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DECLARATION OF CONDOMINIUM
OF THE
RICHARDS COURT CONDOMINIUMS
[a leasehold condominium project]

Dated January 12, 2010

4812-8894-8229

BK 9796 PG 8457

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List of Exhibits

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- Exhibit A-2 Legal Description of Real Property
- Exhibit B Ownership Interest

**DECLARATION OF CONDOMINIUM
OF THE
RICHARDS COURT CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM OF THE RICHARDS COURT CONDOMINIUMS is made as of January 12, 2010, by City Creek Living, LLC, a Utah limited liability company ("CCL"). Except as otherwise expressly provided herein, capitalized terms used in this Declaration shall have the meanings given them in the body of this Declaration.

RECITALS

A. Declarant possesses an exclusive leasehold interest in the Real Property pursuant to the terms, conditions and provisions of the Lease.

B. Declarant desires to create a condominium project on the Property pursuant to the provisions of the Condominium Act. The condominium project shall be known as the "Richards Court Condominiums".

C. Declarant deems it necessary and desirable to subject the Property, and all improvements now or hereafter constructed on the Property, to the covenants, conditions, restrictions, reservations, easements, assessments, provisions, terms, charges and liens set forth in this Declaration.

DECLARATION

ARTICLE 1

DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals") the following terms shall have the meanings indicated.

1.1 "**Affected Owners**" shall have the meaning assigned such term in Section 9.5.3 below.

1.2 "**Airspace Lessor**" shall mean and refer to City Creek Reserve, Inc., a Utah nonprofit corporation, the fee simple owner of the Real Property, and the "Landlord" under the Lease, or the successor in interest of such entity.

1.3 "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association that have been or shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, at or about the time this Declaration is recorded in the real property records of Salt Lake County.

1.4 “**Association**” shall mean and refer to the Richards Court Condominiums Owners Association, Inc., a Utah nonprofit corporation.

1.5 “**Balconies**” (or, individually a “**Balcony**”) shall mean and refer to any and all balconies, decks or similar structures or improvements attached to the Building Exteriors and adjacent to Units, which are for the exclusive use by and enjoyment of the Owner and occupants of the Unit to which each such balcony, deck or similar structure or improvement is attached. The Garden Terrace shall not be included as one of the Balconies, but any deck type improvement on the same rooftop area as the Garden Terrace, which is accessed directly from the adjacent Units and which is partitioned off from the Garden Terrace, shall be included as a Balcony. All Balconies in the Project are Limited Common Areas.

1.6 “**Buildings**” (or, individually “**Building**”) shall mean and refer to levels two and above of the two (2) buildings constructed, or to be constructed, within the airspace that constitutes the Real Property, which buildings (from levels two and above) shall sometimes be commonly referred to herein as the “West Tower” and the “East Tower”. The Non-Condo Building Property on the second level of the East Tower, as shown on the Plat, shall not be included as part of the Buildings.

1.7 “**Building Exteriors**” shall mean and refer to those exterior portions of the Buildings, such as the roof tops, building façades, exterior walls, exterior doors, exterior windows, and other exterior features, whether or not such exterior portions are actually open to the elements or otherwise sheltered therefrom, and specifically including any exterior features that may abut structures or buildings adjacent to the Project.

1.8 “**Business Activities**” shall mean and refer to any industry, business, trade, commercial, income producing, or similar activities even if performed for no income. They include, but are not limited to, accounting activities, sales activities, the provision of services, goods, or information, and other activities generally consistent with the operation of a business or trade.

1.9 “**CCL**” shall have the meaning assigned such term in the first introductory paragraph above.

1.10 “**Claims**” shall have the meaning assigned such term in Section 15.1 below.

1.11 “**Condemnation Award**” shall have the meaning assigned such term in Section 10.2 below.

1.12 “**Common Area Improvements**” shall have the meaning assigned such term in Section 7.2.4 below.

1.13 “**Common Areas**” shall mean and refer to those portions of the Project which are not included within the Units, including without limitation, (a) the Main Floor Easement Areas, (b) the elevators and elevator shafts, (c) the hallways and walkways throughout the Project, (d) the stairways and emergency exits throughout the Project, (e) the Garden Terrace, (f)

the Fitness Room, (g) the Recreational Room, (h) the Limited Common Areas, (i) the Utility Areas, and (j) the Building Exteriors.

1.14 “**Common Expenses**” shall mean and refer to (i) any and all costs and expenses arising out of or connected with the Governing Documents and the maintenance and operation of the Project, the Common Areas, the Limited Common Areas, the Offsite Amenities, and/or the Association. Such Common Expenses may include, without limitation, the following: expenses of management, including fees of any non-employee Manager; real and personal property taxes and assessments; premiums for all insurance; repairs, replacements, and maintenance of the Common Areas (including the Building Exteriors); landscaping; wages and benefits of Association employees; charges for Utilities, including monthly fees for Utilities to the Condominiums to the extent not separately metered or billed; costs associated with the Offsite Amenities; all amounts required to be paid under the Lease, including (without limitation) any rental payments, the “Common Project Rent”, and the “Usage Rent” (as such terms are defined in the Lease); legal, accounting, and professional fees; any deficit or debts remaining from a previous period; the payment or repayment of any loan to the association or association debt, creation of a reserve fund for future expenses; and any other expenses and liabilities which may be incurred by the Association under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses

1.15 “**Common Wall**” shall mean and refer to any wall, floor, or ceiling, which is common to and separates (i) any two or more Condominiums, or (ii) any single Condominium from any Building Exteriors or Common Areas, but which does not separate the interior portions of the same Condominium.

1.16 “**Condominium**” shall mean and refer to a physical structure or portion of a structure which is designated on the Plat and intended for use and occupancy as a single-family residence, together with all improvements associated with that Condominium which are used in conjunction with such residence.

1.17 “**Condominium Act**” shall mean and refer to the Utah Condominium Ownership Act, Utah Code Sections 57-8-1 through 57-8-41 inclusive.

1.18 “**Corporate Regulations**” shall mean and refer to the bylaws adopted pursuant to Section 16-6a-206 of the RNCA (and any successor or amended section) for managing the business and regulating the affairs of the Association, as such bylaws may be amended from time to time.

1.19 “**Damaged Building**” shall have the meaning assigned such term in Section 9.4.2 below.

1.20 “**Damaged Common Areas**” shall have the meaning assigned such term in Section 9.4.1 below.

1.21 “**Damaged Property**” shall have the meaning assigned such term in Section 9.5 below.

1.22 “**Damaged Units**” shall have the meaning assigned such term in Section 9.4.2 below.

1.23 “**Declarant**” shall mean and refer to CCL, or any successor person that receives a specific written assignment of CCL’s rights as provided for in this Declaration.

1.24 “**Declarant Control Period**” shall have the meaning assigned such term in Section 13.1 below.

1.25 “**Declaration**” shall mean and refer to this Declaration of Condominium of the Richards Court Condominiums, as the same may hereafter be modified, amended and supplemented. The bylaws contemplated by Sections 57-8-15 and 57-8-16 of the Condominium Act are embodied in this Declaration.

1.26 “**Developer Parties**” shall mean and refer to (i) the Declarant and any and all of Declarant’s contractors, subcontractors, and design professionals, and (ii) any and all officers, managers, directors, employees, agents, representatives, partners, or members of any of the foregoing.

1.27 “**Extension Term**” shall have the meaning assigned such term in Section 11.1.3 below.

1.28 “**First Mortgage**” shall mean and refer to a Mortgage that is not subject or subordinate to any senior Mortgage.

1.29 “**First Mortgagee**” shall mean and refer to any Person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such Person under a First Mortgage.

1.30 “**Fitness Room**” shall mean and refer to the room or area within the Project, as shown on the Plat, intended for use as a fitness, exercise, weightlifting or workout room, together with any and all equipment, personal property, amenities and facilities related thereto. The Fitness Room shall be a Common Area.

1.31 “**FNMA**” shall mean and refer to the Federal National Mortgage Association (or any successor association or entity).

1.32 “**Garden Terrace**” shall mean and refer to the portion of the rooftop over a part of level three of the East Tower (as more fully depicted on the Plat), which is intended for the use and enjoyment of all Owners as a garden and/or park type area. Such Garden Terrace shall be for the non-exclusive use by, and enjoyment of, all Owners regardless of whether or not any such Owner’s Unit is attached to, or adjacent to, such Garden Terrace. The Garden Terrace shall constitute a part of the Common Areas and shall not be considered a Balcony; provided, however, any deck type improvement on the same rooftop area as the Garden Terrace, which is accessed directly from the adjacent Units and which is partitioned from the Garden Terrace, shall be included as Balconies.

1.33 “**Governing Documents**” shall mean and refer to the Articles, the Corporate Regulations, the Declaration, and the Rules (defined below).

1.34 “**Home Business Activities**” shall have the meaning assigned such term in Section 12.6 below.

1.35 “**Insurable Property**” shall have the meaning assigned such term in Section 7.6.2 below.

1.36 “**Lease**” shall mean and refer to that certain Residential Tower Airspace Lease, dated January 12, 2010, between the Airspace Lessor, as landlord, and the Declarant, as tenant, recorded on January 12, 2010, as Entry No. 10877767, in Book 9746, beginning at Page 5253, in the real property records of the Salt Lake County Recorder’s Office.

1.37 “**Limited Common Areas**” shall mean and refer to any Common Areas designated on the Plat as reserved for the exclusive use by the Owner or Owners of a certain Unit or Units to the exclusion of any other Owner or Owners.

1.38 “**Main Floor Easement Areas**” shall mean and refer to the portions of the Main Floors subject to the Main Floor Easements, as specifically described in the Lease and the Master Declaration.

1.39 “**Main Floor Easements**” shall mean and refer to the easements created in Master Declaration and/or in the Lease, and appurtenant to the Real Property, for the benefit of Tenant, (i) to use certain portions of the Main Floors for lobbies, entrances and/or reception areas for the Project, (ii) to use certain hallways, walkways, access ways, stairwells and staircases located in, or connecting to, the Main Floors for ingress, egress and access purposes, and (iii) to use certain portions of the Main Floors for any other purposes described in the Lease and Master Declaration.

1.40 “**Main Floors**” shall mean and refer to the ground level floors immediately below the Buildings, which Main Floors, except for the Main Floor Easement Areas, are not included as part of the Real Property.

1.41 “**Maintenance Manuals**” shall have the meaning assigned such term in Section 7.1.2 below.

1.42 “**Management Committee**” shall mean and refer to the governing body of the Association, elected or appointed as provided for in the Governing Documents.

1.43 “**Manager**” shall mean and refer to the Person, if any, designated from time to time by the Association (or, during the Declarant Control Period, by the Declarant) to manage, in whole or in part, the affairs of the Association and the Project.

1.44 “**Master Declaration**” shall mean and refer to that certain City Creek Center Amended and Restated Master Declaration of Easements dated effective as of December 4, 2008, and recorded on January 12, 2010, as Entry No. 10877609, in Book 9796.

beginning at Page 4404, in the real property records of the Salt Lake County Recorder's Office.

1.45 "**Member**" shall mean and refer to every Person who holds a membership in the Association, which Person must be an Owner of a Unit. If more than one Person owns a Unit, all of those Persons collectively shall constitute one "Member" for purposes of this Declaration, and shall be obligated to decide among themselves who will be voice for those Persons in exercising membership rights under this Declaration.

1.46 "**Mortgage**" shall mean and refer to a valid mortgage or deed of trust under Utah law, pledging all or any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.47 "**Mortgagee**" shall mean and refer to a beneficiary of a Mortgage.

1.48 "**New Improvements**" shall have the meaning assigned such term in Section 9.7 below.

1.49 "**Notice of Claim**" shall have the meaning assigned such term in Section 15.2 below.

1.50 "**Notice of Extension or Nonextension**" shall have the meaning assigned such term in Section 11.1.3 below.

1.51 "**Non-Condo Building Property**" shall mean and refer to (i) all portions of the Main Floors that are not included in the Main Floor Easement Areas, as shown on the Plat, and (ii) that portion of the second level of the East Tower, as shown on the Plat, which areas are not subject to this Declaration.

1.52 "**Non-Condo Building Property Owners**" shall mean and refer to the owner(s), user(s) and occupant(s) of the Non-Condo Building Property.

1.53 "**Offsite Amenities**" shall mean and refer to any rights, if any, of all Owners to use any swimming pools, facilities, buildings, or other amenities located outside of the Project boundaries, which rights (i) may be specifically and expressly granted to the Tenant under the Lease, or (ii) may be specifically and expressly granted to the Association through a separate contract or agreement between the Association and (a) the Declarant, (b) the Airspace Lessor, or (c) some other third party. As used herein, the Offsite Amenities shall refer only to the rights, if any, to use such swimming pools, facilities, buildings, or other amenities located outside of the Project boundaries and shall not include any actual ownership interest therein.

1.54 "**Owner**" shall mean and refer to each Person or Persons, including the Declarant when applicable, who is/are the record holder of legal title to the fee simple interest in a Unit (subject to the Lease), as such ownership is shown by the records of the Salt Lake County Recorder's Office. "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained legal title to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to

any Person or Persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

1.55 “**Ownership Interest**” shall mean and refer to the undivided ownership interest in all of the Common Areas and common facilities of the Project owned by each Owner, which ownership interest has been allocated to such Owner based on a “par value” as such term is defined in the Condominium Act. The Ownership Interest for each Unit is specifically set forth on Exhibit B attached hereto and incorporated herein by this reference. The Ownership Interest for each Unit as contained herein shall be deemed conclusive and shall not be adjusted in any way except by a proper amendment to the Declaration.

1.56 “**Partial Destruction**” shall have the meaning assigned such term in Section 9.4.2 below.

1.57 “**Person**” shall mean and refer to any individual or entity.

1.58 “**Plat**” shall mean and refer to the condominium plat for the Richards Court Condominiums recorded concurrently with the recording of this Declaration in the office of the County Recorder of Salt Lake County, Utah, and all amendments thereto.

1.59 “**Project**” shall mean and refer to the Property, all improvements constructed and located thereon and therein (including without limitation the Buildings), and all rights and obligations in and to the Property and improvements arising by virtue of this Declaration, the Plat, the Articles, and the Corporate Regulations.

1.60 “**Property**” shall mean and refer to any and all rights, easements, title, benefits and interests of the Declarant as Tenant under the Lease in and to (i) the Real Property, (ii) the Main Floor Easement Areas, and (iii) any other real property, all as specifically described on Exhibit A-1 attached hereto.

1.61 “**Property Insurance Proceeds**” shall have the meaning assigned such term in Section 9.2 below.

1.62 “**Razing Costs**” shall have the meaning assigned such term in Section 9.5.2 below.

1.63 “**Real Property**” shall mean and refer to the real property subject to the Lease as specifically described on Exhibit A-2 attached hereto, which consists of the airspace generally located one floor level above the Main Floors; provided that the Real Property shall not include rights in the airspace above any portions of the roofs of the Buildings reserved by the Airspace Lessor in the Lease or otherwise reserved in the Master Declaration.

1.64 “**Recreational Room**” shall mean and refer to the room or area within the Project, as shown on the Plat, intended for general recreational use as a club house, social room, meeting room, reading room, or other use approved of by the Management Committee, together with any and all equipment, personal property, amenities and facilities related thereto. The Recreational Room shall be a Common Area.

1.65 “**Repair and Reconstruction**” shall have the meaning assigned such term in Section 9.3 below

1.66 “**RNCA**” shall mean and refer to the Revised Nonprofit Corporation Act, 16-6a-101 et seq. The version of the Act applicable to the Association shall be that version in effect at the time of the filing of the Articles, unless otherwise required by law.

1.67 “**Routine Maintenance**” shall have the meaning assigned such term in Section 7.1.2 below.

1.68 “**Regular Assessments**” shall have the meaning assigned such term in Section 6.2 below.

1.69 “**Rules**” shall have the meaning assigned such term in Section 12.1 below.

1.70 “**Tenant**” shall mean and refer to the tenant or lessee under the Lease.

1.71 “**Total Destruction**” shall have the meaning assigned such term in Section 9.4.1 below.

1.72 “**Transfer Fee**” shall have the meaning assigned such term in Section 6.13 below.

1.73 “**Uninhabitable**” shall have the meaning assigned such term in Section 9.4.1 below.

1.74 “**Unit**” shall mean and refer to all elements of individual ownership of each of the separately numbered and individually described areas of the Project as designated on the Plat, including: (a) the Condominium, (b) ownership of the real property area located inside any walls interior to any Condominium which are not Common Walls, (c) exclusive use of any Limited Common Areas associated with that Condominium, (c) nonexclusive use of all Common Areas (except for Limited Common Areas reserved for the use of other Owners), and (d) all rights of membership in the Association.

1.75 “**Unit Improvements**” shall have the meaning assigned such term in Section 7.1.2 below.

1.76 “**Utilities**” shall mean and refer to all utilities of any kind that from time to time service the Project and/or the Units, including without limitation, electricity, natural gas, steam, culinary water, fire protection water, trash and rubbish removal (and recycling systems), sewer, exhaust, telecommunication and data lines, life safety and fire protection, wireless information equipment, fiber optics, cable television, internet service, power, heating and cooling.

1.77 “**Utility Areas**” shall mean and refer to the closets, ducts, rooms, passageways, cavities, crevices, and other areas within the Common Areas of the Project (but not within any individual Unit unless within the walls), as may exist or be constructed or modified from time to time, for all systems, pipes and lines of Utilities.

1.78 **“Voting Rights”** shall mean and refer to the voting rights attributable to a Member of the Association, which shall be equal to the Ownership Interest allocated to the Unit owned by such Member, as designated on Exhibit B attached hereto. The Voting Rights allocated to all Members of the Association shall cumulatively total one hundred (100) Voting Rights.

ARTICLE 2

PROPERTY SUBMISSION AND DESCRIPTION

2.1 **Submission to Condominium Act.** For the term of the Lease, the Declarant hereby submits the Property to the provisions of the Condominium Act. Hereafter, throughout the term of this Declaration, all portions of the Project as shown on the Plat shall be held, sold, conveyed, transferred, occupied, leased, rented, encumbered and used subject to this Declaration and its terms, provisions, covenants, restrictions, reservations, easements, limitations, and conditions, all of which shall constitute covenants that run with the land and shall be binding on and be for the benefit of the Declarant, its successors and assigns, and all Owners, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

2.2 **Master Declaration; Lease.** In addition to the contents of this Declaration, the Property is subject to the terms, provisions, covenants, restrictions, reservations, easements, limitations, and conditions as set forth in the Master Declaration. Further, Declarant’s interest in the Property is a leasehold interest, and the condominium regime created by this Declaration is a “Leasehold Condominium” as such term is described in the Condominium Act. Consequently, each Owner’s interest in a Unit is subject and subordinate to all of the terms, provisions, covenants, restrictions, reservations, easements, limitations, and conditions set forth in the Lease.

2.3 **General Description of Project.** As more fully described and depicted on the Plat, the Project shall consist of two Buildings, commonly known, or to be known, as the “East Tower” and the “West Tower”. The East Tower shall contain fifty-three (53) residential Units and the West Tower shall contain thirty-seven (37) residential Units. Combined, the total number of Units within the Project shall be ninety (90), which Units are shown on the Plat and listed on Exhibit B attached hereto. Except with respect to the Main Floor Easement Areas, no portion of the Main Floors shall be included in the Project. In addition, except as may result by virtue of the Lease or the Master Declaration, no real property below the level of the Main Floor Easement Areas shall be included in the Project. The Buildings shall be constructed primarily of concrete, stone, brick, glass, and wood, along any other building materials as determined by the Declarant. The Unit numbers in the East Tower shall range from “201 E” to “1003 E”, and the Unit numbers in the West Tower shall range from “201 W” to “1003 W”. The East Tower and the West Tower shall each consist of nine (9) stories or levels, with the Main Floor Easement Areas on the ground level located one level below, and with an additional mechanical floor above on the tenth (10th) floor. The next level below the East Tower and the West Tower shall contain the Main Floor Easement Areas and Non-Condo Building Property, while the second (2nd) through the tenth (10th) floors (being the Buildings) shall contain the Units (provided, however, a portion of the second floor of the East Tower shall constitute Non-Condo Building Property as more

fully shown on the Plat). The locations, dimensions and measurements for the Units are also set forth on the Plat.

ARTICLE 3

THE ASSOCIATION

3.1 **Membership.** Each Owner shall be entitled and required to be a Member of the Association. Membership in the Association will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held; provided, however, that any vote of an Owner comprised of more than one Person may not be fractionalized, but must be voted as an entire vote as more particularly set forth in the Corporate Regulations. An Owner shall be entitled to one membership for each Unit owned by such Owner. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No Person other than an Owner may be a Member of the Association and membership in the Association may not be transferred except in connection with the transfer of a Unit.

3.2 **Records of the Association.** The Association shall maintain and make available records of the association as required law, including but not limited to as required by Section 57-8-17 of the Condominium Act and Sections 16-6a-710, 16-6a-1601-1606, 16-6a-1610 of the RNCA, subject to any modifications or limitations in the Articles or Corporate Regulations as permitted by the RNCA. All records provided pursuant to Section 57-8-17 of the Condominium Act shall be provided subject to the procedures in the RNCA. The Association shall make available for inspection to the Mortgagees and the holders, insurers and guarantors of any First Mortgage on any Unit, during normal business hours upon reasonable notice and at a location to be determined by the Management Committee, current copies of the Lease and Governing Documents. The Association shall make available to the Declarant and the Airspace Lessor all records otherwise available to any Owner or Mortgagee either by law or as permitted in the Governing Documents, pursuant to the procedures in the RNCA, except that they shall not have to identify a purpose for the inspection and they may use the documents for any reasonable business purpose.

3.3 **Management Committee.** Except as properly delegated, all business and affairs of the Association shall be undertaken by and through and under the direction of the Management Committee. Any reference to any action or right of the Association in this Declaration, shall be exercised by and through the Management Committee. Any reference to any right or action of the Management Committee in this Declaration shall be on behalf of the Association. The qualifications of members, election of members, and procedures related to the

meetings and decisions of the Management Committee shall be as specified in the Corporate Regulations.

3.3.1 Powers of the Management Committee. Subject to any and all limitations, prohibitions and restrictions set forth in this Declaration, and further subject to all applicable laws, the Management Committee shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following (which are given by way of explanation and illustration and not by way of limitation):

(i) Preparing and adopting, in accordance with this Declaration, annual budgets;

(ii) Making assessments to pay for the Association's expenses as more fully set forth in this Declaration;

(iii) Designating, hiring, and dismissing personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property (including the Common Areas) and any other property for which it has responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(iv) Opening bank accounts on behalf of the Association and designating required signatories relating thereto;

(v) Collecting assessments, depositing the proceeds thereof in a bank depository that it shall approve, and using such proceeds to operate the Association; provided, however, any funds may be deposited, in the Management Committee members' best business judgment, in any financial institution with federally insured deposits;

(vi) Making and amending Rules and adopting resolutions related to the use, operation and governance of the Common Areas and/or the Project;

(vii) Making or contracting for the making of repairs, additions, and improvements to or alterations of the property of the Association in accordance with the provisions of this Declaration and the Lease after damage or destruction by fire or other casualty;

(viii) Enforcing by legal means the Governing Documents and any other provisions of law applicable to the Association or the Project, and bringing any legal, administrative, or other proceedings which it deems appropriate with respect to (a) the filing of any assessment lien against any Unit, (b) the foreclosure of assessment lien, and/or (c) the preparation of amendments to this Declaration (or other similar documentation) which have been approved by the requisite voting rights of the Association as set forth herein. In no event shall the Management Committee incur or commit the Association to incur any amounts for other legal proceedings, litigations, matters, or claims unless the Owners have enacted a resolution authorizing such action by a vote of sixty-six percent (66%) of the total voting rights of the Association. Such super-majority vote shall not be required for legal fees that the Management

Committee may incur in defending the Association and/or the Management Committee from claims or litigation brought against them;

(ix) Obtaining and carrying insurance as provided in this Declaration, and paying the premium costs thereof;

(x) Paying the costs of all services rendered to the Association or its Members, to the extent not chargeable directly to specific Owners;

(xi) Keeping books and records with detailed amounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(xii) Establishing Rules and restrictions related to the installation of satellite dishes, antennas, and over-the-air reception devices, in accordance with law and any applicable provisions of this Declaration and the Lease.

(xiii) Permitting utility suppliers to use portions of the Association's property, if any, as reasonably necessary to the ongoing development or operation of the Project;

(xiv) Indemnifying and advancing expenses to a member of the Management Committee, officer or other committee member, or former member of the Management Committee, officer or other committee member of the Association to the extent such indemnity is required or allowed by Utah law or the Governing Documents;

(xv) Maintaining, repairing and operating the Common Areas;

(xvi) Hiring and retaining accountants, attorneys and other professionals and other independent contractors to assist in carrying out the business of the Association;

(xvii) Collecting funds for reserves in the amount determined by the Management Committee; and

(xviii) Taking any other appropriate action as it deems appropriate to operate the Association and carry out the requirements and intent of the Governing Documents.

Notwithstanding the foregoing, and in addition to all other prohibited, limited or restricted actions of the Management Committee, the Management Committee may not act on behalf of the Association to: (a) amend or terminate this Declaration; (b) terminate the Project; (c) establish a salary for any or all members of the Management Committee; or (d) elect members to the Management Committee (in each case except as agent for the Members in documenting and carrying out any action, agreement or direction approved or authorized by the Members in accordance with the provisions of this Declaration and the Corporate Regulations).

3.3.2 Property Manager.

(i) The Management Committee may, at its option, retain for the Association a professional Manager at a compensation established by the Management Committee to perform such duties and services as the Management Committee shall authorize. The Management Committee may delegate to the Manager, subject to the Management Committee's supervision, the day to day management duties of the Management Committee but shall retain decision making authority on all significant decisions, including those related to the powers and responsibilities set forth in subparagraphs (ii), (vi), (vii), (viii), (xii), (xiii), and (xiv) of Section 3.3.1 above. Management contracts or agreements entered into by the Association shall be consistent with Section 3.3.2(ii).

(ii) **ANY MANAGER IS HEREBY ON NOTICE** that the Management Committee and the officers of the Association cannot and do not have authority to enter into a Management Contract unless the following provisions are part of the contract and, therefore, that notwithstanding the terms of any written or oral contract entered into by the Management Committee that contradict the following terms, the following terms shall apply in any such contract and shall supersede any conflicting terms: (1) any management contract shall be terminable upon 30 days notice with or without cause by the Management Committee and without any financial penalty or right to any severance payment or payment for a remaining term of the contract upon any such cancellation, (2) any management contract shall be terminable immediately for cause as determined solely by the Management Committee and without any financial penalty or right to any severance payment or payment for the remaining term of the contract upon any such cancellation, (3) no right to cure or notice provisions related to the termination of the contract shall be enforceable against the Association, (4) notwithstanding any indemnification provision to the contrary, the Association shall not indemnify the Manager against any claim arising as a result of the Manager's management of the Association if the Manager's own negligence or intentional or wrongful act is the primary basis for the claim, and (5) the Management Committee shall return and deliver to the Association all records of the Association's activities, communications, and financial affairs in both written and electronic form including but not limited to all original electronic data files in both electronic (in all formats in which the data can be provided) and hard copy versions related to assessments and individual owner accounts, all written correspondence and emails from or to the Manager, the Association, or employees of the Manager related to the Association, and all minutes, forms, records, account statements, checks, and any other records of the Association; all within 15 business days of any termination by the Association.

3.3.3 Signatures Required. Any document or instrument that requires the signature of the Management Committee shall be signed by at least two (2) members of such committee, which shall thereafter bind the Association.

3.3.4 Enforcement by the Association. The Association may enforce the Governing Documents through any of the following methods, as it deems appropriate in its sole discretion. The use of any one method does not prevent the use of another or multiple methods at the same time or subsequently. The person against whom any method of enforcement is utilized

may be assessed for all costs and reasonable attorney fees incurred by the Association related to the enforcement efforts.

(i) Fines. The Association shall have the power to assess reasonable fines against Owners as provided for and pursuant to procedures established in the Rules, which shall constitute a lien upon the Owner's Unit as provided for in Section 57-8-37 of the Condominium Act.

(ii) Suspension of Voting Rights. The Association may suspend an Owner's Voting Rights in the event that the Owner is more than thirty (30) days delinquent in paying any assessment, except for delinquencies solely based on the failure to pay fines and charges related thereto.

(iii) Suspension of Services and Access to Amenities. The Association may suspend any services provided by the Association to the Owner or the Owner's Unit in the event that the Owner is more than thirty (30) days delinquent in paying any assessment. The Association may suspend a Member's right to use of any recreational facilities and common meeting rooms included in the Common Areas and any Offsite Amenities for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any failure by such Member to comply with the Governing Documents; and (iii) for successive 60-day periods if any such failure to comply is not corrected during any prior 60-day suspension period. The Management Committee may, in the Rules, alter or provide for multiple time periods for suspension of access depending upon factors it deems appropriate, which may include whether the failure to comply is the initial failure or a repeated failure.

(iv) Legal Action. The Association may elect to bring a suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(v) Self Help.

(a) If an Owner fails to (1) maintain a Unit or Limited Common Area as required herein, (2) make repairs in a Unit in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the attractive appearance and value of the Project, or (3) observe any restrictions imposed on such Owner (or any occupant of such Owner's Unit) by the terms of the Governing Documents, then the Association may give written notice to such Owner (or occupant of such Owner's Unit) stating the nature of the default and the corrective action that the Association determines to be required and requesting that the corrective action be carried out within a period of fourteen (14) days after the giving of such written notice. If the Owner (or occupant of such Owner's Unit) fails to carry out such action within the period specified by the notice or as otherwise required by the Association following any hearing on the issue (should any be required in the Governing Documents), the Association through its agents and representatives may enter the Unit after proper notice as provided for herein and cause corrective action to be taken. The Association may assess the Owner for the costs thereof including but not limited to reasonable attorney fees related to any such action.

(b) Notwithstanding Section 3.3.4(v)(a) above, because the Lease does not provide for or grant any notice, grace, or cure periods with respect to a Use Default as defined in the Lease, then in the event that such a Use Default exists in connection to any Owner, any occupant of any Unit, or any Unit, the Association through its agents and representatives shall have the right to take all actions necessary (including without limitation entering into any Unit) without any notice, grace, or cure periods, and specifically without giving the fourteen (14) day notice described in Section 3.3.4(v)(a) above. Without limiting the foregoing, the Association is hereby granted all remedies and rights of the Airspace Lessor in Article 21 of the Lease with respect to Use Defaults in order to cure any Use Default.

3.3.5 The Failure to Enforce is No Waiver. The failure of the Management Committee to enforce any provision of the Governing Documents or to avail itself of any remedy or procedure provided for in the Governing Documents or by law shall not be deemed a waiver of the right of the Management Committee to do so thereafter.

3.4 Voting by Members.

3.4.1 Voting Rights. The Voting Rights attributable to each Member shall equal the Ownership Interests attributable to such Member as shown on Exhibit B attached hereto.

3.4.2 Other Voting Rights and Procedures in Corporate Regulations. Additional terms and provisions relating to the Voting Rights of the Members in regard to the affairs of the Association and the Project and the election of the Management Committee shall be as provided in the Corporate Regulations.

3.5 Notice of Meetings. During the entire term of the Lease, the Association shall provide Airspace Lessor, Declarant, and any and all other parties designated by Airspace Lessor or Declarant, with written notice of any and all Association meetings, which shall include an invitation to attend same, in the same method and manner as dictated by the Corporate Regulations and/or this Declaration for the giving of notice to Owners regarding such meetings. Such notice shall be delivered to Airspace Lessor, Declarant, and any and all other parties designated by Airspace Lessor or Declarant, at any address as may be requested by Airspace Lessor or Declarant (as applicable) in writing.

ARTICLE 4

RIGHTS AND MAINTENANCE OBLIGATIONS RELATED TO EASEMENT AREAS, COMMON AREAS, AND LIMITED COMMON AREAS

4.1 Rights in Common Areas. Each Owner shall have a non-exclusive right of use and enjoyment, in common with all other Owners, in and to the Common Areas, including without limitation, (i) the Main Floor Easement Areas, (ii) the Garden Terrace, (iii) all elevators (except any elevator that is designated as Limited Common Area on the Plat), (iv) the Recreational Room, (v) the Fitness Room, and (vi) the Utility Areas. Each Owner shall have an unrestricted right of ingress and egress to and from its Unit over and across such Common Areas. Such rights shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Owner may delegate the rights of use and enjoyment described herein

to any family members, household guest, tenant, lessee, contract purchaser, or other Person who resides in or occupies such Owner's Unit in compliance with the Governing Documents.

4.2 **Rights in Offsite Amenities.** Each Owner shall have a non-exclusive right of use and enjoyment, in common with all other Owners and with all other Persons to whom such use and enjoyment rights may be granted, in and to any Offsite Amenities (if any are provided), subject to the terms of the Lease or other applicable agreement granting or creating such rights in the Offsite Amenities. Such rights shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Subject to any rules and regulations imposed by the Association or the operator of the Offsite Amenities related to the use of any Offsite Amenities, any Owner may delegate the rights of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in or occupies such Owner's Unit.

4.3 **Rights in Limited Common Areas.** Each Owner shall also have the right to use and enjoy any Limited Common Areas that may be designated on the Plat for the exclusive use by the Owner of any Unit to which such Limited Common Areas are assigned. Similar to the rights of each Owner in the Common Areas, such rights in the Limited Common Areas shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated from such Unit. Any Owner may delegate the rights of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in or occupies such Owner's Unit. The Limited Common Areas include the Balconies, and other areas as may be identified on the Plat.

The Balconies attached to the Building Exteriors shall be Limited Common Areas as identified on the Plat. As more fully shown on the Plat, each one of the Balconies is hereby designated exclusively for the use of the Owners of the Unit that is adjacent to the same and from which exclusive access to such Balcony can be obtained. The rights to use such Balconies shall be an appurtenance to the corresponding Units and shall run with the land. The exclusive use rights of such Balconies shall not be separated or alienated from the Units to which it is herein allocated and such rights cannot be transferred or conveyed without a corresponding transfer or conveyance of the applicable Unit to the same Person(s).

4.4 **Encroachments/Variances from Plat.** If any actual dimensions in the Project vary from any horizontal or vertical measurements on the Plat, the actual dimensions shall be the controlling boundary for the applicable Unit and/or area within the Project to the extent that the area in variance was constructed in substantial accordance with the Plat as determined by the Airspace Lessor in its sole and absolute discretion. In the event any construction or repair, as a result of any settlement, normal construction variances, or any other movement of any portion of the Buildings or the improvements related thereto (except any encroachment caused by an Owner) causes any part of a Unit to encroach upon the Common Areas, Limited Common Areas, other areas within the Project, or upon an adjoining Unit, or if any part of the Common Areas, Limited Common Areas, other areas within the Project, or any adjoining Unit encroaches or shall encroach upon a Unit for any such reasons, an easement for such encroachment and for the use and maintenance of the same shall and does exist and all other responsibilities, duties, and restrictions related to that portion of the building shall nonetheless remain the same as if that

portion of the Building were located precisely where originally intended. As it applies to any particular circumstances, this provision shall be interpreted by the Association to further the original intent of the Declarant regarding the maintenance, responsibility, and restrictions stated in the Governing Documents.

4.5 **Decor and Maintenance of Main Floor Easement Areas**. The Association shall have the responsibility, duty and obligation, in all respects, to keep and maintain the Main Floor Easement Areas, which are Common Areas, in good condition and repair. The design, layout, furnishings, pictures, paintings, and other décor of the Main Floor Easement Areas shall be (i) consistent with the standards, restrictions, prohibitions, and limitations described in all other provisions of this Declaration, and (ii) subject to the Declarant's reasonable review and approval. In the event the Lease grants any applicable approval rights to the Airspace Lessor, then such design, layout, colors, furnishings, pictures, paintings, and other décor shall also be subject to the Airspace Lessor's review and approval.

4.6 **Limitation on Use Rights**. A Member's rights of use and enjoyment of the Common Areas, the Offsite Amenities, and any applicable Limited Common Areas shall be subject to all requirements and limitations in the Governing Documents and the following:

A. All remedies related to any failure to comply with the Governing Documents as provided in the Governing Documents or by law;

B. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas, any Offsite Amenities, or any applicable Limited Common Areas;

C. The right of Salt Lake City, or any other governmental or quasi-governmental body having jurisdiction over the Property to access, including rights of ingress and egress in, on, over, under, across, and/or through the Main Floor Easement Areas, any hallway, access way, walkway, open space, or other area of any kind whatsoever, contained within the Property, for purposes of (i) providing police and fire protection, and (ii) providing other governmental or municipal services;

D. An easement right for the benefit of the Association (and Developer Parties, as may be reasonably necessary) for maintenance of all of the Common Areas and Limited Common Areas, which easement shall include the right of ingress, egress, and access thereto;

E. The rights of Airspace Lessor (or other third parties) under the Lease;

F. All requirements of any applicable law, code, or regulation applicable to the Project;

G. The restrictions and limitations on use, access, and enjoyment set forth in Section 12.2 below (and as otherwise set forth herein); and

H. The rights and easements granted in Section 12.7 below.

ARTICLE 5

BOUNDARIES, OWNERSHIP, AND CONVEYANCE OF UNITS

5.1 **Form for Conveyance.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. _____, RICHARDS COURT CONDOMINIUMS, according to the official Plat thereof as recorded in the Recorder's Office of Salt Lake County, State of Utah, as Entry No. 10878445, on January 13, 2010, and according to the Declaration of Condominium of the Richards Court Condominiums (the "Declaration"), recorded in the Recorder's Office of Salt Lake County, State of Utah, as Entry No. 10878446 in Book 9796, beginning at Page 8457, on January 13, 2010, together with (i) an undivided ownership interest in all common areas and common facilities of the Richards Court Condominiums, and (ii) all rights, benefits and easements described and provided for in said Declaration.

In addition, any such deed, lease, mortgage, deed of trust or other instrument described in the preceding paragraph shall also contain disclosure language substantially as follows:

Each and every grantee under this instrument understands and is hereby given notice that the transfer of the real property described in this instrument is subject and subordinate to that certain Residential Tower Airspace Lease, dated January 12, 2010, and recorded in the official records of Salt Lake County, Utah, as instrument or entry number 10877767, in Book 9796 beginning at Page 5253 and any extensions or modifications thereof, including without limitation, (i) any and all restrictions, limitations, prohibitions, terms and conditions set forth therein, and (ii) all rights and benefits of the "Landlord" and other third parties described therein.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of the Governing Documents shall be binding upon and shall inure to the benefit of any Person who acquires any interest in a Unit.

5.2 **Transfer of Title.** Subject to the Lease and its terms, the Units shall be conveyed from Owner to Owner in fee (subject to the leasehold interest in the Real Property). No ownership interest in or rights related to the Common Areas or facilities shall be separated from the Units; and, even though not specifically mentioned in the instrument of transfer the ownership interest, shall automatically accompany the transfer of interest in the Unit to which it relates.

5.3 **Boundaries of Each Condominium.** Subject to the following descriptions of particular items, each Condominium shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown and described on the Plat, and all interior partitions, walls, and other fixtures and improvements within such boundaries shall be part of the Unit. The

three dimensional space (except as further defined herein) and Unit Number of each of the Units within the Condominium Project is set forth on the Plat. The boundaries of each Condominium are more particularly identified as follows. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit as shown and described on the Plat. To the extent any portion of any ceiling in any Unit is unfinished, then the horizontal boundary of the Unit with respect to the unfinished portion shall be equal to the lowest horizontal boundary of such Unit based on the finished portions of the ceiling for such Unit. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective levels of the Units as shown and described on the Plat. All framing and structural support for the building in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and in any bearing walls are part of the Common Areas. All other materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all plywood decking, drywall, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Areas. Generally, all paneling, tile, wallpaper, paint, carpet, flooring, and other materials constituting any part of the finished surfaces or installed within the finished surfaces in a Unit are part of the Unit. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit. For all pipes, wires, conduits, chutes, flues, ducts, shafts, utility, water or sewer lines, or any other similar fixtures lying partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is part of the Unit and any portion serving more than one Unit or any portion of the Common Areas is part of the Common Areas. All windows and supporting structures (frames, etc.) on the exterior of the Buildings are not part of the Unit. Any portions of doors, door jams, and/or window sills in or on the boundary of any Unit shall be deemed part of the Unit if, when closed, such portions of such doors, door jams, and/or window sills face inside, or are enclosed within, the Unit. All other portions of the doors, door jams, and/or window sills not specifically deemed part of a Unit as set forth above shall be deemed Common Areas and not part of the Unit. Notwithstanding the foregoing, the Condominiums sharing such Common Wall shall have a non-exclusive, perpetual easement with respect to the remainder of the Common Wall for structural support.

5.4 **Boundaries of Each Balcony.** Subject to the following descriptions of particular items, the Limited Common Area constituting each Balcony shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown and described on the Plat. The three dimensional space (except as further defined herein) and Unit Number to which each Balcony is a Limited Common Area is set forth on the Plat. The boundaries of each Balcony are more particularly identified as follows. The horizontal boundaries of each Balcony shall be the bottom or underside of the finished but unpainted or decorated Balcony or concrete slab of the Balcony corresponding to the Unit directly above the applicable Unit, or in the event no Balcony is located above the applicable Balcony, then the underside of the finished but unpainted or decorated ceiling of level directly above the Unit as extended horizontally over the applicable Balcony, and the top of the finished but undecorated floor or concrete slab of the applicable Balcony. The vertical boundaries of each Balcony shall be the outside of the finished and decorated wall of the applicable Building and the vertical plain running from inside most finished and decorated edge of any railing, barrier, fencing, or other barricade or safety device located on the

along the outer limits of the applicable Balcony. In all events all areas inside of the concrete slabs, supports or other frames upon which the Balconies rest, and all other portions between these Limited Common Areas shall be Common Areas.

ARTICLE 6

ASSESSMENTS

6.1 **Agreement to Pay Assessments.** Each Owner of any Unit by the acceptance of an instrument of conveyance and transfer therefor, whether or not it is expressed in said instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association as allowed in this Declaration.

6.2 **Regular Assessments.** The Management Committee shall establish the amount of regular assessments ("**Regular Assessments**") and the schedules pursuant to which such Regular Assessments shall be due. Regular Assessments shall be computed and assessed against all Units in the Project as follows:

A. **Common Expenses.** Regular Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated Common Expenses.

B. **Apportionment.** Common Expenses and/or any assessments described in this Article 6 shall be apportioned among and assessed to all Units and their Owners based on the Ownership Interest allocated to each Owner's Unit. All Owners shall pay their respective portions of the Common Expenses and/or any assessments related thereto regardless of any limited use or non-use by such Owners of (i) the Common Areas, (ii) the Limited Common Areas, (iii) any Offsite Amenities, and/or (iv) any other facilities or amenities for which such Common Expenses and/or such assessments are charged. Notwithstanding any language to the contrary herein, Common Expenses may, at the Management Committee's option, include expenses for the maintenance and operation of the Limited Common Areas; provided, however, that the Management Committee may, in its sole discretion, either allocate the costs and expenses of such maintenance and operation of the Limited Common Areas as a cost to all Units in the proportions set forth in this Section 6.2(B), or allocate the costs and expenses of such maintenance and operation of such Limited Common Areas in a reasonably equitable manner to only those Units that receive benefit or use from such Limited Common Areas.

C. **Annual Budget.** Regular Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending the following December 31, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by the Declarant. On or before December 1 of each year thereafter, the Management Committee 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 and costs of the Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operation period. The budget shall serve as the supporting document for the regular

assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

D. Notice and Payment. Except with respect to the first fiscal year, the Management Committee shall notify each Owner in writing as to the amount of the regular assessment against his or her Unit on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Management Committee, each regular assessment shall be payable in twelve (12) equal monthly installments, with one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the regular assessment for the first fiscal year shall be allocated among the months remaining in that year.

E. 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 Management Committee may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 6.3 below, except that the vote therein specified shall be unnecessary.

6.3 Special Assessments. In addition to the Regular Assessments, the Management Committee may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of Owner's holding more than fifty percent (50%) of the Voting Rights within the Association, special assessments, payable over such periods as the Management Committee 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 or portion thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners and no payment shall be due less than fifteen (15) days after such notice shall have been given.

6.4 Other Assessments. In addition to regular and special assessments, the Association may assess other amounts to the Owners as provided for in the Declaration including but not limited to for fines and for damage to common areas caused by a particular Owner. Such amounts shall be due as provided for in the Rules or as determined by the Management Committee related to the assessment and shall be assessable directly to the Owner without any need for allocation as required for regular or special assessments.

6.5 Rate of Assessment. The amount of any regular or special assessment against each Unit shall be allocated to the Owner of same based on the Ownership Interest allocated to each Unit.

6.6 Late Payments. Unless the Management Committee establishes otherwise in the Rules, all unpaid assessments shall accrue interest at the rate of eighteen percent (18%) per annum, from ten (10) days after the date each such becomes due, until paid. The Management Committee shall also have the right to assess and establish in the Rules a late fee of a fixed dollar amount or up to five percent (5%) of any assessment payment. In addition, in the event that any assessment is not paid within ten (10) days of the date it becomes due, the Association may, at its

option, and upon ten (10) days prior written notice to the Owner (allowing the owner a right to cure the default during this time period by paying in full all outstanding assessments), accelerate the due date for all remaining unpaid installments of the Regular Assessment for the remainder of the fiscal year. Payment of the regular assessment installments so accelerated shall be due on the 1st day of the month following the ten (10) day notice period and interest shall be assessed on the entire sum at the rate set forth above or as established by the Management Committee, until it is paid in full. The Management Committee may, in the Rules or by resolution, further define procedures related to late payments including but not limited to how payments on delinquent accounts are applied and standard collection procedures related to late payments. The Association shall be entitled to assess all reasonable attorney fees and collection costs related to any failure to pay or delinquent payments of assessments.

6.7 **Failure of Notice/Election of Assessment Procedure.** The failure of the Management Committee to give timely notice of any assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, nor a release of any Owner from the obligation to pay such assessment after receipt of notice. Multiple assessments methods provided for in this Declaration may, in some instances, apply when assessing for the same purpose or amounts. In such instances, the Management Committee may select and use whatever assessment procedure(s) it deems appropriate in its sole discretion.

6.8 **Lien for Assessments.** All sums assessed to Owners of any Unit within the Project pursuant to the Governing Documents, , shall be secured by a lien on such Unit in favor of the Association. To evidence a lien, the Management Committee, Manager, or the Association's attorney may prepare and execute a written notice of lien setting forth the amount of the unpaid assessments the name of the Owner of the Unit a description of the Unit, and any other information required by law. In all events a resolution signed by at least two (2) members of the Management Committee must authorize any such written notice of lien. A notice of lien may be recorded if 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 judicial foreclosure of 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 assessment against the Unit that shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association may, through its duly authorized agents and attorneys, have and exercise the power of the trustee in any such sale or foreclosure and the power to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. Notwithstanding any language to the contrary herein, all acts regarding the liens, assessments and foreclosures as described above shall be taken in accordance with the Condominium Act and all other applicable law.

6.9 **Personal Obligation of Owner.** The amount of any assessment against any Unit shall be the personal obligation of the Owner of such Unit. A suit or claim 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, Limited Common Areas, Offsite Amenities or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration.

6.10 **Personal Liability of Transferee.** Any lien which is placed upon any Unit as described in Section 6.8 above shall not be affected by the sale or transfer of the Unit, but shall run with the land, and any amount of unpaid assessments outstanding at the time of any transfer shall become the obligation of the transferee (jointly and severally with the previous Owner) until paid in full.

6.11 **Reserve Fund.** The Association may, at its option establish and maintain a reserve fund to save money in an amount determined by the Management Committee in its sole discretion, for the periodic maintenance, repair and replacement of capital improvements to and furnishings in the Common Areas, Limited Common Areas, and Building Exteriors, and any and all other areas or improvements to the extent that the Association is obligated to maintain, repair or replace same. Any reserve fund may be funded by regular or special assessment. The Management Committee may, in its reasonable discretion, determine that capital improvements are more appropriately paid for by special assessments or other sources, when such capital improvements are needed, rather than by significant reserves.

6.12 **Evidence of Payment of Assessments.** Upon receipt of a written request by a Member or any other person with the written permission of a Member, the Association within a reasonable period of time thereafter, shall issue to such Member or other person (to the extent such other person has written permission of a Member to request same) a written certificate stating (a) that all assessments have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all assessments have not been paid, the amount of such assessments due and payable as of such date. The Association may require a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Unit in question.

6.13 **Fees and Assessments Required with a Transfer.** The Management Committee, at the time of each and every sale, conveyance, or other transfer of any Unit from one Owner to any successor Owner, may require such successor Owner to prepay simultaneously with any such sale, conveyance, or other transfer, certain Regular Assessments for the applicable Unit transferred; provided, however, in no event shall any such successor Owner be required to prepay more than three (3) months worth of such Regular Assessments. In addition to the assessments described in this Article 6, the Management Committee may require, upon each and every sale, conveyance or other transfer of any Unit from one Owner to any successor Owner, a reasonable transfer fee in an amount determined by the Management Committee (a "**Transfer Fee**"), to reimburse the Association for any fees charged to the Association related to any transfer or for the reasonable costs and time expended by the Association related to any transfer which may include copying and preparation costs for any information about the association provided to new owners or occupants, including copies of Governing Documents.

ARTICLE 7

OPERATION AND MAINTENANCE

7.1 Owner Responsibilities Related to Maintenance, Repair, and Remodeling.

7.1.1 General Maintenance. The Owner shall be responsible for cleaning and maintaining the Condominium consistent with all requirements of the Governing Documents and so as not to detract from the appearance of the Project or the neighborhood and/or community of which the Project is a part, and so as not to affect adversely the value or use of any Common Areas, any Limited Common Areas, or any other Condominium. The Association shall have no obligation regarding maintenance or care of Condominiums or Units except as expressly set forth in this Declaration.

7.1.2 Routine Maintenance and Inspection of the Condominium and All Fixtures, Appliances, and Equipment in the Condominium. By accepting a conveyance or transfer of any Unit, the Owner of such Unit agrees to perform, or cause to be performed, any and all routine, required, or appropriate inspections, service, maintenance, and repair (collectively, the “**Routine Maintenance**”) of all fixtures, equipment, appliances, facilities, and improvements related to such Owner’s Unit including but not limited to sinks, toilets, washers, water heaters and all lines, pipes, and plumbing related thereto (collectively, the “**Unit Improvements**”), as may be reasonably appropriate or as may be set forth in any and all written owner’s or user’s guides and manuals relating to maintenance of same (collectively, the “**Maintenance Manuals**”).

7.1.3 Maintenance Manuals. To the fullest extent enforceable and permitted under applicable law, any and all warranties, guaranties, and representations related to any Unit Improvements from any Developer Parties shall be void and unenforceable, and any claims against, and liabilities of, the Developer Parties and/or the Airspace Lessor shall be waived by such Owners, to the extent such Routine Maintenance is not performed in accordance with the applicable Maintenance Manuals. The Airspace Lessor and/or Developer Parties shall have the right to inspect the Unit Improvements and all documentation and records of all Owners with respect to Owner obligations set forth in Section 7.1.2.

7.1.4 Additional Responsibilities. In addition to all other maintenance responsibilities assigned in the Governing Documents, the Owner shall be responsible for (a) maintaining, and replacing when necessary, the drywall associated with the Owner’s Unit, and (b) unless otherwise modified by Rule, cleaning the inside of all windows and glass surfaces located on the exterior of the building that are associated with the Owner’s Unit.

7.1.5 Limited Common Areas. The Owners shall keep all Limited Common Areas reserved exclusively for the use of that Owner (and/or that Owner’s Unit) in a neat, clean, and tidy condition. The Association may, by Rule, establish additional or more detailed responsibilities for the Owners related to the cleaning and maintenance of the Limited Common Areas.

7.2 Operation and Maintenance by Association.

7.2.1 General Maintenance. The Association shall provide for such maintenance and operation of all Common Areas, Limited Common Areas, and Building Exteriors as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and in good condition and repair, comparable to similar high end, first class residential and mixed used developments. Maintenance of the Common Areas, Limited Common Areas, and Building Exteriors shall include, without limitation, painting, repairing, maintaining, replacing, cleaning, and caring for: the Fitness Room (including any equipment, fixtures, décor, furnishings and personal property related thereto or contained therein), the Recreational Room (including all equipment, fixtures, décor, furnishings and personal property related thereto or contained therein), the roof of the Buildings, the Main Floor Easement Areas (including all equipment, décor, furnishings and personal property related thereto or contained therein), all exteriors of the windows, doors and other exterior improvements to the Project in general.

7.2.2 Right of Entry. The Association shall have the right of entry into any Condominium to perform emergency repairs or do other work necessary for maintenance of the Building Exteriors, the Common Walls, the Balconies, or to install any amenities that may be approved by the majority of the Members of the Association. In addition, except to the extent any maintenance and repair obligation or responsibility is expressly delegated to the Owners hereunder (such as the maintenance and repair obligation of the Owners for their individual Units), the Association shall provide maintenance and repairs for all portions of the Property which are the responsibility of Tenant under the Lease.

7.2.3 Payment of Maintenance Costs in the Event of Willful or Negligent Acts. In the event that the need for maintenance, replacement, or repair of any Common Areas (including, without limitation, Building Exteriors), or Limited Common Areas (including, without limitation, the Balconies), is caused through the willful or negligent acts of any Owner(s), or through the willful or negligent acts of the family, guests, occupants, tenants or invitees of such Owner(s), then the costs of such maintenance, replacement, or repair shall be added to and become a part of the assessment to such Owner's Unit.

7.2.4 Routine Maintenance on Common Areas. Association shall perform, or cause to be performed, any and all Routine Maintenance of all fixtures, equipment, facilities, and improvements related to the Common Areas and Limited Common Areas (collectively, the "**Common Area Improvements**"), as may be described or set forth in any and all Maintenance Manuals related to same. To the fullest extent enforceable and permitted under applicable law, any and all warranties, guaranties, and representations related to such Common Area Improvements from any Developer Parties shall be void and unenforceable, and any claims against, and liabilities of the Developer Parties and/or the Airspace Lessor shall be waived by such Owners, to the extent such Routine Maintenance is not performed in accordance with the applicable Maintenance Manuals. The Airspace Lessor and/or Developer Parties shall have the right to inspect the Common Area Improvements and all documentation and records of Association with respect to the Association's obligations set forth in this Section 7.2.4.

7.2.5 Shared Maintenance Responsibilities. The Association is responsible for maintaining and keeping clean certain structural elements, common areas, surfaces, and fixtures that are either jointly used by Non-Condo Building Property Owners or may have seamless boundaries and/or shared mechanical features with other areas, structures, and surfaces that are maintained by Non-Condo Building Property Owners. For example, the Association is responsible for the maintenance of the exterior of the buildings on portions of the first level and beginning in other areas on the second level of the Buildings. The Association shall cooperate with the Non-Condo Building Property Owners regarding the maintenance and cleaning of these areas such that any necessary maintenance and cleaning is done efficiently and cost effectively for all parties and the costs are allocated through some reasonable and proportional means. Without limiting the generality of the foregoing, in the event that Airspace Lessor, as the owner of some or all of the Non-Condo Building Property, elects to perform any maintenance applicable to both the Non-Condo Building Property and the Common Areas, then the Association shall reimburse and/or pay for its pro rata share of all costs related to same.

7.3 Utilities. The Owner shall pay for all Utilities furnished to that Owner's Unit, except such Utilities which are not separately billed or metered to individual Units by the applicable service provider or other party furnishing such service. To the extent such Utilities to individual Units are not separately metered, or service Common Areas within the Project, all costs and expenses associated with such Utilities shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner; provided, however, in the event a certain meter (or meters) services only certain or specific groups of Units, the Management Committee may, at its option, allocate the costs and expenses of such Utilities among the applicable Units connected to such meter and such expenses shall not be Common Expenses. Notwithstanding the foregoing, as of execution of this Declaration the central HVAC systems in the Buildings service, or are intended to service, all Units collectively. The Owner will pay a portion of the entire Utility costs and expenses of the HVAC systems in proportion to, and based on, the HVAC usage by such Owner calculated by the amount of time the fan, coil, or other applicable mechanisms within each Owner's Unit are running. Meters and/or other measuring devices will be used to measure the amount of time such fans, coils, or other applicable mechanisms are in use within each Unit. Notwithstanding any language herein, in the event the Lease regulates Utilities in any way contrary to the terms hereof, the terms of the Lease shall control.

7.4 Garbage. The Management Committee may elect to have garbage or refuse disposed of by a private waste disposal service, in which event each Owner hereby agrees that all deliveries and all trash removal services, and other such services to that Owner or its Unit, shall be effected at a location or locations designated by the Management Committee from time to time for such purposes. Unless otherwise directed by the Association, Owners of all Units and their guests and/or other occupants shall place all trash and other waste from the Units in receptacles which are located in the Project and designated for that purpose (or, as may be directed by the Association, in any receptacles located outside the Project in which the Association has been granted use rights). All costs and expenses associated with the maintenance of such garbage service shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner. Notwithstanding any language herein, in the

event the Lease regulates garbage or refuse, or the disposal thereof, in any way contrary to the terms hereof, the terms of the Lease shall control.

7.5 **Television, Data Service, and Telecommunications.** The Declarant or the Management Committee may elect to have (i) any cable, satellite or other common television service, (ii) any data services, and/or (iii) any other telecommunication services provided to the entire Project by one or more specific service providers by entering into a service agreement, in which event each Owner hereby agrees and understands that the Owner may be required to pay for the services through that Owner's share of the Regular Assessments even if the Owner does not want to receive or use them. In the event such an agreement exists, all costs and expenses associated with the applicable service provided shall be a Common Expense paid by the Association and shall be included in the Regular Assessments to each Unit Owner. Notwithstanding any language herein, in the event the Lease regulates cable, satellite, television, data services, or other telecommunication services in any way contrary to the terms hereof, the terms of the Lease shall control.

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

7.6.1 **Hazard Insurance.** A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: the Common Areas (including, without limitation, the elevators); the Buildings, the Fitness Room, the Recreational Room, Utility Areas, all structural or "shell" components of all of the Condominiums, including the Balconies (but not the interior contents thereof), and all other portions of the Buildings required under Section 57-8-29 of the Condominium Act; all fixtures, equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by a "special form" endorsement and/or policy. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more). If the policy includes a co-insurance clause, then the policy should also include an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas and all other items described above shall be chosen by the Management Committee, but shall, in all events, be commercially reasonable. In addition, in all events, sufficient funds to cover any and all deductible amounts shall be maintained by the Association.

7.6.2 Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy (or, as may be necessary or convenient, multiple policies) of flood insurance shall be maintained covering the Buildings, any machinery and equipment that are not part of the Buildings and all Common Areas within the Project (hereafter “**Insurable Property**”) in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for such policy(ies) shall be chosen by the Management Committee, but shall be commercially reasonable. In all events, sufficient funds to cover any and all deductible amounts shall be maintained by the Association.

7.6.3 Insurance or Bonds for Employee Dishonesty. The Association shall at all times maintain in force insurance or “blanket” fidelity bonds for all officers and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association, whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide insurance or “blanket” fidelity bonds, with coverage in favor of the Association identical to such bonds required of the Association, for the Manager’s officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of insurance or fidelity bond coverage required shall be based upon the Association’s best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of insurance or bond coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of or makes available to the Association the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association’s reserve account; and (3) two members of the Management Committee must sign any checks written on any account. Nevertheless, in no event may the amount of such insurance or bonds be less than the sum equal to three months’ aggregate assessments on all Units. The insurance or bonds required shall meet the following additional requirements: (a) either shall be in the name of the Association as obligee; (b) the insurance or bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees,” or similar terms or expressions; (c) the premiums on all insurance or bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the insurance or bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days’ prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

7.6.4 Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing commercial general liability insurance coverage covering all of the Common Areas, Limited Common Areas, Buildings and Building Exteriors, and all other areas of the Project that are under the Association supervision. Nevertheless, such coverage shall be commercial general liability insurance including ISO Form CG 00 01 (10/93) or equivalent, with at least the following minimum coverages: (i) \$2,000,000 general aggregate, (ii) \$2,000,000 products-completed operations aggregate, (iii) \$1,000,000 personal and advertising injury, (iv) \$1,000,000 each occurrence, (v) \$100,000 fire damage (any one fire), (vi) \$10,000 medical expense (any one person), and (vii) \$1,000,000 automobile liability insurance combined single limit per occurrence and coverage applying to "any auto" (adjusted by the consumer price index for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and/or Buildings and Building Exteriors. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available) contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance (including owned and non-owned automobile coverage); provided, however, that each of these additional coverages may be covered under separate policies (and not under the commercial general liability policy described above) in the discretion of the Management Committee. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least thirty (30) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

7.6.5 Directors' and Officers' Insurance. A directors' and officers' liability or errors and omissions policy, if reasonably available, with at least One Million Dollars (\$1,000,000.00) in coverage.

7.6.6 Worker's Compensation Insurance. Worker's compensation insurance in at least the minimum amounts required under applicable law.

7.6.7 Additional Insurance. Any other insurance policies or coverages that the Association, in its sole discretion, may deem necessary, appropriate or advisable (including, without limitation, coverage for earthquakes or other natural disasters).

7.6.8 Insurance Trustees and General Requirements Concerning Insurance.

(i) The Association shall receive, hold, or otherwise properly dispose of any proceeds of the insurance described above in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

(ii) The name of the insured under each policy required to be maintained under this Article 7 shall be the Association for the use and benefit of the individual Owners. Said Owners shall be designated by name, if required; provided, however, to the extent any endorsement or rider will accomplish the same goal of providing the applicable benefit to the Owners without having to list each Owner individually, such endorsement or rider may be obtained and used. Loss payable shall be in favor of the Association, as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(iii) Each policy required to be maintained under this Article 7 shall (to the extent applicable) contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the project is located. If FNMA is a holder of one or more mortgagees on Units within the project, such mortgage clause shall name FNMA or FNMA's servicer of such mortgages as mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association, and to each mortgagee listed as a scheduled holder of a mortgage in the policy.

(iv) Each policy required to be maintained under this Article 7, shall provide, if available, for the following: recognition of any applicable insurance trust agreement; a waiver of the right of subrogation against owners individually; the insurance is not prejudiced by any act or neglect of individual owners which is not in the control of such owners collectively; and the policy is primary in the event any Owner or other Person has other insurance covering the same loss.

(v) Each policy required to be maintained under this Article 7 shall (to the extent applicable) also contain a "Building Ordinance or Law Endorsement," if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction.)

(vi) Each insurance policy maintained pursuant to this Article 7 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a "A" general policyholder's rating or a financial performance index of "X" or better in the Best's Key Rating Guide (or such other policyholder's rating or financial performance index score/number as may be commercially reasonable). No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or Members; or (3) the policy includes any limiting clauses (other than

insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, an Owner, or FNMA) from collecting insurance proceeds.

7.6.9 Additional Insured. At all times, and in all events, during the term of this Declaration and the Lease, the Airspace Lessor (and the Declarant during the time that Declarant owns any interest in any Unit) shall be included as an additional insured on all of the insurance policies and coverages described herein. All applicable parties, including the Association, shall promptly provide Airspace Lessor with insurance certificates verifying same.

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

7.6.11 Insurance Provisions and Requirements of the Lease. Notwithstanding the foregoing insurance requirements set forth above in this Article 7, the Association shall be required, at all times, to maintain in full force insurance policies which at least meet or exceed the insurance requirements set forth in the Lease. Consequently, in the event of any discrepancy, difference or conflict in the insurance requirements set forth in the Lease and this Declaration, the requirements which (i) are more strict, (ii) include the higher minimum policy limits, or (iii) set forth lower deductible standards, shall be maintained by the Association. Further, to the extent other insurance policies not described above are required to be maintained by Tenant in the Lease, then the Association shall, in addition to all other insurance requirements, maintain such other insurance policies as may be required under the Lease.

7.7 Reasonable Accommodations. Unless otherwise required by law, anyone requesting permission for a reasonable accommodation or modification related to Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a person with a disability (as defined by Federal law at the time the accommodation is requested) is hereby notified that the Association may not have the authority to and may not be able to grant permission to modify any structures or Buildings that are not part of the Property and may not be able to grant permission to deviate from any covenant, lease, or contract binding on the Association with regard to a third party. Any person seeking a reasonable accommodation or modification that the association may not be able to make or grant, may have to seek any such accommodation from another party to any such covenant, lease, or contract.

ARTICLE 8

PARKING AND STORAGE

8.1 Parking Rights. While parking stalls, parking facilities, and parking areas may be located near or adjacent to the Project, no parking stalls, parking facilities, and parking areas are located within or form a part of the Project, and any rights to use or enjoy the same are not rights granted or provided to Owners or their lessees, tenants or occupants under this Declaration or the Plat. Strictly by way of disclosure, however, the Airspace Lessor under the Lease has

constructed, or intends to construct, parking facilities under and near the Project. Pursuant to the terms of a separate license (or other) agreement(s) with the Airspace Lessor and/or any manager or operator of the Airspace Lessor's parking facilities, the Association and/or individual Owners may be able to obtain parking rights therein. If an Owner or potential Owner desires the right to park one or more vehicles under or near the Project, it is incumbent upon each such Owner or potential Owner to enter into the separate license (or other) agreement(s) referenced above. Notwithstanding the foregoing statements, nothing in this Section 8.1, or in any other article or section of this Declaration, shall be construed as any obligation or agreement of the Airspace Lessor, the Declarant, or the Association to (a) build the parking facilities described above, or (b) provide any parking rights or facilities to the Owners or their tenants, lessees, occupants, invitees, or guests.

8.2 **Storage Facilities.** Storage facilities may be located in the parking facilities located under or near the Project, but no rights to use the same are granted or provided to Owners or their lessees, tenants or occupants by this Declaration or the Plat. Strictly by way of disclosure, however, the Airspace Lessor under the Lease has constructed, or intends to construct, storage facilities under and near the Project. The Association and/or individual Owners may be able to obtain rights to use such storage facilities pursuant to the terms of a separate license (or other) agreement(s) with the Airspace Lessor and/or any manager or operator of the Airspace Lessor's storage facilities. If an Owner or potential Owner desires the right to use any such storage facilities, it is incumbent upon each such Owner or potential Owner to ensure (i) the availability of any such storage facilities, and (ii) the ability of such Owner or potential Owner to obtain and use the same. Notwithstanding the foregoing, nothing in this Section 8.2, or in any other article or section of this Declaration, shall be construed as any obligation or agreement of the Airspace Lessor, the Declarant, or the Association to provide any storage rights or facilities to the Owners or their tenants, lessees, occupants, invitees, or guests.

8.3 **Association Authorization.** The Owners hereby specifically authorize the Association and the Management Committee, at their option (but with no obligation to do so) to (i) enter into leases, licenses, agreements, or any other form of contract to obtain rights to use the Airspace Lessor's parking facilities and storage facilities (if constructed and available), or any other parking rights or storage facility use rights, on behalf of the Association and/or the Owners, and/or (ii) collect money or fees from the Owners on behalf of the Airspace Lessor and/or any other owner or operator of parking and/or storage rights facilities and to remit such money or fees to the applicable parties. Such authorization shall include the authority, on behalf of the Owners, to fulfill and satisfy all obligations, duties, and responsibilities contained in any such leases, licenses, agreements, or other contracts.

ARTICLE 9

DAMAGE OR DESTRUCTION

9.1 **Airspace Lessor as Attorney-in-Fact.** Notwithstanding any language to the contrary in this Declaration, in all events in which Airspace Lessor under the Lease is entitled to the Property Insurance Proceeds, the Association and all Owners irrevocably constitute and appoint Airspace Lessor as their true and lawful attorney-in-fact in their name, place and stead

for all purposes related to (i) the Project, the Common Areas, and the applicable damage or destruction, and (ii) the collection of all Property Insurance Proceeds. Acceptance of any transfer or conveyance of any Unit by any Owner shall constitute an appointment by such Owner of Airspace Lessor as its attorney-in-fact as herein provided. As attorney-in-fact, Airspace Lessor 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 any Owner which may be necessary or appropriate to exercise the powers herein granted.

9.2 **Property Insurance Proceeds.** For purposes of the Lease and this Declaration, “**Property Insurance Proceeds**” shall mean any and all proceeds or compensation of any kind in connection with, related to, or provided as a result of, any and all property insurance or similar insurance policies required to be obtained and maintained under the Lease of this Declaration, whether actually received or not, and any and all claims for such proceeds or compensation, less all actual and reasonable costs and expenses of obtaining same. In the event that the Association shall fail to obtain and maintain any applicable insurance policies required under the Lease or this Declaration, the Association and the Owners shall be obligated to pay to Airspace Lessor, as Property Insurance Proceeds, the amount equal to the Property Insurance Proceeds that would have been payable under such policies had such policies been obtained and maintained. Except as may be otherwise specifically provided herein, Airspace Lessor shall be entitled to receive all Property Insurance Proceeds. The Association and each Owner shall (i) use their best and most diligent efforts to promptly acquire all Property Insurance Proceeds and immediately deliver all such Property Insurance Proceeds received or payable by the Association (or as applicable any Owner) to Airspace Lessor, (ii) cause all insurance providers and any other applicable third parties to immediately deliver all Property Insurance Proceeds to Airspace Lessor, and (iii) cooperate in all respects with Airspace Lessor to aid Airspace Lessor in obtaining all Property Insurance Proceeds, including without limitation, the execution and delivery of any documentation, letters or other agreements requested by Airspace Lessor.

9.3 **Repair and Reconstruction.** For purposes of the Lease and this Declaration, “**Repair and Reconstruction**” of the applicable improvements shall mean repairing, restoring, and/or reconstructing, as applicable, the applicable improvements to substantially the same condition in which such improvements existed prior to the damage or destruction, with all aspects of the Project and the Common Areas having substantially the same vertical and horizontal boundaries as before (subject to any modifications required by then-applicable law); provided, however, in the event that Airspace Lessor elects to repair a Damaged Building but not the Damaged Units or Damaged Common Areas, then Repair and Reconstruction shall mean the repairing, restoring, and/or reconstructing, as applicable, of the remainder of the Damaged Building in accordance with the terms of Section 9.5 below. Notwithstanding any language to the contrary herein, in no event shall Landlord be required to perform, or cause to be performed, any work of any kind related any Repair and Reconstruction prior to Airspace Lessor’s actual receipt of all Property Insurance Proceeds.

9.4 **Scope of Damage or Destruction.** The rights of the parties in the event of damage or destruction shall be determined based on the scope of such damage or destruction, which shall be determined as follows:

9.4.1 Total Damage or Destruction. Any damage or destruction that causes forty (40) or more Units within the Project to be deemed by Airspace Lessor, in Airspace Lessor's reasonable judgment, to be uninhabitable for any period of time ("Uninhabitable"), shall be deemed a "**Total Destruction**" of the Project and the Buildings. In the event of a Total Destruction, Airspace Lessor shall have the right and option, in its sole and absolute discretion, to either (i) perform, or cause to be performed, the Repair and Reconstruction of the Project, (ii) terminate the Lease and the entire Project, or (iii) terminate the Lease and the Project with respect only to the Damaged Units (defined below) and any common areas or other areas within the Condominium Project that are also damaged (collectively, the "**Damaged Common Areas**"), and perform, or cause to be performed, the Repair and Reconstruction of the remaining portions of the Project, which shall include razing, clearing and disposing of the Damaged Units and Damaged Common Areas, all as more fully set forth in Section 9.5 below.

9.4.2 Partial Damage or Destruction. Any damage or destruction that causes fewer than forty (40) Units within the Project to be deemed by Airspace Lessor, in Airspace Lessor's reasonable judgment, to be Uninhabitable (a "**Partial Destruction**"), shall be governed as follows:

(A) Major Damage to One Building. In the event any damage or destruction to any single building within the Condominium Project (a "**Damaged Building**") causes twenty (20) or more Units in such Damaged Building to be Uninhabitable (the "**Damaged Units**"), then Airspace Lessor shall have the right and option, in its sole and absolute discretion, to either (i) perform (or cause to be performed) the Repair and Reconstruction related to the Damaged Building, or (ii) terminate the Lease and the portion of the Project with respect to the entire Damaged Building, and not just the Damaged Property (but not the entire Project), in the same manner as described and set forth in Section 9.5 below with respect to Damaged Property.

(B) Minor Damage to One Building. In the event any damage or destruction to any Damaged Building causes fewer than twenty (20) Damaged Units, then, if the Property Insurance Proceeds are sufficient to pay all costs and expenses of the Repair and Reconstruction of the Damaged Building, then Airspace Lessor shall perform, or cause to be performed, all Repair and Reconstruction of the Damaged Building. If the Property Insurance Proceeds are not sufficient to pay all costs and expenses of the Repair and Reconstruction of the Damaged Building, then Airspace Lessor shall have the right and option, in its sole and absolute discretion, to (i) perform, or cause to be performed, the Repair and Reconstruction of the Damaged Building, (ii) terminate the Lease with respect to the Damaged Building, or (iii) terminate the Lease with respect only to the Damaged Units and any Damaged Common Areas, and perform, or cause to be performed, the Repair and Reconstruction of the remaining portions of the Damaged Building, which shall include razing, clearing and disposing of the Damaged Units and Damaged Common Areas, all as more fully set forth in Section 9.5 below.

9.5 Procedures in the Event of Damage or Destruction. In the event of any damage or destruction to the Project, the rights and obligations of the parties with respect to the damaged or destroyed portion of the Project, including, as applicable, any Damaged Buildings, Damaged Units, or Damaged Common Areas (as applicable, the "**Damaged Property**") shall be as set forth below:

9.5.1 Repair and Reconstruction. In the event that Airspace Lessor elects or is required to perform, or cause to be performed, the Repair and Reconstruction of the Damaged Property, then upon receipt of all Property Insurance Proceeds, or at such earlier time as determined by Airspace Lessor in its sole discretion, Airspace Lessor shall perform, or caused to be performed, all Repair and Reconstruction of the Damaged Property. In addition, in the event that Airspace Lessor elects to terminate the Lease with respect only to the Damaged Units and any Damaged Common Areas, as set forth in Section 9.4 above, then Airspace Lessor shall perform, or cause to be performed, the Repair and Reconstruction of the remainder of the Damaged Building, without repairing, reconstructing, and restoring the Damaged Units or the Damaged Common Areas (but shall raze and clear the Damaged Units and Damaged Common Areas), so that the remainder of the Damaged Building: (i) is reasonably repaired so as not to include the Damaged Units or the Damaged Common Areas, (ii) is structurally sound; harmonious with the surrounding properties, buildings and improvements (including, without limitation, any remaining portions of the Condominium Project), and with the remainder of the City Creek Center project; and aesthetically pleasing in Airspace Lessor's sole and absolute discretion, and (iii) satisfies all applicable building codes, zoning ordinances, and other applicable laws.

9.5.2 Termination of Lease and the Project. In the event that Airspace Lessor elects to terminate the Lease and the Project with respect to the Damaged Property, then: (i) the Lease shall immediately be terminated with respect to the Damaged Property, and no party shall have any further obligations to the other except as otherwise expressly set forth therein, (ii) the Damaged Property shall no longer be subject to the Lease, the Project, the Plat or this Declaration, (iii) in the event of a Partial Destruction, the remaining property, without the Damaged Property, shall continue in all respects as the Project under the Condominium Act, (iv) the Base Rent under the Lease shall be reduced on a pro rata basis based on the total square footage of the Damaged Property compared to the total square footage of the Premises (as defined in the Lease) before the termination of the Lease with respect to the portion of the Airspace within which and upon which the Damaged Property is located, (v) to the extent required by applicable law, or requested by Airspace Lessor, all applicable parties (including, without limitation, all Owners and the Association) shall promptly execute, deliver and record a termination of the Lease, the Project, the Plat, and/or the Declaration, with respect to the Damaged Property, (vi) all easements, rights, licenses and benefits granted to Tenant, any Owners and/or the Association in the Lease, to the extent same are appurtenant to the Damaged Property, shall be terminated, and (vii) the Damaged Property and/or improvements related thereto shall immediately revert back, in fee simple, to Airspace Lessor in the same manner as described in Section 3.3 of the Lease. Airspace Lessor shall apply the Property Insurance Proceeds to the razing, clearing, removing, and disposing of the Damaged Property from the Property (collectively, the "**Razing Costs**").

9.5.3 Reimbursement to Owners. In the event that Airspace Lessor elects to terminate the Lease and the Project with respect to the Damaged Property, the Owners of Damaged Units with the portion of the Property terminated from the Project (the "**Affected Owners**") shall be entitled to reimbursement for the fair market value of such Owner's interest in the Damaged Property, valued immediately prior to the applicable damage or destruction,

pursuant to the method of valuation set forth in Section 3.2.3 of the Lease; provided, however, that each Affected Owner's right to such reimbursement shall be limited to the amount of any Property Insurance Proceeds remaining after payment of all Razing Costs. Following payment of all Razing Costs, Airspace Lessor shall deliver to the Association any such remaining Property Insurance Proceeds, to the extent of the Affected Owners' interest in the Damaged Property, valued as set forth above, as reimbursement for such Affected Owners' interest in the Damaged Property. In no event shall Affected Owners be liable to pay any amount of any difference between the fair market value of the Affected Owners' interest in the Damaged Property, valued as set forth above, and the amount of any Property Insurance Proceeds remaining following payment of all Razing Costs. In the event that the amount of the remaining Property Insurance Proceeds exceeds the value of the Affected Owners' interest in the Damaged Property, valued as set forth above, Airspace Lessor shall be entitled to retain such remaining Property Insurance Proceeds as compensation for damage to Airspace Lessor's reversionary interest in the Damaged Property.

9.6 **Continuation of Lease.** In the event of any damage or destruction to the Project as set forth above, unless Airspace Lessor exercises any one of its options to terminate all or a portion of the Lease as set forth in the Lease, the Lease shall not terminate, be forfeited, or be affected in any other manner. Unless and until the Lease has been validly terminated, all of Tenant's obligations under the Lease, including, without limitation, the obligation to pay any and all rental or other payments, shall continue unabated, subject to all other terms and provisions of the Lease.

9.7 **Use by Airspace Lessor of Property Removed from the Lease.** If Airspace Lessor elects to terminate the Lease with respect to all or any portion of any Damaged Property as set forth above, then Airspace Lessor, at any time, and from time to time, thereafter may (but shall not be obligated to) construct other buildings or improvements on, within, around, or near the previous location of the Damaged Property (the "New Improvements"). The New Improvements and/or any Property removed from the Lease may be used for any purpose whatsoever in Airspace Lessor's sole and absolute discretion and shall not be subject to the Lease or this Declaration, or any conditions, covenants, or restrictions in same.

9.8 **Damage and Destruction Terms and Provisions of the Lease.** Notwithstanding the foregoing terms and provisions, if any terms and provisions of this Article 9 are contrary to any terms and provisions of the Lease, the Lease shall govern and control.

9.9 **Damage and Destruction Terms and Provisions of Law.** Notwithstanding the foregoing terms and provisions, if any terms and provisions of this Article 9 are contrary to applicable law, the applicable law shall govern and control.

ARTICLE 10

CONDEMNATION

10.1 **Condemnation.** If at any time, or from time to time, 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 10 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 any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by a condemning authority, the Management Committee shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project, the Declarant, the Airspace Lessor, and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation; provided, however, if, under the terms of the Lease, the Airspace Lessor is granted authority to act as the attorney-in-fact for and in behalf of Tenant or the Association, then each Owner hereby appoints the Airspace Lessor as such Owner's attorney-in-fact. Notwithstanding any language to the contrary herein, (i) the Association and/or any Owner shall only receive that portion of the Condemnation Award (as defined below) that relates directly to the Association's or such Owner's interest, which interest shall be valued as a leasehold interest for the then-remaining portion of the original term of the Lease (assuming no additional extension or renewal options shall be exercised), and (ii) Airspace Lessor shall receive its fair share of such Condemnation Award based on the value of its reversionary interest under the Lease (assuming no additional extension or renewal options shall be exercised).

10.2 **Proceeds.** The Association and all Owners hereby agree that any and all compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Airspace Lessor, and shall be distributed by the Airspace Lessor to the Association and/or the Unit Owners only after the Airspace Lessor has received its fair share of same.

10.3 **Complete Taking.** In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate, and the portion of the Condemnation Award distributable to the Owners shall be allocated among and distributed to the Owners, (i) with respect to their individual Units, based upon the relative values of the Units immediately prior to the condemnation, and (ii) with respect to the Common Areas, based on the Owner's Ownership Interest. Such distribution shall be made by check payable jointly to each Owner and his/her respective Mortgagees, as appropriate.

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

10.4.1 **Allocation of Award.** As soon as practicable, the Association, reasonably and in good faith, shall apportion the Condemnation Award distributable to the Owners between compensation, severance damages or other proceeds and shall allocate such apportioned amount 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) based on each Owner's Ownership Interest;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Units that have not been taken as the Association reasonably determines to be equitable under the circumstances;

(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 taking or injuries shall be allocated and distributed as the Association reasonably 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 their interests may appear; and

(vii) No provision of this Article 10, or any other provision of this Declaration, the Articles or the Corporate Regulations shall entitle the Owner of a Unit, or other party, to have priority over any First Mortgagee holding 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 proceedings.

10.4.2 Continuation and Reorganization. Unless otherwise set forth in the Lease, if less than the entire Project is taken by power of eminent domain, 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, then the Owner thereof shall cease to be a Member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Management Committee, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights shall terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Management Committee, after duly considering any recommendations, proposals or other input from the Owners, 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 Article 10 (including a possible reallocation of Voting Rights); provided, however, that if any such determination shall have been or such action is taken by judicial decree, the Management Committee shall defer thereto and proceed in accordance therewith.

10.4.3 Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article 9 hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article 9 dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

10.5 Condemnation Terms and Provisions of the Lease. Notwithstanding the foregoing terms and provisions, the terms and provisions of the Lease shall govern over any contrary terms of this Article 10 of the Declaration. Consequently, in the event of any discrepancy, difference or conflict in the provisions relating to condemnation or takings under the Lease and this Declaration, the provisions of the Lease shall control.

10.6 Condemnation Terms and Provisions of Law. Notwithstanding the foregoing terms and provisions, if any terms and provisions of this Article 10 are contrary to applicable law, the applicable law shall govern and control.

ARTICLE 11

THE LEASE

11.1 Subordination and General Terms and Conditions of the Lease. The terms, provisions and conditions of this Declaration are subject and subordinate to the terms, provisions and conditions of the Lease. Each Owner, upon the transfer of title to any Unit to such Owner, agrees to be bound by, and subject to, all such terms, provisions and conditions of the Lease. Consequently, each Owner and/or potential Owner is hereby given notice of the Lease and is directed to review the terms and provisions thereof. Such Owner or potential Owner's purchase of any Unit, or acceptance of any transfer of any Unit to such Owner or potential Owner, shall constitute such Owner's or potential Owner's approval, acceptance and agreement to all of the terms, provisions and conditions of the Lease. Without limiting the generality of the foregoing, this Declaration discloses the following terms and provisions of the Lease:

11.1.1 Expiration. As more fully set forth in the Lease, the Lease term is for approximately one hundred (100) years. Subject to the Airspace Lessor's rights to renew and/or extend the term of the Lease as set forth in Section 11.1.3 below, the Lease shall expire on December 31, 2112. All rights of the Owners in the Project, including their Units, as set forth in this Declaration, shall run coterminous with the term of the Lease. On the expiration of the Lease, (i) the Association, this Declaration and the condominium regime or plan described herein, shall immediately and automatically terminate (without the need for any additional action or additional documentation of any kind), (ii) all of the Property and any improvements located thereon, including without limitation the Buildings, the Common Areas, the Limited Common Areas, and each and every Unit and all fixtures therein, shall immediately and automatically revert back to the Airspace Lessor (without the need for any additional action or additional

documentation of any kind), (iii) all rights, title, interests and benefits of the Association and the Owners in all or any portion of the Property, including without limitation the Buildings, the Common Areas, the Limited Common Areas, and each and every Unit and all fixtures therein, shall immediately and automatically cease (without the need for any additional action or additional documentation of any kind), and (iv) all First Mortgages and other Mortgages, and all rights, title, interests and benefits of any First Mortgagee or other Mortgagee under such First Mortgages and other Mortgages, shall automatically and immediately terminate, and Airspace Lessor shall have no liability, duty, or responsibility for any obligations or payments relating to same.

11.1.2 Right to Repurchase Early. As more fully set forth in Section 3.2 of the Lease (and in any other applicable provisions therein), from and after the sixtieth (60th) year of the Lease, the Airspace Lessor, subject to certain notice provisions set forth in the Lease, shall have the right to repurchase all leasehold interests granted under the Lease prior to the expiration of the approximately one hundred (100) year term. In order to repurchase the leasehold interests under the Lease prior to the expiration of the approximately one hundred (100) year term, the Airspace Lessor must pay to each Owner a repurchase payment, as more fully described in the Section 3.2 of the Lease. Upon the early repurchase of the Lease by the Airspace Lessor, (i) the Association, this Declaration and the condominium regime or plan described herein, shall immediately and automatically terminate (without the need for any additional action or additional documentation of any kind), (ii) all of the Property and any improvements located thereon, including without limitation the Buildings, the Common Areas, the Limited Common Areas, and each and every Unit and all fixtures therein, shall immediately and automatically revert back to the Airspace Lessor (without the need for any additional action or additional documentation of any kind), (iii) all rights, title, interests and benefits of the Association and the Owners in all or any portion of the Property, including without limitation the Buildings, the Common Areas, the Limited Common Areas, and each and every Unit and all fixtures therein, shall immediately and automatically cease (without the need for any additional action or additional documentation of any kind), and (iv) all First Mortgages and other Mortgages, and all rights, title, interests and benefits of any First Mortgagee or other Mortgagee under such First Mortgages and other Mortgages, shall automatically and immediately terminate, and Airspace Lessor shall have no liability, duty, or responsibility for any obligations or payments relating to same.

11.1.3 Extension Rights. As more fully set forth in Section 3.1.2 of the Lease, Airspace Lessor, in its sole and absolute discretion, shall have the option to extend the Lease for any number of extension terms of twenty (20) years each (each, an “**Extension Term**”). Airspace Lessor may extend the Lease any number of times, and for any number of Extension Terms, provided, however, that all Extension Terms shall be successive, with no intervening periods. Airspace Lessor shall deliver to Tenant written Notice of its election to extend or not extend the Lease (the “**Notice of Extension or Nonextension**”) at any time during the then-current Term; provided, however, that in the event that Airspace Lessor fails to deliver its Notice of Extension or Nonextension to Tenant prior to the date that is five (5) years before the expiration of the then-current Term, Airspace Lessor shall be deemed to have elected to extend the Lease for one (1) Extension Term. All terms and provisions of this Lease shall continue in

full force and effect during each Extension Term. Tenant shall have no right to extend, or to require Airspace Lessor to extend, the term of the Lease.

11.1.4 **Inconsistencies.** In the event of any inconsistency between the Lease and any provision of this Section 11.1, the terms and provisions of the Lease shall govern and control.

11.2 **Ownership of the Improvements within the Units.** Upon the purchase, conveyance or other transfer of any Unit, the Owner of such Unit shall be granted and conveyed the improvements to such Unit in fee, subject to the Airspace Lessor's rights in the Property set forth in Section 11.1 above, and as otherwise set forth in this Declaration and the Lease.

11.3 **Removal of Real and/or Personal Property.** No real property, fixtures or other permanent furnishings shall be removed from the Units at, after, or prior to the expiration of the Lease or the repurchase of the Property by the Airspace Lessor. All tangible and movable personal property of any Owner and/or the Association must be removed from the Property prior to the expiration of the Lease or any repurchase of the Property. To the fullest extent permitted by applicable law, all personal property remaining in any Unit or in any portion of the Project after the expiration of the Lease or the repurchase of the Property by the Airspace Lessor shall be deemed abandoned by its Owner and/or the Association. Ownership of such remaining personal property shall transfer immediately to the Airspace Lessor upon the expiration of the Lease or, as applicable, the repurchase of the Property.

11.4 **No Extension or Purchase Rights of Unit Owners.** Under the Lease, neither the Owners, nor the Association, have been granted, and therefore do not have, any rights to extend or renew the Lease or to redeem or purchase any reversionary interests in such Owner's Unit or in any other portion of the Property.

11.5 **Rights of Airspace Lessor and Others.** Under the terms of the Lease (including, without limitation, Section 2.3 therein), the Master Declaration, and/or any other recorded documentation, the Airspace Lessor and/or other third parties have, or may have, certain rights, easements and/or licenses to use or enjoy, either exclusively or in common with some or all of the Owners, different portions of the Buildings and/or the Property, including without limitation, (i) the roof tops, (ii) any airspace above the roof tops, (iii) the Utility Areas, and (iv) any and all areas for venting of any parking or other structures which may be located under the Buildings. Such use and enjoyment rights include, or may include (without limitation), (a) the right to attach, store, place, keep, install, construct, repair, replace, relocate and maintain improvements, fixtures, facilities, equipment and/or personal property on, within or around the Buildings, and (b) rights of access, ingress, and egress thereto.

11.6 **Restrictions on Use.** In addition to any and all restrictions on use as set forth herein, all use and other restrictions, limitations and prohibitions described in the Lease (including, without limitation, those restrictions, limitations and prohibitions set forth in Sections 7.1 and 7.2 of the Lease) shall apply to the use of the Property, the Common Areas, and the Units.

11.7 **Stricter Covenants, Terms and Provisions of the Lease.** If any covenant, term or provision of the Lease, which by its nature or effect creates, either directly or indirectly, a requirement, duty, responsibility or obligation upon the Association or upon any Owner (or any lessee, tenant or occupant of any Unit) that is stricter or greater than any requirements, duties, responsibilities or obligations of this Declaration relating to the same subject matter, then such stricter or greater requirements, duties, responsibilities and obligations set forth in the Lease shall be observed, and shall be deemed to control over any relevant or corresponding requirements, duties, responsibilities or obligations of this Declaration; provided, however, to the extent all requirements, duties, responsibilities and obligations in both the Lease and the Declaration can be met, satisfied and fulfilled, then the Association and/or each Owner shall be required to strictly comply with all such requirements, duties, responsibilities and obligations in both the Lease and the Declaration.

11.8 **Assumption of All Obligations Under the Lease.** The Association expressly hereby assumes and agrees to perform, satisfy and fulfill, all obligations, duties, and responsibilities of Tenant under the Lease, whether or not such obligations, duties, and responsibilities are specifically set forth in this Declaration. The Association (as it deems appropriate) shall, subject to the terms and provisions of this Declaration, enforce the rights of the Tenant under the Lease for the benefit of all Owners. Further, by acceptance of a Unit transfer or conveyance, each Owner shall be deemed to have assumed, jointly and severally with the Association, all obligations, duties, and responsibilities of Tenant under the Lease to the extent such obligations, duties, and responsibilities relate to such Owner's Unit. While the assumption by the Association and each Owner described above shall be effective automatically upon recordation of this Declaration (without the need for any further documentation), the Association hereby agrees to execute any additional documentation requested by Declarant relating to such assumption.

ARTICLE 12

GENERAL USE RESTRICTIONS, DISCLAIMERS, AND INDEMNIFICATION

12.1 **Rules.** The Association shall have authority to promulgate and enforce reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions and to insure that the Property is maintained and used in a manner consistent with the Governing Documents (the "**Rules**"). No such Rules shall be inconsistent with this Declaration, the Articles, the Corporate Regulations, the Lease or the Master Declaration, unless otherwise specifically permitted therein.

12.2 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their residential community nature and with the rules, regulations and use restrictions applicable thereto. Notwithstanding any language to the contrary herein, the personal use of, and access to, the following Common Areas by the Owners is hereby strictly restricted, limited and prohibited (such use and access rights being specifically kept and retained by the Declarant or, after the expiration of the Declarant Control Period, by the Association): all mechanical/electrical rooms (and all contents, facilities and equipment therein); all janitorial and/or supply rooms or closets; all rooftops (except the Garden Terrace); all spaces inside

Common Walls; all spaces between the ceiling finish of one Unit (as originally constructed by Declarant and/or Declarant's contractor/developer) and the floor finish (as originally constructed by Declarant and/or Declarant's contractor/developer) of the Unit(s) directly above such first Unit; all other cavities, crevices and voids within the Buildings; and any and all other portions of the Common Areas, the access and use of which are restricted, limited and/or prohibited by the Declarant (or, after the expiration of the Declarant Control Period, the Association) at its sole discretion. In addition, no Common Area shall be used, occupied, or altered (i) in violation of law, (ii) in violation of the Lease, (iii) in violation of the Master Declaration, (iv) so as to jeopardize the structural support of any Condominium, (v) so as to create a nuisance or unreasonably interfere with the rights of any Owners, or (vi) in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

12.3 **Use of Balconies.** Nothing shall be kept, stored, or left on Balconies except for patio furniture (designed and constructed for outdoor use) which may include tables and chairs and which must be constructed primarily of metal, glass, or wood. No patio furniture primarily constructed of plastic, resin, or similar materials is permitted. The Management Committee may adopt Rules that further define these restrictions related to Balconies (including potentially limiting the number of chairs and tables) and carry forth the intent of maintaining clean, uncluttered, and uniformly appearing patios.

12.4 **Use of Units and Condominiums.** All Units are improved residential Condominiums and are restricted to such use, except only as specifically provided in this Declaration. Each Condominium shall be used only as a single-family residence. No Unit or Condominium shall be used, occupied, or altered (i) in violation of law, (ii) in violation of the Lease, (iii) in violation of the Master Declaration, (iv) so as to jeopardize the structural support of any other Condominium, (v) so as to create a nuisance or unreasonably interfere with the rights of any Owners, or (vi) in any way which would result in an increase in the cost of any insurance covering the Common Areas or other Condominiums.

12.5 **Leasing and/or Renting of Units.** Owners may lease or rent their Units subject to any restrictions set forth by the Association.

12.6 **Authorized and Prohibited Business Activities in Units.** Business Activities other than Home Business Activities as defined herein, are not permitted in any Unit or in the Project, except as engaged in by the Association (and only to the extent allowable under the Lease). This restriction shall not prevent an Owner from engaging in work related communications and associations consistent with the residential nature of the Project and while in their Unit, or from performing work related to their employment while in the Unit, so long as such activities comply with the requirements for Home Business Activities. For purposes of this Declaration, "**Home Business Activities**" are Business Activities conducted without: (1) any employees or business associates working in the Project or Unit (other than incidental to an occasional event consistent with the residential use of the Unit such as a dinner hosted in a Unit by a Unit Owner for business associates), (2) any signs or other perceivable effect of business activity visible from the outside of the Unit, (3) any public advertising utilizing the address of the Unit or the name of the Project or the Association, (4) any persons regularly visiting the Unit related to the business pursuits including but not limited to customers, vendors, employees,

delivery persons, and business associates, (5) storage and/or package or mail delivery inconsistent with a typical residential home or condominium unit, (6) any interference with any other Unit Owners' right to the quiet possession and use of their Unit, (7) the use of any equipment, machinery, or other items in the Unit that are not typically found in a residential home or condominium (items typically found in a residential home or condominium may include telephones, small home copiers and scanners, computers, desks, filing cabinets, and similar office type equipment and related supplies), (8) any draw of electricity, air conditioning, heating, or other utilities beyond that typically associated with a residential condominium unit; or (9) disrupting the residential nature of the Project. A Unit Owner may, if permitted in and as regulated by the Rules, utilize Common Areas for occasional Business Activities consistent with the residential nature of the Project. These provisions shall be the minimum restrictions on Business Activities in the Project. The Management Committee may adopt Rules with additional clarifications and further restrictions on Business Activities in Units and Common Areas or that prohibit any Business Activities in Units and Common Areas altogether.

12.7 **Easements for Utilities.** Easements for installation, repair maintenance, and replacement of Utilities are hereby reserved throughout the Project in all locations (i) as may be shown on the Plat, or (ii) as otherwise may be chosen by Declarant. In all events, such easements for Utilities shall be deemed to exist where any such Utilities are actually originally constructed and/or installed. Within these easements, no structure, planting or other material shall be placed or permitted to remain that may damage or interfere with the installation or maintenance of such Utilities. Easements for the installation and maintenance of Utilities are also reserved within each Unit. It is contemplated that telephone, gas, electricity, lines, pipes, conduit, and other Utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such Utilities is reserved to the Association and to all applicable suppliers or providers of such Utilities (as same may change from time to time). In addition, the owner(s), tenant(s), user(s), occupant(s), licensee(s) and permittee(s) of the Non-Condo Building Property are hereby granted an easement to install and maintain any and all Utilities for such Non-Condo Building Property within the Utility Areas, which easement shall include a reasonable right of ingress and egress in, over, through and across the portions of the Buildings (but not in, through or across any Units) to the extent necessary to access mechanical/electrical rooms and the Utility Areas containing the Utilities for the Non-Condo Building Property.

12.8 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property or in any Unit, and no odors, including but not limited to cooking odors, tobacco smoke and incense, shall be permitted to arise therefrom (i) that would render any part of the Property or any Unit unsanitary or unsightly, (ii) that would be offensive or detrimental to any other part of the Property or any other Unit or to the Owners, tenants, lessees, or occupants thereof, or (iii) that would give rise to any nuisance claim or cause of action under any applicable law. No unreasonable noise or other nuisance shall be permitted to exist or operate upon any part of the Property, in any of the Common Areas or in any Unit so as to be offensive or detrimental to any other part of the Property, including without limitation, the Common Areas or any Unit, or to the Owners, tenants, lessees, or occupants thereof, including, between the hours of 10:00 PM and 8:00 AM, which shall be quiet courtesy hours. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, megaphones, bells, sirens, speaker systems, surround sound systems, artificial noise makers or

other sound devices (other than (1) security and/or emergency alarms or devices used exclusively for security and/or emergency purposes, or (2) fire, smoke, carbon monoxide or similar alarms or devices used exclusively to safety purposes) shall be located, used or placed on or within the Property or any Unit without the prior written approval of the Management Committee and the Airspace Lessor. In all events, the Owners, tenants, lessees and/or occupants of any and all Units shall comply with all terms and provisions of the Lease and the Governing Documents related to noise, odor, garbage, rubbish, debris, and/or similar nuisances.

12.9 **Indemnification.** To the fullest extent permitted under applicable law, each Owner shall indemnify, defend and hold harmless the Association, the Airspace Lessor, and all Developer Parties from any loss, claim, liability, fine, penalty, damages, injury, detriment, cost, or expense (including, without limitation, all attorneys' fees and other legal costs, interest and penalties) as a result of, or on account of (i) any use of any Unit or any portion of the Project by such Owner or the family, guests, occupants, tenants or invitees of such Owner, or (ii) any act (whether inside or outside the Project) of such Owner or the family, guests, occupants, tenants or invitees of such Owner.

12.10 **Additional Structures or Alterations.**

12.10.1 **No Exterior, Encroaching, or Structural Alterations.** No structures, improvements, changes, modifications, extensions, attachments, excavation, construction, additions, expansions, or alterations of any Unit of any kind, whether permanent or temporary, shall be permitted at any time which would (i) extend, expand, or encroach upon, into, or onto any Common Areas, or Limited Common Areas, or (ii) otherwise alter the exterior appearance of any improvement within the Property whether viewed from any Common Areas, Limited Common Areas, or any location outside the Project. In addition, no structural changes, extensions, attachments, additions, expansions, or alterations of any Unit of any kind, whether permanent or temporary, shall be permitted at any time.

12.10.2 **Non-Structural Changes.** Non-structural changes, extensions, attachments, additions, expansions, or alterations within any Unit shall only be permitted with the prior written consent of the Association. Nevertheless such non-structural changes, extensions, attachments, additions, expansions, or alterations shall be permitted by the Association to the extent the same do not affect (i) any other Unit, (ii) any Common Areas, (iii) the structural integrity of any portion of either of the Buildings, or (iv) any Utilities or Utility Areas relating to portions of the Buildings outside of the applicable Owner's Unit. In addition, provided that subsections (ii), (iii) and (iv) above are satisfied, the combining of Units through the removal of all or portions of interior, non-structural walls within a Unit shall also be permitted by the Association, notwithstanding the fact that such alteration shall affect another Unit. In no event, however, shall any combination of any Units allow the removal of any door to any Common Area.

12.10.3 **Flooring.** Notwithstanding any language to the contrary in Section 12.10.2 above, new flooring may only be installed within a Unit with the prior written approval of the Association in order to assure a consistent and beneficial acoustic environment, following such flooring change, for all adjacent Units and the Owners and occupants of same.

12.10.4 Additional Terms and Conditions.

(i) In the event of any changes, extensions, attachments, additions, expansions, or alterations allowable under Section 12.10.2 above, Owners may not undertake any such changes extensions, attachments, additions, expansions, or alterations without first obtaining any and all applicable permits, consents, and approvals from any governmental agency or department with jurisdiction and responsibility over building, development, construction, building permits, and/or the requested changes (including, without limitation, any necessary building permit).

(ii) Any provision of the foregoing to the contrary notwithstanding, to the fullest extent permitted under applicable law, any Owner making any changes extensions, attachments, additions, expansions, or alterations described above shall indemnify, defend, save and hold Airspace Lessor and Developer Parties harmless from and against any and all losses, costs, claims, liabilities, penalties, judgments, damages, and other injury, detriment, or expense (including, without limitation, all attorneys' fees and other legal costs, interest and penalties) that Airspace Lessor or Developer Parties suffers or incurs from, as a result of, or on account of any such changes, extensions, attachments, additions, expansions, or alterations.

(iii) In all events, the Owners, tenants, lessees and/or occupants of any and all Units shall comply with all terms and provisions of the Lease, Master Declaration, Governing Documents and the law related to changes extensions, attachments, additions, expansions, or alterations (including, without limitation, Section 10.1 of the Lease).

(iv) To limit noise disturbance, Owners shall not install speaker systems, surround sound systems and/or other sound devices connected to a Common Wall without the prior written approval of the Management Committee, which the Management Committee may approve or deny in its sole and absolute discretion.

(v) The Association may establish additional Rules related to any work or procedures described in this Section 12.10, which may provide for, among other things, (a) additional Association inspection rights related to such work, (b) the obligation to provide information including but not limited to plans, specifications, drawings, and licensing, insurance, and background information related to anyone conducting any work or expected to enter any Building related to such work, (c) the obligation to compensate the Association for any architectural, legal, and managerial review or oversight expenses and time as the Association deems appropriate or necessary in its discretion, (d) the requirement of deposits related to potential damages or cleaning, (e) requirements for disposing of materials and debris, (f) requirements related to the timing of when work can be performed, (g) bonding requirements for completion of the work, (h) requirements for storage, delivery, staging, and movement of materials and equipment, (i) timelines for completion of the work and fines and other assessments related to any delayed or abandoned remodeling, and (j) and other requirements as deemed appropriate by the Association in its sole discretion.

12.11 Exterior Walls, Doors, Windows, Facades, and Other Features. No changing or altering of any exterior walls, doors, windows, facades, or other features that are visible from

any Common Areas, Limited Common Areas, public streets, or public rights-of-way shall be permitted, including without limitation, (i) the painting or decorating of any such doors or walls, (ii) any penetrations of any exterior doors, roofs, or walls, or (iii) any installation of doorbells peep holes, or door knockers.

12.12 **Unsightly Items**. No unsightly articles or items visible from any other Unit, any Common Area, or from any public street or right-of-way shall be permitted to remain on or near a Unit, any of the Balconies or the Garden Terrace, the Limited Common Areas, or the Common Areas (including, without limitation, the Building Exteriors). Without limiting the generality of the foregoing, (i) refuse, debris, garbage and trash shall be kept at all times within the interior of the Units in properly maintained trash receptacles or within the designated trash and recycle receptacles in the Project (or, if applicable such designated trash and recycle receptacles located off site), and (ii) no storage piles; barbecues; flags, banners, or signs (except as may be permitted under Section 12.14 below); bicycles; unsightly furniture; dead plants or weeds; boxes; storage shelves; clothing or fabric hanging, drying or airing; or other unsightly items shall be permitted outside any Unit, or on any Balcony where it is visible either (a) from any other Unit, the Limited Common Areas, the Common Areas, or (b) to any other Person outside of the Project.

12.13 **No Further Subdividing**. No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association and the Airspace Lessor; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit or Condominium to more than one Person to be held by them as tenants in common, joint tenants, or otherwise.

12.14 **Signs**. To the fullest extent permitted by applicable law, no sign, flag, banner, display, or advertisement of any kind (including, without limitation, political signs) shall be displayed to the view of any Person outside the Project, or to the view of any of the Common Areas, without the approval of the Management Committee, except (a) such signs as may be used by the Declarant in connection with the development of the Project and the sale of Units and (b) such signs of customary and reasonable dimensions as may be displayed in any area designated by the Association (but not on any Unit, on any Building Exterior, on the interior portion of any window which can be seen from the outside, on any Balcony, or on the Garden Terrace) advertising a Unit for sale or lease (which shall be limited in number to one sign per Unit) and (c) such signs and markers as are reasonably appropriate to warn people of an emergency or dangerous condition. Identifying Unit numbers and/or addresses shall be located in the same position as originally constructed by the Declarant and any replacement of such numbers shall be with numbers of the same, design, style, texture, color, and material as the original numbers unless prior written consent to a change in same has been received from the Management Committee. In addition to, and without limiting the generality of, the foregoing, any sign, flag, banner, display, or advertisement of any kind that may be seen or viewed from outside of the Project (whether displayed by an Owner or the Association) shall only be permitted with the prior written consent of the Airspace Lessor (including, without limitation, any sign, banner, display, or advertisement placed or situated (i) in any lobby areas, (ii) in any windows within or adjacent to the Main Floor Easement Areas), (iii) on any Building Exteriors or rooftops, or (iv) on any Balconies. In all events, the Owners, tenants, lessees and/or occupants

of any and all Units, and the Association, shall comply with all terms and provisions of the Lease and the Master Declaration (if any) related to the placement or display of signs, banners, displays, and advertisements. To the extent applicable law allows the displaying of the American flag, the Management Committee shall provide reasonable rules and restrictions on same to the extent allowed under such laws.

12.15 **No Hazardous Activities.** No activities shall be conducted on or within the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon or within the Property and no open fires or incinerators shall be ignited, lighted or permitted on or within the Property except in a contained barbecue unit (if permitted by the Association) while attended and in use for cooking purposes or within a safe and Association approved interior fireplace.

12.16 **Rooftop Antennas and Satellite Dishes.** Except as may be required by law or originally installed by the Declarant, or except as may be permitted under the Lease and approved by (a) the Management Committee pursuant to Section 12.17 below, and (b) the Airspace Lessor in writing, no (i) television, ham radio, citizens band or radio antenna or (ii) satellite dishes of any kind shall be permitted upon any rooftop, exterior, patio, deck, Balcony, Building Exteriors, or side of any Unit. Any authorized antenna or satellite dish shall require appropriate screening. In connection with the foregoing, the Owners and the Association hereby acknowledge that the Building Exteriors, and the railings, concrete slabs, and certain other portions of the Balconies as more fully described in Section 5.4 above, are Common Areas. No penetrations, borings, or drillings (whether for anchoring or the purposes) of any kind shall be permitted within these Common Areas. In addition, the Owners and the Association are hereby given notice that the concrete slabs described in Section 5.4 above are post-tensioned. Consequently, any penetrations, borings, or drillings into same may compromise or injure the structural integrity of the applicable Balcony.

12.17 **Architectural Control.** No building, construction, improvement, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, size, dimensions, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing to the extent required under the Lease, by the Declarant and/or the Airspace Lessor, in its (or their) sole discretion.

12.18 **Noise; Dust; Vibrations; Odors.** By acquiring a Unit, each Owner and/or potential Owner hereby acknowledges and understands that the Project is located within a downtown urban setting surrounded by buildings, structures and improvements that are, or may be, used for commercial, residential, office, retail, industrial, manufacturing and other various purposes during all hours of the day and night. These uses located near or around the Project may cause, create or emit dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, odors, smells, lights or other emissions, discharges or conditions at any or all hours of the day and/or night that some Owners or Persons may find disturbing, disruptive, annoying, or irritating, or which may interrupt, inconvenience, or interfere with the lifestyles, routines, rituals, customs, habits, standards, schedules, or practices of such Owners or Persons. Each Owner understands that such

dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, rackets, odors, smells, lights, glows or other emissions, discharges or conditions may directly or indirectly affect such Owner's Unit, and, by the acceptance of instruments of conveyance and the transfer related to such Unit, such Owner shall be deemed to have understood, accepted and agreed to same. Each Owner further agrees and acknowledges that the Developer Parties, the Association, and the Airspace Lessor shall not have any liability, duty or responsibility of any kind for any such dust, dirt, smoke, steam, vibrations, shaking, noises, sounds, rackets, odors, smells, lights, glows or other emissions, discharges or conditions emanating from outside of the Project, or for any mitigation or remediation thereof, and all such Owners accept the conveyance or transfer of their respective Units subject thereto.

12.19 Pets.

12.19.1 Allowable Pets. Subject to additional restrictions imposed by the Association, the following types of common household pets shall be permitted in the Project based on the criteria below:

- (i) Domesticated Birds.
 - (a) Limit two (2) per Unit;
 - (b) Must be kept current on all required vaccinations;
 - (c) Must be kept inside Unit and not allowed in Common Areas; and
 - (d) Must be kept inside cage at all times.

- (ii) Fish.
 - (a) Limit one (1) aquarium per Unit with reasonable number of fish;
 - (b) Twenty (20) gallon aquarium maximum;
 - (c) Must be maintained on stand approved by the Association;
 - (d) Must be kept inside Unit and not allowed in Common Areas; and
 - (e) Must have odor free filter system.

Other than those listed above, no pets, animals, or reptiles of any kind, including dogs or cats, shall be allowed within the Project. Notwithstanding the foregoing, the Association reserves the right (a) to grant variances to this Section 12.19.1 and allow specific pets on a case by case basis subject to, any conditions or restrictions determined in the Association's sole and absolute discretion, or (b) create any pet policies which are more strict and/or restrictive than those described herein (provided, however, in the event other rules and restrictions are adopted by the Association, any individual and specific pet previously allowed by the Association or this Declaration and which is then-residing within the Project may remain within the Project). In all events, the owner of any pets allowed by the Association or this Declaration shall satisfy all the terms, conditions, requirements, and provisions of Sections 12.19.2 and 12.19.3 below.

12.19.2 Pet Registration. All pets must be registered with the Association. To register a pet, the pet owner must provide the Association with the following:

- feature(s);
- (i) The pet's breed, age, gender, name, and any other distinguishing feature(s);
 - (ii) Proof of current shots or vaccinations and an annual reassessment of compliance with any required updates related to shots or vaccinations; and
 - (iii) Proof of spaying/neutering for dogs and cats.

12.19.3 Pet Owner Responsibility. The owner of a pet within the Project agrees to the following:

- (i) Maintain proper pet registration with the Association as set forth in Section 12.19.2 above;
- (ii) Provide adequate food, water, shelter and care for pet as set forth in relevant city, county, and state ordinances and in accordance with all other laws;
- (iii) Provide proper and prompt clean-up for pet;
- (iv) Not allow their pet to defecate or relieve themselves in any Common Areas or in any areas outside the interior walls of such Owner's Unit, including, any Limited Common Areas;
- (v) Not keep, maintain, or allow any pet on the Garden Terrace or any Balconies;
- (vi) Cause all pet waste double bagged and hand carried to the dumpster;
- (vii) Not flush down any toilet or throw down any garbage shoot any pet waste or kitty litter;
- (viii) Regularly clean and change out bird cages, aquariums and/or other pet habitats so as to eliminate offensive smells and/or other pest problems;
- (ix) Keep pet noise to a minimum;
- (x) Not allow any pet to roam in any Common Areas, whether on or off of a leash;
- (xi) Assume all responsibility and liability for any injury sustained by any person attributable to their pet, and indemnify, save, defend

and hold the Airspace Lessor and the Association harmless in connection therewith;

- (xii) Assume all responsibility and liability for any damage to the Project or clean-up resulting from their pet, and indemnify, save, defend and hold the Airspace Lessor and the Association harmless in connection therewith;
- (xiii) Immediately and permanently remove from the Project any pet which causes bodily injury to any person (if any pet owner fails to do so, the Association shall have the right at its option to remove pet to a pound or animal shelter under the jurisdiction of Salt Lake City by calling the appropriate authorities, all costs of which shall be the responsibility of the pet owner);
- (xiv) Not leave pet unattended for longer than twelve (12) hours (if any pet owner leaves any pet unattended for longer than twelve (12) hours, then Association shall have the right at its option to remove pet after attempting to notify the pet owner, all costs of which shall be the responsibility of the pet owner);
- (xv) Keep pet well groomed, clean, and free of offensive odors;
- (xvi) Keep pet identified with ownership tag; and
- (xvii) Comply with all provisions of this Declaration and the Lease with respect to nuisances, noises, and other applicable prohibitions, limitations, and restrictions.

In the event of noncompliance of this Section 12.19.3, the Airspace Lessor shall have the right, and the Association hereby reserves the right, to (i) request any pet be permanently or temporarily removed from the Project by its owner or (ii) permanently or temporarily remove such pet from the Project to a pound or animal shelter under the jurisdiction of Salt Lake City by calling the appropriate authorities, all costs of which shall be the responsibility of the pet owner. Additionally, the Airspace Lessor shall have the right, and the Association hereby reserves the right, to prohibit any future pet ownership within the Project as a result of noncompliance of this Section 12.19.3.

12.19.4 Service Animals. Notwithstanding the foregoing policies relating to pets, seeing-eye dogs or other similar pets necessitated for medical conditions shall be allowed within the Project and any Unit, provided (i) such dogs or pets must have taken all applicable and then-medically accepted training, classes and courses and received all applicable and then-medically accepted certifications in order to provide the applicable medical aid and help, (ii) such dogs or pets must be at least six (6) months old and housebroken, and (iii) all other terms and conditions described in Sections 12.19.2 and 12.19.3 above related to such dogs or pets are met and satisfied, except that such dogs or pets shall be allowed in the Common Areas if such dogs or

pets (a) are kept on a leash, and (b) are performing the medical help, aid and/or services for which they are trained. All requirements set forth in this Section 12.19.4 are subject to third-party verification as deemed necessary by the Airspace Lessor and/or Association.

12.20 **No Smoking.** All smoking of any kind shall be strictly prohibited in all portions of the Project (whether indoor or outdoor), including without limitation, in the Common Areas, in the Limited Common Areas, and in each and every Unit. By the acceptance of any conveyance or transfer of any Unit, each Owner hereby agrees that, if such Owner desires to smoke, such Owner shall leave the Project before doing so.

12.21 **No Alcoholic Beverages in Common Areas.** No Owner or occupant of any Unit shall consume or permit the consumption of alcohol in the common areas of the Project or any other portions of the Project other than inside the respective Unit of such Owner or occupant. In addition, no Owner or occupancy shall open or allow any open alcoholic beverages of any kind (whether in bottles, cans, cups, or other) in the common areas of the Condominium Project or any other portions of the Condominium Project other than inside the respective Unit of such Owner or occupant.

12.22 **Use of the Non-Condo Building Property.** As more fully described herein, the Non-Condo Building Property is not included within the Project. Consequently, the Non-Condo Building Property is not regulated or restricted by this Declaration. Such Non-Condo Building Property may be used, enjoyed and/or occupied for any purpose (or for no purpose at all) by any and all Non-Condo Building Property Owners. In addition, certain costs and expenses related to the Buildings and the Non-Condo Building Property Owners may be shared between the Non-Condo Building Property Owners and the Association. Notwithstanding the foregoing, while the heating, venting, and air-conditioning (collectively, the "HVAC") of the Non-Condo Building Property is connected to, and part of the HVAC of the Buildings, such HVAC is incidental to the overall use of same by the Project. Consequently, the Association shall be responsible for all maintenance, repair, servicing and replacement (including all costs related thereto) with respect to the HVAC for the Buildings and the Non-Condo Building Property; provided, however, (i) in the event the Association fails to provide necessary maintenance, repair, service and/or replacement of the HVAC, the Non-Condo Building Property Owners shall have the right to perform such required maintenance, repair, servicing and/or replacement and recoup from the Association any such costs related thereto, and (ii) the Non-Condo Building Property Owners shall pay for the actual energy costs related to their usage of the HVAC based on separate metering.

12.23 **Fitness Room and Recreational Room.** Notwithstanding any language to the contrary herein, the use of the Fitness Room and Recreational Room shall not be changed or altered without a vote of more than fifty (50%) of the Voting Rights; provided, however, the Management Committee may elect to switch the location of the Fitness Room and the Recreational Room in their reasonable discretion.

12.24 **General Obligations.** Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration, the Master Declaration and the Lease.

With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

ARTICLE 13

DECLARANT RIGHTS

Notwithstanding any other provisions to the contrary herein, but nonetheless subject to the limitations and rights provided for in the Lease and Master Declaration, the Declarant shall have the following rights:

13.1 **Declarant Control.** Declarant shall have the right to retain control, power, or authority over, and all decision-making ability or authority for, the Association and/or the Project during the “**Declarant Control Period**”, which shall refer to (a) the period of time commencing with the recordation of this Declaration and ending on the first to occur of: (i) that date which is three (3) years from the date on which the first Unit in the Project is conveyed by the Declarant to a Person not affiliated with the Declarant; or (ii) the date on which units to which three-fourths of the total Ownership Interests appertain have been conveyed by the Declarant to a Person not affiliated with the Declarant, or (b) any longer period of time allowed by the Condominium Act under which, Declarant may, at any time, by written notice to the Association, transfer all or some of its control, power, authority, or decision-making ability to the Association prior to the time period described above. It is the desire of the Declarant to retain control of the Association and its activities during the anticipated period of planning, development and sale for the maximum time period permitted by law, but in any event not beyond the expiration of the Declarant Control Period.

13.2 **No Alteration of Declarant Rights.** Any rights of the Declarant in the Governing Documents shall not be substantively or procedurally altered without the written consent of the Declarant. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declaration, without consent of the Declarant.

13.3 **Right to Amend.** Notwithstanding anything stated herein to the contrary, the Declarant shall have the right to amend, revise, and modify this Declaration in any way and at any time without any additional approvals until the sooner to occur of (i) the expiration of the Declarant Control Period, or (ii) the expiration of the maximum time period permitted by law. Anything in this Article 13 or other articles or sections of this Declaration to the contrary notwithstanding, during the Declarant Control Period, the Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be reasonably requested by FNMA and to further amend to the extent reasonably requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency’s approval of the Declaration, the Plat or any other documentation related to the development and/or creation of the condominium regime related to the Project; or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof (including, without limitation, as may be necessary to qualify for any VA or FHA loans or loan programs). Any such amendment

shall be effected by the recordation by the Declarant of an amendment duly signed by an authorized officer or manager of the Declarant, with such signature acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and when recorded, any such amendment shall be binding upon all of the Project and all persons having an interest therein. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

13.4 Declarant Exception to Certain Restrictions Contained In This Declaration.

For the five (5) year period following the date on which this Declaration is recorded in the office of the County Recorder of Salt Lake County, Utah, the Declarant shall have the right to use any Unit or Condominium owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant, and the construction and improvement of all Common Areas and/or Limited Common Areas. The Declarant shall have the right to maintain one or more sales offices and model Condominiums. Such offices and model Condominiums may be located in any Condominium owned or leased by the Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. In addition, Declarant shall have the right to use any portion of the Property for marketing and/or advertising of the Units. Without limiting the generality of the foregoing, Declarant shall also have the right to maintain any number of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places on the Property or within the Project. In addition, Declarant shall have the right, at any time, and from time to time to relocate any of its sales offices, model Condominiums, signs, banners or similar structures or devices.

13.5 Payment by Declarant of Assessments. Until the expiration of the Declarant Control Period, the Declarant may establish and set all assessments and when they shall be due. During such Declarant Control Period, all Owners (except Declarant) shall pay their allocated assessments. Any shortfalls thereafter with respect to actual, necessary costs and expenses for the Project shall be paid by Declarant. Declarant shall have no additional obligation to pay any actual assessment for any Units owned by Declarant. In all events, no assessment for a Unit owned by Declarant shall be made until such Unit has been issued a final certificate of occupancy. Declarant shall pay actual assessment only for Units owned by Declarant which are constructed and completed and for which a certificate of occupancy has been issued.

13.6 Assessments for Reserves. In no event shall any assessment of any sort within the first three (3) years after the recordation of this Declaration include any amount allocated for a reserve fund which is in excess of ten percent (10.0%) of the total assessment requested.

ARTICLE 14

MORTGAGE PROTECTION

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

14.2 **Payment of Taxes or Insurance.** In the event any taxes or other charges that may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 7.6 above lapses, is not maintained, or the premiums therefor are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or individually, pay such taxes or premiums or secure such insurance.

14.3 **Estoppel Certificate.** The Association hereby agrees to provide, from time to time, at the request of any Owner of any First Mortgagee, a certificate, executed by a person with authority to sign on behalf of the Association as may be set forth in this Declaration, the Articles or the Corporate Regulations, indicating whether or not such Owner is current in the payment of any and all assessments described in Article 6 hereof. The form of any such certificate is subject to the Association's discretion. In addition, the Association is authorized to charge a reasonable fee (at its discretion) for the issuance of any such certificate.

14.4 **First Mortgagee Consent to Amendments.** Notwithstanding any language to the contrary in this Declaration, but specifically subject and subordinate to the terms and provisions of the Lease and all rights of Airspace Lessor therein, any change, modification, or amendment to this Declaration, the Articles, or the Corporate Regulations that would reasonably be deemed to be materially adverse to any Mortgagee shall only be effective upon the written consent of First Mortgagees constituting at least fifty-one percent (51%) of all of the then-current First Mortgagees relating to the Units.

14.5 **First Mortgagee Consent to Termination.** Notwithstanding any language to the contrary in this Declaration, but specifically subject and subordinate to the terms and provisions of the Lease and all rights of Airspace Lessor therein, any termination of any or all of the Project for any reason (including, without limitation, in connection with any condemnation, damage or destruction to all or a part of the Buildings) shall only be effective upon the written consent of First Mortgagees constituting at least fifty-one percent (51%) of all of the then-current First Mortgagees relating to the Units.

14.6 **Assumed Consent from First Mortgagees.** In connection with the consents required from First Mortgagees under Section 14.4 and/or Section 14.5 above, in the event that any First Mortgagee is given written notice by certified or registered mail, with a "return receipt" requested to (i) a change, modification or amendment to this Declaration, or (ii) a termination of any or all of the Project, but such First Mortgagee does not provide any written response within sixty (60) days after such First Mortgagee receives the applicable written notice, then such First Mortgagee shall be deemed to have granted and given its written consent and agreement to the applicable (a) change, modification or amendment, and/or (b) termination of any or all of the Project.

14.7 **Additional Notices to Mortgagees.** In addition to, and not as a substitute for, the notices required to be provided to any Mortgagees under this Article 14 (but subject and subordinate to the terms and provisions of the Lease and all rights of Airspace Lessor therein), the Association shall provide written notice to Mortgagees, and to any guarantors to any Mortgages, in each of the following circumstances:

- (i) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing the applicable Mortgagee's Mortgage;
- (ii) Any payment of assessments or charges owed by the Owner of the Unit securing the applicable Mortgagee's Mortgage which is delinquent by at least sixty (60) days;
- (iii) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and/or
- (iv) Any proposed action that requires the consent of a specified number or percentage of Mortgagees.

14.8 **Payment of Unpaid Dues by First Mortgagees.** Any First Mortgagee that obtains title to a Unit pursuant to the remedies granted such First Mortgagee in such First Mortgagee's Mortgage (whether through foreclosure or otherwise) shall not be liable to pay more than six (6) months of any Unit's unpaid Regular Assessments which accrued prior to the acquisition of the applicable Unit by such First Mortgagee; provided, however, if the Association's lien priority related to such unpaid Regular Assessments includes the costs of collecting such unpaid Regular Assessments, then the First Mortgagee shall be liable for the fees and costs related to such collection. From and after the date of any First Mortgagee obtains title to a Unit, such First Mortgagee shall be responsible for the timely payment of all assessments, costs, fees, and other amounts set forth herein as the Owner of such Unit.

ARTICLE 15

ALTERNATIVE DISPUTE RESOLUTION

15.1 **Alternative Dispute Resolution Requirement.** The Association and each Owner

agree that any claims or disputes (“**Claims**”) with any of the Developer Parties shall be subject to required alternative dispute resolution procedures as set forth below prior to any litigation, trial, or other court procedures or proceedings.

15.2 Alternative Dispute Resolution Procedure.

15.2.1 Notice of Claim. The Owner or the Association must first provide the applicable Developer Parties with written notice of any Claims (“**Notice of Claim**”) related to the design or construction of the Project, including, but not limited to claims of defective or negligent construction or design. The Notice of Claim will detail the alleged deficiencies in the Project in sufficient detail that the applicable Developer Parties can address all such issues. The Notice of Claim will include any and all expert reports or independent evaluations obtained by the Association or applicable Owner that address the deficiencies identified in the Claim. In the event of a negligent Claim by the Association or the applicable Owner(s), a written opinion of an expert in the applicable field must be provided certifying that such expert has reviewed the facts and applicable law and that the Claim is not frivolous.

15.2.2 Right to Repair. Each of the applicable Developer Parties shall have a reasonable time period after the receipt of the Notice of Claim to respond to such Notice of Claim, by either (i) denying the Claim in writing or, (ii) if the applicable Developer Parties so elect, to inspect, repair, or otherwise remedy those items and issues identified in the Notice of Claim. If the applicable Developer Parties elect to inspect (including, if reasonably necessary, destructive testing), repair, or otherwise remedy the items or issues presented in the Notice of Claim, the Association and/or Owner (as applicable) agree to provide the applicable Developer Parties (and their consultants, experts, representatives, agents and/or contractors) with reasonable access to all applicable Units and the Common Areas.

15.2.3 Approval of Repair or Remedy. The applicable Developer Parties shall not repair any issues or items in the Notice of Claim without the written consent of the party making the Claim. The applicable Developer Parties shall provide the Association and/or Owner (as applicable) with a written description of the scope of repair, as well as an estimated schedule for repair and an allocation of responsibility, which may include some responsibility of the Association and/or Owner (as applicable). The Association and/or Owner (as applicable) shall have 15 days to evaluate the proposed repair, and to accept or reject the proposed repair. If the Association and/or Owner (as applicable) reject the proposed repair, the parties will proceed with a formal mediation of the Claims in accordance with terms set forth below.

15.2.4 Mediation. After all of the procedures set forth above in this Article 15 have been satisfied, if any Claim still exists, then, prior to the commencement of arbitration or litigation, any such Claim shall be submitted to a mediator reasonably agreed to by the applicable Developer Parties, and the Association and/or Owner (as applicable), as well as any other parties to the Claim. If the parties cannot agree on a mediator, then any party may petition a court or competent jurisdiction in the location of the Project for appointment of a mediator. The mediation shall occur in the jurisdiction where the Project is located, and be subject to the laws of that jurisdiction. Within 60 days after appointment of the mediator, the parties shall be required to exchange with each other all inspection and consultant reports in

their possession pertaining to the claims. The parties shall have 90 days after exchanging reports in which to perform additional inspections, and any additional reports resulting from such inspections shall be furnished to the other parties prior to the mediation. All mediation fees and expenses shall be shared equally by the parties on a 50/50 basis. The parties agree to attempt in good faith to resolve all disputes in mediation. Any mediation shall be non-binding. If any issue is not resolved after a good faith attempt at mediation such party may either submit any remaining Claim to arbitration (if the parties all agree) or to litigation.

ARTICLE 16

MISCELLANEOUS

16.1 Notices.

16.1.1 Notices to Owners. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person appearing in the records of the Association at the time of mailing. It shall be the responsibility of each Owner to provide current address and contact information to the Association for such Owner. If no such address has been provided by an Owner to the Association, then the mailing address of the Owner's Condominium Unit in the Project shall be used.

16.1.2 Notices to the Association. Any notice required or permitted to be given to the Association, including any service of process, shall be deemed to have been properly furnished if mailed via certified U.S. mail, postage prepaid, to the person who appears as the registered agent for the Association with the Division of Corporations and Commercial Code for the State of Utah, as the same may be changed or amended from time to time. The notice address at the date of recordation of this Declaration is:

City Creek Living, LLC
Attn: Mark Gibbons and Steve Romney
15 West South Temple, Suite 200
Salt Lake City, Utah 84101

For a period of ten (10) years after the recordation date of this Declaration, the Association shall immediately deliver a copy of such notice to the Declarant.

16.1.3 Notices to Airspace Lessor and/or Tenant. Any notice required or permitted to be given to the Airspace Lessor and/or the Tenant under the Lease or under this Declaration shall be deemed to have been properly furnished if delivered to the Airspace Lessor, or as applicable, the Tenant (or its assignee), in accordance with the terms and provisions of the Lease.

16.2 Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect until the Lease expires or is

terminated, as more fully described in Section 11.1 of this Declaration, and as more fully set forth in the Lease.

16.3 Amendment.

16.3.1 Voting Requirement. Except as otherwise provided for in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of Owners holding at least sixty six percent (66%) of the Ownership Interests within the Association and the written approval of the Declarant and the Airspace Lessor. Any amendment authorized pursuant to this Section 16.3 shall be effective upon the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument two officers or directors of the Association shall certify that the written consent required by this Section 16.3 for amendment has been obtained.

16.3.2 Amendment To Conform to Law. The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

(a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of Community Association law, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section 16.3.2;

(b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded;

(c) The Declarant and Airspace Lessor must consent in writing to the Amendment;

(d) The Management Committee must provide to the Owners; (1) the proposed amendment instrument, (2) the language of this Section 16.3.2, (3) the law that conflicts with the existing Declaration language, (4) the attorney opinion letter required for the amendment, and (5) a notice in which the Association (a) notifies the Owner that it intends to amend this Declaration pursuant to this Section 16.3.2, (b) provides the Owner a right to object to the amendment within 30 days, and (c) provides instructions on how, when, and where to properly return the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners, as approved by the Management Committee;

(e) Within 45 days of providing the information to the Owners required by this Section 16.3.2, no more than 40% of the Owners have objected to the amendment; and

(f) Having otherwise complied with all of the requirements of this section, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than 40% of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Salt Lake County.

16.4 **Rights of Action.** The Association and any aggrieved Owner shall have a right of action against any Owners who fail to comply with the provisions of the Governing Documents or the decisions of the Association. The Owners, individually or collectively, shall have a similar right of action against the Association.

16.5 **Declarant's Rights Assignable.** The rights of the Declarant under this Declaration or in any way relating to the Property may be specifically assigned through a separate written document whereupon the assignee of the Declarant shall have all the rights of the Declarant hereunder.

16.6 **Interpretation.** The captions which precede the articles and sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to affect all of its purposes.

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

16.8 **Lists of Owners, Mortgagees, and Guarantors.** The Management Committee shall maintain up-to-date records showing the name of each Person who is an Owner of a Unit, and of all Mortgagees related thereto, any guarantors of any Mortgages related thereto, the address of such Persons and guarantors, and the Unit which is owned by the applicable Owner to which the applicable Mortgage relates. In the event of any transfer of a Unit, either the transferor or transferee shall furnish the Management Committee with evidence establishing that the

transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Management Committee is otherwise advised in writing. Upon any request therefor, all Owners shall have the duty, obligation and responsibility to promptly provide to the Management Committee and/or the Association any and all information described above, including without limitation, all applicable addresses, guarantor information, Mortgage information, and contact information.

16.9 **Interpretation of this Declaration.** Except for judicial construction, the Association, by its Management Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the covenants and the provisions hereof.

16.10 **Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other provision hereof.

16.11 **Disclaimer of Representations.** Notwithstanding anything to the contrary contained in this Declaration, the Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Project and nearby property can or will be carried out or that any land now owned or hereafter acquired by the Declarant is or will be subject to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, that such use will continue in effect.

16.12 **Reference to Declaration and Deeds.** Deeds to and instruments affecting any Unit or any other part of the Project may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

16.13 **Successors and Assigns of Declarant.** Any reference in this Declaration to the Declarant shall include any successors or assignees of the Declarant's rights and powers hereunder on the condition that the Declarant's rights and powers may only be assigned by a written recorded instrument expressly assigning such rights and powers.

16.14 **Exhibits.** All exhibits attached to this Declaration are a part of, and are incorporated into this Declaration.

16.15 **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah determined without regard to conflict-of-law principles.

16.16 **Effective Date.** This Declaration and any amendment or supplement hereto shall take effect upon its being recorded in the office of the County Recorder of Salt Lake County, Utah.

[SIGNATURES TO FOLLOW]

SIGNATURE PAGE
TO
DECLARATION OF CONDOMINIUM
OF THE
RICHARDS COURT CONDOMINIUMS
[a leasehold condominium project]

This Declaration is signed and executed as of the date first set forth above.

CITY CREEK LIVING, LLC,
a Utah limited liability company

Ray
By: *Mark B. Gibbons*

Name: Mark B. Gibbons

Its: Manager

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

On this 12th day of January, 2010, personally appeared before me Mark B. Gibbons, who being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as the Manager of City Creek Living, LLC, a Utah limited liability company, for and on behalf of said limited liability company.

Sarahi D. Soperanez
NOTARY PUBLIC



ACKNOWLEDGEMENT OF AIRSPACE LESSOR

On this _____ day of January, 2010, the undersigned, as the current fee simple owner of the Real Property subject to this Declaration, hereby acknowledges and consents, solely for the purposes of submitting a leasehold interest in the Real Property to the Condominium Act, to the encumbrance of this Declaration on the Property. Without limiting the generality of the foregoing, the undersigned is not signing this Declaration for any other purpose except as set forth above, and the undersigned specifically disclaims any responsibilities, duties, obligations, warranties, representations, or certifications of "Declarant" or any other party set forth herein.

CITY CREEK RESERVE, INC.,
a Utah nonprofit corporation

MB
By: *Mark B. Gibbons*

Name: Mark B. Gibbons

Its: President

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

On this 24th day of January, 2010, personally appeared before me Mark B. Gibbons who, being by me duly sworn, did say that he is the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his authorized capacity as President of City Creek Reserve, Inc. a Utah nonprofit corporation, for and on behalf of said corporation.

Sarahi D. Soperanez

Notary Public

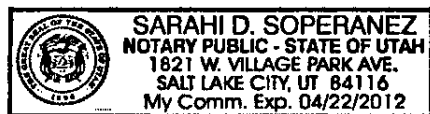


EXHIBIT A-1

LEGAL DESCRIPTION OF PROPERTY

All of the Declarant's rights, title, benefits and interests as Tenant under the Lease, which leasehold estate pertains to that certain Real Property described in Exhibit A-2 attached hereto and immediately following this page;

TOGETHER WITH AND SUBJECT TO all of the rights, title, interests, easements, benefits, covenants, obligations and conditions as set forth in the Master Declaration;

AND FURTHER TOGETHER WITH, the easement rights in and to the Main Floor Easement Areas.

EXHIBIT A-2

LEGAL DESCRIPTION OF REAL PROPERTY

LEGAL DESCRIPTION EAST TOWER

An airspace lease parcel lying and situate in the Northeast Quarter of Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being a part of Lot 7, and Richards Street, a vacated street, Block 76, Plat "A", Salt Lake City Survey. Basis of bearing for subject parcel being North 00°00'58" West 791.94 feet coincident with the monument line of West Temple Street from the brass cap well monument monumentalizing the center of intersection of 100 South Street and said West Temple Street and a four inch brass cap monument set flush with concrete at the intersection of West Temple and South Temple Streets, stamped "Salt Lake City, REDCON LS#8498, 12-1998". Project Benchmark being the Salt Lake Initial Point Sand Stone Monument, located at the northwest corner of South Temple and Main Streets, at the southeast corner of the Temple Square Wall, elevation 4330.83, North American Vertical Datum 1929, on the top of said sand stone monument (twelve inches square at the base, ten inches square at the top tapering the last six inches to a pyramidal point, with "Great Salt Lake Base and Meridian" chiseled on the side), elevation at the base of the monument being 4327.62 feet. Subject parcel being more particularly described as follows:

Commencing at said point of intersection of 100 South and West Temple Streets, thence North 00°00'58" West 723.90 feet coincident with the monument line of said West Temple Street; Thence North 89°59'41" East 68.76 feet to the Northwest corner of said Block 76; Thence North 89°59'41" East 384.18 feet coincident with the north boundary of said Block 76; Thence vertical up to elevation 4337.66 to the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4337.66 and 4393.30; Thence North 89°59'41" East 107.93 feet coincident with the north boundary of said Block 76 at said elevations; Thence SOUTH 144.30 feet; Thence WEST 129.34 feet; Thence NORTH 118.39 feet; Thence EAST 8.95 feet; Thence NORTH 3.08 feet; Thence North 28°38'10" East 26.00 feet to the point of beginning. Thence vertical up to elevation 4393.30 to the TRUE POINT OF BEGINNING of an parcel comprising the air space contained between elevations 4393.30 and up; Thence North 89°59'41" East 52.26 feet coincident with the north boundary of said Block 76 at said elevations; Thence SOUTH 7.51 feet; Thence EAST 11.67 feet; Thence SOUTH 12.03 feet; Thence WEST 9.67 feet; Thence SOUTH 124.75 feet; Thence WEST 75.67 feet; Thence NORTH 118.39 feet; Thence EAST 8.95 feet; Thence NORTH 3.08 feet; Thence North 28°38'10" East 26.00 feet to the point of beginning.

Less and Excepting therefrom the following described Air Space:

Commencing at the Salt Lake City brass cap well monument monumentalizing the point of intersection of 100 South and West Temple Streets, thence North 00°00'58" West 723.90 feet coincident with the monument line of said West Temple Street; Thence North 89°59'41" East

68.76 feet to the Northwest corner of said Block 76; Thence North 89°59'41" East 384.18 feet coincident with the north boundary of said Block 76; Thence South 28°38'10" West 26.00 feet; Thence SOUTH 3.08 feet; Thence WEST 8.95 feet; Thence SOUTH 73.68 feet; Thence EAST 49.99 feet; Thence vertical up to elevation 4337.66 to the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4337.66 and 4354.00 (Parcel 7); Thence EAST 10.59 feet; Thence SOUTH 9.30 feet; Thence WEST 10.59 feet; Thence NORTH 9.30 feet to the point of beginning of said Parcel 7; Thence SOUTH 9.30 feet; Thence EAST 10.59 feet; Thence North 78°40'50" East 7.52 feet to the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4337.66 and 4354.00 (Parcel 8); Thence EAST 5.36 feet; Thence SOUTH 6.32 feet; Thence EAST 11.62 feet; Thence NORTH 6.04 feet; Thence EAST 19.46 feet; Thence NORTH 57.33 feet; Thence EAST 16.44 feet; Thence SOUTH 21.74 feet; Thence EAST 8.50 feet; Thence SOUTH 72.17 feet; Thence WEST 61.38 feet; Thence NORTH 36.88 feet to the point of beginning of said Parcel 8.

Together with the following described Main Floor (Level 1) Air Space Easements:

Commencing at the Salt Lake City brass cap well monument monumentalizing the point of intersection of 100 South and West Temple Streets, thence North 00°00'58" West 723.90 feet coincident with the monument line of said West Temple Street; Thence North 89°59'41" East 68.76 feet to the Northwest corner of said Block 76; Thence North 89°59'41" East 402.25 feet coincident with the north boundary of said Block 76; Thence vertical up to elevation 4319.66 feet and the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4319.66 and 4337.66 (Parcel 4); Thence North 89°59'41" East 31.71 feet coincident with the north boundary of said Block 76 at said elevations; Thence SOUTH 27.78; Thence WEST 0.50 feet; Thence SOUTH 9.67 feet; Thence EAST 1.42 feet; Thence SOUTH 13.19 feet; Thence WEST 1.42 feet; Thence SOUTH 30.65 feet; Thence WEST 10.77 feet; Thence NORTH 2.04 feet; Thence WEST 11.25 feet; Thence SOUTH 10.06 feet; Thence EAST 11.25 feet; Thence SOUTH 10.30 feet; Thence WEST 9.93 feet; Thence NORTH 0.62 feet; Thence WEST 11.74 feet; Thence NORTH 39.75 feet; Thence EAST 4.19 feet; Thence NORTH 30.24 feet; Thence WEST 2.96 feet; Thence North 28.97 feet to the point of beginning of said Parcel 4; Thence North 89°59'41" East 79.61 feet coincident with the north boundary of said Block 76; Thence vertical up to elevation 4321.89 to the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4321.89 and 4337.66 (Parcel 5); Thence North 89°59'41" East 10.25 feet coincident with the north boundary of said Block 76 at said elevations; Thence SOUTH 30.83 feet; Thence WEST 8.06 feet; Thence NORTH 16.09 feet; Thence WEST 2.19 feet; Thence NORTH 14.74 feet to the point of beginning of said Parcel 5; Thence North 89°59'41" East 10.25 feet coincident with the north boundary of said Block 76; Thence SOUTH 144.30 feet; Thence WEST 129.34 feet; Thence vertical down to elevation 4319.66 and the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4319.66 and 4337.66 (Parcel 6); Thence NORTH 8.20 feet; Thence EAST 17.69 feet; Thence SOUTH 1.08 feet; Thence EAST 17.83 feet; Thence NORTH 4.07 feet; Thence EAST 25.15 feet; Thence SOUTH 4.13 feet; Thence WEST 18.59 feet; Thence SOUTH 7.05 feet; Thence WEST 42.07 feet to the point of beginning of said Parcel 6;

LEGAL DESCRIPTION WEST TOWER

An airspace lease parcel lying and situate in the Northeast Quarter of Section 1, Township 1 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, being a part of Lot 6, Block 76, Plat "A", Salt Lake City Survey. Basis of bearing for subject parcel being North 00°00'58" West 791.94 feet coincident with the monument line of West Temple Street from the brass cap well monument monumentalizing the center of intersection of 100 South Street and said West Temple Street and a four inch brass cap monument set flush with concrete at the intersection of West Temple and South Temple Streets, stamped "Salt Lake City, REDCON LS#8498, 12-1998". Project Benchmark being the Salt Lake Initial Point Sand Stone Monument, located at the northwest corner of South Temple and Main Streets, at the southeast corner of the Temple Square Wall, elevation 4330.83, North American Vertical Datum 1929, on the top of said sand stone monument (twelve inches square at the base, ten inches square at the top tapering the last six inches to a pyramidal point, with "Great Salt Lake Base and Meridian" chiseled on the side), elevation at the base of the monument being 4327.62 feet. Subject parcel being more particularly described as follows:

Commencing at said point of intersection of 100 South and West Temple Streets, thence North 00°00'58" West 723.90 feet coincident with the monument line of said West Temple Street; Thence North 89°59'41" East 68.76 feet to the Northwest corner of said Block 76; Thence North 89°59'41" East 234.30 feet coincident with the north boundary of said Block 76; Thence vertical up to elevation 4336.75 and the TRUE POINT OF BEGINNING of a parcel comprising the air space between elevations 4336.75 and 4361.08; Thence North 89°59'41" East 39.73 feet coincident with the north line of said Block 76 at said elevations; Thence South 28°38'10" East 25.99 feet; Thence SOUTH 3.08 feet; Thence EAST 8.95 feet; Thence SOUTH 118.39 feet; Thence WEST 125.72 feet; Thence NORTH 30.05 feet; Thence EAST 56.84 feet; Thence NORTH 9.74 feet; Thence EAST 2.66 feet; Thence NORTH 5.59 feet; Thence EAST 5.08 feet; Thence NORTH 98.89 feet to the point of beginning. Thence vertical up to elevation 4361.08 feet and the TRUE POINT OF BEGINNING of a parcel comprising the air space between said elevation 4361.08 and up; Thence North 89°59'41" East 39.73 feet coincident with the north line of said Block 76 at said elevations; Thence South 28°38'10" East 25.99 feet; Thence SOUTH 3.08 feet; Thence EAST 8.95 feet; Thence SOUTH 118.39 feet; Thence WEST 61.14 feet; Thence NORTH 144.28 feet to the point of beginning.

Together with the following described Main Floor (Level 1) Air Space Easements:

Commencing at the Salt Lake City brass cap well monument monumentalizing the point of intersection of 100 South and West Temple Streets, thence North 00°00'58" West 723.90 feet coincident with the monument line of said West Temple Street; Thence North 89°59'41" East 68.76 feet to the Northwest corner of said Block 76; Thence North 89°59'41" East 234.30 feet coincident with the north boundary of said Block 76; Thence vertical up to elevation 4315.72 feet and the TRUE POINT OF BEGINNING of a parcel comprising the air space contained between elevations 4315.72 and 4336.75 (Parcel 1); Thence North 89°59'41" East 27.78 feet coincident with the north line of said Block 76 at said elevations; Thence SOUTH 30.10 feet; Thence EAST 1.52 feet; Thence SOUTH 24.21 feet; Thence WEST 5.73 feet; Thence SOUTH

21.16 feet; Thence WEST 16.48 feet to a vertical step up to elevation 4318.58 and the TRUE POINT OF BEGINNING of a parcel comprising the air space between elevations 4318.58 and 4336.75 (Parcel 2); Thence SOUTH 7.10 feet; Thence WEST 4.70 feet; Thence SOUTH 6.71 feet; Thence EAST 21.09 feet; Thence SOUTH 9.69 feet; Thence WEST 21.89 feet; Thence SOUTH 14.70 feet; Thence WEST 3.01; Thence SOUTH 30.61 feet; Thence WEST 17.80 feet; Thence NORTH 12.14 feet; Thence EAST 7.90 feet; Thence NORTH 15.86 feet; Thence EAST 4.45 feet; Thence NORTH 11.80 feet; Thence EAST 2.30 feet; Thence NORTH 15.58 feet; Thence EAST 4.57 feet; Thence NORTH 13.44 feet to a vertical step down to elevation 4315.72 feet to a point on said parcel 1; Thence NORTH 75.46 feet to the point of beginning of said Parcel 1;

Commencing at the Salt Lake City brass cap well monument monumentalizing the point of intersection of 100 South and West Temple Streets, thence North $00^{\circ}00'58''$ West 723.90 feet coincident with the monument line of said West Temple Street; Thence North $89^{\circ}59'41''$ East 68.76 feet to the Northwest corner of said Block 76; Thence North $89^{\circ}59'41''$ East 234.30 feet coincident with the north boundary of said Block 76; Thence North $89^{\circ}59'41''$ East 27.78 feet coincident with the north line of said Block 76; Thence SOUTH 30.10 feet; Thence EAST 1.52 feet; Thence SOUTH 24.21 feet; Thence WEST 5.73 feet; Thence SOUTH 21.16 feet; Thence WEST 16.48 feet; Thence SOUTH 7.10 feet; Thence WEST 0.70 feet; Thence vertical up to elevation 4332.75 and the TRUE POINT OF BEGINNING of a parcel comprising the air space between elevations 4332.75 and 4336.75 (Parcel 3); Thence SOUTH 6.71 feet; Thence WEST 4.00 feet; NORTH 6.71 feet; Thence EAST 4.00 feet to the point of beginning.

EXHIBIT B**OWNERSHIP INTEREST**

Unit Number	Unit Type	Approx. Square Footage of Unit	Voting Rights	Ownership Interest
201 W	Two Bedroom	1860	1.59	1.59
202 W	Two Bedroom	1218	1.03	1.03
203 W	One Bedroom	763	0.64	0.64
204 W	One Bedroom	977	0.86	0.86
205 W	Studio	661	0.51	0.51
206 W	Two Bedroom	1367	1.16	1.16
301 W	Two Bedroom	1791	1.55	1.55
302 W	Two Bedroom	1064	0.90	0.90
303 W	One Bedroom	800	0.69	0.69
304 W	One Bedroom	788	0.69	0.69
305 W	One Bedroom	788	0.69	0.69
401 W	Two Bedroom	1821	1.55	1.55
402 W	Two Bedroom	1064	0.90	0.90
403 W	One Bedroom	800	0.69	0.69
404 W	Two Bedroom	1604	1.37	1.37
501 W	Two Bedroom	1821	1.55	1.55
502 W	Two Bedroom	1064	0.90	0.90
503 W	One Bedroom	800	0.69	0.69
504 W	Two Bedroom	1612	1.37	1.37
601 W	Two Bedroom	1821	1.55	1.55
602 W	Two Bedroom	1064	0.90	0.90
603 W	One Bedroom	800	0.69	0.69
604 W	Two Bedroom	1612	1.37	1.37
701 W	Two Bedroom	1821	1.55	1.55
702 W	Two Bedroom	1064	0.90	0.90
703 W	One Bedroom	800	0.69	0.69
704 W	Two Bedroom	1612	1.37	1.37
801 W	Two Bedroom	1821	1.55	1.55
802 W	Two Bedroom	1064	0.90	0.90
803 W	One Bedroom	800	0.69	0.69
804 W	Two Bedroom	1612	1.37	1.37
901 W	Two Bedroom	1821	1.55	1.55
902 W	Two Bedroom/Den	1908	1.63	1.63
903 W	Two Bedroom	1612	1.37	1.37
1001 W	Two Bedroom	1670	1.42	1.42
1002 W	Two Bedroom/Den	1701	1.46	1.46
1003 W	Two Bedroom	1617	1.37	1.37

201 E	One Bedroom/Den	1349	1.16	1.16
202 E	Two Bedroom/Den	1653	1.42	1.42
203 E	Two Bedroom/Den	2000	1.72	1.72
204 E	One Bedroom/Den	1193	1.03	1.03
205 E	One Bedroom/Den	1068	0.90	0.90
301 E	One Bedroom	760	0.64	0.64
302 E	Two Bedroom	1607	1.37	1.37
303 E	One Bedroom	823	0.69	0.69
304 E	Two Bedroom	1095	0.94	0.94
305 E	Two Bedroom	1297	1.12	1.12
306 E	Two Bedroom/Den	2135	1.85	1.85
307 E	One Bedroom	760	0.64	0.64
401 E	One Bedroom	815	0.69	0.69
402 E	Two Bedroom	1608	1.37	1.37
403 E	One Bedroom	820	0.69	0.69
404 E	Two Bedroom	1097	0.94	0.94
405 E	Two Bedroom	1293	1.12	1.12
406 E	Two Bedroom/Den	2142	1.85	1.85
407 E	One Bedroom	809	0.69	0.69
501 E	One Bedroom	815	0.69	0.69
502 E	Two Bedroom	1608	1.37	1.37
503 E	One Bedroom	820	0.69	0.69
504 E	Two Bedroom	1097	0.94	0.94
505 E	Two Bedroom	1293	1.12	1.12
506 E	Two Bedroom/Den	2142	1.85	1.85
507 E	One Bedroom	809	0.69	0.69
601 E	One Bedroom	815	0.69	0.69
602 E	Two Bedroom	1608	1.37	1.37
603 E	One Bedroom	820	0.69	0.69
604 E	Two Bedroom	1097	0.94	0.94
605 E	Two Bedroom	1293	1.12	1.12
606 E	Two Bedroom	1507	1.29	1.29
701 E	One Bedroom	815	0.69	0.69
702 E	Two Bedroom	1608	1.37	1.37
703 E	One Bedroom	820	0.69	0.69
704 E	Two Bedroom	1097	0.94	0.94
705 E	Two Bedroom	1293	1.12	1.12
706 E	Two Bedroom	1507	1.29	1.29
801 E	One Bedroom	815	0.69	0.69
802 E	Two Bedroom	1608	1.37	1.37
803 E	One Bedroom	820	0.69	0.69
804 E	Two Bedroom	1097	0.94	0.94
805 E	Two Bedroom	1293	1.12	1.12

806 E	Two Bedroom	1507	1.29	1.29
901 E	One Bedroom	815	0.69	0.69
902 E	Two Bedroom	1608	1.37	1.37
903 E	One Bedroom	820	0.69	0.69
904 E	Two Bedroom	1097	0.94	0.94
905 E	Two Bedroom	1293	1.12	1.12
906 E	Two Bedroom	1507	1.29	1.29
1001 E	Three Bedroom	2288	1.98	1.98
1002 E	Two Bedroom/Den	1750	1.50	1.50
1003 E	Three Bedroom	2655	2.28	2.28
TOTALS	90 Units	117,044 Sq. Ft.	100.00	100.00