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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE  
URBANA ON 11TH CONDOMINIUMS**

made by

Gardiner Properties 1100 East, LLC,  
a Utah limited liability company

*Dec*  
~~October~~ 21, 2009

Salt Lake County, Utah

**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF THE  
URBANA ON 11TH CONDOMINIUMS**

This Declaration ("Declaration") is made as of the 21<sup>st</sup> day of Dec. ~~October~~, 2009, by Gardiner Properties 1100 East, LLC, a Utah limited liability company, hereinafter referred to as the "Declarant."

**RECITALS:**

A. The Declarant is the owner of the following described parcels of land, hereinafter collectively the "Land," which are located in Salt Lake County, State of Utah:

PARCEL 1

A parcel of land, part of Lot 20, Block 1, Five Acre Plat "A," Big Field Survey located in the Southeast Quarter of Section 17, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

BEGINNING at a point, which is 27.06 feet South 00°04'07" West from the Northeast corner of said Lot 20 and running thence South 00°04'07" West 63.50 feet; thence North 89°55'47" West 143.07 feet; thence North 05°04'09" East 82.38 feet; thence North 89°25'18" East 44.99 feet; thence South 00°00'20" East 19.19 feet; thence East 90.88 feet to the POINT OF BEGINNING.

Containing 9,765 square feet or 0.22 acres.

PARCEL 2

A parcel of land located in the Southeast Quarter of Section 17, Township 1 South, Range 1 East, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, more particularly described as follows:

BEGINNING at a point, which is South 05°03'51" West 12.05 feet from the Southeast corner of Lot 4, Block 4, Evergreen Park Subdivision and running thence South 89°55'47" East 30.01 feet; thence South 05°04'09" West 60.50 feet; thence North 89°55'47" West 42.16 feet; thence North 05°03'30" East 17.92 feet to the Southeast corner of Lot 5, Block 4, Evergreen Park subdivision as recorded in the Office of the Salt Lake County Recorder; thence North 00°26'29" East 5.31 feet; thence South 89°33'31" East 2.74 feet; thence North 00°26'29" East 21.33 feet; thence North 89°33'31" West 0.59 feet; thence North 05°03'30" East 21.93 feet; thence South 89°55'18" East 12.17 feet; thence South 05°03'51" West 6.08 feet to the POINT OF BEGINNING.

Contains 2,585 square feet or 0.06 acres.

B. The Declarant has constructed or will construct on the Land a Building comprised of approximately 30 Condominium Units and other improvements as shown on the Map referred to below.

C. The Declarant intends to execute, acknowledge, and record in the official real estate records of the County Recorder for Salt Lake County, State of Utah, a certain instrument pertaining to the Project entitled "Record of Survey Map for the Urbana on 11th Condominiums."

D. The Declarant intends by recording this Declaration and the Map to submit the Land, the Building, and all other improvements situated in or upon the land to the provisions of the Utah Condominium Ownership Act, Utah Code Ann., § 57-8-1, et seq. (hereinafter the "Condominium Act") as a fee simple Condominium Project and to impose on said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominium Units within said project and the Owners thereof.

## DECLARATION

NOW, THEREFORE, the Declarant hereby declares as follows:

### ARTICLE 1. DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article:

(a) "Articles" shall mean the Articles of Incorporation of the Urbana on 11th Condominium Owner's Association, filed with the Utah Division of Corporations and Commercial Code, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference.

(b) "Association" shall mean the Urbana on 11th Condominium Owner's Association, a Utah nonprofit corporation, organized to be the Association referred to herein.

(c) "Board of Directors" shall mean the governing board or management committee of the Association, appointed or elected in accordance with this Declaration and in accordance with the Articles and Bylaws.

(d) "Building" shall mean the building containing the Units that have been or will hereafter be constructed on the Land, as the building is shown on the Map, together with (i) any additions or modifications that may hereafter be made thereto; and, (ii) all improvements and fixtures contained within the building.

(e) "Bylaws" shall mean the Bylaws of the Urbana on 11th Condominium Owner's Association that are adopted and/or amended by the Board from time to time. A copy of the initial Bylaws are attached as Exhibit F and incorporated herein by this reference.

(f) "Common Areas" shall mean all physical portions of the Project, except all Units.

(g) “Common Expense Fund” shall mean the fund created or to be created pursuant to the provisions of Article 9 of this Declaration and into which all monies of the Association shall be deposited.

(h) “Common Facilities” shall mean all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

(i) “Condominium” shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit A attached hereto and by this reference made a part hereof.

(j) “Condominium Act” shall mean the Utah Condominium Ownership Act, Utah Code Ann., § 57-8-1, et seq.

(k) “Declarant” shall mean Gardiner Properties 1100 East, LLC, a Utah limited liability company.

(l) “Eligible First Mortgagee” shall have the meaning set forth in Section 14(c) below.

(m) “First Mortgage” shall mean a first Mortgage lien on any Unit in the Project.

(n) “First Mortgagee” shall mean the holder of a First Mortgage.

(o) “Land” shall mean the land upon which the Project is situated, as more particularly described in Paragraph A of the Recitals above.

(p) “Limited Common Areas” shall mean any Common Areas designated as reserved for the use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof. Any balconies, porches, parking stalls, or storage facilities that are identified on attached Exhibit B or, alternatively, that are described in the instrument or instruments of conveyance at the time a Unit is first sold by the Declarant in accordance with the provisions of this Declaration, as being assigned to a specific Unit shall be Limited Common Areas for the exclusive use of the Owner of such Unit.

(q) “Live/Work Unit” shall refer to the combination of two separate Units within the Project, as designated on the Map and in Exhibit C, into a single two-level unit in which the occupant primarily conducts his/her employment, livelihood and/or business within the ground-level Unit, and occupies as his/her primary residence the second-level Unit.

(r) “Map” shall mean the Record of Survey Map for Urbana On 11th Condominiums, a Utah Condominium Project, attached hereto as Exhibit D and incorporated herein by this reference

and any Supplemental Maps pertaining to the Project and recorded or to be recorded in the office of the Official Records.

(s) “Member” shall mean and refer to each Owner of a Unit.

(t) “Mortgage” shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

(u) “Mortgagee” shall mean (i) any persons named as the mortgagee or beneficiary under any mortgage or deed of trust by which the interest of any Owner in the Project is encumbered, or (ii) any successor to the interest of such person under such mortgage or deed of trust.

(v) “Official Records” shall mean the official real estate records of the County Recorder for Salt Lake County, State of Utah.

(w) “Owner” shall mean the person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by Official Records. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title to a Condominium for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

(x) “Project” shall mean the land, the buildings, and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

(y) “Total Votes of the Association” shall mean the total number of votes appertaining to all Condominiums in the Project, as shown on Exhibit A attached hereto.

(z) “Unit” shall mean an individual air space unit, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of any other Unit: Bearing walls floors, ceilings, and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

## ARTICLE 2. SUBMISSION AND DIVISION OF PROJECT

(a) Submission to Condominium Act. The Declarant hereby submits the Land, the buildings, and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated,

encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as Urbana on 11th Condominiums, a Utah Condominium Project. All of said property 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 and in furtherance of a plan for improvement of said property and division thereof into Condominiums 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 Land and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

(b) Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas, as set forth in Exhibit A attached hereto.

### **ARTICLE 3. BUILDINGS AND IMPROVEMENTS**

(a) Buildings and Improvements. The buildings and other improvements constructed or to be constructed on the land are described on the Map. The ground floor of the buildings will be constructed of and finished with concrete, and the upper floors will be wood framed and finished with brick and galvanized metal panels. The following information regarding the buildings is also contained on the Map: (i) the number of floors and basements in a building; and (ii) the number of units on each floor of a building. All buildings and improvements, including reconstruction and additions, shall conform to the architectural drawings approved by the City of Salt Lake City for the construction of the Project.

(b) Description of Units. The Map contains the Unit number, location, and dimensions of each Unit in the Project and all other information necessary to identify each such Unit. Each Unit shall have at least one parking space which is either part of the Unit or appurtenant to it and, in accordance with the terms of this Declaration, reserved for its exclusive use as a Limited Common Area which shall not be severed from such Unit.

(c) Description of Common Areas. The Map contains a description of the Common Area of the Project.

(d) Description of Limited Common Areas. The Map contains a description of the Limited Common Areas of the Project. Exhibit B describes the parking stalls and storage facilities that are reserved for the exclusive use by the Owners of the Units. The Declarant shall have the right, subject to matters of record in the Official Records, and provided no prior designation or assignment of any Limited Common Area to any Unit is affected without the consent and agreement of the Owner of such affected Unit, to assign the specific parking stalls, storage facilities and any other Limited Common Areas to be reserved for the exclusive use of any unsold Unit at the time of the first sale of such Unit by the Declarant by designating such assignment in the instrument or instruments of conveyance for such Unit. Such designation in a conveyance instrument or instruments shall have the effect, again subject to matters of record in the Official Records, of amending and supplementing Exhibit B to this Declaration to reflect the specific assignment of the

Limited Common Areas as described in such conveyance instrument or instruments, and no further action, amendment, document or other instrument shall be required from Declarant or the Owner of the applicable Unit in order to give legal effect to and/or notice of such assignment and corresponding rights of use.

**ARTICLE 4.  
NATURE AND INCIDENTS OF OWNERSHIP**

(a) Interior of Units. 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 such Owner's Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right, to construct partition walls, fixtures, and improvements within the boundaries of such Owner's Unit; provided however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located, and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Board of Directors shall consent in writing to such encroachment.

(b) Maintenance of Units. Each Owner shall keep the interior of such Owner's Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board of Directors, the Board of Directors in behalf of the Association 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 or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

(c) Title. Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common.

(d) Ownership of Common Areas. The undivided ownership interests in the Common Areas shall be allocated prorata to all of the Units in the Project according to the square footage of each Unit, as set forth in Exhibit A attached hereto. The percentages appurtenant to each Unit as shown in said Exhibit A shall have a permanent character and shall not be altered, except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated in accordance with this Declaration for the exclusive use of such Owner.

(e) Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance, or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

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

(g) Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber such Owner's Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to such Owner's Condominium. Any mortgage or other encumbrance of any Condominium 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.

(h) Separate Taxation. Each Condominium within the Project including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

(i) Mechanics' Liens. No labor performed or material furnished for use in connection with any Unit with the consent or at the request of an Owner or such Owner's agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

(j) Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.



(k) Balcony and Terrace Use. The Owners who have balconies or terraces which are Limited Common Areas appurtenant to their Units are prohibited from permanently placing or attaching any objects on the balconies or terraces; provided, however, the owners of Units on the 4<sup>th</sup> Floor having large Private Balconies designated as Limited Common Areas may install an uncovered hot tub on such terraces. The Owners may temporarily place furniture, plants or other items on the balconies as permitted by the Rules and Regulations adopted by the Board of Directors of the Association relating to the attended use of such balcony areas by other occupants.

(l) Building Exteriors. To provide a neat, attractive and harmonious appearance throughout the Condominium, no air conditioning units, awnings, shades or screens shall be attached to, hung or used on the exterior of any window or door of a Unit, the roof of any building, or other portion of the Common Areas and/or Common Facilities without the prior written consent of the Board of Directors of the Association. Also, no foil or other reflective material shall be used on any windows for sun screens, blinds or any other purpose.

(m) Leasing. The following terms shall govern the leasing of Units in the Project:

(1) Subject to the ability of the Association to impose additional leasing controls as set forth in subsection 4(m)(2) below and the other provisions set forth in this subsection 4(m), no more than five (5) Units, plus Unit 101 (the "Work" space portion of the Live/Work Unit), in the Project may be leased at any given time.

(2) The Association, with the written approval of Unit Owners holding at least seventy-five percent (75%) of the Total Votes of the Association, may (i) regulate, limit (or modify existing limits), or prohibit leasing of the Units; (ii) require the leasing of Units to be conducted through the Association or a designated management company selected by the Association, or (iii) require that all lease agreements be reviewed and approved by the Association or the designated management company, and that any tenants be screened and approved by the Association or the designated management company prior to leasing a Unit, provided, any such approval shall not be unreasonably withheld.

(3) Subject to any additional or alternative leasing controls imposed in accordance with subsection 4(m)(2) above, the following provisions shall govern the leasing of Units by Owners. Owners shall not lease their Units for a period of less than six (6) months. Subject to receiving confirmation from the Association that any rental will be consistent with the limits imposed by subparagraph 4(m)(1) above, Owners shall be entitled to lease their Units without approval of the Association or any designated management company appointed by the Association; provided, however, any leases shall comply with the provisions of this subsection 4(m)(3). Prior to leasing any Unit, the Owner shall execute a written lease which shall contain the following provisions; (i) Tenants shall comply with all of the terms and conditions of this Declaration and the Association's by-laws; (ii) Tenants shall agree not to allow or commit any nuisance, waste, unlawful or illegal act on the premises; (iii) Owner and tenant shall acknowledge that the Association is an intended third-party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with this Declaration and its by-laws and to abate any nuisance, waste, unlawful or illegal activity on the premises, and that the Association shall be entitled to exercise all of the Owner's rights and remedies under the lease agreement to do so. Prior to a tenant's occupancy of a

Unit the Owner must provide the Association with the name, address and telephone number of tenant and a copy of the written lease agreement. The Association shall have the right and the obligation to enforce compliance with this Declaration and its by-laws against any Owner and/or occupant of any Unit, and shall have all rights and remedies as a third-party beneficiary under any lease agreement to enforce such compliance.

(n) Parking. The parking of vehicles in the Project shall be governed by the following:

(1) Each Unit shall be assigned at least one parking stall in one of the parking garages at the Project as a Limited Common Area for the exclusive use of such Unit. Any additional available stalls may be purchased from the Association under the terms set by the Board of Directors.

(2) The Board of Directors may set rules and regulations specifically governing the parking of vehicles at the Project.

(3) No recreational (e.g., ATVs, RVs, boats, wave runners), commercial or oversize vehicles or vessels shall be allowed to park in the Project, except to the extent temporarily required, as determined by the Board of Directors, in connection with any construction activity serving the Project.

(4) No resident shall repair or restore any vehicle of any kind in, on or about the Project, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(5) Owners who are assigned alley garage parking spaces located within the Project shall have the right to park one (1) additional vehicle in front of the door to their assigned garage unit, provided that the parking of such additional vehicle shall not violate any other provision of this Declaration or of applicable law or otherwise interfere with the rights of any other Owner.

(6) Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner's sole expense.

(o) Limited Access to Roofs. No residents shall be entitled to access the roof area of the building, other than private balconies designated as Limited Common Areas, without the prior approval of the Association.

## **ARTICLE 5. EASEMENTS**

(a) Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the land, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred

to herein include, but are not limited to, encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

(b) Easements for Maintenance, Cleaning and Repair. Some of the Common Areas 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 from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas 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 Fund.

(c) Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

(d) Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the common areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

(e) Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein as shown on the Map and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

(f) Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyances.

(g) Easement for Utilities. The Declarant hereby creates a blanket easement upon, across and through the Common Areas for the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, computer, cable, and master television antenna or cable or satellite television systems, if any. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the facilities, equipment and appurtenances on

the Common Areas necessary to repair, and maintain water and sewer pipes, gas, electric, telephone, computer and television wires, cables, circuits, conduits and meters. If any utility or quasi-utility company furnishing a service covered by the blanket easement created herein requests a specific easement by separate recordable document, the Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over or under any part or all of the Common Areas without conflicting with the terms hereof.

## **ARTICLE 6. RESTRICTIONS ON USE**

(a) Primary Residential Use; Live/Work Units. Except for the Live/Work Units as designated on Exhibit C and any model units designated pursuant to subsection 16(l) below, all Units within the Project shall be used exclusively for residential purposes and for no other purpose. Live/Work Units may be used for residential and/or any retail, commercial or professional purposes permitted by applicable zoning regulations, subject to the following limitations:

(1) No customer, client or member of the public shall have right to access any of the Limited Common Areas of the Building except those that may be appurtenant to a specific Live/Work Unit.

(2) Notwithstanding the foregoing, no portion of a Live/Work Unit may be utilized as a warehouse, secondhand store, unemployment or welfare office, pet shop, animal raising business, veterinary hospital, any medial use generating bio-hazardous materials, pool hall, "adult" type bookstore, tattoo parlor, liquor store, bar or tavern, private club, commercial laundry, dry cleaning plant, laundromat, massage parlor, sexually oriented business (as that term is defined in the Salt Lake City Code), or theater exhibiting pornographic movies or productions.

(3) No portion of the commercial space of a Live/Work Unit may be utilized for the preparation of food if such preparation requires the use of a grill, open flames, deep fat fryers, commercial ovens and similar devices unless (A) such use is approved by the Board of Directors, and (B) the commercial space is appropriately retrofitted to accommodate such use in accordance with applicable laws; provided, however nothing herein shall preclude the use of microwave ovens or other equipment typically used in a coffee house.

(4) Each Owner of a Live/Work Unit must at all times maintain comprehensive liability insurance, primary to that obtained by the Association, covering the Live/Work Unit, written by an underwriter satisfactory to the Association, with minimum limits of liability, regarding personal injury or death, of \$1,000,000.00 per occurrence, and regarding property damage, of \$100,000.00 per occurrence, and with a deductible of not more than \$5,000.00. The Association shall be named as additional insured and shall be furnished with a certificate of insurance. The insurance policy shall contain provisions requiring thirty (30) days notice to the Association prior to any cancellation or reduction in amount of coverage. Such insurance policy shall be subject to the requirements of Article 10 below.

(5) The Owner(s) of each Live/Work Unit shall defend, indemnify, and hold harmless the Association and the other Owners from and against any and all claims, costs, and

liabilities, including attorneys' fees, arising from the use of the Live/Work Unit, from the conduct of such Owner's business therein, or from any activity, work, or thing done, permitted, or suffered by such Owner(s) or by any of such Owner's or Owners' agents, contractors, or employees.

(b) No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. 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.

(c) Restrictions on Signs. Subject to the provisions of this subsection 6(c) below relating to commercial signage for Live/Work Units, and except as provided in Utah Code Ann., § 57-24-101, et seq., no signs, flags, or advertising devices of any nature, including without limitation, commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Board of Directors, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association. Live/Work Units shall be subject to the following additional provisions relating to commercial signage:

(1) The Owner of each Live/Work Unit may erect, display or maintain no more than the following signs: three (3) window signs (including signs on any door); two (2) sidewalk signs; one (1) exterior sign, which signs shall be considered "Commercial Signs." The location of the Commercial Signs must be limited to the commercial space in any Live/Work Unit and the ground immediately surrounding it, and Commercial Signs may not be placed anywhere else within the Project. The content of Commercial Signs may only advertise the business conducted within the commercial space of the applicable Live/Work Unit at that time. No Commercial Sign may advertise the sale or lease of any Unit; provided, however, that the Owner of the Live/Work Unit in which the commercial space is located may place, in the window of the Commercial Space, one (1) paper sign no larger than twenty inches in width by thirty inches in height advertising the availability of that space for lease if the lease of such space is otherwise permitted by this Declaration.

(2) Commercial Signs placed in any window may only state the name and/or nature of the business conducted in the commercial space of the applicable Live/Work Unit. Only one of these signs per Live/Work Unit may be lit by neon or other light source; provided, however, that such a sign may only state the name of the business and/or whether the business occupying the commercial space of such Live/Work Unit is open, and may only remain lit during the normal hours of business conducted in that Live/Work Unit.

(3) To the extent permitted by Salt Lake City zoning regulations, the Owner of each Live/Work Unit may place two (2) A-frame style sidewalk signs in the park strip adjacent to the sidewalk that is immediately adjacent to the applicable commercial space within such Live/Work Unit. Such sidewalk signs may not interfere with pedestrian traffic on any sidewalk, and may only be placed outside during the normal hours of business conducted in applicable commercial space. Sidewalk signs may not advertise any sale or promotion.

(4) Any sign that is attached to the exterior of any Live/Work Unit, including, without limitation, backlight lightbox, architectural, and hanging signs, may only be displayed or erected upon the Board's prior written approval of such a sign.

(5) None of the following may be erected, displayed or maintained by any Owner: (i) pennant signs, flags or banners; (ii) neon or lit signs advertising any brand or product; (iii) mobile or portable signs other than A-frame style sidewalk signs; (iv) signs advertising the sale of any Unit; (v) LED display signs; (vi) corrugated plastic signs; and (vii) any sign placed above the ground story level.

Nothing included herein shall prevent Declarant and its agents and assigns from utilizing reasonable signs, flags, markers, and sales devices in furtherance of sales activities until all Units have been sold by Declarant.

(d) Pets and Animals. No animals, livestock, poultry, or insects, of any kind, shall be raised, bred, kept, or boarded in or on the Project; provided, however, that the Owners of each Unit may keep a total of two (2) household pets (consisting of domestic dogs, domestic cats, or other household pets approved by the Board) following payment to the Association of a \$325 nonrefundable pet fee for each such household pet. The Board of Directors shall administer all funds collected as pet fees in its reasonable discretion. In no event shall any Owner be permitted to raise, breed, keep or maintain such pets for any commercial purposes, nor shall any pet be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Unit shall promptly remove all pet waste from the Common Areas and Common Facilities. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet damages any portion of the Common Areas or disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Board of Directors will give notice to the Owner of such pet to cause such annoyance or damage to be discontinued and, if applicable, repaired at such Owner's expense; and if such annoyance or damage is not discontinued and corrected, the Board of Directors may revoke its permission to keep the pet in the Project and the pet shall immediately be removed therefrom. In addition, the Board may adopt association rules applicable to the provisions of this subsection and to the keeping of pets within the Project and their enforcement, including, without limitation, the assessment of charges to Owners who violate such rules. Any charges so assessed shall be Special Assessments.

(e) No Alterations. No Owner shall, without the prior written consent of the Board Directors in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project; provided that the Owners shall have the right to landscape the Limited Common Areas appurtenant to their respective units without obtaining in each specific instance the prior written consent of the Board of Directors so long as any landscaping undertaken in such Limited Common Areas is completed in a timely fashion, does not create a harmful or unsafe condition, and does not result in an increase in the cost of insurance on the Common Areas of the Project.

(f) No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Directors shall consent thereto in writing.

(g) No Overloading. No Owner shall bring anything into such Owner's Unit or permit anything to be done in such Owner's Unit that will cause damage to the Building. No Owner shall overload the floor of such Owner's Unit. No Owner shall permit the use or operation in such Owner's Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the Building or portions thereof.

(h) Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Directors, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold Harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

(i) No Commercial Business. Except for the Live/Work Units as designated on Exhibit C, no commercial business shall be permitted within the Project.

(j) Common Roof Garden. The Board shall have the right, from time to time, to adopt and/or modify reasonable rules, regulations and restrictions with respect to the use of the fourth (4th) floor roof garden Common Area, including, without limitation, noise and time restrictions, and reservation procedures (it is anticipated that reservations will be taken on a first-come, first-served basis).

(k) Rules and Regulations. 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 Board of Directors.

(l) Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provisions, covenants, conditions, or restrictions upon completion of the construction.

(m) Motor Vehicles. Motor vehicles shall be operated and parked only upon those portions of the Common Areas and Common Facilities designated for such purpose by the Board of

Directors of the Association. Mobile homes, motor homes and truck campers shall not be kept, placed, stored, parked, maintained or operated on the Property.

(n) No Unsightly Activities. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Property.

(o) External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, landscaping and planting, other than those provided in connection with the original construction of the Project, and any replacements thereof, and other than those approved by the Board of Directors, and any replacements thereof, shall be constructed, erected, or maintained on the exterior of the Project. The foregoing notwithstanding, nothing included herein shall be construed as preventing Declarant and its agents and assigns from engaging in all forms of construction and sales activities within the Project.

(p) Window Covers. Each Unit shall have window covers. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers, and all such window covers shall comply with Association rules regulating the type, color and design of any portion of such window covers that is visible from outside the applicable Unit. No window may be covered by paint, foil, sheets, or similar items. The Board of Directors may adopt Association rules regulating the type, color and design of any portion of such window covers that is visible from outside the applicable Unit. The Board of Directors may also require use of a uniform color and fabric for draperies, under-draperies and drapery linings to the extent such are visible from outside a Unit.

(q) Clotheslines. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Property.

(r) Hanging Items. The hanging of any items outside the Project from any balcony or window is specifically prohibited.

(s) In-Wall Speakers. No in-wall speakers are permitted to be installed in any of the Units within the Project.

(t) No Waterbeds. No waterbeds are permitted to be installed, maintained, or used in any of the Units of the Project.

(u) Nuisance. No noxious or offensive activity shall be carried on anywhere upon the Project, nor shall any activity which might be or become an annoyance or nuisance to Owners or occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or occupants shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or



federal body. Nothing included herein shall be constructed to prevent Declarant and its agents from engaging in all forms of construction and sales activities until all Units have been sold by Declarant.

(v) Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors or any committee established by the Board of Directors for that purpose. By way of illustration but not of limitation the following are considered exterior changes; painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work in which in any way alters the exterior appearance of the Project. The Board of Directors, or committee established by the Board of Directors for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration which is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors, or in any committee established by the Board of Directors for that purpose. By way of illustration but not limitation the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.

## **ARTICLE 7. THE ASSOCIATION**

(a) Membership. Each Owner shall be entitled and required to be a Member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by such Owner. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Condominium shall be construed to be a devise, encumbrance conveyance, or other disposition respectively of the Owner's membership in the Association and 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 the Condominium.

(b) Board of Directors. Until either of the following events has occurred, the Declarant shall have the exclusive right to appoint and to remove all directors of the Association:

(1) The fifth anniversary of the date on which the sale of the first Unit by Declarant to a third-party purchaser is completed, or

(2) One hundred and twenty days has expired after seventy-five percent (75%) of the Condominiums have been conveyed to purchasers.

Upon the occurrence of either of the foregoing events, the directors of the Association shall be elected by the Members in accordance with the Bylaws.

(c) Votes. Each Unit in the Project shall have one vote in the Association regardless of the size or value of the Unit. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit A. The number of votes appurtenant to each Condominium as set forth in said Exhibit A shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

(d) Amplification. The provisions of this Article 7 may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration. The initial Bylaws of the Association shall be in the form of Exhibit F.

**ARTICLE 8.  
CERTAIN RIGHTS AND OBLIGATIONS OF  
ASSOCIATION AND BOARD OF DIRECTORS**

(a) The Common Areas. The Board of Directors, 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 all improvements thereon (including the Common Facilities), 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 such Owner's Unit, if any, in a clean, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Buildings, other improvements and grounds, including without limitation painting thereof, repair and replacement of exterior trim, roofs and fences, and maintenance of landscaping, walkways, driveways, and parking areas (except that the Owners shall, at their own expense, be responsible for the maintenance, upkeep and replacement of all landscaping located in the Limited Common Areas appurtenant to their respective Units). In the event that an Owner fails to adequately maintain, care for, and replace the landscaping located in the Limited Common Areas appurtenant to such Owner's Unit, the Board of Directors shall have the right to cause such maintenance, upkeep and replacement of the landscaping to be done and to charge the cost thereof to such Owner. The Board of Directors shall also be responsible for maintenance, repair, and replacement of Common Areas within the Buildings, including without limitation landings, stairways utility lines, Common Facilities, and all improvements and other items located within or used in connection with the Common Areas. The specification of duties of the Board of Directors with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Board of Directors in performing its responsibilities under this subsection 8(a) shall be paid for with funds from the Common Expense Fund.

(b) Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for the services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with

whom or which it contracts. The Board of Directors may, in behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not directly metered or billed to Owners as provided in Article 9), insurance, bonds, and other goods and services common to the Units.

(c) Real and Personal Property. The Board of Directors may acquire and hold on behalf of the Association real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise; provided that any acquisition or disposition of any real, personal or mixed property by the Board of Directors wherein the value of such property exceeds \$5,000 must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a Meeting duly called for that purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

(d) Rules and Regulations. The Board of Directors may make reasonable rules and regulations governing the use of the Units, the Common Areas, the Limited Common Areas, and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established by this Declaration. The Board of Directors, on behalf of the Association, may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

(e) Granting Easements. The Board of Directors may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.

(f) Statutory Duties and Powers. All duties, responsibilities rights, and powers imposed upon or granted to the "management committee" or to the "manager" under the Condominium Act shall be duties, responsibilities, rights, and powers of the Board of Directors hereunder.

(g) Implied Rights. The Association may exercise any right, power, or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

(h) Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise,

except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board of Directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

## **ARTICLE 9. ASSESSMENTS**

(a) Agreement to Pay Assessments. The Declarant, for each Condominium owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article 9.

(b) Annual Assessments. Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:

(1) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with maintenance and operation of the Common Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses shall include the creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Facilities that must be replaced on a periodic basis (such reserve to be funded by monthly payments rather than extraordinary special assessments), and, in addition, may include, among other things, the following: expenses of management; real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services (e.g., water, sewer, gas, electricity) to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. All of the foregoing shall, collectively, constitute the "Common Expense," and all funds received from assessments under this subsection 9(b)(1) shall be part of the "Common Expense Fund."

(2) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to the Owners in proportion to their respective undivided interests in the Common Areas or as otherwise determined and presented to the Owners in writing by the Board of Directors from time to time. The Declarant shall be liable for the amount of any assessments against the Condominiums owned by it.

(3) Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 of each year and ending the December 31 next following; provided the first fiscal year shall begin on the date of this Declaration and end on the December 31 next following. On or before December 15 of each year, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period. Such budgets shall be unnecessary for Annual Assessments relative to, or for operation of the Project during, any operating period ending before December 31, 2010.

(4) Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the Annual Assessment against such Owner's Condominium on or before December 15 each year for the fiscal year beginning on January 1 next following. Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the Annual Assessment for the first fiscal year shall be based upon such portion of the first fiscal year and shall be payable in such installments and at such times as the Association, in the sole discretion of its Board of Directors, may determine. All unpaid installments of any Annual Assessment shall bear interest at the rate of fifteen percent (15%) per annum from the date each such installment becomes due until paid. In addition, in the event that any installment of any Annual Assessment is not paid on the date such installment becomes, due, it shall be subject to a penalty for late payment of three dollars (\$3.00) per day from the date each such installment becomes due until paid. The failure of the Board of Directors to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(5) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Directors may on behalf of the Association levy additional assessments in accordance with the procedure set forth in subsection 9(c) below, except that the vote therein specified shall be unnecessary.

(c) Special Assessments. In addition to the Annual Assessments authorized by this Article 9, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the

Association, Special Assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This subsection 9(c) shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of fifteen percent (15%) per annum from the date such portions become due until paid. In addition, in the event that any Special Assessment is not paid on the date such Special Assessment becomes due, it shall be subject to a penalty for late payment of three dollars (\$3.00) per day from the date each such Special Assessment becomes due until paid. All funds received from assessments under this subsection 9(c) shall be part of the Common Expense Fund.

(d) Utility Assessments. In the event that, in the sole discretion of the Board of Directors, any utility service (e.g., water, sewer, gas, electricity) is provided, metered and billed to the Project as a whole rather than separately provided, metered and billed to individual Units, the Board of Directors may elect either to (i) pass the costs of such service on to the Owners in accordance with subsection 9(b)(1) above, or (ii) establish, by written notice to the Owners, a "submetering" system for tracking usage of such services by Unit and separately billing individual Owners for such services based on tracked usage. Following the establishment of any submetering program pursuant to this paragraph, the Board of Directors shall provide monthly invoices to the Owners for the applicable utility service or services, which invoices shall specify the amount of the payment due from such Owner, the usage and calculation upon which such payment is based (which method of calculation shall be consistent among all Owners), and the deadline for payment of such amount.

(e) Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article 9, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article 9, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium, and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the association and may be recorded in the Official Records. No notice of lien shall be recorded until there is a delinquency in payment of the 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. 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 assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium in the name of the Association.

(f) Personal Obligation of Owner. The amount of any Annual, Special or Utility Assessment against any Condominium shall be the personal obligation of the Owner of such Condominium 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 or by abandonment of such Owner's Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees. The personal obligation for delinquent Annual, Special or Utility Assessments shall not pass to successors in title or interest to an Owner unless assumed by such successors.

(g) Restrictions on Right to Use Common Areas and Common Facilities. During any period in which an Owner is in default in the payment of the Annual, Special or Utility Assessments against such Owner's Condominium, the Board of Directors may, in addition to any other rights or remedies available at law or pursuant to this Declaration and upon twenty (20) days prior written notice to such Owner, restrict such Owner's right to use certain of the Common Areas and Common Facilities (other than as required to access and use the Unit owned by such Owner).

(h) Establishment of Working Capital Fund. Upon the first transfer of any Condominium by the Declarant, the transferee of such Condominium shall pay to the Association, for the purpose of establishing a working capital fund for the Project, an amount equal to the greater of \$750 or two times the then current amount of the monthly installments of the Annual Assessment for such Condominium. The obligation to pay such amounts pursuant to this subsection 9(h) shall be in addition to the obligation to pay any other amounts pursuant to this Declaration or by law, including, but not limited to, Annual, Special and Utility Assessments associated with such Condominium.

(i) Amendment of Article. This Article 9 shall not be amended unless Owners of seventy-five percent (75%) of the Total Votes of the Association in the Project consent and agree to such amendment in a duly recorded instrument.

## ARTICLE 10. INSURANCE

(a) Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(1) Master Property Insurance. The Association shall obtain and maintain a "master" multi-peril policy of property insurance equal to a full replacement value (i.e., 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Project (including all building service equipment and the like), and other endorsements as determined by the Board of Directors as necessary. Such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, vandalism, malicious mischief, windstorm, and water damage; and such other risks as are customarily covered in similar projects or as are commonly

required by private institutional mortgage investors for projects similar in construction, location and use. Any blanket policy of property insurance shall contain or have attached a standard mortgagee clause (without contribution) customarily used in the area in which the Project is located which must be endorsed to provide that any proceeds shall be paid to the Urbana on 11th Condominium Owner's Association for the use and benefit of the Owners and their respective First Mortgagees, as their interests may appear. The personal property of the Association shall also be insured against loss under this master policy.

(2) Public Liability Insurance. The Association shall obtain and maintain comprehensive policy of public liability insurance covering all of the Common Areas and Facilities, commercial spaces and public ways (if any) in the Project, with limits of not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

(3) Workmen's Compensation Insurance. If the Association has employees, then the Association shall obtain and maintain workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(4) Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board of Directors, and employees and all others who are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

- (i) all shall name the Association as an obligee;
- (ii) all shall be written in an amount which shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, but in no event less than the sum of three (3) months aggregate assessments on all Units plus reserves;
- (iii) all shall contain waivers of any defenses based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;
- (iv) all shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any Insurance Trustee. If applicable, such bonds shall also provide that the FNMA Servicer, on behalf of FNMA, receive such notice of cancellation or modification.



(5) Flood Insurance. The Project is not presently located in an area identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Project should be declared to be in such a flood area, the Association shall at that time obtain and maintain at all times a blanket policy of flood insurance that meets the then existing flood insurance requirements for similar condominium projects. Such policy shall contain the standard mortgagee clause customarily used in the area in which the Project is located and provide that any proceeds shall be paid to the Urbana on 11th Condominium Owner's Association for the use and benefit of mortgagees as their interest may appear.

(6) Governmental Requirements. Notwithstanding any other provisions contained herein to the contrary, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by Federal National Mortgage Association and Government National Mortgage Association so long as either is a mortgagee or owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

(7) Director's and Officer's Insurance. Adequate director's and officer's liability insurance (aka Errors and Omissions Insurance).

(8) Insurance Policy Requirements. The Association shall use generally acceptable insurance carriers for all policies of insurance procured and maintained by the Association, generally in accordance with the Federal National Mortgage Association ("FNMA") Conventional Home Mortgage Selling Contract Supplement and the Federal Home Loan Mortgage Corporation ("FHLMC") Sellers Guide. The Master Multi-Peril Property, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 11(a) above shall be subject to the following additional requirements:

(i) the named insured under any such policies shall be the Association, as a trustee for the Owners, or its authorized representative, including any trustee with which such Association may enter into any Insurance Trust Agreement, or any successor trusts, each of which shall be referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under these policies;

(ii) each Unit Owner shall, and hereby does, appoint the Association or, if applicable, any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining such policies, including (1) the collection and appropriate disposition of the proceeds thereof, (2) the negotiation of losses and execution of releases of liability, (3) the execution of all documents pertaining thereto, and (4) the performance of all other acts reasonably necessary in connection with the purchase and maintenance of such policies;

(iii) insurance coverage obtained and maintained pursuant to the requirements of subsections 10(a) and 10(b) shall not be brought into contribution with any insurance purchased by any Owner or such Owner's mortgagee;

(iv) coverage must not be prejudiced by (1) any act or neglect of the Association, any employee or agent of the Association, or any Owner, or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the promises over which the Association has no control;

(v) coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds, including each First Mortgagee scheduled as a holder of a first mortgage in the applicable policy;

(vi) each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better;

(vii) policies shall be deemed unacceptable where (1) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a Condominium Owner, such Owner's First Mortgagee or any First Mortgagee's designee or such designee's designee; (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 a Condominium Owner, such Owner's First Mortgagee or any First Mortgagee's designee or such designee's designee from collecting insurance proceeds; and

(viii) all policies of hazard insurance shall contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located.

(9) Additional Coverage. The provisions of this Declaration 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 by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time. .

(10) Owner's Own Insurance. Each Owner, at his/her own expense, shall procure and maintain at all times the equivalent of a so-called "HO-6" policy or "paint-in" coverage insurance covering the property of such Owner within the Project, including all fixtures, carpets, cabinets, appliances, toilets, light fixtures, etc., against all loss including without limitation vandalism and malicious mischief. All such policies shall be subject to such reasonable minimum coverage limits and other requirements as may be imposed by the Board of Directors from time to time, and shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article 10. Notwithstanding the provisions hereof, each Owner may obtain insurance at such Owner's own expense providing such other coverage upon such Owner's Unit, such Owner's personal property, such Owner's personal liability, and covering such other risks as such Owner may deem appropriate provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article 10. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the

Declarant, the Manager, other Owners, and their respective servants, agents and guests. Additionally, each Owner may obtain a loss of use and loss of assessment endorsement.

(11) Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

## **ARTICLE 11. DAMAGE OR DESTRUCTION**

(a) Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association 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 the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as such grantee's 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 in which may be necessary or appropriate to exercise the powers herein granted.

(b) Definition of Repair and Reconstruction. 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 having substantially the same vertical and horizontal boundaries as before.

(c) Procedures. In the event any part of the Project is damaged or destroyed, the Association shall proceed as follows:

(1) Notice to Eligible First Mortgage Holders. The Association shall give timely written notice to any each Eligible First Mortgagee holding a First Mortgage on a Unit in the event of substantial damage to or destruction of such Unit or any part of the Common Areas.

(2) Estimate of Costs. 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 that part of the Project damaged or destroyed.

(3) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project such repair and reconstruction shall be carried out.

(4) Insufficient Insurance – Less than 75% Destruction. 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 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 Assessment shall be allocated and collected as provided in Section 10(c) 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.

(5) Insufficient Insurance – 75% or More Destruction. 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 if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall, subject to the provisions of subsection 14(c), record in the Official Records, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

- (i) The Project shall be deemed to be owned in common by the Owners;
- (ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest preciously owned by such Owner in the Common Areas;
- (iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
- (iv) 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 a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A hereto, 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.

(6) In no event shall an owner of a Unit or any other party have priority over any First Mortgagee holding a First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

(d) Repair or Reconstruction. If the damage or destruction is to be repaired and 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 having the same vertical and horizontal boundaries as before.

(e) Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to subsection 11(c)(4) hereof 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 in proportion to their respective percentages of Ownership of the Common Areas, and respective Limited Common Areas.

(f) Amendment of Article. This Article 11 shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by duly executed and recorded instruments.

## **ARTICLE 12. CONDEMNATION**

(a) Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article 13 shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or Facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Eligible First Mortgagee holding a First Mortgage on a Unit in the Project.

(b) Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association, as herein provided.

(c) Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas and Limited Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

(d) Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(1) Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between

compensation and severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas, and Limited Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportion to their respective undivided interests in the Common Areas and Limited Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as appropriate; and

(vii) No provision of this Article 12 or any other provisions in this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding a First Mortgage lien on such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceeding.

(2) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. In such event, the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas.

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Directors that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the

Board of Directors and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas.

(iv) The Board of Directors shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 13(d)(ii)(4); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

(3) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions of Article 11 hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

### **ARTICLE 13. OBSOLESCENCE**

(a) Adoption of Plan. Subject to the provisions of Article 14 hereof, Owners holding seventy-five percent (75%) or more of the Total Votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Owners and Mortgagees.

(b) Payment for Renewal and Reconstruction. The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 10(c) hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

(c) Sale of Project. Subject to the provisions of Article 14 hereof, the Owners may at any time, by an affirmative vote of at least eighty-nine percent (89%) of the Total Votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board of Directors shall forthwith record in the Official Records, a notice setting forth such facts, and upon the recording of such notice by the Board of Directors, the Project shall be sold or otherwise disposed of by the Board of Directors as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. The Board of Directors, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of any First Mortgagee holding a First Mortgage lien on the Condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owners.

(d) Amendment of Article. No provision of this Article 13 shall be amended unless the percentage of the Total Votes of the Association required under such provision and at least seventy-five percent (75%) of all First Mortgagees holding First Mortgage liens on Units in the Project, based on one vote for each mortgage, consent and agree to such amendment by duly executed and recorded instruments.

#### **ARTICLE 14. MORTGAGEE PROTECTION**

(a) Notices of Action. A holder, insurer, or guarantor of a First Mortgage, upon written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and identify the Unit encumbered by such First Mortgage) shall be entitled to timely written notice of the following:

(1) Any proposed amendment of the Declaration, Bylaws, or Articles effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Areas or Limited Common Areas appurtenant to any Unit or the liability for the assessments of the Association appertaining thereto, (iii) the number of votes in the Association appertaining to any Unit, or (iv) the purposes to which any Unit or the Common Areas are restricted;

(2) Any proposed termination of the Condominium Project;



(3) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such holder, insurer or guarantor;

(4) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to the First Mortgage of such holder, insurer or guarantor where such delinquency has continued for a period of 60 days;

(5) Any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to this Declaration.

(b) Matters Requiring Prior Approval of Sixty-Seven Percent of Eligible First Mortgagees. Unless sixty-seven percent (67%) of the Eligible First Mortgagees which hold First Mortgage liens on Condominium Units in the Project (based upon one vote for each First Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) Abandon or terminate the Project, except for abandonment or termination in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(2) Cause any amendment to be made to the Declaration, the Articles, or the Bylaws, which would change the percentage interests of the Owners in the Project;

(3) Partition or subdivide any Condominium; or

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas and Common Facilities of the Project.

(c) Matters that Require Approval of 51% of Eligible First Mortgage Holders. Except to the extent that any provision of this Declaration requires approval of a greater number of First Mortgagees, unless at least fifty-one percent (51%) of the Eligible First Mortgagees holding First Mortgage liens on Condominium Units in the Project (based upon one vote for each First Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

(1) elect to terminate the Project after substantial destruction of the Project or substantial taking by exercise of the power of eminent domain of the Project;

(2) repair and reconstruction of the Project following any partial condemnation or damage due to an insurable hazard in a manner different than as specified in Articles 11 and 12 of this Declaration;

(3) materially amend any provisions of this Declaration, the Bylaws or the Articles to add any material provisions which establish, provide for, govern, or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas and Common Facilities;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use the Common Areas and/or Common Facilities;
- (vi) Responsibility for maintenance and/or repair of the Common Areas and/or Facilities;
- (vii) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (viii) The boundaries of any Unit;
- (ix) The interests in the Common Areas and/or Facilities and/or the Limited Common Areas;
- (x) Convertibility of Units into Common Areas or Facilities and/or convertibility of Common Areas or Facilities into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey such Owner's Unit; and
- (xiii) Establishment of self-management by the Association following the imposition by the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Veterans Affairs ("VA"), FNMA or FHLMC of a requirement that the Association be professionally managed.

As used in this subsection 14(c), "Eligible First Mortgagees" shall mean First Mortgagees who have delivered a written request for notice to the Association (such request to state the name and address of such First Mortgagee and identify the Unit encumbered by such First Mortgage).

(d) Prior Liens Relate Only to Individual Units. All taxes, assessments, and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

(e) Subordination of Common Expense Lien. Any lien which the Association may have on any Unit in the Project for the payment of any assessments of the Association attributable to such Unit shall be subordinate to the lien or equivalent security interest of any First Mortgage on the Unit recorded on or before the date on which any such assessments became due.

(f) Information Made Available to Mortgage Holder upon Request. Any First Mortgagee holding a First Mortgage on a Condominium shall, upon request, be entitled to: (i) inspect the books and records of the Association during normal business hours; and (ii) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (iii) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(g) Priority of Mortgage Holder in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas and/or Facilities, any Eligible First Mortgagee holding a First Mortgage on a Condominium shall be entitled to timely written notice of any such damage or destruction and no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the Owner of a Unit or other party to priority over a First Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

(h) Priority of Mortgage Holder in Event of Condemnation. If any Unit or portion thereof or the Common Areas and Facilities or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then any Eligible First Mortgagee holding a First Mortgage on a Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition and no provision of the Declaration, Articles, or Bylaws (or any amendment thereto), shall entitle the Owner of a Unit or other party to priority over a First Mortgagee with respect to the distribution to such unit of the proceeds of any award or settlement.

(i) Mortgage Holder Rights in Event of Foreclosure. Each holder of a First Mortgage lien on a Unit who comes into possession of the Unit by the virtue of mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder or purchaser comes into possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units in the Project, including the Unit which is the subject of such mortgaged unit. Notwithstanding the foregoing, however, nothing herein shall be deemed or construed to relieve any such holder or purchaser or the applicable Unit from any liability or liens for any assessments accruing after the date such holder or purchaser comes into possession of such Unit.

(j) Notice to First Mortgage Holders. The Association shall give each Eligible First Mortgagee holding a First Mortgage on a Unit prompt notice of any default in the Unit Mortgagor's obligations under the Condominium documents not cured within thirty (30) days of default.

(k) No Right of First Refusal. No "right of first refusal" shall be included in or added by amendment to the Declaration, Articles, or Bylaws.

(l) Amendment. No provision of this Article 14 shall be amended without the prior written consent of at least fifty-one percent (51%) of all Eligible First Mortgagees holding First Mortgages on Units in the Project, based on one vote for each Mortgage.

**ARTICLE 15.**  
**COMPLIANCE WITH DECLARATION AND BYLAWS**

(a) Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or by an aggrieved Owner.

(b) Enforcement of Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or, as provided in this Declaration or where otherwise appropriate in the reasonable discretion of the Board, and subject to applicable law, by levying Special Assessments. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant shall be enforceable by the Declarant or by the Association or by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

**ARTICLE 16.**  
**GENERAL PROVISIONS**

(a) Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition contained in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

(b) Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

(c) Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association such Owner's current mailing address. All notices, demands, and other

communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail postage prepaid, addressed to the Owner at such Owner's registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Association at its offices at 1988 South 1100 East, Salt Lake City, Utah 84106, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section 17(c), as the case be.

(d) Audit. Any Owner may at any reasonable time, upon appointment and at such Owner's own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

(e) Disclosure of Information. Upon the written request of any person or entity that has either an interest or a prospective interest in a Condominium, the Association shall, within a reasonable time, provide such person or entity with a copy of a financial statement of the Association for the immediately preceding fiscal year. Further, upon the written request of HUD, VA, FNMA or FHLMC, to the extent such requesting entity has an interest or a prospective interest in the Project or in a Condominium, the Association shall, within a reasonable time, provide such requesting entity with a copy of an audited financial statement of the Association for the immediately preceding fiscal year. The Association shall, upon request, during normal business hours or under reasonable circumstances, make available to Owners, lenders, and holders and insurers of any First Mortgage current copies of the Declaration, Bylaws, and other rules governing the Project and other books, records and financial statements of the Association. The financial statements of the Association shall be prepared by an outside certified public accountant. The Association shall also, upon request, during normal business hours and under reasonable circumstances, make available to prospective purchasers current copies of the Declaration, Bylaws, other rules governing the Project, and the most recent financial statement for the Association, if such is prepared. Upon a request of sixty-seven percent (67%) of the Total Votes of the Association, the Association's financial statements and books may be audited.

(f) Amendment. Except as otherwise provided herein (including, but not limited to, Article 14), this Declaration may be amended if Owners holding at least sixty-seven percent (67%) of the Total Votes in the Association consent and agree to such amendment by instruments which are duly recorded in the Official Records. Notwithstanding the foregoing, the designation and assignment of Limited Common Areas at the time of the first sale of any Unit as provided in Section 3(d) hereof shall have the effect of amending and supplementing Exhibit B attached to this Declaration and shall not require the consent of any other Owners or Mortgagees unless and to the extent such designation and assignment purports to modify any previous designation and assignment of Limited Common Areas to any Unit in the Project, in which event the consent and agreement, by duly recorded instrument, of the Owner of such affected Unit shall be required.

(g) Termination. Subject to the provisions of Article 14 and except as provided by law or in this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain, the prior written approval of all of the Owners of Condominium Units in the Project shall be required before the Project may be abandoned or terminated.

(h) Effective Date. This Declaration shall be effective upon recording.

(i) Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown in the official corporate records maintained in the office of the Utah Department of Commerce, Division of Corporations and Commercial Code. On the date of this Declaration, the registered agent of the Association is: John Gardiner, whose address is 1073 East 2100 South, Salt Lake City, Utah 84106.

(j) Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from, any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or order of any governmental authority.

(k) Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that such Owner may be leasing, renting, or selling under contract such Owner's Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

(l) Model Units, Sales Offices, and Advertising Signs. Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to establish and maintain model units and sales offices on the Land within the Project, the right to use such model units and sales offices during the period that Units in the Project remain unsold, and the right, at all times, to access any portion of the Common Areas and/or Common Facilities in connection with the marketing and sale of any unsold Units. No more than three (3) model units and one sales office will be established and maintained by Declarant in the Project at any time. Declarant reserves the right to relocate the same from time to time within the Project. Declarant further reserves the right to maintain advertising signs on the Project and to place the same in any location, and to relocate, replace, and remove the same at the sole discretion of Declarant during the period that Units in the Project remain unsold.

*[remainder of page left intentionally blank]*




IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration to be effective as of the day and year first above written.

**DECLARANT:**


GARDINER PROPERTIES 1100 EAST, LLC,  
a Utah limited liability company

By: Gardiner Properties, LLC,  
a Utah limited liability company

By:   
John A. Gardiner, Manager

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

The foregoing instrument was acknowledged before me this 22 day of December, 2009, by John A. Gardiner, the Manager of **GARDINER PROPERTIES, LLC**, a Utah limited liability company.

  
NOTARY PUBLIC

My Commission Expires:  
October 20, 2011

Residing at:  
Salt Lake





## EXHIBIT A

(Units, Undivided Ownership Interests and Votes)

<u>Unit No.</u>	<u>*Size (sf)</u>	<u>Undivided Ownership Interests (Percentage)</u>	<u>Votes</u>
101	772	2.80%	1
201	990	3.60%	1
202	620	2.25%	1
203	717	2.60%	1
204	677	2.46%	1
205	757	2.75%	1
206	747	2.71%	1
207	743	2.70%	1
208	827	3.00%	1
209	800	2.91%	1
301	990	3.60%	1
302	1,077	3.91%	1
303	718	2.61%	1
304	976	3.54%	1
305	757	2.75%	1
307	743	2.70%	1
308	826	3.00%	1
309	801	2.91%	1
401	1,171	4.25%	1
402	1,078	3.91%	1
403	915	3.32%	1
404	877	3.18%	1
405	938	3.41%	1
406	678	2.46%	1
501	1,491	5.41%	1
502	1,316	4.78%	1
503	1,204	4.37%	1
504	1,251	4.54%	1
505	1,155	4.19%	1
506	926	3.36%	1
Total	27,538	100.00%	30

\*Note: The square footage numbers set forth above are approximations only measured from outside of exterior walls, midpoint of demising walls and inside of corridor and stair walls, in accordance with real estate industry customs and standards, and may be different from the square footage numbers for the Units shown on the Map attached hereto as Exhibit D, which square footages were derived in accordance with separate survey industry customs and standards.

## EXHIBIT B

(Limited Common Areas)

Pursuant to Section 57-8-10 of the Utah Code Annotated, the following Limited Common Areas are designated for use by Units 1-30 within the Project, with the assignment of specific areas to specific Units to be made in accordance with the provisions of subparagraphs 3(d) and 16(f) of the Declaration unless otherwise specified below:

### Parking Stalls

<b>Parking Garage</b>	<b>Stall Number</b>	<b>Description</b>	<b>Assigned to Unit:</b>
Main	1	Single stall	TBD
Main	2	Single stall	TBD
Main	3	Single stall	TBD
Main	4	Single stall	TBD
Main	5	Single stall	TBD
Main	6	Single stall	TBD
Main	7	Single stall	TBD
Main	8	Single stall	TBD
Main	9	Single stall	TBD
Main	10	Single stall	TBD
Main	11	Handicap stall	TBD
Main	12	Single stall	TBD
Main	13	Single stall	TBD
Main	14	Single stall	TBD
Main	15	Single stall	TBD
Main	16	Single stall	TBD
Main	17	Single stall	TBD
Main	18	Single stall	TBD
Main	19	Single stall	TBD
Main	20	Single stall	TBD
Main	21	Single stall	TBD
Main	22	Single stall	TBD
Main	23	Single stall	TBD
Main	24	Single stall	TBD
Main	25	Tandem garage	TBD
Alley	1	Covered stall w/storage attic and uncovered stall in front	TBD
Alley	2	Covered stall w/storage attic and uncovered stall in front	TBD
Alley	3	Covered stall w/storage attic and uncovered stall in front	TBD
Alley	4	Covered stall w/storage attic and uncovered stall in front	TBD
Alley	5	Covered stall w/storage attic and uncovered stall in front	TBD
Alley	6	Covered stall w/storage attic and uncovered stall in front	TBD

*[continued on following page]*

### Storage Units

<b>Unit Number</b>	<b>Description</b>	<b>Assigned to Unit:</b>
105	Main floor storage unit	TBD
1	Basement storage unit	TBD
2	Basement storage unit	TBD
3	Basement storage unit	TBD
4	Basement storage unit	TBD
5	Basement storage unit	TBD
6	Basement storage unit	TBD
7	Basement storage unit	TBD
8	Basement storage unit	TBD
9	Basement storage unit	TBD
10	Basement storage unit	TBD
11	Basement storage unit	TBD
12	Basement storage unit	TBD
13	Basement storage unit	TBD
14	Basement storage unit	TBD
15	Basement storage unit	TBD
16	Basement storage unit	TBD
17	Basement storage unit	TBD
18	Basement storage unit	TBD
19	Basement storage unit	TBD
20	Basement storage unit	TBD
21	Basement storage unit	TBD
22	Basement storage unit	TBD

### Balconies and Porches

The balconies and/or porches attached to each Unit in the Project are designated as reserved for the use of the specific Unit to which they are attached to the exclusion of the other Units in the Project.

**EXHIBIT C**

(Live/Work Units)

Units 101 and 201 shall, collectively, comprise the Live/Work Unit, with ground-level Unit 101 designated as the commercial or “Work” space portion of the Live/Work Unit, and second-level Unit 201 designated as the residential or “Live” space portion of the Live/Work Unit.

**EXHIBIT D**

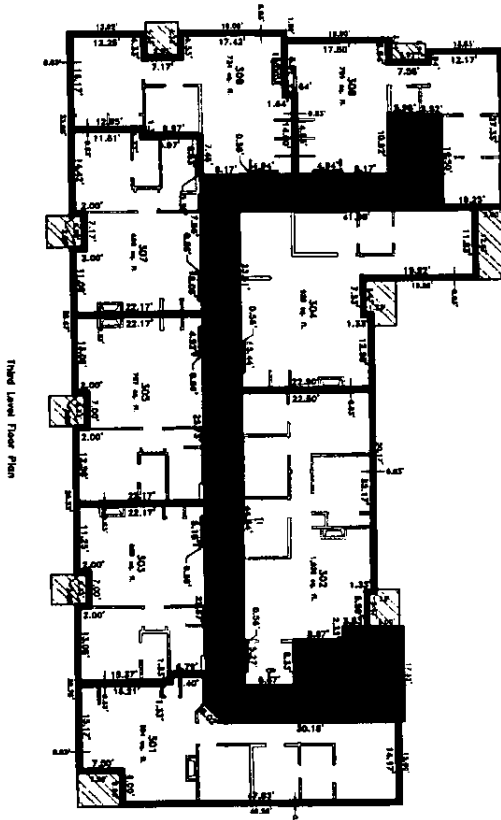
(Map)



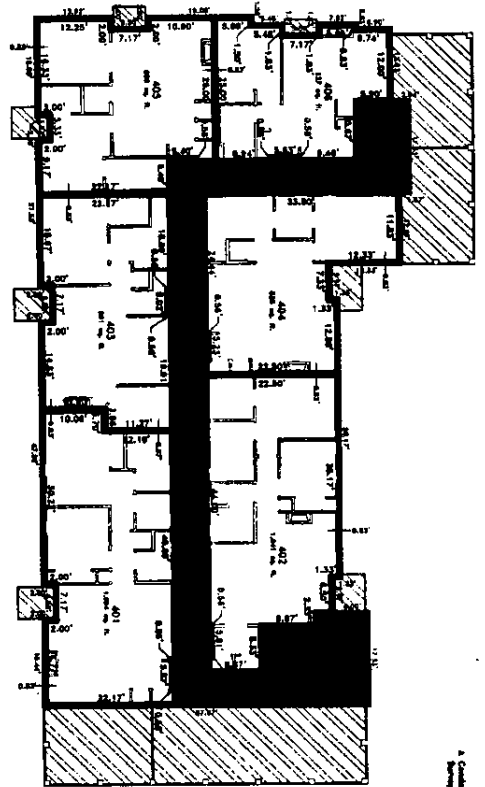




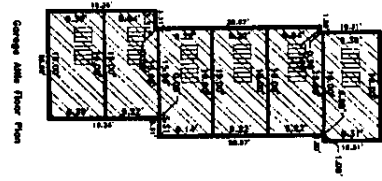
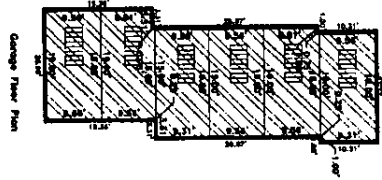
**Common**  
 Engineering Associates, L.P.  
 6844 South Green Street  
 Irving, Texas 75015 972-711-4888



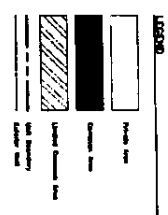
Third Level Floor Plan



Fourth Level Floor Plan



URBANA on 11th CONDOMINIUMS  
 A Condominium Project, Being a Part of Lot 20, Block 7, The Green Park "C" Sub-  
 Project, Located in the City of Dallas, Texas, as Shown on the Plat of the  
 Project, Dated and Filed for Record in the Public Records of Dallas County,  
 Texas, on 04/13/2009, at 10:00 AM.

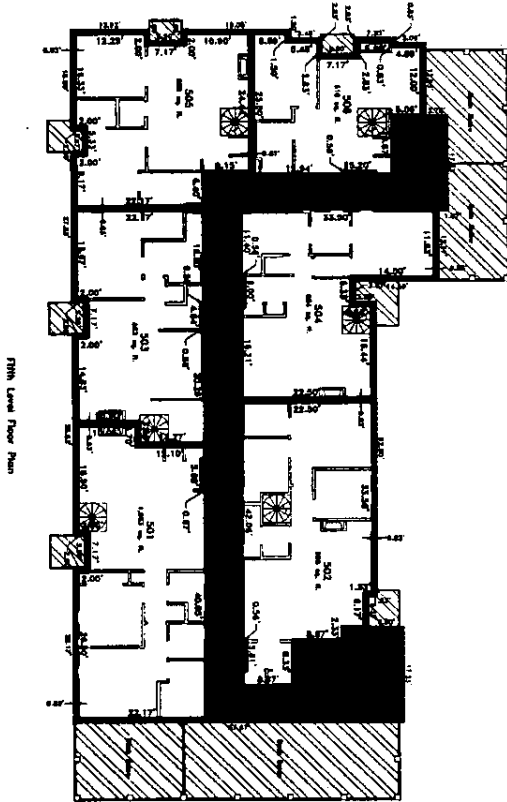


PROJECT NO.	DATE	BY	CHECKED
1278	4/13/2009	MMT	MMT
DESCRIPTION	SCALE	SHEET	OF 4 SHEETS
URBANA on 11th CONDOMINIUMS	AS SHOWN	3	

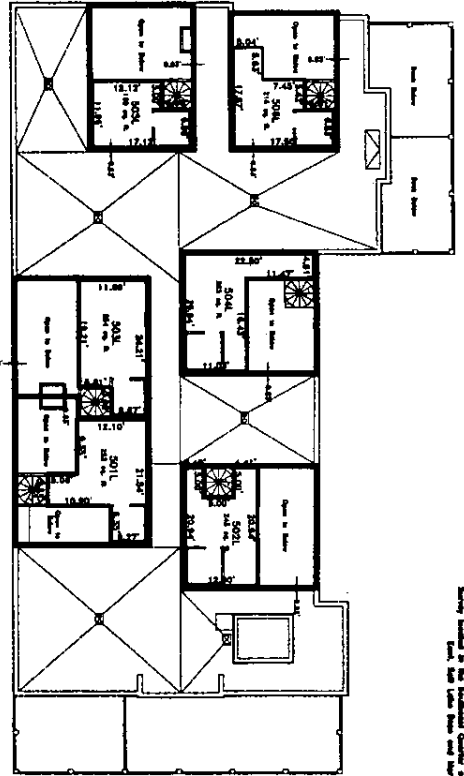




**Dominion**  
 Landmark  
 1845 South Greenway Blvd.  
 Suite 1000  
 Denver, CO 80202

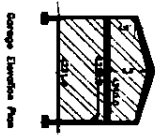


27th Level Floor Plan

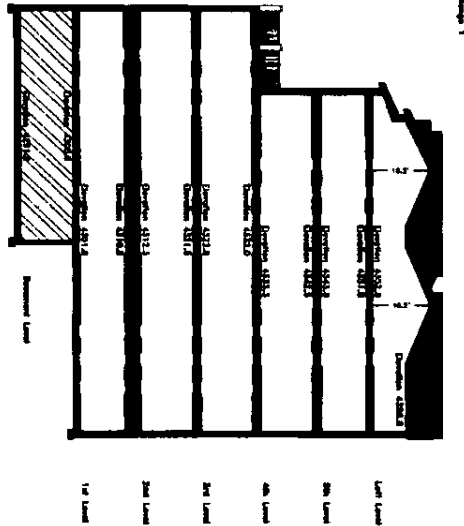


28th Level Floor Plan

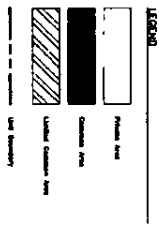
URBANA on 11th CONDOMINIUMS  
 A Condominium Project Being a Part of Lot 26, Block 1, First Story Plan "C", The First  
 Story Addition to the Residential Quarter of Section 17, Township 6 North, Range 7  
 East, 3rd Urban Block and Addition, 3rd Urban Center, Denver



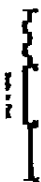
Garage Elevation Plan



Elevation Plan



LEGEND



RECORD No.	NUMBER
Name of Owner, County of said Land	ACCOUNT
Address and City of the property	SHEET
Map	of 4 SHEETS
City/County/State	

**EXHIBIT E**

(Articles of Incorporation)

**ARTICLES OF INCORPORATION  
OF  
URBANA ON 11TH CONDOMINIUM OWNER'S ASSOCIATION  
A UTAH NON-PROFIT CORPORATION**

**RECEIVED**  
**SEP 10 2009**  
Utah Div. Of Corp. & Comm. Code

JOHN GARDINER, the undersigned natural person over the age of twenty-one years, acting as incorporator of a nonprofit corporation pursuant to the Utah Revised Nonprofit Corporation Act, hereby adopts the following Articles of Incorporation for such nonprofit corporation.

(JBB)

09-10-09P03:31 RCVD

**ARTICLE 1: NAME**

The name of the nonprofit corporation is Urbana On 11th Condominium Owner's Association, a Utah Non-Profit Corporation, hereinafter referred to as the "Association."

**ARTICLE 2: DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all terms defined in Article 1 of the Declaration of Covenants, Conditions and Restrictions of the Urbana On 11th Condominiums, hereinafter referred to as the "Declaration," shall have such defined meanings when used in these Articles of Incorporation.

**ARTICLE 3: DURATION**

The Association shall exist perpetually or until dissolved pursuant to law.

**ARTICLE 4: PURPOSES**

The Association is organized as a nonprofit corporation and shall be operated exclusively for the purpose of maintaining, operating and governing the Units, Common Areas, and Limited Common Areas situated within that certain Project known as Urbana On 11th Condominiums, as more particularly described in the Declaration, hereinafter referred to as the "Project," which is located upon real property in Salt Lake County, State of Utah, described in the Declaration.

The Association is organized and shall be operated to perform the functions and provide the services contemplated in the Declaration, which document is to be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No dividend shall be paid and no part of the net income of the Association, if any, shall be distributed to the Members, Directors or officers of the Association, except as otherwise provided herein, in the Declaration or under Utah law.

**ARTICLE 5: POWERS**

Subject to the purposes declared in ARTICLE 4 above and any limitations herein expressed, the Association shall have and may exercise each and all of the following powers and privileges:

Date: 09/10/2009  
Receipt Number: 2962184  
Amount Paid: \$30.00

A. The power to do any and all things that the Association is authorized or required to do under the Declaration, as the same may from time to time be amended, including, without limiting the generality of the foregoing, the specific power to fix, levy and collect the charges and assessments provided for in the said Declaration;

B. The power to purchase, acquire, own, hold, lease, mortgage, sell and dispose of any and all kinds and character of real, personal and mixed property (the foregoing particular enumeration in no sense being used by way of exclusion or limitation), and while the owner of any of the foregoing, to exercise all rights, powers and privileges appertaining thereto; and

C. The power to do any and all things that a nonprofit corporation may now or hereafter do under the laws of the State of Utah.

#### ARTICLE 6: MEMBERSHIP

The members of the Association shall be all of the record owners of Condominiums in the Project, as such owners are shown on the records of the County Recorder of Salt Lake County, State of Utah. The term "record owner" shall not include any mortgagee, trustee or beneficiary under any mortgage, trust deed or other security instrument by which a Condominium or any part thereof is encumbered (unless such mortgagee, trustee or beneficiary has acquired title for other than security purposes). If record ownership of a Condominium in the Project is jointly held, the Membership appertaining to such Unit shall also be jointly held. Membership in the Association shall be mandatory and not optional. Each Membership in the Association shall be appurtenant to and shall not be separated from the Condominium to which it relates. No person or entity other than an owner of a Condominium in the Project may be a Member of the Association.

#### ARTICLE 7: MEMBERSHIP CERTIFICATES

The Association may issue certificates of membership, but such certificates shall not be necessary to evidence membership in the Association. Membership in the Association shall begin immediately and automatically upon becoming a record owner of the Condominium to which such membership appertains and shall cease immediately and automatically upon an Owner ceasing to be a record owner of such Condominium.

#### ARTICLE 8: VOTING RIGHTS

All voting rights of the Association shall be exercised by the Members, each membership being entitled to the number of votes relating to the Condominium appertaining to such Membership, as set forth in the Declaration. If a membership is jointly held, any or all holders thereof may attend any meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint membership. Any designation of a proxy to act for joint holders of a membership must be signed by all such holders. With respect to matters to be voted upon by the Members as provided in the Declaration, the voting requirements and proportions shall be as set forth in the Declaration. Cumulative voting is not permitted.

ARTICLE 9: ASSESSMENTS

Members of the Association shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration and shall be liable to the Association for payment of such assessments. Members shall not be individually or personally liable for the debts or obligations of the Association.

ARTICLE 10: PRINCIPAL OFFICE REGISTERED AGENT

The address of the initial principal office of the Association is 1988 South 1100 East, Salt Lake City, Utah 84106. The name and address of the initial registered agent of the Association is John Gardiner whose address is 1073 East 2100 South, Salt Lake City, Utah 84106.

ARTICLE 11: BOARD OF DIRECTORS

The affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than nine (9) Directors, as prescribed in the Bylaws. The number of Directors constituting the initial Board of Directors shall be three (3). The names and addresses of the persons who are to serve as the initial Directors and until the successors of such Directors are elected or appointed and shall qualify are as follows:

<u>NAME:</u>	<u>ADDRESS:</u>
John A. Gardiner	1073 East 2100 South, 84106
Robert T. Gardiner	Same
L. Ray Gardiner	93 Laurel Street, 84103.

ARTICLE 12: MANAGER

The Board of Directors may, by written contract, delegate to a professional management organization or individual such of its managerial duties, responsibilities, functions and powers as are properly delegable.

ARTICLE 13: BYLAWS, RULES AND REGULATIONS

The Members of the Association may adopt, amend, repeal and enforce Bylaws and reasonable rules and regulations governing the operation of the Association and the operation and use of the Project, to the extent that the same are not inconsistent with these Articles of Incorporation or the Declaration.

ARTICLE 14: CONTRACTS WITH DIRECTORS OR OFFICERS

No Director, officer, agent, employee or other person shall derive a principal economic benefit from the operation of the Association. However, any person, including a Director or officer, may deal or contract with the Association, provided that no person or entity shall be paid

any fee, salary, rent or other payment of any kind in excess of the fair market value for the service rendered, goods furnished or facilities or equipment rented; provided further, that at a meeting of the Directors or a committee thereof having authority to authorize or confirm such contract or transaction, the interest of such Director, officer or other person or entity is disclosed or made known and there shall be present a quorum of the Directors or such committee and such contract or transaction shall be approved by a majority of such quorum consisting of Directors or committee members not so interested.

No Director or officer shall be liable to account to the Association for any transaction or contract of the Association ratified or approved as herein provided, and they are relieved from any liability that might otherwise exist with respect to such transactions or contracts.

#### ARTICLE 15: INDEMNIFICATION

A. The Association shall indemnify any person who was or is party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer or committee member of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, Officer or committee member of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

C. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Paragraphs A or B of this ARTICLE 15, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Paragraphs A or B of this ARTICLE 15 shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Paragraphs A or B of this ARTICLE 15. Such determination shall be made either (i) by the Board of Directors by a majority vote of disinterested Directors or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the voting power of the Members of the Association at any meeting duly called for such purpose.

D. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this ARTICLE 15, may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Directors and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this ARTICLE 15 or otherwise.

E. The indemnification provided for by this ARTICLE 15 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in these Articles of Incorporation, the Bylaws of the Association, agreements, votes of disinterested Members or Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this ARTICLE 15 shall apply to all present and future Directors, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

#### ARTICLE 16: INCORPORATOR

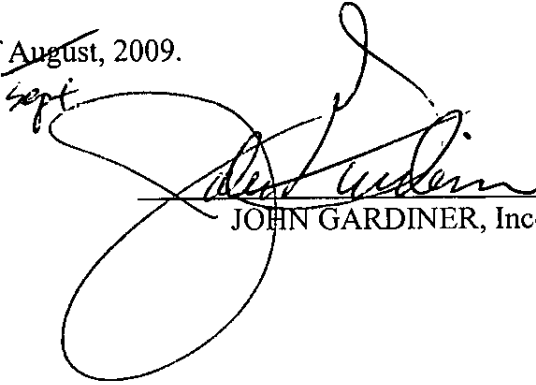
The name and address of the incorporator of the Association is as follows:

John Gardiner  
1073 East 2100 South  
Salt Lake City, Utah 84106

ARTICLE 17: AMENDMENTS

Except as otherwise provided by law or by the Declaration, these Articles of Incorporation may be amended in accordance with Utah law upon the affirmative vote of not less than sixty-seven percent (67%) of the voting power of the Members of the Association.

DATED this 10 day of ~~August~~, 2009.

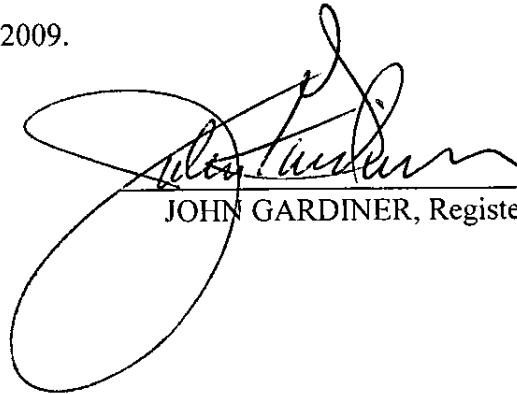
*Sept.*  
  
\_\_\_\_\_  
JOHN GARDINER, Incorporator



ACKNOWLEDGMENT AND ACCEPTANCE OF  
APPOINTMENT AS REGISTERED AGENT

Pursuant to the provisions of Section 16-6a-501 of the Utah Revised Nonprofit Corporation Act, JOHN GARDINER herewith acknowledges and accepts his appointment as the registered agent for Urbana On 11th Condominium Owner's Association, a Utah Non-Profit Corporation. This acknowledgment and acceptance of appointment as registered agent is freely and voluntarily made and given by the undersigned.

Dated this 16<sup>th</sup> day of ~~August~~, 2009.  
sept



JOHN GARDINER, Registered Agent

**EXHIBIT F**

(Bylaws)

**BYLAWS FOR**  
**URBANA ON 11TH OWNER'S ASSOCIATION**  
A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, the Board of Trustees of Urbana On 11th Condominium Owner's Association, a Utah nonprofit corporation, hereby adopt the following Bylaws for such nonprofit corporation.

ARTICLE 1: NAME AND PRINCIPAL OFFICE

1.1 Name. The name of the nonprofit corporation is Urbana On 11th Condominium Owner's Association, hereinafter referred to as the "Association."

1.2 Offices. The principal office of the Association shall be at 1988 South 1100 East, Salt Lake City, Utah 84106.

ARTICLE 2: DEFINITIONS

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article 1 of the Declaration of Covenants, Conditions and Restrictions of the Urbana On 11th Condominiums, hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

ARTICLE 3: MEMBERS

3.1 Annual Meetings. The annual meeting of Members shall be held on the second Saturday in February of each year at the hours of 10:00 o'clock a.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Directors and transacting such other business as may come before the meeting. If the election of Directors shall not be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient. The Board of Directors may from time to time by resolution change the date and time for the annual meeting of the Members.

3.2 Special Meetings. Special meetings of the Members may be called by the Board of Directors, the President, or upon the written request of Members holding not less than ten percent (10%) of the Total Votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Directors or the President.

3.3 Place of Meetings. The Board of Directors may designate any place in Salt Lake County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. A waiver of notice signed by all of the Members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association.

3.4 Notice of Meetings. The Board of Directors shall cause written or printed notice of the time, place, and purposes of all meetings of the Members (whether annual or special) to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each Member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at his registered address, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.5 Members of Record. Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Board of Directors may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting, for determining Members entitled to notice of or to vote at any meeting of the Members. If no record date, is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining Members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Condominiums in the Project shall be deemed to be the Members of record entitled to notice of and to vote at the meeting of the Members.

3.6 Quorum. At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the Members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the Members as provided above. At the reconvened meeting, the Members and proxy holders present shall constitute a quorum for the transaction of business.

3.7 Proxies. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing. If a Membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such Membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. With respect to each matter submitted to a vote of the members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such Member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Board of Directors shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint membership.

3.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Members entitled to vote with respect to the subject matter thereof.

#### ARTICLE 4: BOARD OF DIRECTORS

4.1 General Powers. The property, affairs, and business of the Association shall be managed by its Board of Directors. The Board of Directors may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the Members. The Board of Directors may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

4.2 Number, Tenure and Qualifications. The number of directors of the Association shall be three (3). The initial Board of Directors specified in the Articles of Incorporation shall serve until the Declarant turns over to the Members, as provided in Section 8b of the Declaration, the responsibility for electing directors. At the first annual meeting of the Members held after the Declarant turns over to the members responsibility for electing directors, the Members shall elect five (5) directors to serve for the following respective terms: Two (2) directors to serve for terms of three (3) years each; two (2) directors to serve for a term of two (2) years each; and one (1) director to serve for a term of one (1) year. At each annual meeting thereafter, the Members shall elect for terms of three (3) years each the appropriate number of directors to fill all vacancies created by expiring terms of directors. All directors, except directors appointed by the Declarant, shall be Members of the Association.

4.3 Regular Meetings. The regular annual meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide by resolution the time and place, within Salt Lake County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.4 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of any director. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Salt Lake County, State of Utah, as the place for holding any special meeting of the Board of Directors called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each director at his registered address, or by Telegram. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. If notice is given by telegram, such notice shall be deemed to have been delivered when the telegram is delivered to the telegraph company. Any director may waive notice of a meeting either by (a) the director's presence at the meeting or (b) by a written waiver signed by the director and delivered to the Association for filing with the Association's corporate records.

4.5 Quorum and Manner of Acting. A majority of the then authorized number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. The directors shall act only as a Board of Directors, and individual directors shall have no powers as such.

4.6 Compensation. No director shall receive compensation for any services that he may render to the Association as a director; provided, however, that a director may be reimbursed for expenses incurred in performance of his duties as a director to the extent such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a director.

4.7 Resignation and Removal. A director may resign at any time by delivering a written resignation to either the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any director, except a director appointed by Declarant, may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%) of the Total Votes of the Association at a special meeting of the Members duly called for such purpose.

4.8 Vacancies and Newly Created Directorships. If vacancies shall occur in the Board of Directors by reason of the death, resignation or disqualification of a director (other than a director appointed by Declarant), or if the authorized number of director shall be increased, the director then in office shall continue to act, and such vacancies or newly created directorships shall be filled by a vote of the directors then in office, though less than a quorum, in any way approved by such directors at the meeting. Any vacancy in the Board of Directors occurring by reason of removal of a director by the Members

may be filled by election at the meeting at which such director is removed. If vacancies shall occur in the Board of Directors by reason of death, resignation or removal of a director appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created directorship, as the case may be.

4.9 Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

## ARTICLE 5: OFFICERS

5.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other officers as may from time to time be appointed by the Board of Directors.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Directors annually at the regular annual meeting of the Board of Directors. In the event of failure to choose officers at such regular annual meeting of the Board of Directors, officers may be chosen at any regular or special meeting of the Board of Directors. Each such officer (whether chosen at a regular annual meeting of the Board of Directors or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Directors and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, Vice President, Secretary and Treasurer shall be and remain directors of the Association during the entire term of their respective offices. No other officer need be a director.

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

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Directors at any time, for or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if

a new office shall be created, such vacancies or newly created offices may be filled by the Board of Directors at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Board of Directors and at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Directors may require of him.

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

5.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Directors may require him to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Directors may require of him.

5.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board of Directors. He shall perform such other duties as the Board of Directors may require of him.

5.10 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses; are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer.

## ARTICLE 6: COMMITTEES

6.1 Designation of Committees. The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) director. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Board of Directors and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.



6.2 Proceedings of Committees. Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.

6.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.5 Vacancies. If any vacancy shall occur in any committee designated by the Board of Directors hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Directors.

## ARTICLE 7: INDEMNIFICATION

7.1 Indemnification Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any

criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.2 Indemnification Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.1 or 7.2 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.1 or 7.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 hereof. Such determination shall be made either (i) by the Board of Directors by a majority vote of disinterested directors or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty percent (50%) of the Total Votes of the Association at any meeting duly called for such purpose.

7.4 Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this ARTICLE 7 may be paid by the Association in advance of the final disposition for such action, suit, or proceeding upon a majority vote of a quorum of the Board of Directors and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this ARTICLE 7 or otherwise.

7.5 Scope of Indemnification. The indemnification provided for by this ARTICLE 7 shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested Members or directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this ARTICLE 7 shall apply to all present and

future directors, officers, employees, and agents of the Association and shall continue as to such persons who cease to be directors, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a director, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), as may be required by Article 11 of the Declaration.

7.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained pursuant to this ARTICLE 7 shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

#### ARTICLE 8: FISCAL YEAR AND SEAL

8.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following except that the first fiscal year shall begin on the date of incorporation.

8.2 Seal. The Board of Directors may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal".

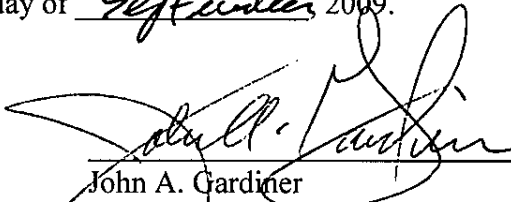
#### ARTICLE 9: RULES AND REGULATIONS

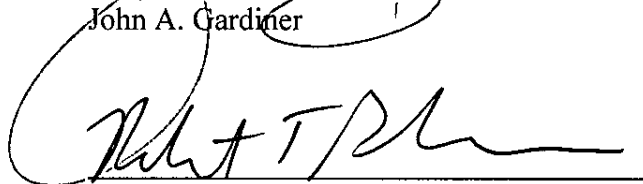
9.1 Rules and Regulations. The Board of Directors may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The Members shall be provided with copies of all rules and regulations adopted by the Board of Directors, and with copies of all amendments and revisions thereof.

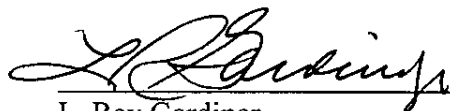
#### ARTICLE 10: AMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the Members upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Utah County, State of Utah.

IN WITNESS WHEREOF the undersigned, constituting all of the directors of the Urbana On 11th Condominium Owner's Association, a Utah nonprofit corporation, have executed these Bylaws on the 9<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
John A. Gardiner

  
\_\_\_\_\_  
Robert T. Gardiner

  
\_\_\_\_\_  
L. Ray Gardiner