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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE  
FOREST CREEK OFFICE CONDOMINIUMS  
(a Utah condominium project)**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE  
FOREST CREEK OFFICE CONDOMINIUMS**

This Declaration of Covenants, Conditions and Restrictions of the Forest Creek Office Condominiums, hereinafter referred to as the "Declaration," is made and executed as of this \_\_\_\_ day of \_\_\_\_\_, 2006, by Forest Creek Complex, L.C., a Utah limited liability company, and W.S.B., L.L.C., a Utah limited liability company (both entities are collectively referred to herein as the "Declarant"), as owners of the Property described herein.

1. RECITALS.

1.1. Capitalized terms in this Declaration are defined in Section 2 below.

1.2. Declarant holds legal title to certain improved real property located in Salt Lake County, State of Utah, and more particularly described herein (the "Property"). The Property was previously used for office rental purposes. Having obtained the necessary approvals from Murray City, Declarant intends to, and does by the recording of this Declaration, convert the office units into condominium units, the use, possession, repair, maintenance, enjoyment and improvement of which shall be governed by the covenants, conditions, and restrictions set forth in this Declaration.

1.3. The covenants, conditions and restrictions contained in this Declaration are expressly intended to be enforceable equitable servitudes, appurtenant to and running with the land, and shall be binding upon and inure to the benefit of the Declarant, its successors and assigns, and all owners of any portion of the Property, together with their grantees, successors, assigns, heirs, executors, administrators, and devisees.

NOW, THEREFORE, Declarant hereby declares that the Property shall be encumbered by the following provisions of this Declaration.

2. DEFINITIONS.

2.1. Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Section 2.

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

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

2.4. Association shall mean Forest Creek Office Condominiums Owners Association, Inc., a Utah nonprofit corporation.

2.5. Building shall mean the office building located on the Property, which Property is more fully described in Section 3.1.

2.6. Bylaws shall mean the Bylaws of the Association, as amended from time to time. A copy of the original Bylaws of the Association is attached to this Declaration.

2.7. Capital Improvement shall mean any improvement with a useful life of more than three (3) years.

2.8. Common Areas and Facilities shall mean all portions of the Project other than the Units, as described in Section 6.1 hereof. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is described in Section 6.2 hereof and is set forth in Exhibit A hereto.

2.9. Common Assessments shall mean those assessments described in Section 19 to fund the Common Expenses, and include Regular Common Assessments and Special Common Assessments.

2.10. Common Expense Account shall mean one or more deposit or investment accounts of the Association into which are deposited the Common Assessments.

2.11. 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.

2.12. Cost of Living Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100 compiled by the Bureau of Labor Statistics, United States Department of Labor. The Index for December 1982-1984 is the reference base index. Declarant may select any other comparable index that measures changes in the cost of living.

2.13. Declarant shall mean and refer collectively to Forest Creek Complex, L.C., a Utah limited liability company, and W.S.B., L.L.C., a Utah limited liability company. Said companies are tenant in common owners of the Property as of the execution of this Declaration.

2.14. Lease shall mean any agreement for the leasing or rental of any portion of the Project.

2.15. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities allocated by the Declaration or the Act, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units.

2.16. Management Committee shall mean the Board of Trustees of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.17. Manager shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

2.18. Mortgage shall mean any mortgage, deed of trust or other security instrument 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.

2.19. Mortgagee shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.

2.20. Owner shall mean any person or entity at any time owning in fee simple a Unit within the Project as such ownership is shown by the records of the Salt Lake County Recorder, State of Utah. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.21. Plat shall mean the Condominium Plat for the Forest Creek Office Condominiums, recorded in the official records of the Salt Lake County Recorder's Office, State of Utah.

2.22. 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.

2.23. Property shall mean that certain real property situated in Salt Lake County, State of Utah, more particularly described in Section 3 below, on which the Units and other improvements are located.

2.24. Regular Common Assessments shall mean the annual assessments levied by the Association to pay the budgeted Common Expenses.

2.25. Size shall mean the area of floor space within a Unit, in square feet, rounded off to a whole number. Declarant's determination of the Size of a Unit, as set forth in this Declaration or in any amendment or supplement hereto pursuant to Section 18, shall be conclusive.

2.26. Special Common Assessments shall mean assessments, which the Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.27. Total Votes of the Association shall mean the total number of votes appertaining to all Units, as described in Section 20 hereof.

2.28. Unit shall mean a physical portion of the Project designed for separate ownership and occupancy as described in Section 5 hereof.

2.29. Unit Number shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

### 3. DESCRIPTION OF THE PROPERTY.

3.1. The Property on which the Building, Units and improvements are located is comprised of approximately one (1) acre of ground, with an existing office building containing approximately 24,500 total square feet, situated in Salt Lake County, Utah, having a street address of 5882 South 900 East, Murray, Utah 84121 (Parcel No. 22-17-327-009), and is more particularly described as follows:

All of Lot 1, Forest Creek Office Subdivision, according to the official plat thereof on file and of record in the Salt Lake County Recorder's office.

Together with a right of way for ingress and egress as granted in that certain Right of Way Easement recorded March 31, 1994, as Entry No. 5781735 in Book 6908 at Page 948, Salt Lake County Recorder's Office.

The Building is constructed of wood-framed walls, metal, brick and stucco exterior, and a single-ply membrane roof. The Building contains three (3) levels of offices with office-related common areas and amenities. The Building was constructed in 1998.

### 4. CONFIRMATION OF SUBMISSION TO ACT.

Declarant hereby confirms and acknowledges that the Property, the Building and all other improvements thereon are subject to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a professional office condominium project known as the Forest Creek Office Condominiums. All of said 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 said Project; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

### 5. DESCRIPTION OF UNITS.

The boundary lines of each Unit are as set forth on the Plat 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. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings (including drop ceilings), windows and window frames, doors and door frames, and trim, consisting of, among other items and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, and any structural members or any other property of any kind, including fixtures and appliances, within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which such Unit is situated shall be considered part of the Unit. 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. Exhibit "A" hereto contains the Unit Number of each Unit in the Project.

## 6. COMMON AREAS AND FACILITIES.

6.1. 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, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, exterior siding, stairwells, lobbies, fire escapes and entrances and exits of the Building; the grounds and recreational facilities, if any, and the parking areas in the Project; the areas used for storage of janitorial supplies and maintenance equipment and materials; 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 as a whole and not exclusively servicing only one Unit; 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 Plat; all foyers, bathrooms, halls, entrance features, and elevators that are not part of a Unit; landscaping and landscaping improvements; parking stalls; and all repairs and replacements of any of the foregoing. Parking areas which are Common Areas and Facilities may be utilized for locating trash containers and similar items if needed by the Association.

6.1.1. There are approximately seventy-five (75) parking stalls for the Building, as shown on the Plat. No Owner shall be entitled to the exclusive use any particular parking stall; provided, however, that the number of parking stalls pertaining to

each Unit, and which may be used by the Owners or occupants of each Unit, are as set forth in Exhibit "A" hereto. The parking stalls are Common Areas and Facilities, and shall be maintained and repaired, as necessary, as a Common Expense of the Association. The Management Committee may, in its discretion, adopt reasonable rules and regulations regarding use of the parking stalls.

6.1.2. Utility services (i.e., gas, electric, water, sewer, etc.), to the extent they are separately-metered for each Unit, shall not be Common Expenses of the Association, but shall be paid for by the Owner(s) of the applicable Unit(s) receiving such services. To the extent any utility services are not separately-metered, but provide services to all of the Units, such utility services shall be Common Expenses of the Association. If any utility services are provided and metered for more than one (1) Unit, but less than all of the Units, then the expenses of such services shall be borne and paid for by the Owners receiving such services, on a pro-rata basis determined by the relative Size of the Unit(s) receiving the services, and the Owners of such Units shall have full rights of contribution against each other to recover any sums or payments made on behalf of the other such Owners.

6.2. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is set forth in Exhibit "A" attached hereto. The undivided interest appurtenant to each Unit shall be calculated based on the Size of each Unit compared to the aggregate Size of all Units. Voting rights pertaining to each Unit shall also be calculated in this manner, as set forth in Exhibit "A" hereto and as more fully explained in Section 20 below. Except as otherwise provided in this Declaration, the undivided interest in the Common Areas and Facilities that is appurtenant to each Unit shall have a permanent character and shall not be altered.

## 7. LIMITED COMMON AREAS AND FACILITIES.

7.1. 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, as indicated by the Plat, to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only certain Units shall be Limited Common Areas and Facilities with respect to the Units which they serve. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

## 8. NATURE AND INCIDENTS OF UNIT OWNERSHIP.

8.1. Each Unit is 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.

8.2. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use their Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners.



8.3. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of their Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of their Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary 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 written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. Except as otherwise provided herein, no Owner may subdivide their Unit.

8.4. The Management Committee shall have the right, if reasonably necessary, to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

## 9. TITLE TO UNITS.

9.1. Title to a Unit within the Project 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.

9.2. Title to any part of a Unit within the Project shall not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each Unit, 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 in the Association as herein set forth.

9.3. No Owner shall be permitted to timeshare or to allow any other form of interval ownership or interval right to use form of timesharing of any Unit within the Project.

9.4. 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.

9.5. 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 undivided interest therein appurtenant to his interest in a Unit. Any Mortgage of any Unit within the Project 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.

9.6. 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 the 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.

9.7. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

#### 10. RESTRICTIONS ON USE.

The Units and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

10.1. All Units are intended to be used for office purposes, which may include, without limitation, any form of psychiatric, legal, accounting, real estate, title and escrow, engineering, medical, dental, any other form of professional office use, or any other office use permitted by applicable zoning ordinances. The Units are restricted to such uses.

10.2. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with their professional office nature and the use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) no automobile or other vehicle shall be parked at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from

its various parts; (ii) no radio or television antenna, receiver or similar device, or any wiring for any purpose, may be installed on the exterior of the Building, in a manner that is visible from the street level of this Project, without the prior written approval of the Management Committee; (iii) no Owner shall discard or permit any items to fall from the windows of his or her Unit; and (iv) no dogs or other pets are permitted on common areas, except for service dogs for blind persons or other similar types of necessary service dogs.

10.3. Except for the office signs located at the Project as of the date of the recording of this Declaration, no signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices, shall be erected or maintained on any 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. If the Management Committee consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Management Committee.

10.4. No Unit, or portions thereof, may be further divided or subdivided into two or more other Units. This provision does not prohibit a Unit from being owned by more than one person in the form of a tenancy in common or other form of joint undivided ownership. An Owner may lease portions of a Unit to two or more tenants.

10.5. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities. Owner may remodel or redecorate the interior space of their Units, without Management Committee approval, so long as the remodeling or redecoration involves quality workmanship and materials consistent with a professional office complex.

10.6. 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 Unit, except with the prior consent of the Management Committee.

10.7. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which 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 Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which 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.

10.8. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and the Project, as such rules and regulations may be modified, amended and construed by the Association in the sole discretion of its Management Committee. The Management Committee may adopt reasonable rules and regulations that are not inconsistent with the terms and provisions of this Declaration, the Articles or the Bylaws.

10.9. Any Lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. All such Lease agreements shall be in writing and a copy of the Lease shall be filed with the Association. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

#### 11. ASSOCIATION AND MANAGEMENT COMMITTEE.

11.1. Each Owner shall be a member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

11.2. The Association shall be governed by the following provisions:

11.2.1. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of three (3) natural persons as provided in the Bylaws. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

11.2.2. Except as otherwise provided herein, the Management Committee 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:

11.2.2.1. To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.

11.2.2.2. To carry out through a Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association or Management Committee, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

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

11.2.2.4. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

11.2.2.5. To determine and pay the Common Expenses, and levy and collect Assessments to pay for the Common Expenses.

11.2.2.6. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Section 19 hereinafter.

11.2.2.7. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

11.2.2.8. To open bank accounts on behalf of the Association and to designate the signatories therefor.

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

11.2.2.10. To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Management Committee, the Association or the Project in excess of \$10,000 (as measured in 2006 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of \$10,000 shall not require Association approval.

11.2.2.11. To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, as well as worker's compensation insurance, as needed.

11.2.2.12. 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.

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

11.2.2.14. 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. The Association or the Management Committee shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.2.2.15. 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.

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

11.2.2.17. To grant conveyances, easements and rights-of-way over the Common Areas and Facilities.

11.2.2.18. Members of the Management Committee, 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.

11.2.2.19. When a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, 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 Management Committee who so acted. Members of the Management Committee 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 gross negligence gave rise to the damages.

11.2.3. Neither the Management Committee nor the Manager, if any, shall sell any Property of the Association except as permitted by the Act and this Declaration.

## 12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

12.1. The Management Committee, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Facilities and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit in a clean, sanitary and attractive condition. The Management Committee shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, siding, railings, roof and fences, cleaning, repair, and the maintenance of all landscaping, fire and landscaping sprinkling systems, walkways and driveways. The Management Committee shall also be responsible for maintenance, repair and replacement of Common Areas and Facilities within the Building, and any items located within or used in connection with the Common Areas and Facilities. The costs associated with the maintenance, replacement and repair of the Common Areas and Facilities shall be a Common Expense.

12.2. 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.

12.3. Additions or Capital Improvements to the Project which cost no more than \$5,000 (as measured by 2006 dollars) may be authorized by the Management Committee alone, so long as the Association has such funds available to it without imposing a special assessment. Additions or Capital Improvements the cost of which exceeds \$5,000 must, prior to being constructed, be authorized by at least a majority of the undivided ownership in the Project. Any additional or Capital Improvements which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by at least seventy-five percent (75%) of the Project's undivided ownership interest. For purposes of this Section 12.3, "materially alter the nature of the Project" shall mean any addition or Capital Improvement that changes the project from office use to any other use, such as residential or any form of timesharing.

12.4. No Owner shall enlarge or otherwise modify the exterior of his/her Unit or Limited Common Area or add any devices or structures such as, for illustration and not limitation, fences, greenhouses, solariums, room additions, or decks, unless and until the Owner has received written consent from the Management Committee. The Management Committee may function by itself or may appoint a committee to be charged with the responsibility of keeping the Project's exterior and common areas consistent in appearance.

In the event the Management Committee grants an Owner the right to convert Common Area into Limited Common Area or modify Limited Common Area into Common Area, the entire cost of any such improvement or modification shall be borne by the Owner. Ownership interests in the Common Areas shall also be amended to reflect the additional private ownership of the Owner, increasing the Owner's interest and concurrently reducing the Ownership interests of the other Owners. The other Owners' consent is not required for such an amendment. Moreover, the Owner shall pay all expenses associated with the preparation, execution and recordation of any amendments reflecting such conversion.

Should any improvement or modification to a Unit or to the Project by an Owner cause any increase in the cost of the Association's insurance, painting, or other expense, such increase in expense shall be added to the affecting Owner's monthly assessment. Further, any such additional expense affected thereby and applicable to non-yearly periodic maintenance projects such as, but not limited to, roofing, staining or painting, shall also be added to any special assessment of the Owner.

### 13. INSURANCE.

13.1. The Association shall at all times maintain in force insurance meeting the following requirements:

13.1.1. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities; the Building including all Units (other than the interior contents thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or Facilities or owned by the Association, but excluding land, foundations,



excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Management Committee deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Management Committee otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be Two Thousand Dollars (\$2,000) and for losses related to individual Units that are covered by such a policy, the maximum deductible related to each individual Unit shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

13.1.2. If a Unit within the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Plat, a "master" or "blanket" policy of flood insurance shall be maintained covering the Building (a separate policy is required for each separate multi-story building that houses Units), any machinery and equipment that are not part of a Building and all Common Areas and Facilities within the Project (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Building and any other Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

13.1.3. The name of the insured under each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association,

including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

13.1.4. Each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.1.5. Each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

13.1.6. In contracting for the policies of insurance required to be maintained by the foregoing provisions of this Section 13.1, the Management Committee shall make reasonable efforts to secure, if the Management Committee deems such advisable, coverage which provides the following endorsements: (1) "Inflation Guard Endorsement" (2) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "Steam Boiler and Machinery Coverage Endorsement", if the Project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of One Million Dollars (\$1,000,000.00) or the insurable value of the Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

13.1.7. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to the Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manager's

officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association.

13.1.8. The Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision, and any commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.1.9. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to

such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this Section 13.1.9 and of the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

13.1.10. All insurance policies shall be reviewed at least annually by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

#### 14. DESTRUCTION OR DAMAGE.

14.1. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to

exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

14.2. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

14.3. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

14.3.1. The Association shall give timely written notice to any holder of any First Mortgage on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or Facilities or a Unit subject to such First Mortgage.

14.3.2. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

14.3.3. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

14.3.4. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 19.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

14.3.5. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association to carry out such

repair and reconstruction, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

14.3.5.1. The Project shall be deemed to be owned in common by the Owners;

14.3.5.2. Each Owner shall own an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities;

14.3.5.3. 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 respective Owner in the Project; and

14.3.5.4. The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the percentage of undivided interest owned by each Owner in the Project after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

14.3.5.5. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

14.4. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

14.5. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Common Assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance

proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

14.6. This Section 14 shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

## 15. TERMINATION.

15.1. Except as otherwise provided in this Declaration, the Project may be terminated only by agreement of Owners entitled to vote at least sixty percent (60%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose at which a quorum is present.

15.2. 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.

15.3. A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

15.4. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

15.5. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

16. EMINENT DOMAIN.

16.1. 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 Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

16.2. With respect to the Common or 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 ownership interest in the Common Areas and Facilities.

16.3. 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 damage or destruction pursuant to Section 14 above and shall be deposited with the Management Committee as trustee. Even though the damages or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his award with the Management Committee, then at the option of the Management Committee, either a Special Common 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.

16.4. In the event the Project is removed from the provisions of the Act pursuant to Section 15 above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities.

16.5. 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:

16.5.1. 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.

16.5.2. 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 Owners thereof. 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 Management Committee. The ownership interest in the



Common Areas and Facilities appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Owners.

16.6. 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 16.6 shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

## 17. MORTGAGEE PROTECTION.

17.1. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

17.2. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

17.3. In the event any taxes or other charges which may or have become a lien on the Common Areas and Facilities are not timely paid, or in the event the required hazard insurance described in 13.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

17.4. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas and Facilities.

18. AMENDMENT.

18.1. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Plat shall require the affirmative vote of at least seventy-five percent (75%) of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or a member of the Management Committee of the Association shall certify that the vote required by this Section for amendment has occurred.

19. ASSESSMENT OF UNITS BY THE ASSOCIATION.

19.1. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

19.1.1. Each Owner shall be liable for a proportionate share of the Common Expenses, such share being the same as the percentage of undivided ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him, as determined in accordance with the provisions of Section 20 below. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Article 19 shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common 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 Common Assessments shall be levied against each separate Unit annually.

19.1.2. The Association may not impose a Regular Common Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, casting a majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Units. The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

19.1.3. In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Management Committee shall not, without the vote or written assent of Owners, casting a majority of the Total Votes of the Association at a meeting or by written ballot, levy

Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to pay an increase in real property taxes or when the special assessment against an Owner is a remedy utilized by the Management 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 Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Management Committee and the Management Committee may permit Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.

19.1.4. All Common Assessments shall be due as determined pursuant to the Bylaws. Common 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 Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a late fee of up to One Hundred Dollars (\$100.00), adjustable from year to year at the discretion of the Management Committee pursuant to the Cost of Living Index. All payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common 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' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

19.1.5. There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Common Assessments and related charges shall be effective upon recordation in the Office of the Salt Lake County Recorder of a written notice of lien by the Management Committee or the Manager. The written notice of lien shall set forth the amount of the Common Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Common Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the

exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the state of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Common Assessments against the Unit which shall become due during the period of foreclosure, and all such Common Assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.). The Association and each Owner hereby appoint First American Title Insurance, Inc., 330 East 400 South, Salt Lake City, Utah 84111, its successors and/or assigns, as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8 Utah Code Ann. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 17.2 hereof 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. 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. The Management Committee, 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 Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith.

19.1.6. The amount of any Common Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the

Common Areas and Facilities or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

19.1.7. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 19.1.6 shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

The Management Committee 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; provided, however, that the Management Committee may expend up to \$5,000.00 per year of reserve funds for other purposes so long as an adequate level of reserve funds is maintained. The Management Committee may also 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 Management Committee 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 Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 19.1.3 hereof.

19.2. If an Owner shall at any time lease his Unit and shall default in the payment of Common Assessments, the Management Committee 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 Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

## 20. VOTING.

At any meeting of the Association, each Owner of a Unit either in person or by proxy, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in Exhibit "A." The number of votes appurtenant to each respective Unit shall be based on the Unit's undivided interest in the Common Areas and Facilities. The undivided interest

appurtenant to each Unit shall be equal to the percentage derived by dividing the Size of each Unit by the aggregate Size of all Units in the Project, as set forth in Exhibit "A." The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Amendment.

## 21. EASEMENTS.

21.1. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. 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 Plat, 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.

21.2. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he is occupying and to any Limited Common Areas and Facilities appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium.

21.3. The Association 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 each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas and Facilities for use by the Owners and the Association.

21.4. 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 maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas and Facilities or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas and Facilities or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Account. Similarly, Owners shall have a right of reasonable access through the Common Areas and Facilities and

other Units (upon reasonable advance notice to the owner(s) of such Units) if reasonably necessary to access, repair, replace or maintain any Unit or item appurtenant to such Unit.

21.5. All conveyances of Units within the Project 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.

## 22. 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 Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. 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.

## 23. NO WAIVER.

The failure of the Management Committee 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, 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 Management Committee 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 Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

## 24. ENFORCEMENT.

24.1. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the rules and regulations and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. 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 Management Committee, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or

(ii) the Management Committee 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 Management Committee 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 Management Committee. The Management Committee may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

24.2. The Association shall not be empowered 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 the Declaration or the rules and regulations for the Project except pursuant to:

24.2.1. The judgment of a court; or

24.2.2. A foreclosure for the failure of an Owner to pay assessments duly levied by the Association.

24.3. The Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

25. AGENT FOR SERVICE OF PROCESS.

The name and address of the person to receive service of process in all cases provided by the Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

26. SEVERABILITY.

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

27. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

28. LAW CONTROLLING.

This Declaration and the Plat shall be construed and controlled by and under the laws of the State of Utah.



29. EFFECTIVE DATE.

This Declaration shall take effect when recorded in the office of the Salt Lake County Recorder.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 12<sup>th</sup> day of June, 2006.

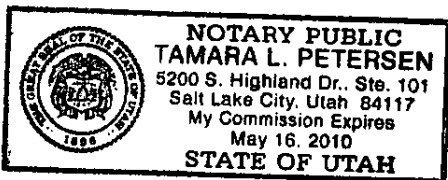
**DECLARANT:**

Forest Creek Complex, L.C., a Utah limited liability company

By: [Signature]  
Title: MANAGER, NEWBORN

STATE OF UTAH )  
: ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of JUNE, 2006, by GREG R. WATTS, as authorized member/manager of Forest Creek Complex, L.C., a Utah limited liability company.



Tamara L Petersen  
NOTARY PUBLIC  
Residing at: 5200 S. Highland

My Commission Expires:  
5/16/2010

**EXHIBIT B**

**Bylaws**

**(Attached)**

**EXHIBIT A**

**Schedule of Units, Votes and Undivided Interests in Common Areas**

**FOREST CREEK OFFICE CONDOMINIUMS**

<b>Unit Number</b>	<b>Size of Unit (square feet)</b>	<b>No. of Votes Per Unit</b>	<b>Percentage of Undivided Interest Per Unit</b>	<b>Parking Stalls</b>
#100	956	5.2 Votes	5.2%	4
#101	1,125	6.1 Votes	6.1%	5
#102	1,531	8.3 Votes	8.3%	6
#103	1,443	7.8 Votes	7.8%	6
#104	1,109	6.0 Votes	6.0%	5
#200	1,002	5.4 Votes	5.4%	4
#201	1,940	10.5 Votes	10.5%	8
#202	1,562	8.4 Votes	8.4%	6
#203	1,628	8.8 Votes	8.8%	6
#300	1,286	7.0 Votes	7.0%	5
#301	950	5.1 Votes	5.1%	4
#302	1,291	7.0 Votes	7.0%	5
#303	2,672	14.4 Votes	14.4%	11
<b>Total</b>	<b>18,495</b>	<b>100</b>	<b>100%</b>	<b>75</b>