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**2nd AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
4340 HIGHLAND CONDOMINIUM**

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2nd AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
4340 HIGHLAND CONDOMINIUM PROJECT

Pursuant to the provisions of Section 8.01 of that Amended and Restated Declaration of Condominium 4340 Highland Condominium Project dated April 8, 2003, and recorded in the Office of the Recorder of Salt Lake County, Utah, on April 9, 2003, as Entry No. 8603739, Book 8774, Pages 2267-2686, Declarant hereby amends and restates the Declaration of Condominium 4340 Highland Condominium Project in its entirety as follows, effective as of _____, 2009.

WITNESSETH

WHEREAS, the Declarant, by its unit owner members, is the owner in fee simple of certain real estate in Salt Lake City, Salt Lake County, Utah, legally described on Appendix A attached hereto and incorporated herein.

WHEREAS, the Declarant intends to, and does hereby submit such real estate together with all buildings, structures, improvements and other permanent fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, to the provisions of the Utah Condominium Ownership Act (hereinafter the "Act") as amended from time to time, and;

WHEREAS, the name of the Condominium shall be 4340 Highland Condominium; and

WHEREAS, the Declarant desires to establish certain rights and easements in, over and upon said real estate for the benefit of itself and all future owners of any part of said real estate, and any unit or units thereof or therein contained, and to provide for the harmonious, beneficial and proper use and conduct of the real estate and all units; and

WHEREAS, the Declarant desires and intends that the several unit owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property, hereinafter defined, shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

NOW THEREFORE, THE DECLARANT DECLARES AS FOLLOWS:

1. Definitions. Certain words and terms used in this Declaration are defined as follows:

1.(a) Act: The Utah Condominium Ownership Act, as amended from time to time.

1.(b) Association: The Association of all the Unit Owners acting pursuant to the By-Laws, as amended, from time to time, through its duly elected Board.

- 1.(c) Board: The Board of Trustees of the incorporated Association.
- 1.(d) Building: All structures or portions of a structure located on the Property, attached or unattached, containing one or more Units.
- 1.(e) By-Laws: The By-Laws of the Association.
- 1.(f) Capital Reserves: Those sums paid by Unit Owners which are separately maintained by the Board in the Capital Reserve Fund for purposes specified by the Board or the Condominium Instruments, including, without limitation, replacement reserves.
- 1.(g) Capital Reserve Fund: All monies collected or received by the Association as Capital Reserves to be used by the Association to meet unforeseen expenditures or to purchase additional equipment and/or services.
- 1.(h) Common Elements: All portions of the Property other than the Units, as depicted on the Plat, and as more particularly described in **Section 4(a)** hereof.
- 1.(i) Common Expenses: The proposed or actual expenses affecting the Property, including Reserves, if any, lawfully assessed by the Board.
- 1.(j) Condominium: The 4340 Highland Condominium, as established by submission of the Property to the terms of the Act by this Declaration.
- 1.(k) Condominium Instruments: All documents and authorized amendments thereto Recorded pursuant to the provisions of the Act, including the Declaration, By-Laws and Plat.
- 1.(l) Declaration: This instrument by which the Property is submitted to the Act.
- 1.(m) Declarant: 4340 Highland Homeowners Association, a Utah nonprofit corporation.
- 1.(n) First Mortgagee: The holder of a note secured by a bona fide first mortgage or first trust deed covering any portion of the Property.
- 1.(o) Limited Common Elements: Those portions of the Common Elements allocated by this Declaration which serve exclusively a single Unit or less than all of the Units as an inseparable appurtenance thereto, as more fully described in **Section 4(b)** hereof.
- 1.(p) Majority of Unit Owners: The owners, without regard to their number, of more than 50% in the aggregate in interest of the entire undivided ownership interest of the Common Elements. Any specified percentage of the Unit Owners shall mean those Unit Owners who in the aggregate, own such percentage of the entire undivided ownership interest in the common elements.
- 1.(q) Occupant: A person or persons, other than a Unit Owner, in possession of a Unit.

1.(r) Operating Fund: All monies collected or received by the Association pursuant to the provisions of the Condominium Instruments, except Capital Reserves and specifically including each purchaser's initial assessment for working capital and contingencies.

1.(s) Operating Reserves: Those sums paid by Unit Owners which are separately maintained by the Board in the Operating Fund for purposes specified by the Board or the Condominium Instruments, including, without limitation, the purchaser's initial assessment contribution for working capital and contingencies.

1.(t) Person: A natural individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

1.(u) Plat: A plat or plats of survey of the Property, as amended, and all of the Units in the Property submitted to the provisions of the Act, said plat being attached hereto as Appendix B and made a part hereof and Recorded with the Recording of this Declaration and as amended from time to time in accordance herewith, which shall consist of such data as may be required by the Act.

1.(v) Property: All land, property and space, all improvements and structures erected, constructed or contained therein or thereon, including the Building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit and enjoyment of the Unit Owners, submitted to the provisions of the Act.

1.(w) Record: To record in the Office of the Recorder of Salt Lake County, Utah.

1.(x) Undivided Interest: The percentage of ownership interest in the Common Elements appurtenant to each Unit as allocated on Appendix C hereto, as Appendix C may be amended from time to time.

1.(y) Recreational Facilities: A portion of the Common Elements available for and designed for the recreational use, benefit and enjoyment of members of the Association, subject to the provisions of this Declaration, the By-Laws and such rules and regulations as the Board may adopt from time to time.

1.(z) Units: Any part of the Property within a Building, including one or more rooms, occupying one or more floors, or a part or parts thereof, designed and intended for any type of independent use and which is designated on the Plat as a Unit. The term Unit shall include the Unit garage, which is intended for use as a parking space for an automobile, appurtenant to such Unit and as set forth on the Plat attached hereto as Appendix B.

1.(aa) Unit Owners: The person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a Unit.

1.(bb) Unit Ownership: A part of the Property consisting of one Unit and its undivided interest in the Common Elements appurtenant thereto.

2. Legal Description of Property: The Property is hereby submitted to the provisions of the Act is legally described on Appendix A.

3. The Units.

3.(a) Legal Description. All Units are delineated on the Plat attached hereto as Appendix B. The legal description of each Unit shall consist of the identifying number or symbol of such Unit as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number or symbol as shown on Appendix B and every such description shall be deemed good and sufficient for all purposes. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his or her Unit Ownership without including therein both his or her interest in the Unit and his or her corresponding percentage of ownership in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

3.(b) Unit Boundaries. The boundaries of each unit are as follows:

(i) Upper Boundary. The horizontal plane of the top surface of the wallboard in the ceilings within the Unit. In certain Units, as depicted on the Plans, the ceilings within different portions of the Unit may be at different elevations; in such cases, the upper boundary of the Unit shall not be a single plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(ii) Lower Boundary. The horizontal plane of the top surface of the subflooring within the Unit. In certain Units, as depicted on the Plans, the floors within different portions of the Unit may be at different elevations; in such cases the lower boundary of a Unit shall not be a single plane, but shall vary with the differing finished floor elevations within different portions of the Unit. In addition, certain Units may contain two levels connected by an interior stairway. In such cases, the definitions of upper and lower boundaries set forth in this **Section 3(b)** apply with respect to each level within the Unit; the horizontal structural elements dividing the levels of such a Unit are part of the Common Elements.

(iii) Vertical Boundaries. The vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the-upper and lower boundaries.

3.(c) Subdivision. Except as provided by the Act or as provided elsewhere herein, no Unit Owner shall by deed, plat, court decree or otherwise, subdivide or in any other manner cause his or her Unit to be separated into any tracts or parcels different from the whole Unit as shown on Appendix B. Unit Owners may at their expense, subdivide or combine units and locate or relocate Common Elements including Limited Common Elements affected or required thereby, subject to the following: the Unit Owner must make a written application to the Board which, (1) requests an amendment to the Condominium Instruments; (2) sets forth the proposed

reallocation, if any, to the new units of the percentage interest in the Common Elements; (3) sets forth whether the Limited Common Elements, if any, previously assigned to the affected Unit(s) shall be reassigned; and (4) provides evidence that they have obtained the consent of each lender on the Unit, if necessary. In the event that end Units on opposite sides of a hallway are combined, any Common Element hallway which will be within the newly combined Unit shall become a Limited Common Element assigned to the Unit in question. The subdivision or combination must be approved by a majority of the Board and will be effective only upon recording of an appropriate amendment to the Condominium Instruments and execution of appropriate documentation by the Unit Owner(s) involved. Notwithstanding anything herein to the contrary, Declarant shall have the right to subdivide and combine Units at its discretion so long as it is a Unit Owner. The requesting Unit Owner(s) shall pay, whether or not the subdivision or combination is approved, all costs of the Association and Board in connection therewith, including, but not limited to, attorney's fees, survey costs and recording charges.

3.(d) Measurements. To the extent such data is available to the Declarant at the time this Declaration is recorded, the Plat sets forth the measurements, elevations, locations and other data, as required by the Act, with respect to (1) the Property and its exterior boundaries; (2) the Building and each floor thereof; and (3) each Unit in the Building and said Unit's horizontal and vertical dimensions. However, the Declarant hereby reserves unto itself, the right, from time to time, as further data becomes available, to amend the Plat so as to set forth the measurements, elevations, locations and other data required by the Act, with respect to the Building and the Units now or hereafter constructed on the Property. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, acting by or through its duly authorized officers, its successors, or its designee, as attorney-in-fact, to amend the Plat, as described above, without notice to any Unit Owner. Each deed, mortgage or other instrument with respect to a Unit, and the acceptance thereof, shall be deemed a grant of such power to each of said attorneys-in-fact, and acknowledgment of and consent to such power, and shall be deemed to reserve to each of said attorneys-in-fact the power to amend the Plat, as described above.

3.(e) Structural Components. Except as constructed or altered by or with the permission of the Declarant or the Association, or as otherwise set forth herein, nothing shall be done in any Unit or in, on or to the Common Elements or Limited Common Elements which would impair the structural integrity, safety or soundness of the Building or which would structurally change the Building.

3.(f) Transfer of a Unit. A Unit Owner may, subject to the restrictions on leasing in **Section 3(g)** below and the following enumerated conditions to transfer, sell, give, devise, lease or otherwise transfer his or her unit, or any interest therein. In the event of any resale of a Unit by a Unit Owner other than the Declarant such Unit Owner shall obtain from the Board and shall make available for inspection to the prospective purchaser, upon demand, the following:

(1) A copy of the Declaration, By-Laws, other Condominium Instruments and any rules and regulations;

(2) A statement of any liens, including a statement of the account of the Unit setting forth

the amounts of unpaid assessments and other charges due and owing as authorized and limited by the provisions of the Act or the Condominium Instruments;

(3) A statement of any capital expenditures anticipated by the Association within the current or succeeding two fiscal years;

(4) A statement of the status and amount of any Capital Reserves and any portion of such fund earmarked for any specified project by the Board;

(5) A copy of the statement of financial condition of the Association for the last fiscal year for which such statement is available;

(6) A statement of the status of any pending suits or judgments in which the Association is a party;

(7) A statement setting forth what insurance coverage is provided for all Unit Owners by the Association;

(8) A statement that any improvements or alterations made to the Unit, or the Limited Common Elements assigned thereto, by the prior Unit Owner are in good faith believed to be in compliance with the Condominium Instruments; and

(9) The identity and mailing address of the principal officer of the Association or of the other officer or agent as is specifically designated to receive notices.

The Unit seller requesting such information shall be entitled to such information upon payment of One Hundred and No/100 Dollars (\$100.00), or such other amount as determined by the Association, and any direct-out-of-pocket costs to the Association in providing the requested information, including copying or other similar charges. The principal officer of the Association or such other officer as is specifically designated shall furnish the above information when requested to do so in writing and within thirty (30) days of the request.

Notice of any transfer under this **Section 3(f)** must be given to the Association within ten (10) days following consummation of such transfer. Additionally, within fifteen (15) days of the recording of a mortgage or trust deed against a Unit Ownership given by a Unit Owner to secure a debt, the Unit Owner shall inform the Board of the identity of the lender together with a mailing address at which the lender can receive notices from the Association. If such Unit Owner fails or refuses to inform the Board as required hereunder then that Unit Owner shall be liable to the Association for all costs, expenses and reasonable attorneys fees and such other damages, if any, incurred by the Association as a result of such failure or refusal.

3.(g) Leasing.

(1) Unit Owners. Any Unit Owner shall have the right to lease, or permit a subsequent sublease or assignment of all (but not less than all) of his or her Unit upon such terms and conditions as the Unit Owner may deem acceptable, except that no Unit shall be leased,

subleased or assigned, for a period of less than one (1) year or for a period of more than two (2) years. Any lease, sublease or assignment shall be in writing, a copy of which must be delivered to the Association within ten (10) days of execution thereof, and shall provide that the lease, sublease or assignment set forth above shall be subject to the terms of this Declaration. The lease shall provide that any failure of the lessee, sublessee or assignee to comply with the terms of this Declaration shall be a default under the lease, sublease or assignment. Every such lease shall also expressly provide that the Association may exercise against the lessee thereunder any and all remedies available to the Association under this Declaration, including, but not limited to, the right to take possession of the Unit, or of the interest therein, or lease thereunder. In furtherance of the foregoing, the delivery and acceptance of each deed, lease, mortgage or other conveyance instrument with respect to a Unit shall be deemed to assign, transfer and set over the Association and the Board, or either one of them ("Assignees") all interest of the lessor Unit Owner or any other lessor of said Unit, or interest therein, in any lease of such Unit, or any interest therein, or any extensions or renewals thereof, together with all rents payable under same and all benefits and advantages to be derived therefrom, to hold and receive same unto Assignees (together with all rights against any guarantors of the lessee's obligations under such lease) as security for the payment of any lien which may exist against such Unit, or any interest therein, for such Unit Owner's unpaid proportionate share of the common expenses, pursuant to this Declaration, in the performance by said Unit Owner of each and all of said Unit Owner's obligations under this Declaration. Any such lease of a Unit, or interest therein, shall contain and include such provisions in furtherance of said assignment as the Board may approve and deem prudent, from time to time, in order to effect such collateral assignment, provided, however, that such assignment shall not be construed as constituting the Assignee thereunder as a trustee or mortgagee in possession.

In the event of a default by such Unit Owner under the terms and provisions of this Declaration, the Association and the Board, or either of them, may elect to exercise each and all of the rights and powers conferred upon them as Assignee by such assignment and to directly collect all rents and other amounts then due under such lease from the lessee thereunder, provided, however, that such amounts so collected, after deducting therefrom the expenses of operating such Unit and the expenses of such collection and enforcement, shall be applied on account of any such lien for unpaid common expenses. Any costs or expenses incurred in connection with the operation of such Unit or in connection with such collection and enforcement (including, without limitation, reasonable attorneys' fees) shall be a common expense and secured as set forth in this Declaration, and the defaulting Unit Owner shall reimburse the Association therefor immediately upon demand.

Notwithstanding anything hereinabove to the contrary, any such assignment of the lease of a Unit, or any interest herein, by a Unit Owner, as hereinabove described, shall be subordinate to any assignment of such lease which is recorded and attaches prior to the date such lien for unpaid common expenses and which is owned or held by any First Mortgagee, except for the amount of said proportionate share of such common expenses which becomes due and payable from and after the date on which such First Mortgagee either takes possession of the lessor's interest encumbered by such assignment, accepts a conveyance of any interest therein (other than as a security) or causes a receiver to be appointed in a suit to enforce such assignment. This provision shall not be amended or rescinded without the prior written consent of all such First

Mortgagees who are the holders or owners of any such collateral assignments recorded prior to the date of such amendment or rescission.

The Unit Owners making any such lease, or permitting such sublease or assignment shall not be relieved thereby from any obligations under the Declaration.

(2) Declarant. Notwithstanding anything to the contrary in **Paragraph (1)** above, the Declarant may lease, sublease or assign any Units owned or controlled by it under such terms and conditions as it may deem acceptable; provided, that such lease, sublease or assignment shall be in writing and subject to the Declaration.

3.(h) Use and Occupancy.

(1) General. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted in any Unit; provided, however, that the foregoing restrictions of this **Section 3(h)** shall not be construed in such a manner as to prohibit a Unit Owner from (i) maintaining a professional library therein, (ii) keeping personal business or professional records or accounts therein, or (iii) handling personal business or professional telephone calls or correspondence therefrom.

(2) Alteration. Except as otherwise set forth herein, no part of the Common Elements (other than the Limited Common Elements pertaining to a Unit) may be altered by a Unit Owner. Except as otherwise set forth herein, the Association has the exclusive right to modify and alter the Common Elements (other than the Limited Common Elements pertaining to a Unit) in accordance with the rules and regulations of the Association and upon such conditions as shall reasonably be determined by the Association. The Association must notify the Unit Owners at least twenty-one (21) days prior to the commencement of any such alteration, except for work done by the Developer on any Unit the Developer may own and on the Common Elements.

(3) Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Property, or contents thereof, without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of any insurance maintained by the Association, or which is in violation of any law. No waste shall be committed on the Common Elements.

(4) Appurtenances. Except as otherwise provided in this Declaration, Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Building or upon the Limited Common Elements and no sign, awning, canopy or shutter (except as installed by Declarant or the Association or approved by Declarant or the Association) shall be affixed to or placed upon the exterior walls or roof or any part thereof or on the Common Elements, or Limited Common Elements, without the prior written consent of the Association. No air conditioning unit of any type may be installed by a Unit Owner without the prior notification and consent of the Association. The installation of all radio

or television antennas or receiving dishes shall be subject to the rules and regulations of the Association.

(i) No provision in the Declaration, By-laws, rules, regulations, agreements or Condominium Instruments or other instruments of the Association, or the Board's construction of any provision of said instruments, as amended from time to time, shall prohibit the display of the American flag or a military flag (each a "Permitted Flag" and together "Permitted Flags"), or both, on or within the Limited Common Elements and facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of such Unit Owner is located.

(ii) No provision in the Declaration, By-laws, rules, regulations, agreements or Condominium Instruments or other instruments of the Association, or the Board's construction of any provision of said instruments, as amended from time to time, shall prohibit the installation of a flagpole for the display of any Permitted Flag, or both, on or within the Limited Common Elements and facilities of a Unit Owner or on the immediately adjacent exterior of the building in which the Unit of such Unit Owner is located.

(iii) Notwithstanding (i) and (ii), no Permitted Flag or flagpole shall be installed without first providing thirty (30) days written notice to the Board. Such notice shall be deemed sufficient and effective as provided for in **Section 12(b)** of this Declaration.

(iv) Any proposed installation of any Permitted Flag or flagpole shall be subject to regulations the Board may, in accordance with the provisions of the Act, adopt from time to time. Such regulations shall address, but shall not be limited to, size and location of flagpoles, placement and manner of display of any Permitted Flag and manner of installation of any flagpole.

(v) Installation and maintenance of any Permitted Flag or flagpole shall be the sole responsibility of the Unit Owner, and said Unit Owner shall indemnify and/or reimburse, at the Board's election, the Association, Board, Declarant and all other necessary parties, including but not limited to, contractors, subcontractors, repairmen or otherwise, from any and all costs, claims, causes of action, loss and damages associated with or arising out of Unit Owner's installation and/or display of any Permitted Flag or flagpole.

(5) Pets. No animals, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that household pets, including dogs, cats and birds, may be kept in Units, subject to the provisions of **Section 8(a)** hereof and rules and regulations adopted by the Association, which rules or regulations may exclude any kind of pet other than dogs, cats or birds, by type or category; provided that no pets are kept, bred, or maintained for any commercial purpose. Each Unit Owner and each Occupant shall be responsible for picking up after any animal kept in his or her Unit, including without limitation, removing any waste deposited by such animal anywhere on the Common Elements.

(6) Nuisance. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(7) Maintenance. Each Unit Owner shall be obligated to maintain his or her own Unit and the Limited Common Elements appurtenant thereto in good, clean order and repair. Each Unit Owner at his or her own expense shall furnish and be responsible for all decorating within his or her own Unit as may be required from time to time, including painting, decorating, wallpapering, washing, cleaning, and installing paneling, floor covering, draperies, window shades, curtains, lighting and other furnishings. Each such Unit Owner shall be entitled to the exclusive use of the interior surfaces of the perimeter walls, floors and ceilings of his or her Unit, and such Unit Owner shall maintain said interior surfaces in good condition at his or her sole expense, as may be required from time to time. Said maintenance and use of interior surfaces shall be subject to the rules and regulations of the Association, but each such Unit Owner shall have the right to decorate such interior surfaces from time to time as he or she may see fit and at his or her sole expense. The exterior of all draperies, window shades, curtains or other window coverings shall be neutral in color and subject to the rules and regulations of the Association. The interior surfaces of all windows forming part of a perimeter wall of a Unit shall be cleaned or washed at the expense of the Unit Owner of that Unit.

(8) Construction. Construction work on the interior of any Unit must be in compliance with such construction rules as the Board may pass from time to time.

(9) Garbage. No Unit, or any portion of the Common Elements, or any Limited Common Elements, shall be used or maintained as a dumping ground for rubbish, trash, garbage, refuse, debris, papers, junk, or other waste (collectively "garbage"), nor shall any such garbage be burned anywhere within the Property. All garbage within the boundaries of the Property shall be kept only in sanitary containers and appropriately screened from view. Each Unit shall be kept free of garbage by the Owner of such Unit.

(10) Unsightliness. No unsightliness shall be permitted in or about any portion of the Property. Without limiting the generality of the foregoing, (a) any unsightly structures, facilities, equipment, tools, boats, vehicles other than operable and properly licensed automobiles, objects and conditions shall be appropriately screened from view, except equipment and tools when in actual use for maintenance and repairs, (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon any of the Property, (c) no vehicle, boat, or equipment shall be constructed, reconstructed, repaired or abandoned upon any portion of the Property, (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on any of the Property, (e) hanging, drying or airing of clothing or household fabrics shall not be permitted in the Common Area, nor permitted within Units if visible from the Common Elements, or other Units, or property adjacent to the property.

(11) Visible Unit Numbers. All Units shall have a clearly visible Unit number displayed on its main entrance.

(12) Exterior Lighting. Any light used to illuminate any exterior area of a Unit or Limited Common Element shall be so arranged as to reflect light away from adjacent Units, other residences adjacent to the Property, and away from the vision of passing motorists.

(13) Fire and Fireworks. No open fires or fireworks are allowed on or about any portion of the Property.

3.(i) Real Estate Taxes. It is understood that real estate taxes are to be separately taxed to each Unit Owner for his or her Unit and its corresponding percentage of ownership of the Common Elements, as provided in the Act. In the event that for any year such taxes are not separately taxed to each Unit Owner, then the Association shall collect from each Unit Owner of a Unit not separately taxed, the proportionate share of the tax bill attributable to each Unit based on the relative percentages of ownership of the Common Elements of each such Unit not separately taxed in proportion to the total percentage of ownership of the Common Elements of all of the Units located on property affected by such tax bill. Such taxes shall be considered a Common Expense of each such Unit, and shall be subject to lien by the Association. If a Unit Owner fails to pay his or her real estate tax obligation the Association, at its option, may pay the taxes for the Unit and levy such amount on the Unit as a Special Assessment on the Unit.

4. The Common Elements.

4.(a) Description of Common Elements. The Common Elements shall consist of all portions of the Property, except the Units, and including the Limited Common Elements, unless otherwise expressly specified herein. The Common Elements include, without limitation and if applicable, any of the following items located on the Property: the walls, roof, hallways, stairways, entrances and exits, security system, mechanical equipment areas, storage areas (other than storage areas situated entirely within a Unit and serving only such Unit), trash compaction system, grounds, walkways, mail boxes, master television antenna systems (whether leased or owned), if any, fire escapes, pipes, ducts, flues, shafts, electrical wiring and conduits (except pipes, ducts, flues, shafts, electrical wiring and conduits situated entirely within a Unit and serving only such Unit), central heating and ventilating systems servicing the Common Elements, public utility lines, structural parts of the Building, and all other portions of the Property except the individual Units. Structural columns located within the boundaries of a Unit shall be part of the Common Elements. To the extent that perimeter and partition wall, floors or ceilings are designated as boundaries of Units or of any specified Units, all decorating, wall and floor coverings, paneling, molding, tiles, wallpaper, paint, finished flooring and any other material constituting any part of the finished surfaces thereof, shall be deemed part of such Units, while all other portions of such walls, floors or ceilings and all portions of perimeter doors and all portions of windows in perimeter walls shall be deemed part of the Common Elements. Common Elements include fixtures located within the unfinished interior cavities of the perimeter walls, floors and ceilings of the individual units initially installed by Declarant. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Any references to "Common Elements" appearing on the Plat (except references to Limited Common Elements) shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the Common Elements in any way. The use of the Common Elements and the right of the Unit Owners with respect thereto shall be subject to and governed by the Act, the Condominium Instruments and the rules and regulations of the Board.

4.(b) Description of Limited Common Elements. The Limited Common Elements are parts of the Common Elements which serve exclusively a single Unit or less than all of the Units as an inseparable appurtenance thereto, as designated as such in this Declaration or the Plat, or which by the nature or location thereof, or by the terms of this Declaration, are clearly intended to be reserved exclusively for or for the use of one or more Units and not others. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, perimeter doors, windows in perimeter walls, and any other apparatus designed to serve a single Unit shall be deemed a Limited Common Element appertaining to that Unit exclusively. The Limited Common Elements appertaining to, or designated or reserved for or for the use of, or serving any Unit (alone or in conjunction with other Units) are hereinafter from time to time referred to as the Limited Common Elements of such Unit. The Limited Common Elements shall include, but shall not be limited to, balconies, patios and decks attached to Units and the interior surface of the perimeter walls, ceilings and floors which define the boundary planes of a Unit. The Limited Common Elements shall also include the parking spaces identified on Appendix D attached hereto and by this reference incorporated herein.

4.(c) Structural Components. Except as a tenant in common with all other Unit Owners, no Unit Owner shall own any structural components of the Building, including structural columns or pipes, wires, conduits, ducts, flues, shafts, or public utility lines running through his or her Unit and forming a part of any system serving more than his or her Unit, or any components of communication systems, if any, located in his or her Unit, whether or not any such items shall be located in the floors, ceilings or perimeter or interior walls of the Unit. All pipes, wires, ducts, flues, chutes, conduits, public utility lines (to the outlets), and structural components located in or running through a Unit and serving more than one Unit or serving, or extending into, the Common Elements shall not be deemed to be Limited Common Elements. No Unit Owner may take any action which would interfere with the ability of the Association to repair, replace or maintain said Common Elements as provided herein.

4.(d) Percentage of Ownership. Each Unit Owner shall be entitled to the percentage of ownership in the Common Elements allocated to the respective Unit owned by such Unit Owner, as set forth in Appendix C attached hereto. The percentages of ownership interests set forth in Appendix C have been computed and determined in accordance with the Act, and shall remain constant and shall not be changed, except as specifically permitted under the Act or the Declaration, without unanimous written consent of all Unit Owners and all mortgagees having bona fide liens of record against any of the Unit Ownerships. Said ownership interest in the Common Elements shall be an undivided interest, and the Common Elements shall be owned by the Unit Owners as tenants in common in accordance with their respective percentages of ownership. The ownership of each Unit shall not be conveyed separately from the percentage of ownership in the Common Elements corresponding to said Unit. The undivided percentage of ownership in the Common Elements corresponding to any Unit shall always be deemed conveyed or encumbered with any conveyance or encumbrance of that Unit, even though the legal description in the instrument conveying or encumbering said Unit may refer only to the fee title to that Unit.

4.(e) Recreational Facilities. The Recreational Facilities, as defined in **Section 1(y)** above, shall be part of the Common Elements. Each Unit Owner and Occupant shall have the

right to use the Recreational Facilities (subject to easements made by or assigned to the Board or the Association) in common with all other Unit Owners, provided, however, that such use shall be subject to, and governed by the provisions of the Act, Declaration and By-Laws and the rules and regulations of the Association. Such right to use the Recreational Facilities shall extend not only to each Unit Owner or Occupant but also to his or her agents, tenants, servants, family members, invitees and licensees.

4.(f) Balconies and HVAC Units. Any balcony, patio or deck structure contiguous to and serving exclusively a single Unit or adjoining Units shall be a Limited Common Element serving said Unit or Units, subject to such rules and regulations as the Board may adopt. The balconies, patios or decks serving Units shall not be used for the storage of property or equipment of any kind, except as permitted by such rules and regulations as adopted by the Board. Carpeting or other covering for balcony, patio or deck surfaces may not be installed or modified unless expressly permitted by rules adopted by the Board, and shall thereafter be maintained as required by the Board at the sole expense of the Unit Owner making such installation. No Person shall permit on such Person's balcony, patio or deck, any vegetation that may take root in such structure. The cost of use, maintenance, repair and replacement of the balcony, patio or deck structure shall be paid by the Unit Owner for which such balcony, patio or deck structure is a Limited Common Element. All heating and air conditioning systems and all mechanical elements related thereto which serve exclusively a single Unit or Units shall be Limited Common Elements serving said Unit or Units, subject to such rules and regulations as the Board may prescribe. The cost of use, maintenance, repair and replacement of said heating and air conditioning systems and all mechanical elements related thereto shall be paid by the Unit Owners. If a heating and air conditioning system and the mechanical elements related thereto serve any Common Elements as well as any single or adjoining Units, they shall be Common Elements and the cost of use, maintenance, repair or replacement of such heating and air conditioning systems and all mechanical elements related thereto shall be a common expense.

4.(g) Use and Occupancy of Common Elements and Limited Common Elements. Each Unit Owner and Occupant shall have the right to (1) the exclusive use and possession of the Limited Common Elements serving exclusively the Unit(s) of such Unit Owner(s), which right shall be appurtenant to and shall run with title to such Unit(s), and shall not be separated from such Unit(s), and (2) the use and possession of the Limited Common Elements serving the Unit(s) of such Unit Owner(s) in common with one or more (but not all) other Units, which use and possession shall be to the exclusion of all other persons except the Unit Owner of any such other Unit to which such Limited Common Elements shall respectively appertain. Each Unit Owner shall be obligated to maintain his or her own Unit and the Limited Common Elements appurtenant thereto in good, clean order and repair. No Unit Owner shall overload the electric wiring or plumbing systems in the Building, or operate any machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Association, an unreasonable disturbance to others. No Unit Owner shall overload the floors of any Unit, the Common Elements or the Limited Common Elements. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Association except as herein expressly provided. Further, there shall be no obstruction to any Unit.

4.(h) Cleanliness of Common Elements. No clothes, sheets, blankets, laundry or other articles of any kind shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

4.(i) Storage in Common Elements. No benches, chairs or other personal property shall be left on, nor shall any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, toys or vehicles be permitted on, any part of the Common Elements without the prior consent of and subject to any regulations of, the Association.

4.(j) Modification of Common Elements and Limited Common Elements. Except as provided in this Declaration, nothing shall be altered or constructed in or removed from the Common Elements or Limited Common Elements except as constructed or altered by or with the permission of the Declarant at any time prior to the first annual meeting of the Unit Owners or with the written consent of the Association thereafter. In the event that the Association must alter, damage, or remove any portion of any Limited Common Element in the course of maintaining, repairing, replacing or otherwise servicing any Common Element or portion thereof, it will promptly restore said Limited Common Element to its original condition at Association expense and the cost of such will be considered a Common Expense.

5. Easements and Encroachments.

5.(a) Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or any portion of any Unit encroaches upon any part of any other Unit as a result of the renovation, repair, reconstruction, settlement or shifting of the Building, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit or Common Elements so encroaching so long as all or any part of the Building containing such Unit or Common Elements so encroaching shall remain standing; provided, however, that after the date this Declaration is recorded, a valid easement for any encroachment shall in no event be created in favor of any owner of a Unit other than the Declarant or in favor of the owners of the Common Elements if such encroachment occurred due to the intentional or willful conduct of said owner(s) or their agent(s).

5.(b) Utility Easements. Easements are hereby declared and granted for utility purposes, including the right to install, lay, construct, maintain, operate, renew, repair and replace water mains and pipes, sewer lines, gas main, telephone wires, receiving dishes and equipment, and electrical conduits, wires and equipment over, under, along and on any part of the Common Elements for the purpose of providing the Property with such services.

5.(c) Cable Easements. Easements are hereby declared and granted to the Declarant and the Association on the roofs and alongside the perimeter of the Units for purposes of installing a receiving dish for cable reception and the like. Upon approval by more than fifty percent (50%) of the Unit Owners further easements may be granted for cable television.

5.(d) Streets and Utilities. Upon approval by at least sixty-six and two-thirds percent (66-2/3%) of the Unit Owners, portions of the Common Elements (excluding any Limited Common Elements) may be dedicated to a public body for purposes of streets or utilities. Where such a dedication is made, nothing in the Act or any other law shall be construed to require that real property taxes of every Unit must be paid prior to recordation of the dedication. Any action pursuant to this **Section 5(d)** must be taken at a meeting of Unit Owners duly called for that purpose.

5.(e) Easements for Structural Columns in Units. Easements are hereby declared and granted to Declarant and the Association for the right to maintain each and every structural column, pole and beam in each Unit. The easement includes the right to maintain, repair, replace, recondition, refurbish, reconfigure, inspect, test, clean and paint the same.

5.(f) Easements Appurtenant. All easements and rights described herein are easements appurtenant, running with the Property, and shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee, First Mortgagee and other person having an interest in said Property, or any part or portion thereof.

5.(g) Incorporation of Easements. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

5.(h) Declarant Easements. The following easements shall be deemed and taken to be covenants running with the land.

(1) Common Elements. The right of the Unit Owners to use and possess the Common Elements as set forth herein shall be subject to a blanket easement over the Common Elements in favor of the Declarant, and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns, for the purpose of (i) access and ingress to and egress from the Common Elements or any part thereof, (ii) construction, installation, repair, replacement and restoration of utilities, buildings, landscaping and any other improvements on the Property or any part thereof, (iii) the installation and maintenance of signs advertising the Units on the Property, or any part thereof, and signs directing potential purchasers to the sales office and models erected in connection with such Units, (iv) using and showing one or more unsold and un conveyed Units, or portion or portions of the Common Elements specifically, without limitation, including the garage and/or the Recreational Facilities as a model Unit or Units, sales office, construction office or administrative office or for such other purposes deemed necessary or desirable in connection with such construction, leasing, marketing, sales, or brokerage, (v) setting up, staffing and maintaining marketing materials and tables in the Common Elements and using the Common Elements for special events, (vi) posting and maintaining such signs and lighting on the Property as are deemed necessary or desirable in connection with (vii) and (v) above, and (vii) using the office of the Building for management of the Building, construction activities at the Building and sales or leasing activity concerning the

Building. Until all the Units are sold and conveyed, the Declarant shall be entitled to such access, ingress and egress to the Property as it shall deem necessary in connection with the sale of, or work in, the Building or any Unit. Declarant shall have a blanket easement over the Common Elements for its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns for purposes of access and ingress to and egress from said Common Elements, and for purposes of marketing, sales, brokerage, construction, installation, repair, replacement and restoration of utilities, driveways, buildings, landscaping and any other improvements on said Common Elements until ninety (90) days after Declarant is no longer a Unit Owner.

(2) Roof. The Developer and its representatives, agents, associates, employees, contractors, subcontractors, tenants, successors and assigns shall have a perpetual easement for: (i) the non-exclusive right of access and ingress to and egress from the Common Elements to the roof of the Building; (ii) the exclusive right to erect structures, antennae, satellite dishes or other improvements ("Roof Communications") upon the roof of the Building, subject to specific easements that may be granted by the Developer to the Association from time to time, provided that the Developer shall be responsible for any damage to the roof caused by such items erected thereon by the Developer; and (iii) the non-exclusive right to lay, construct, renew, replace, operate and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment related to the Roof Communications into and through the Common Elements and the Units, where reasonably necessary, as long as such grantees repair any damage to the Property resulting from an exercise of their rights hereunder.

(3) Easements for Construction. Notwithstanding anything contained in this Declaration to the contrary, the Declarant, its contractors and subcontractors, and their respective agents and employees, shall have a perpetual easement for ingress, egress and access to and throughout the Property and the Building to perform at any time, and from time to time, and as may be required in connection with, the construction and equipping of any Unit, which easement shall continue, at the Declarant's discretion, for two (2) years following the Declarant's transfer of control of the Association to the initial Board of Managers. In connection therewith, the Declarant, its contractors and subcontractors, and their respective agents and employees, shall have the right at any time, and from time to time, to take into and through and maintain on the Property and in the Building all material and equipment required in connection with such construction and equipping, and to temporarily suspend operation of entrances, doors, corridors and other common elements without liability to any Unit Owner or Occupant; provided, however, that at all times Unit Owners and Occupants shall have reasonable access to their respective Units and Limited Common Elements, and the Declarant shall cause as little inconvenience to Unit Owners and Occupants as reasonably possibly under the circumstances. Declarant shall promptly repair any damage to the Common Elements or any Unit in connection with its exercise of its rights and easements under this **Section 5(h)**.

6. The Association.

6.(a) Incorporation. The Declarant has caused, or will cause, the formation of a Utah nonprofit corporation for the purposes of facilitating the administration and operation of the Property and to act as the Association.

6.(b) Miscellaneous. With respect to the Association:

(1) each Unit Owner shall be a member of such Association, which membership shall terminate upon the sale or other disposition by such member of his or her Unit, at which time the new Unit Owner shall automatically become a member thereof;

(2) the provisions of Appendix E of this Declaration shall be adopted as the By-Laws of such Association;

(3) the name of such Association shall be The 4340 Highland Homeowners Association, or a similar name; and

(4) completion of condominium questionnaires and the issuance of paid assessment letters shall be at no charge through the initial conveyance of each Unit.

7. Insurance and Condemnation.

7.(a) General Insurance. The Association shall acquire and pay for out of the Operating Fund herein provided for, such insurance as the Association is required to obtain under the provisions of the Act and such other insurance as the Association deems advisable in the operation, and for the protection, of the Common Elements and the Units, including, without limitation, the following:

(1) Property Insurance. Property insurance (i) on the Common Elements and the Units, including the Limited Common Elements and the bare walls, floors and ceilings of the Unit, (ii) providing coverage for special form causes of loss, and (iii) in a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. The insurance may, but is not required to, cover betterments and improvements to the Units installed by Unit Owners. If such improvements and betterments are covered, the increased costs may be assessed by the Association against the Units affected. For purposes of this paragraph, "betterments and improvements" means all decorating, fixtures and furnishings installed or added to and located within the boundaries of the Unit, including but not limited to, electrical fixtures, appliances, air conditioning and heating equipment, water heaters or built-in cabinets installed by the Unit Owner.

Any loss covered by the property insurance policy shall be adjusted by and with the Association. The insurance proceeds for that loss shall be payable to the Association, or to an insurance trustee designated by the Association for that purpose. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Unit Owners and secured parties, as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged Common Elements, the bare walls, ceilings and floors of the Units, and then to any improvements and betterments the Association may insure. Unit Owners are not entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the Common Elements and Units have been completely repaired or restored.

The Board may, in the case of a claim for damage to a Unit or the Common Elements, (i) pay the deductible amount as a Common Expense, (ii) after notice and an opportunity for a hearing, assess in any reasonable manner the deductible amount against the Unit Owners who caused the damage or from whose Units the damage or cause of loss originated, or (iii) require the Unit Owners of the Units affected to pay the deductible amount.

(2) General Liability Insurance. Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use or management of the property in a minimum amount of One Million Dollars (\$1,000,000.00) or such greater amount deemed sufficient in the judgment of the Board, insuring the Board, the Association, the management agent, and their respective employees, agents and all persons acting as agents. The Declarant shall be included as an additional insured in its capacity as a Unit Owner, manager, Board member or officer. The Unit Owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Elements. The insurance shall cover claims of one or more insured parties against other insured parties, and shall preclude the insurer(s) denial of a Unit Owner's claim because of negligent acts of the Association or of other Unit Owners.

(3) Fidelity Bond: Trustees and Officers Coverage.

(i) The Association shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the Association for the maximum amount of coverage available to protect funds in the custody or control of the Association, plus the Association reserve fund.

(ii) The Board shall obtain directors and officers liability coverage at a level deemed reasonable by the Board. Trustees and officers liability coverage shall extend to all contracts and other actions taken by the Board in their official capacity as directors and officers, but this coverage shall exclude actions for which the directors and officers are not entitled to indemnification under the Utah Revised Nonprofit Corporation Act, this Declaration or the By-Laws.

(4) Other Coverage. Such other forms of insurance, including workers compensation, employment practices, environmental hazards and equipment breakdown, as the Board considers appropriate to protect the Association, the Unit Owners or officers, directors or agents of the Association.

The Association shall also comply with the insurance requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal National Mortgage Association ("FNMA"), the U.S. Department of Housing and Urban Development ("HUD"), the Federal Housing Authority ("FHA") and/or the Veterans Administration ("VA") to the extent that such agency is a mortgagee, assignee of a mortgagee or an insurer or guarantor of a first mortgage with respect to any Unit and the Association is so notified thereof. The Association shall not be required to comply with the insurance requirements of the FNMA, HUD, the FHA, and/or the VA to the extent such agency(s) requirements conflict with those contained in the Act. Any losses under such policies of insurance shall be payable, and all insurance proceeds recovered

thereunder shall be applied and disbursed in accordance with the provisions of this Declaration and the Act.

7.(b) Unit Owners' Insurance. Each Unit Owner shall obtain insurance covering their personal liability and compensatory (but not consequential) damages to another Unit, caused by the negligence of the Unit Owner, his or her guests, residents, or invitees, or regardless of any negligence, originating from the Unit. The personal liability of a Unit Owner or Association member shall include the deductible of the Unit Owner whose Unit was damaged, any damage not covered by insurance required by this Section 7(b), as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment and other furnishings. If a Unit Owner does not purchase or produce evidence of insurance requested by the Board, the Association may purchase such insurance coverage and charge the premium cost back to the Unit Owner. In no event shall the Board be liable to any person either with regard to its decision not to purchase such insurance, or the timing of purchasing such insurance, the amounts, or the amounts or types of coverages obtained. Each Unit Owner may, but shall not be required to obtain insurance coverage on the furnishings and other items of personal property belonging to a Unit Owner which are contained in a Unit and not a part of the Unit, and not insured pursuant to Paragraph 7(a)(1) hereof.

7.(c) Common Expense. Except as otherwise provided in this Declaration, premiums for all insurance obtained or maintained by the Association, and the cost of any appraisal which the Association deems advisable in connection with any insurance, shall be Common Expenses.

7.(d) The Association. The Association shall secure insurance policies that will provide for the following:

(1) each Unit Owner and its mortgagee(s) is an insured person under the policy with respect to liability arising out of the Unit Owner(s) interest in the Common Elements or membership in the Association;

(2) the insurer waives its right to subrogation under the policy against any Unit Owner or Occupants of the Unit or members of the Unit Owner(s) household and against the Association and members of the Board;

(3) the Unit Owner waives his or her right to subrogation under the policy against the Association and the Board;

(4) the insurer will recognize any insurance trust agreement;

(5) the policies are primary in the event the Unit Owner has other insurance covering the same loss;

(6) the policy cannot be canceled, invalidated or suspended on account of the conduct of any one or more individual Unit Owner; and

(7) the insurer defending a liability claim against the Association must notify the Association of the terms of settlement no less than ten (10) days before settling the claim. The Association may not veto the settlement unless otherwise provided by contract or statute.

7.(e) Notice of Cancellation. An insurer that has issued an insurance policy under this **Section 7** shall issue certificates or memoranda of insurance, upon request, to any Unit Owner or mortgagee. The insurance may not be canceled until sixty (60) days after notice of the proposed cancellation has been mailed to the Association, each Unit Owner, and each mortgagee for an obligation to whom certificates of insurance have been issued. Contractors and vendors (except public utilities) doing business with the Association under contracts exceeding \$10,000 per year must provide certificates of insurance naming the Association, the Board and the managing agent as additional insured parties.

7.(f) Reconstruction. In the event of fire or other disaster, the insurance proceeds, if sufficient to reconstruct the Building, shall be applied to restore the Building to substantially the same condition in which it existed prior to the fire or other disaster, with each Unit and Common Elements to have the same vertical and horizontal boundaries as before the fire or other disaster.

7.(g) Insufficient Proceeds. If, in the event of fire or other disaster, the insurance proceeds are insufficient to restore the Building as set forth in the preceding **Section 7(f)** then:

(1) The Board shall call a meeting of Unit Owners to be held not later than the first to occur of (i) the expiration of thirty (30) days after the final adjustment of the insurance claims, or (ii) the expiration of ninety (90) days after the fire or other disaster which caused the damage.

(2) At such meeting, the Board shall present an estimate of the cost of repair or reconstruction together with an estimate of the part thereof which must be raised by way of special assessment.

(3) The Building shall be restored and the proposed special assessment shall be levied only upon the vote of seventy-five percent (75%) of the Unit Owners.

(4) If the Unit Owners do not vote to restore the Building at the meeting provided for in (1) above, then the Board may, at its discretion, call another meeting or meetings of Unit Owners to reconsider the question. If the Unit Owners do not vote to restore the Building within one hundred eighty (180) days after the fire or other disaster, then the Board may (but shall not be required to) Record a notice as permitted under the Act.

(5) If the Unit Owners do not vote to restore the Building under the provisions of the immediately preceding **Paragraph 7(g)(4)** and the Board does not Record a notice as permitted under the Act, then the Unit Owners may, upon the affirmative vote of at least sixty-seven percent (67%) of the Unit Owners and with the written consent of at least sixty-seven percent (67%) of the First Mortgagees, authorize the President or Vice President and the Secretary or Assistant Secretary to execute and Record an amendment to this Declaration for the purpose of withdrawing any portion of the Building so affected by such fire or other disaster from the Act. Upon the withdrawal of any Unit or portion thereof, the percentage of interest in the Common

Elements appurtenant to such Unit shall be reallocated among the remaining Units on the basis of the relative percentage interest of the remaining Units. If only a portion of a Unit is withdrawn, the percentage of interest appurtenant to that Unit shall be reduced accordingly, upon the basis of diminution of the market value of the Unit, as determined by the Board. The allocation of any insurance, or other proceeds to any withdrawing or remaining Unit Owners shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Elements, not necessarily including the Limited Common Elements, shall be allocated on the basis of each Unit Owner's percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interests of those entitled to their use. Upon the withdrawal of any Unit or portion thereof, assessments attributable to the period after such withdrawal shall no longer be required for such withdrawn Unit or shall be equitably reduced to reflect such withdrawn portion.

7.(h) Destruction of Personalty. Each Unit Owner and the Association hereby waive and release any and all claims which he or she or it may have against any other Unit Owner, the Association, members of the Board, the Developer, the Declarant and their respective agents, for damage to the Common Elements, the Units, or to any personal property located in the Units or Common Elements, caused by fire or other casualty or any act or omission referred to in **Section 8**, to the extent that such damage is covered by fire or other form of hazard insurance.

7.(i) Release or Waiver. Any release or waiver shall be valid only if such release or waiver does not affect the right of the insured under the applicable insurance policy to recover thereunder.

7.(j) Condemnation. In the event of a taking or condemnation by competent authority of any part of the Property, the Association shall, if necessary, restore the improvements on the remaining portion of the Property to conform as closely as possible to the general design, structure and materials used with respect to the improvements as they existed prior to the taking or condemnation. In the event that part or all of one or more Units is taken or condemned, then the portions so taken or condemned shall be deemed to have been removed from the provisions of the Act and the percentage of ownership interest in the Common Elements allocated to such Unit or portion thereof (as determined by the Board on the basis of diminution in market value of the Unit) shall be reallocated among the remaining Units on the basis of the relative percentage of ownership interests in the Common Elements of the remaining Units. In such cases, this Declaration and the Plat shall be amended accordingly by an instrument executed by the President and the Secretary of the Association, which the Board shall Record. The allocation of any condemnation awarded, or other proceeds to any withdrawing or remaining Unit Owner shall be on an equitable basis, which need not be a Unit's percentage of interest in the Common Elements. Any such proceeds available from the withdrawal of Limited Common Elements shall be distributed in accordance with the interests of those entitled to their use, as determined by the Board. Upon the withdrawal of any Unit or portion thereof, the responsibility for the payment of assessments on such Unit or portion thereof so withdrawn shall cease or shall be equitably reduced.

8. Remedies.

8.(a) Damages. If the act or omission of a Unit Owner, or of a member of his or her family, a household pet, guest, occupant or visitor of such Unit Owner, shall cause damage to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, to the extent such payment is not waived or released under the provisions hereof. No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

8.(b) Violation of Declaration. The violation of any rule or regulation adopted by the Association or the breach of any covenant or provision herein or contained in the By-Laws shall, in addition to any other rights provided for in this Declaration or the By-Laws, give the Association the right:

(1) to enter upon the Unit, or any portion of the Property upon which, or as to which, such violation or breach exists and at the expense of the defaulting Unit Owner to summarily abate and/or remove, as applicable, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and neither the Association nor the officers or agents thereof shall thereby be deemed guilty of trespass; or

(2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; or

(3) to take possession of such Unit Owner's interest in the Property and to maintain an action for possession of such Unit in the manner provided by law.

Provided, however, that, except in cases of emergency where damage to persons or property is threatened, the Association shall not take any such action unless it has (i) first given the Unit Owner alleged to have violated any restriction, condition or regulation adopted by the Association or to be in breach of any covenant or provision herein or in the By-Laws contained, a hearing on such allegations pursuant to rules and regulations adopted by the Association; (ii) the Association shall have determined such allegations to be true, and; (iii) the Unit Owner shall not have desisted from such violation or breach or shall not have taken such steps necessary to correct such violation or breach within such reasonable period of time as determined by the Association and communicated to the Unit Owner. Any and all costs and expenses incurred by the Association in the exercise of its authority as granted in this **Section 8**, including but not limited to court costs, reasonable attorneys' fees as determined by a court of competent jurisdiction, and cost of labor and materials shall be paid by the Unit Owner in violation, and, until paid by such Unit Owner, shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in the Act with respect to liens for failure to pay a share of the Common Expenses. Any such lien shall be junior and subordinate to the lien of a First Mortgagee with respect to such Unit.

Furthermore, if after hearing and finding as aforesaid, the Unit Owner shall fail to desist from such violation or to take such corrective action as may be required, the Association shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his or her Unit and thereupon an action in equity may be filed by the Association against the defaulting Unit Owner for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him or her on account of the violation of a rule or breach of covenant or provision as aforesaid and ordering that all the right, title and interest of the Unit Owner in the Property shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established, and except that the court shall direct that any existing Mortgage held by a First Mortgagee be retired out of the proceeds of such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorneys' fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds after satisfaction of such charges and any unpaid assessments or any liens hereunder shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit and to immediate possession of the Unit and may apply to the court for a writ of assistance for the purposes of acquiring possession and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit sold subject to this Declaration.

Any Unit Owner in default hereunder or under the provisions of the By-Laws or any rule or regulation adopted by the Association shall pay to the Association, as an agreed Common Expense with respect to his or her Unit, all interest, late charges, reasonable attorneys' fees, cost of collection and amount of any fine by the Association in enforcing the provisions of the By-Laws, this Declaration or the rules and regulations of the Association as to which the Unit Owner is in default. Until such amounts are paid by the Unit Owner, the total amount thereof shall constitute a lien on the interest of the Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in the Act with respect to liens for failure to pay a share of the Common Expenses. Any such liens shall be junior and subordinate to the lien of a First Mortgagee with respect to such Unit.

In addition to the foregoing remedies available to the Association, any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Trustees which are made pursuant to authority granted to the Association or its Board of Trustees in such documents. Owners shall have a similar right against the Association.

8.(c) Entry by Association. The Association or its officers or agents may enter any Unit when necessary in connection with any painting, maintenance, repair or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and except in the event of emergency shall be done upon reasonable notice to the Unit Owner. Any damage caused thereby shall be repaired by the Association and charged as a Common Expense.

8.(d) Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property or any question of interpretation or application of the provisions of the Declaration or By-Laws, the determination thereof by the Board shall be final and binding on each and all such Unit Owners.

9. First Mortgagees.

9.(a) Rights of First Mortgages. Any mortgage or trust deed owned or held by a First Mortgagee and Recorded prior to the Recording or mailing of a notice by the Association of the amount owing by a Unit Owner who has refused or failed to pay his or her share of the monthly assessment when due shall be superior to the lien of such unpaid Common Expenses set forth in said notice and to all assessments for Common Expenses which become due and are unpaid subsequent to the date of Recording of such first mortgage or first trust deed. Any First Mortgagee who comes into possession of a Unit pursuant to the remedies provided in the mortgage or trust deed, foreclosure of the mortgage or trust deed or deed (or assignment) in lieu of foreclosure shall not be liable for and shall take the Unit and its proportionate interest in the Common Elements free from, claims for unpaid common or special assessments levied by the Association which accrue prior to the date of possession as aforesaid. A First Mortgagee, or an insurer or guarantor of the note held by a First Mortgagee, upon written request to the Association (such request to state the name and address of such First Mortgagee, insurer or guarantor and the Unit number), shall be entitled to timely written notice of or have the right to:

(1) receive, without charge, notice of any proposed amendment of the Condominium Instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses, (iii) the number of votes in the Association appertaining to any Unit or (iv) the purposes to which any Unit or Common Elements are restricted;

(2) examine, without charge, current copies of this Declaration, the By-Laws, rules and regulations and the books and records of the Association during normal business hours;

(3) receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Unit Owners at the end of each of its respective fiscal years, provided, however, that in the event an audited financial statement is not available, fifty-one percent (51%) or more of the First Mortgagees (by number) shall be entitled to have such an audited statement prepared at their expense;

(4) receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(5) receive written notice of any decision by the Unit Owners to make a material amendment to the Declaration, By-Laws or Articles of Incorporation;

(6) receive written notice of any action which would require the consent of a specified percentage of First Mortgagees;

(7) receive notice of any proposed termination of The 4340 Highland Condominium as a condominium project;

(8) receive notice of any condemnation loss or any casualty loss which affects a portion of the Common Elements, which loss exceeds \$10,000.00, or which affects any Unit, which loss exceeds \$1,000.00, on which there is a first mortgage held, insured or guaranteed by such eligible holder;

(9) receive notice of any delinquency in the payment of assessments or charges owed by an owner of a Unit subject to the mortgage of a First Mortgagee, insurer or guarantor, where such delinquency has continued for a period of sixty (60) days; and

(10) receive notice of any lapse, cancellation or material modification of any insurance policy maintained by the Association.

No provision of this Declaration or Articles of Incorporation of the Association or any similar instrument pertaining to the Property or the Units therein shall be deemed to give a Unit Owner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of the Units, and/or the Common Elements, or any portion thereof or interest therein. In such event, the First Mortgagees and insurers or guarantors thereof, of the Units affected shall be entitled, upon specific written request, to timely written notice of any such loss.

9.(b) Additional Rights of First Mortgagees. Unless the First Mortgagees of all of the Units which are a part of the Property have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to:

(1) by act or omission seek to abandon or terminate the condominium regime, except for abandonment provided by the Act in case of substantial loss to or condemnation of the Units and/or the Common Elements;

(2) change the pro rata interest or obligations of any Unit Owner for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, and (ii) determining the pro rata share of ownership of each Unit Owner in the Common Elements, except as set forth herein; or

(3) use hazard insurance proceeds for losses to any Property (whether to Units or to Common Elements) for other than the repair, replacement, or construction of such improvements, except as provided by the Act in case of substantial loss to the Units and/or the Common Elements.

9.(c) Consent of at Least Fifty-One Percent (51%). Unless the First Mortgagees of the individual Units representing at least fifty-one percent (51%) of the votes in the Association have given their prior written approval, neither the Association nor the Unit Owners shall be entitled to do or permit to be done any of the following:

(1) Adoption of an amendment to this Declaration which (i) materially and adversely changes any provision of this Declaration or which specifically grants rights to First Mortgagees, (ii) materially changes insurance and fidelity bond requirements, (iii) imposes a right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer or otherwise convey his or her Unit Ownership or changes the provisions concerning the leasing of Units, or (iv) changes the provisions of the Declaration concerning the Capital Reserve Fund;

(2) Abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements (except for the granting of easements for public utilities or for other purposes consistent with the intended use of the Property and except for the encumbrance, sale or transfer of the percentage of ownership in the Common Elements in connection with the encumbrance, sale or transfer of a Unit Ownership);

(3) Sale of the Property; or

(4) Removal of a portion of the Property from the provisions of the Act and this Declaration.

9.(d) Federal Agencies. Notwithstanding anything to the contrary contained herein, if any Unit is security for a loan insured by the FHA, the FNMA, or the VA (each a "Federal Agency" collectively the "Federal Agencies"), and if Declarant is a Unit Owner, the following actions will require the prior approval of the each Federal Agency insuring such loan(s):

(1) Adding any portion of the Development Area to the Condominium;

(2) Mergers, consolidations and dissolution of the Association;

(3) Mortgaging or conveyance of the Common Elements; and

(4) Amendment of this Declaration.

9.(e) Condemnation. If any Unit or portion thereof or the Common Elements or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, or insurer or guarantor thereof, of said Unit will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition and no provisions of any document will entitle the owner of a Unit or such other party to priority over such First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

9.(f) Restoration or Repair. Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with the

Declaration and the existing plans and specifications for the Building as modified and amended prior to the date of the partial condemnation or damage unless the approval of a Majority of Unit Owners and a majority in number of First Mortgagees of Units which are subject to a mortgage or trust deed is obtained.

9.(g) Termination of Condominium. Any election to terminate the Condominium as a condominium project after substantial destruction or substantial taking by condemnation of the Property shall require the approval of a Majority of Unit Owners and a majority in number of First Mortgagees of Units which are subject to a mortgage or trust deed. Whenever required, the consent of a First Mortgagee shall be deemed granted unless the party seeking the consent is advised to the contrary in writing by the First Mortgagee within sixty (60) days after making the request for consent by certified or registered mail, return receipt requested.

10. Amendments and Special Amendments. No provision of this Declaration affecting the rights, privileges and duties of the Declarant may be modified without the written consent of the affected party.

(1) Except as otherwise expressly provided herein, this Declaration may be modified or rescinded only by the vote of Unit Owners owning not less than seventy-five percent (75%) of the total ownership of Common Elements or by a written instrument setting forth such modification or rescission, signed by Unit Owners owning not less than seventy-five percent (75%) of the total ownership of Common Elements. Such modification or rescission shall be effective only if all lien holders of record have been notified by certified mail of such modification or rescission, and an affidavit by the secretary of the Association certifying such mailing is made a part of such instrument.

(2) If the Act, the Declaration or the By-Laws require the consent or agreement of all Unit Owners or of all lien holders for any action specified in the Act or in this Declaration, then any instrument modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all the Unit Owners or all lien holders or both, as required by the Act, the Declaration or the By-Laws.

(3) No consent of the Declarant or Association shall be required if the Declarant or Association shall amend this Declaration to comply with the legal requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmer's Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity (any one of which is herein referred to as an "Agency"), provided such Agency is participating in purchasing or guarantying mortgages of Units in the Property and further provided the Board has notice of such participation by the Agency to be notified.

(4) As further set forth in **Section 4(j)** hereof, no consent or agreement of any of the Unit Owners or mortgagees of Unit Owners of units other than those affected by the transfer, subdivision or combination shall be required if the Declarant or the Association desires to amend this Declaration in order to provide for the transfer of Limited Common Elements or the

subdivision or combination of Units, provided the provisions of the Act governing such special amendments are satisfied.

(5) Any modification or rescission of this Declaration shall be effective upon recording of such instrument in the Office of the Recorder of Deeds of Salt Lake County, Utah, provided, however, that no provisions in this Declaration may be modified or rescinded so as to conflict with the provisions of the Act.

11. Development Plan. Development of the Property is complete. The Property consists of sixty (60) separate condominium units and their accompanying Limited Common Elements. The Condominium is not an expandable condominium, as that term is defined in the Act. In addition, the Condominium is not a contractable condominium, as that term is defined in the Act.

12. Sale of the Property. The Unit Owners, through the affirmative vote of at least seventy-five percent (75%) of the total votes in the Association, at a meeting duly called for such purpose, may elect to sell the Property as a whole. Within ten (10) days after the date of the meeting at which any such sale is approved, the Board shall give written notice of such action and an opportunity to vote to the holder of any duly recorded mortgage or trust deed recorded against any Unit in accordance with **Paragraph 9(c)(3)** of this Declaration. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner or form may be necessary to effect such sale; provided, however, that any Unit Owner who did not vote in favor of such action and who has filed written objection thereto with the Board within twenty (20) days after the date of the meeting at which such sale was approved, shall be entitled to receive from the proceeds of such sale an amount equal to the fair market value of its Unit and the percentage ownership interest in the Common Elements appurtenant to such Unit, as determined as hereinafter provided, less the amount of any unpaid assessments or charges due and owing from such Unit Owner. If the Board and such Unit Owner fail to agree on the fair market value of such Unit and related ownership interest within fifteen (15) days after delivery of such Unit Owner(s) notice, such Unit Owner and the Board shall each select an appraiser, and the two appraisers so selected shall select a third appraiser, and the fair market value determined by the third appraiser shall control. If either party shall fail to select an appraiser, then the one designated by the other party shall make the appraisal. The cost of the appraisal shall be divided equally between such Unit Owner and the Board, and the Board's share shall be a Common Expense.

13. Miscellaneous.

13.(a) Grantees. Each grantee of the Declarant and each tenant, subtenant or assignee under a lease, sublease or assignment accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, the By-Laws, rules and regulations of the Association, jurisdiction, rights and powers created or reserved by this Declaration, and the provisions of the Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to

the benefit of each grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

13.(b) Notices. Whenever any notice is required to be given under the provisions of this Declaration, or the By-Laws, a waiver thereof in writing by the person or persons entitled to such notice, whether before or at the time stated therein, shall be deemed equivalent to the giving of such notice, provided such waiver or the time of giving same is not contrary to the provisions of the Act. Notices required to be given to any devisee or personal representative of a deceased Unit Owner shall be mailed to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased owner is being administered. Other notices required or permitted to be given shall be in writing and shall be given in the manner set forth in the Condominium Instruments.

13.(c) Severability. The invalidity of any restriction hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, and all of the terms hereof are hereby declared to be severable.

13.(d) Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class condominium development.

13.(e) Changes or Modifications by the Declarant. To the extent not otherwise prohibited by the Act, the Declarant hereby reserves to itself the right, without the consent of any Unit Owner or Mortgagee of a Unit, until the first annual meeting of Unit Owners is called, to record an amendment to this Declaration, provided such amendment does not materially adversely affect the value of any Unit. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make or consent to any such amendment on behalf of each Unit Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit, and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record such amendments.

13.(f) Assignments by Declarant. All rights which are specified in this Declaration to be rights of the Declarant are mortgageable, pledgeable, assignable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liability for the acts of any other party which previously exercised or subsequently shall exercise such rights.

14. Maintenance.

14.(a) Repairs and Replacements. Notwithstanding anything contained in this Declaration to the contrary, each Unit Owner shall furnish and be responsible for, at his or her

own expense, all of the maintenance, repairs, and replacements within his or her own Unit, including, without limitation, all additions, improvements, betterments and alterations, all internal installations of such Unit, such as refrigerators, ranges and other kitchen appliances, lighting fixtures and electrical fixtures, furnaces, air-conditioners, condensers and plumbing (except for windows and window frames appurtenant thereto), and except as described in **Section 14(b)** below, any portion of any other utility service facilities located within the Unit; provided, however, that such maintenance, repairs and replacements as may be required for the bringing of water and electricity to the Units shall be furnished by the Association as part of the Common Elements, and no Unit Owner shall perform any maintenance or make any modification, repair or replacement to any plumbing, electrical, HVAC or phone system or component located in any perimeter wall, floor or ceiling between Units without written consent from the Association.

14.(b) The Association. Notwithstanding anything contained in this Declaration to the contrary, the Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions, if any of each Unit which contribute to the support of the Property, including all windows and window frames and all exterior doors and all balconies, but excluding all interior surfaces of walls, ceilings, and floors. In addition, the Association shall maintain, repair and replace all pipes, wires, conduits, flues, shafts and other facilities for the furnishing of utility services which may be located within the Unit boundaries and forming part of any system not exclusively serving such Unit, exclusive of any portions of the foregoing which may be located at or beyond the wall outlets. Unless governed by **Section 8(a)** of this Declaration, maintenance, repairs and replacements of the Common Elements shall be furnished by the Association acting by and through the Board as part of the Common Expenses, subject to the By-Laws and Rules and Regulations of the Association.

14.(c) Enforcement of Provisions. Whenever the Board shall determine, in its discretion, that any maintenance and repair of any Unit (or any Limited Common Elements appurtenant to a Unit which are maintained by a Unit Owner) is necessary to protect the Building, the Board may cause a written notice of the necessity for such maintenance and repair to be served upon such Unit Owner, which notice may be served by delivering a copy thereof to any Occupant of such Unit or by mailing the same by certified or registered mail addressed to the Unit Owner at the Unit. If such Unit Owner refuses or fails to perform such maintenance or repair within a reasonable time stated in the notice (or any extension thereof approved by the Board), the Board may cause such maintenance and repair to be performed at the expense of such Unit Owner. The Board shall have exclusive authority to take or refrain from taking any action pursuant to this Article. All expenses which are, pursuant to this **Section 14(c)**, chargeable to any Unit Owner may be specifically assessed to such Unit Owner and shall be payable by such Unit Owner as prescribed by the Board.

14.(d) Exculpation. This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally, but are made

and intended for the purpose of binding only the Tract; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or any of its officers, directors, members or shareholders, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit (including mortgagees) as a condition to the acquisition thereof.

IN WITNESS WHEREOF, the Declarant has caused its name to be signed to these presents on the day and year first above written.

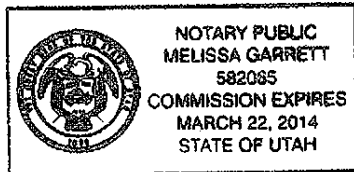
4340 HIGHLAND HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation

By: [Signature]
Its: PRESIDENT
Printed: JOHN BAIRD

STATE OF UTAH)
COUNTY OF SALT LAKE CITY)

I, Melissa Garrett a Notary Public in and for said County, in the state aforesaid, do hereby certify that John Baird, the PRESIDENT of 4340 HIGHLAND HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, who personally is known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal as of the 14 day of March, 2010^{may}.



Melissa Garrett
Notary Public

APPENDIX A
LEGAL DESCRIPTION OF PROPERTY

PROPERTY DESCRIPTION

Beginning at a point on the West Right-of-Way line of Highland Drive, which point lies North 05°26'00" West along the monument line of Highland Drive 175.91 feet and South 84°34'00" West 33.00 feet from the found monument at the intersection of Highland Drive and Lincoln Lane, said monument being North 1128.19 and West 2319.44 feet and South 05°26'00" East 690.89 feet from the East Quarter corner of Section 4, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence

South 05°26'00" East along the West Right-of-Way line of Highland Drive 178.31 feet; thence South 14°20'08" East along said Right-of-Way line 73.52 feet; thence

South 01°16'44" East 28.16 feet to a fence line; thence

along said fence line the following four calls;

North 89°17'49" West 84.75 feet;

South 89°55'36" West 69.58 feet;

North 89°50'51" West 81.11 feet; and

North 89°07'09" West 54.39 feet to a fence corner; thence

North 00°43'29" West along a fence line 109.85 feet to a fence corner; thence

South 89°38'07" West along a fence line 80.47 feet to a fence corner; thence

North 00°18'46" East along a fence line 166.12 feet to a fence corner; thence

South 89°54'23" East along a fence line extended 335.06 feet to the point of beginning.

Parcel Contains 88,053 Sq. Ft. (2.02 Acres).

Tax Id. Nos. 22-04-251-002 and -003

APPENDIX B

PLAT OF SURVEY

(Attached)

<p>Recorded at the request of, and after recording return to:</p> <p>Greggory J. Savage Ray Quinney & Nebeker P.C. 36 S. State Street, Suite 1400 Salt Lake City, Utah 84111</p>	<p>11075249 11/15/2010 2:56:00 PM \$75.00 Book - 9878 Pg - 9370-9373 Gary W. Ott Recorder, Salt Lake County, UT RAY QUINNEY & NEBEKER BY: eCASH, DEPUTY - EF 4 P.</p> <p>Space Above For County Recorder's Use</p>
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**Affidavit of Officer for Plat Clarification
The 4340 Highland Homeowners Association**

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

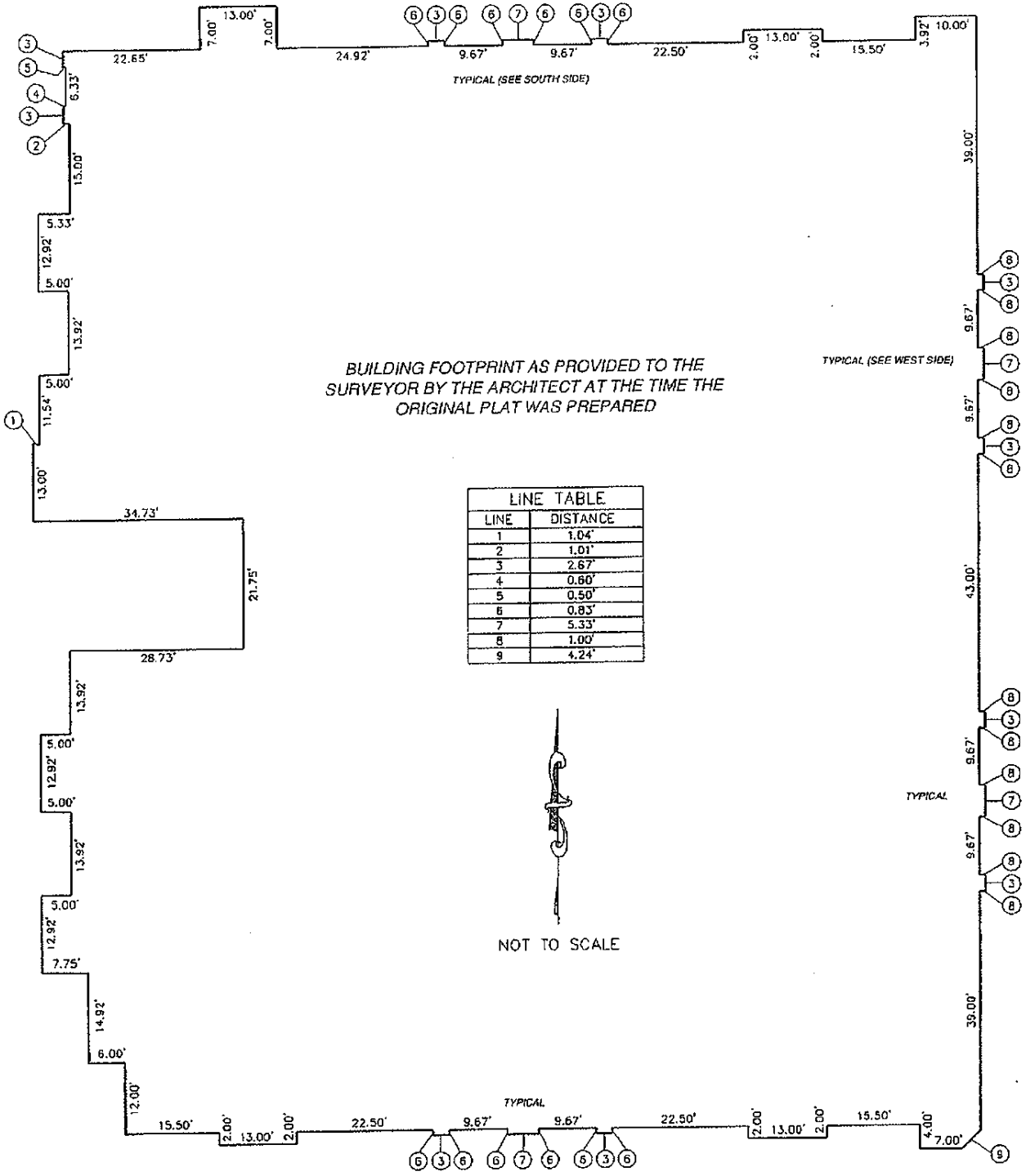
The undersigned, John Baird a resident of the State of Utah ("Affiant"), having been first duly sworn upon his/her oath, deposes and says:

1. The affiant is the President of The 4340 Highland Homeowners Association, a duly organized and validly existing nonprofit corporation existing under the laws of the State of Utah (the "Association").
2. The Association is the governing body of The 4340 Highland Condominium, located at 4340 Highland Drive, Salt Lake City, Utah 84124 (the "Condominium"), which Condominium was originally established by that certain Declaration of Condominium 4340 Highland Condominium Project dated August 21, 2002, recorded August 21, 2002, as Entry No. 8328372 in the Office of the Recorder of Salt Lake County, Utah (the "Original Declaration"). The Original Declaration has been amended and restated by that certain Amended and Restated Declaration of Condominium 4340 Highland Condominium Project dated April 8, 2003, recorded April 9, 2003, as Entry No. 8603739 in the Office of the Recorder of Salt Lake County, Utah (the "A&R Declaration").
3. In connection with establishment of the Condominium, a certain Plat of Condominium dated March 20, 2003, recorded April 9, 2003, as Entry No. 8603738, at Book 8774, Page 2666 (the "Plat"), was recorded in the Office of the Recorder of Salt Lake County, Utah.
4. At the time of its original recording, the Plat did not include detail identifying exterior measurements of the building comprised of units of the Condominium, its parking and associated Condominium amenities.

EXHIBIT A

Exterior Measurement Detail
(attached)

4340 HIGHLAND CONDOMINIUMS (BUILDING DIMENSIONS)

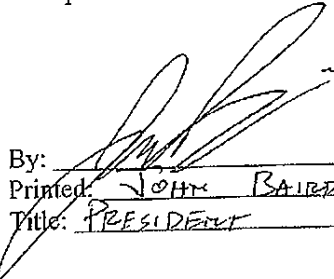


LINE TABLE	
LINE	DISTANCE
1	1.04'
2	1.01'
3	2.67'
4	0.60'
5	0.50'
6	0.83'
7	5.33'
8	1.00'
9	4.24'


NOT TO SCALE

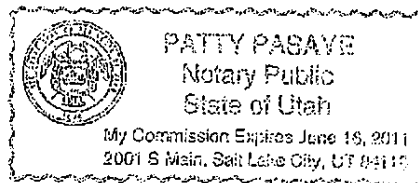
5. This Affidavit is intended to correct the clerical error of omitting such exterior measurement detail, and the attached Exhibit A hereto contains an illustration of the building perimeter walls and exterior measurements for each such perimeter wall.

Further, Affiant saith not.

By: 
Printed: JOHN BAIRD
Title: PRESIDENT

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 13th day of October, 2010.


Notary



1100394-v1

~~8603738~~

8603738
04/04/2003 09:39 AM 361.00
Book - 8774 Pg - 2666
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
HILLER VANCE & THOMPSON PC
PO BOX 682800
PARK CITY UT 84068-2800
BY: HNP, DEPUTY - UT

X P.
HNP

Name: 4340 HIGHLAND
CONDOMINIUMS A.M.D.

Desc: 22-04-251-0118012
22-04-256-001-061
22-04-21

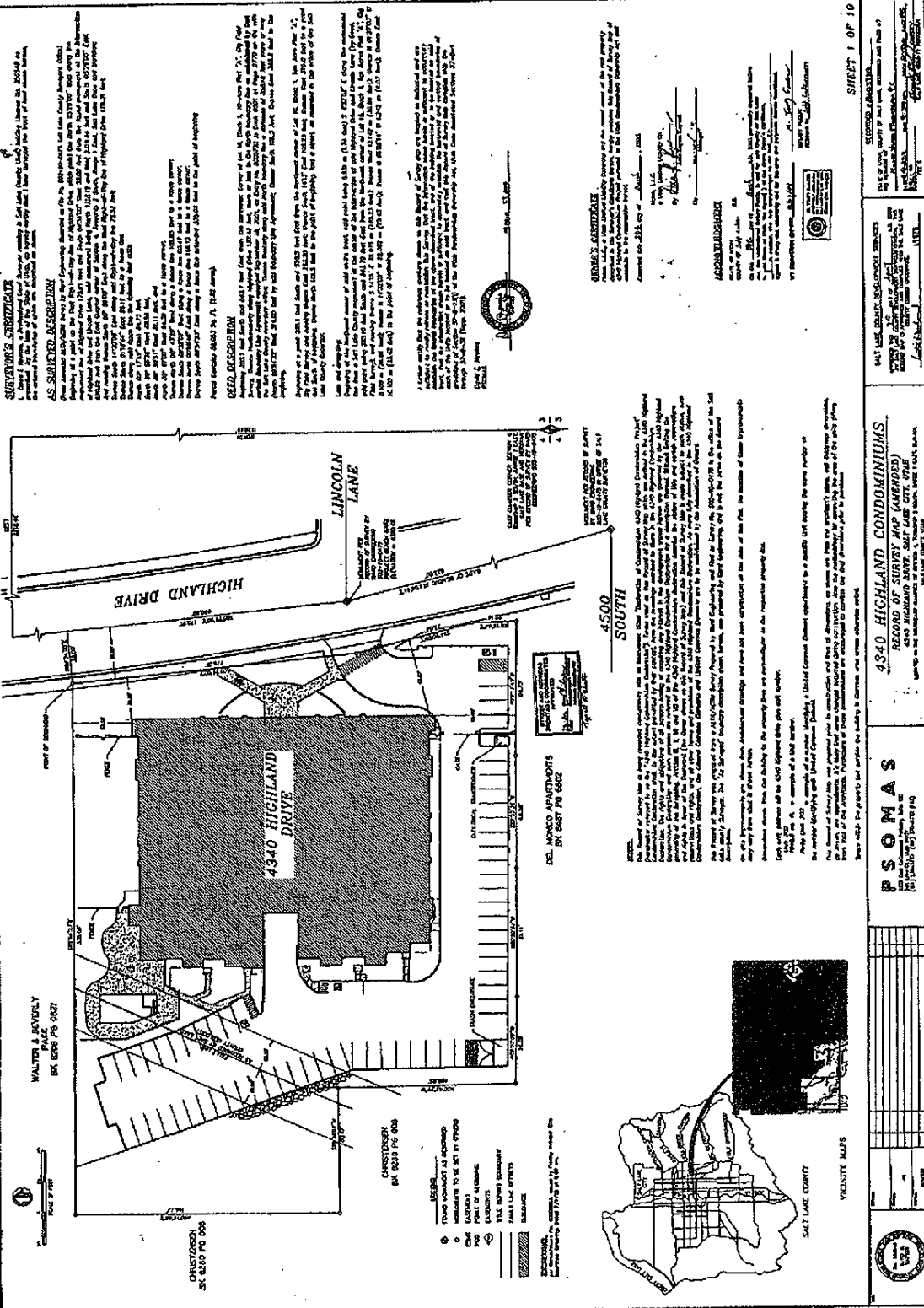
Fee: \$361.00

of Pages: TEN

PLAT

SEE ONLINE PLATS AT
[HTTP://REC.CO.SLC.UT.US/](http://REC.CO.SLC.UT.US/)

~~8603738~~



SUBDIVISION CERTIFICATE
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

AS SHOWN ON PLAT
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

GENERAL DESCRIPTION
 The land shown on the attached plat is situated in the City of Salt Lake County, Utah, and is bounded on the north by Highland Drive, on the east by Lincoln Lane, on the south by the Salt Lake County Canal, and on the west by the Salt Lake County Canal. The land is divided into lots, blocks, and sections, and is to be used for residential purposes.

LEGAL DESCRIPTION
 The land shown on the attached plat is situated in the City of Salt Lake County, Utah, and is bounded on the north by Highland Drive, on the east by Lincoln Lane, on the south by the Salt Lake County Canal, and on the west by the Salt Lake County Canal. The land is divided into lots, blocks, and sections, and is to be used for residential purposes.

RECORD OF SURVEY MAP (REVISED)
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

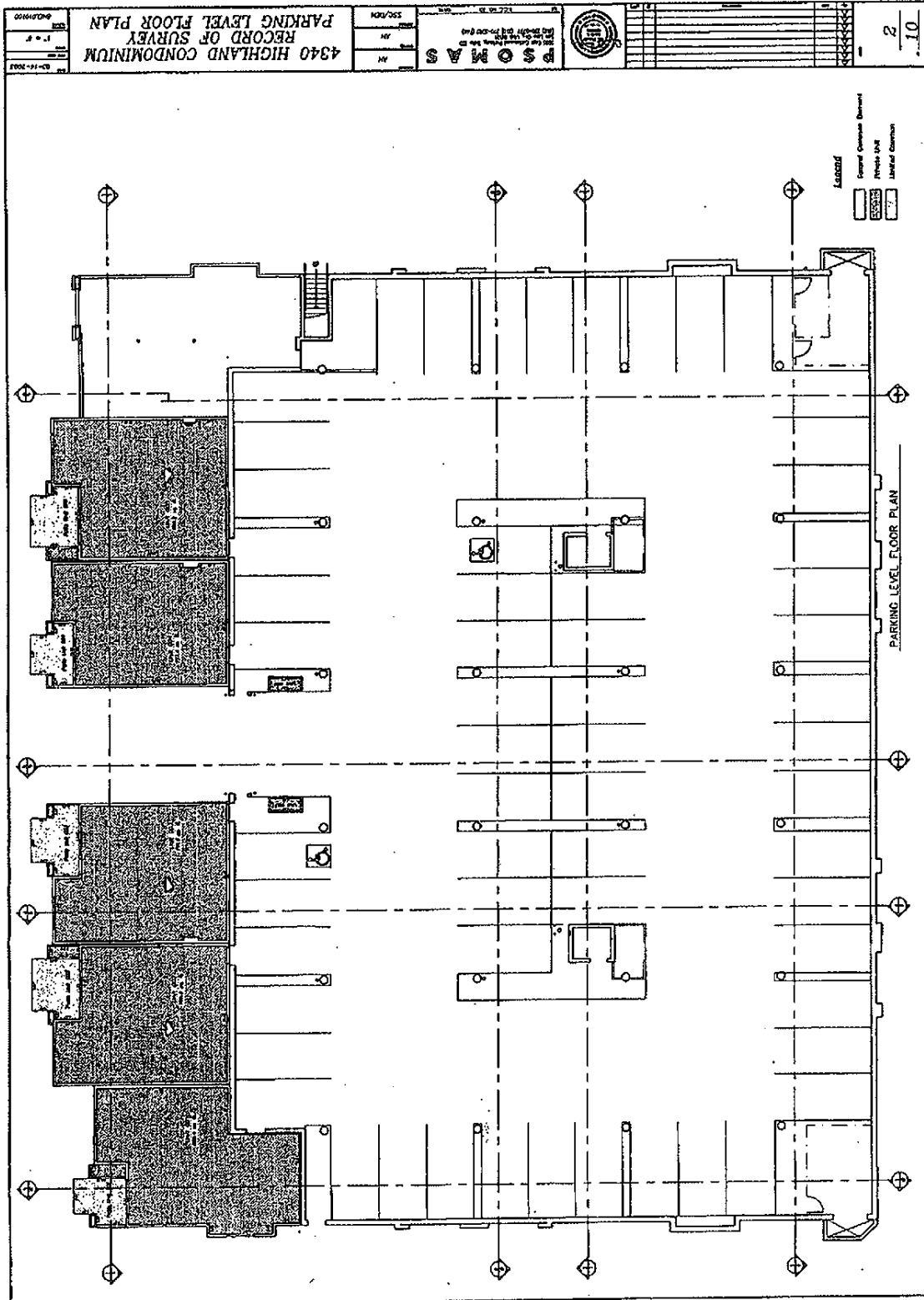
PLAT MAP
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

4340 HIGHLAND CONDOMINIUMS
 RECORD OF SURVEY MAP (REVISED)
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

PSOMAS
 RECORD OF SURVEY MAP (REVISED)
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

SHEET 1 OF 10
 The Board of Survey has approved the subdivision of the land shown on the attached plat into lots, blocks, and sections, and has caused the same to be recorded in the office of the County Clerk of Salt Lake County, Utah, on this 15th day of May, 1968.

BK 9918 PG 389



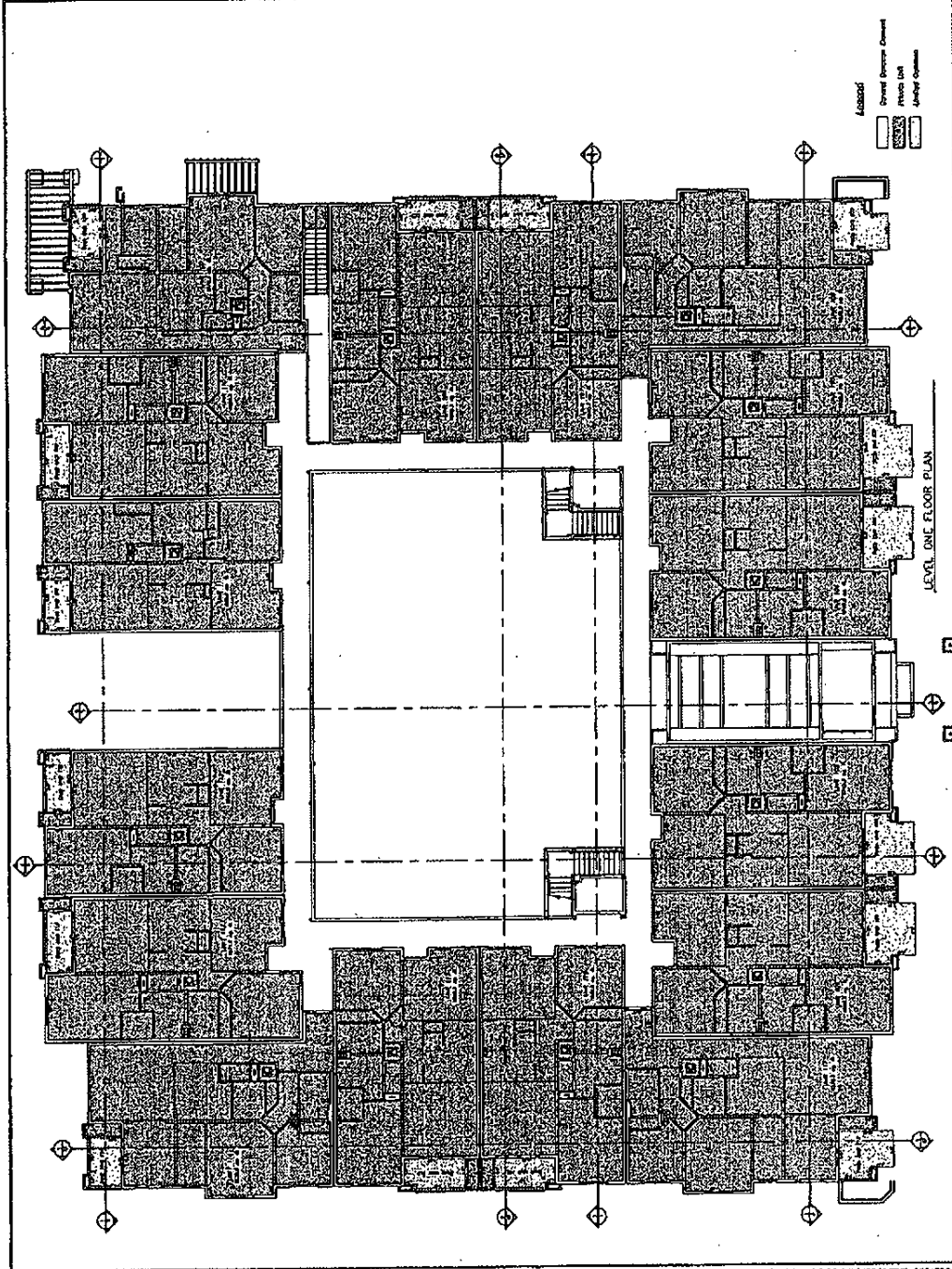
4340 HIGHLAND CONDOMINIUM
 RECORD OF SURVEY
 PARKING LEVEL FLOOR PLAN

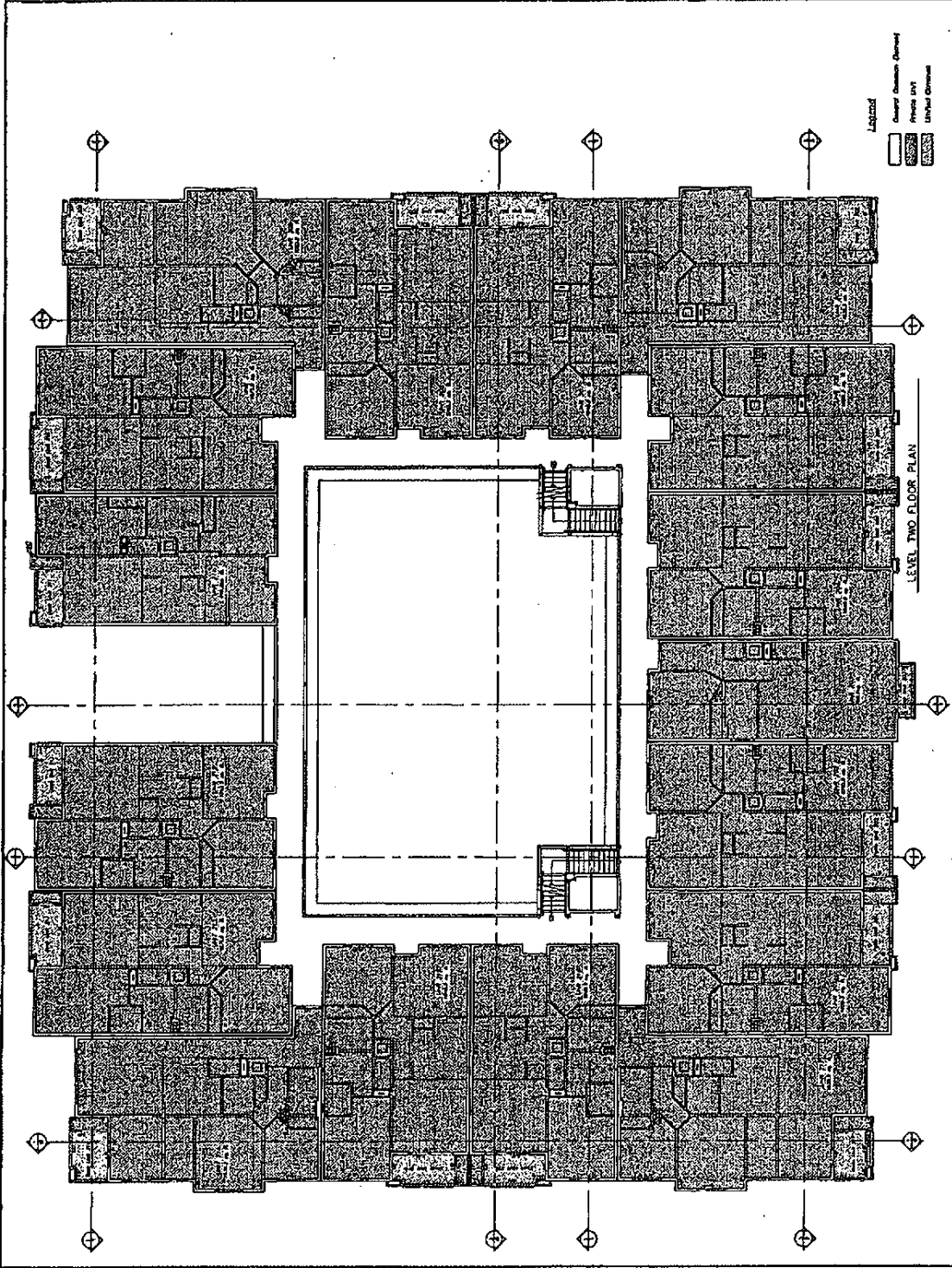
P S O M A S
 PROFESSIONAL SURVEYORS
 12500 125th St. S.E.
 Bellevue, WA 98005
 TEL: 425.452.2200
 FAX: 425.452.2201

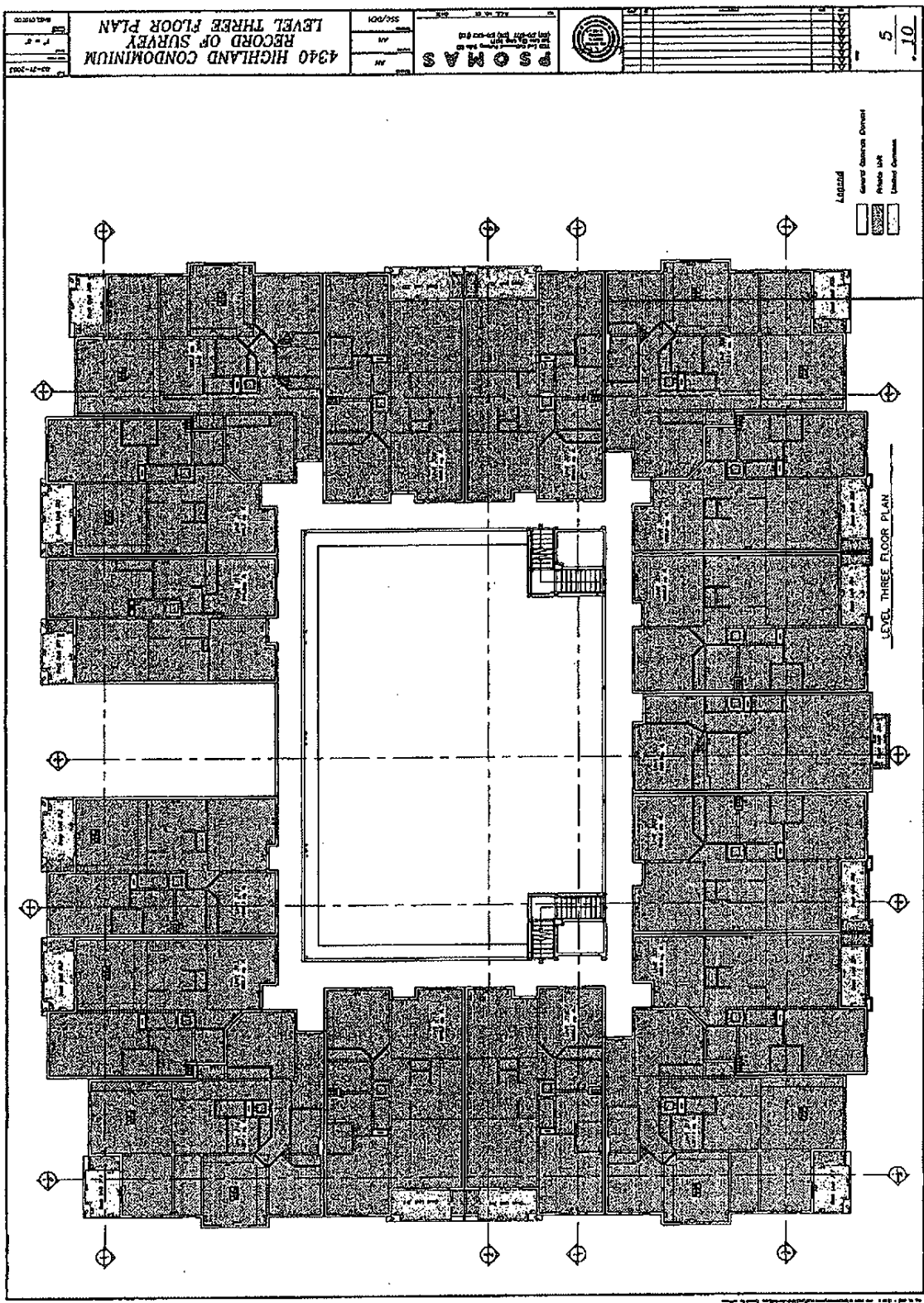


2
 .10

PARKING LEVEL FLOOR PLAN







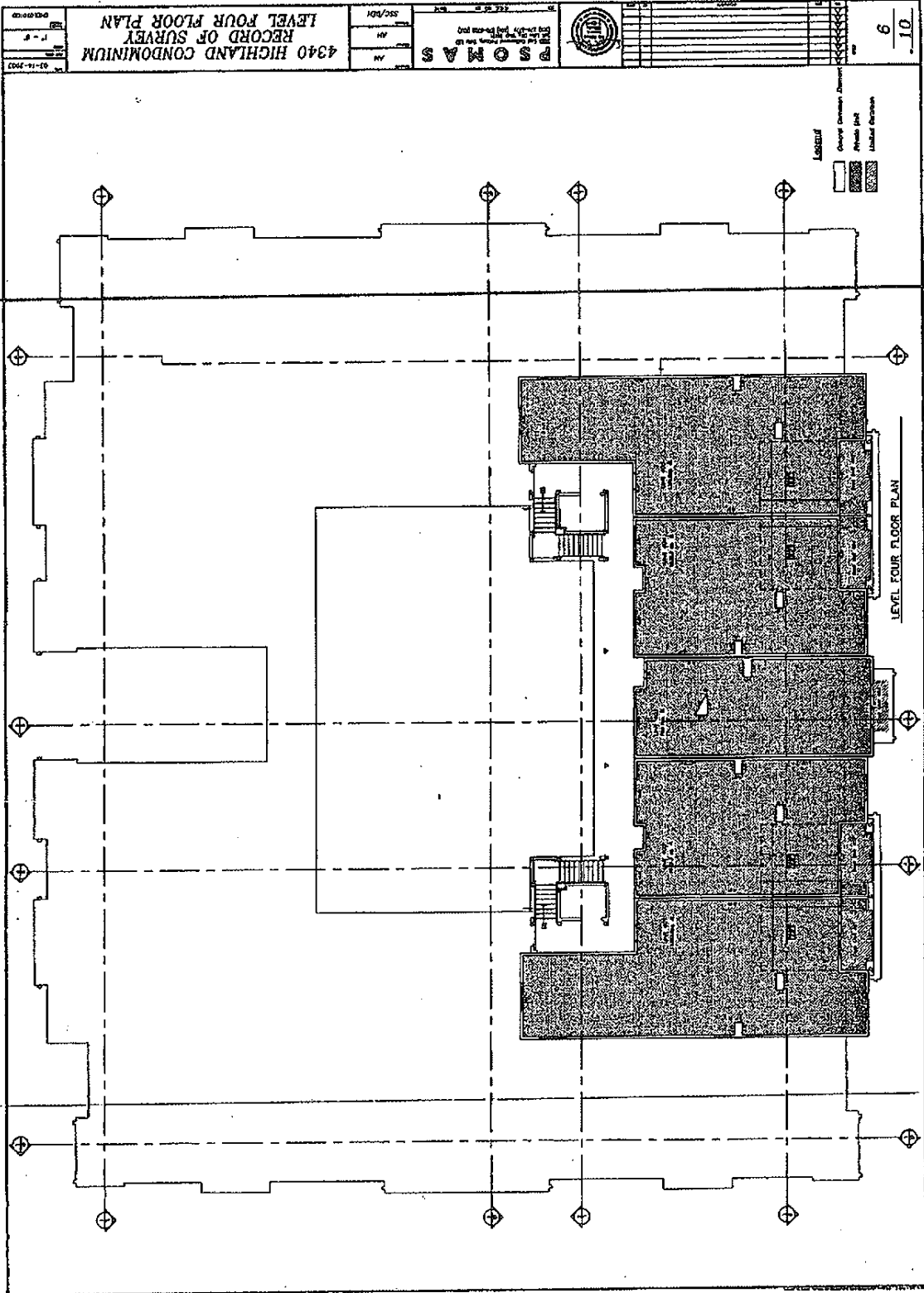
4340 HIGHLAND CONDOMINIUM
 RECORD OF SURVEY
 LEVEL THREE FLOOR PLAN

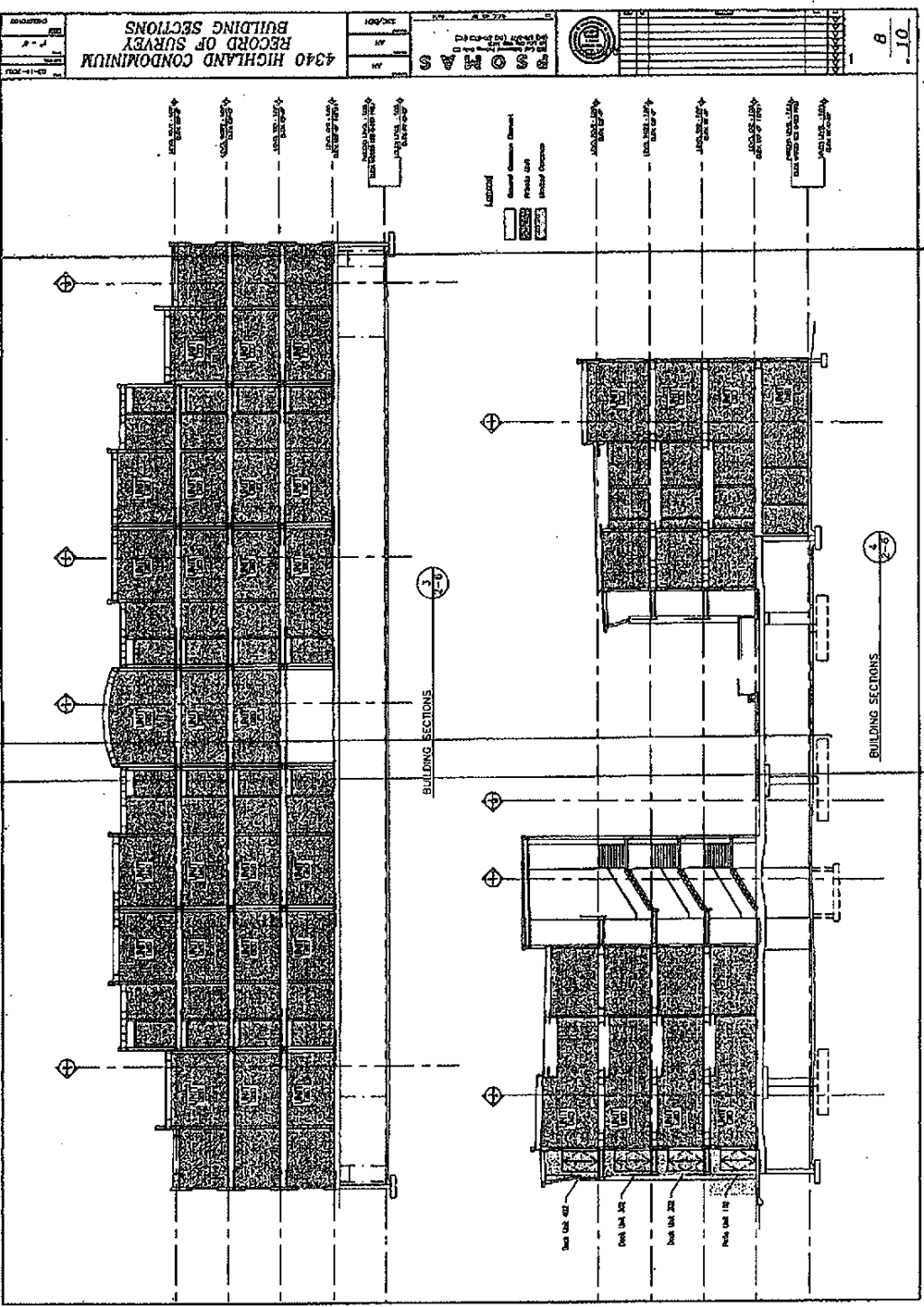
PSOMAS
 PROFESSIONAL SURVEYORS
 100/055
 100/055
 100/055



Legend
 General Common Corridor
 Private Unit
 Limited Common

5
 10





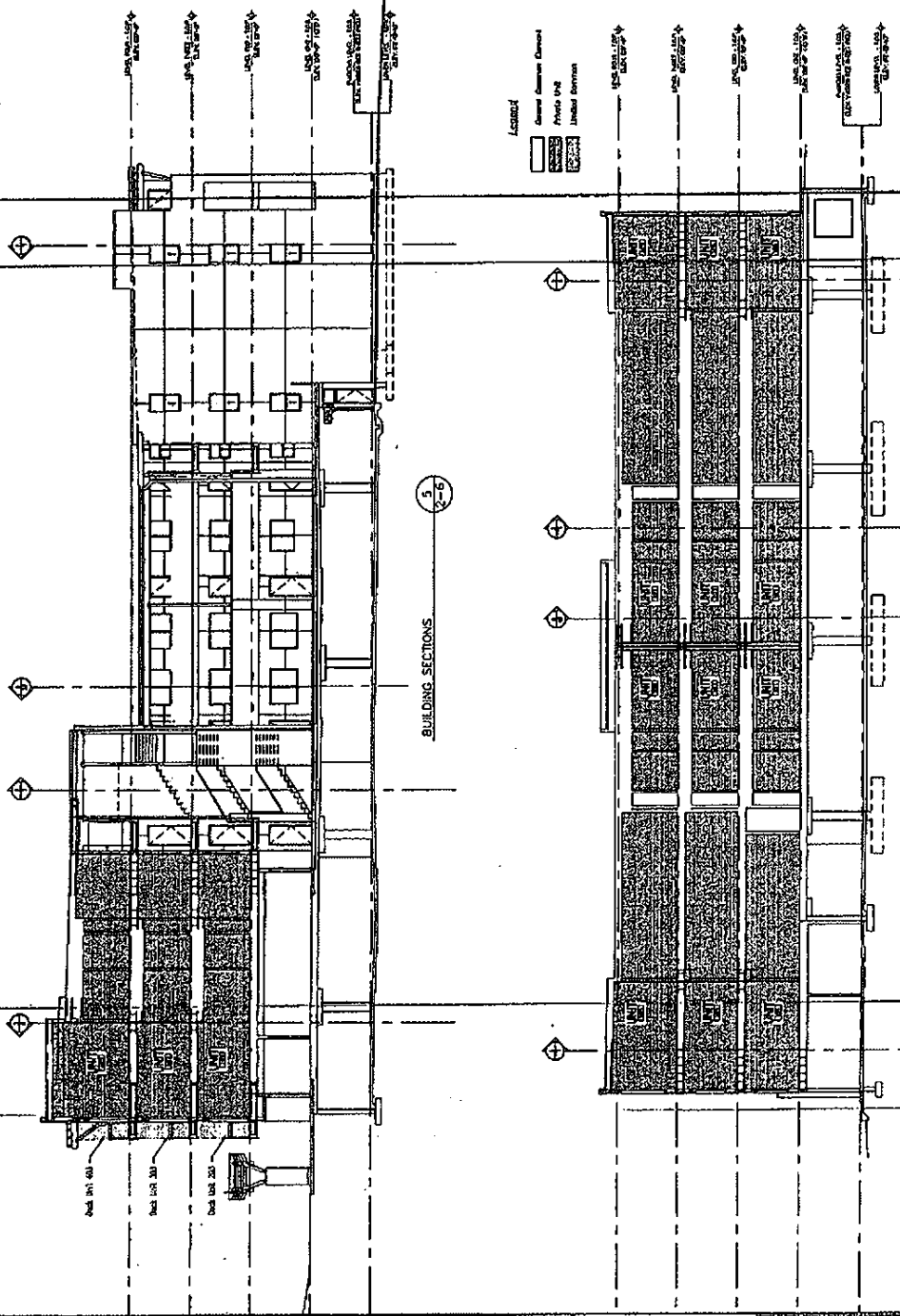
10
9

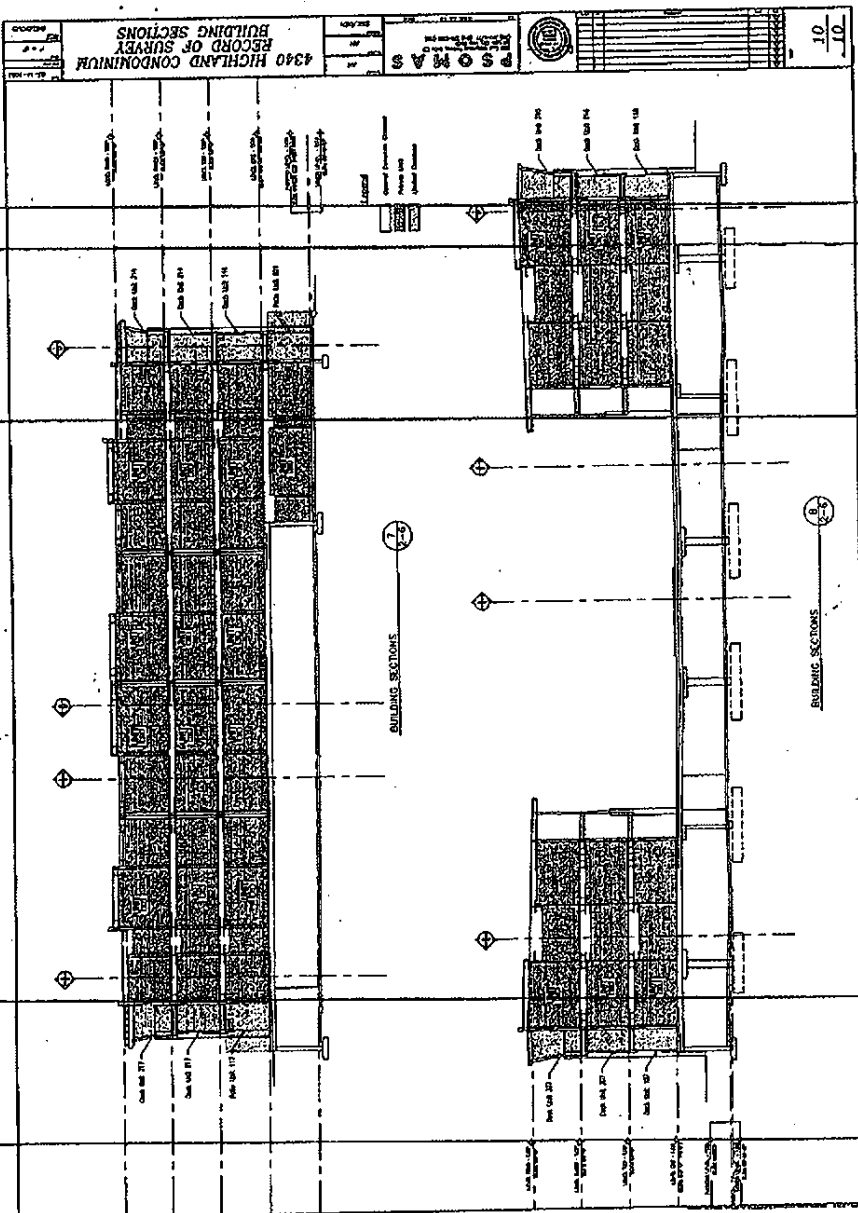
THOMAS
SURVEYING & ENGINEERING
INC.
1000 15th Street, N.W.
Atlanta, Georgia 30309
404-525-1100

4340 HIGHLAND CONDOMINIUM
RECORD OF SURVEY
BUILDING SECTIONS

DATE: 01-14-2003
BY: [Signature]
CHECKED: [Signature]

LEGEND
Common Element
Private Use
Limited Common





~~8328374~~

8328374
08/21/2002 12:20 PM 361.00
Book - 8635 Pg - 8298
GARY W. DIT
RECORDER, SALT LAKE COUNTY, UTAH
DWAYNE A VANCE
PO BOX 3390
PARK CITY UT 84060
BY: ZJM, DEPUTY - WT 2P.

Name: 4340 HIGHLAND
CONDOMINIUMS

Desc: 22-4-21
22-04-251-002 & -003

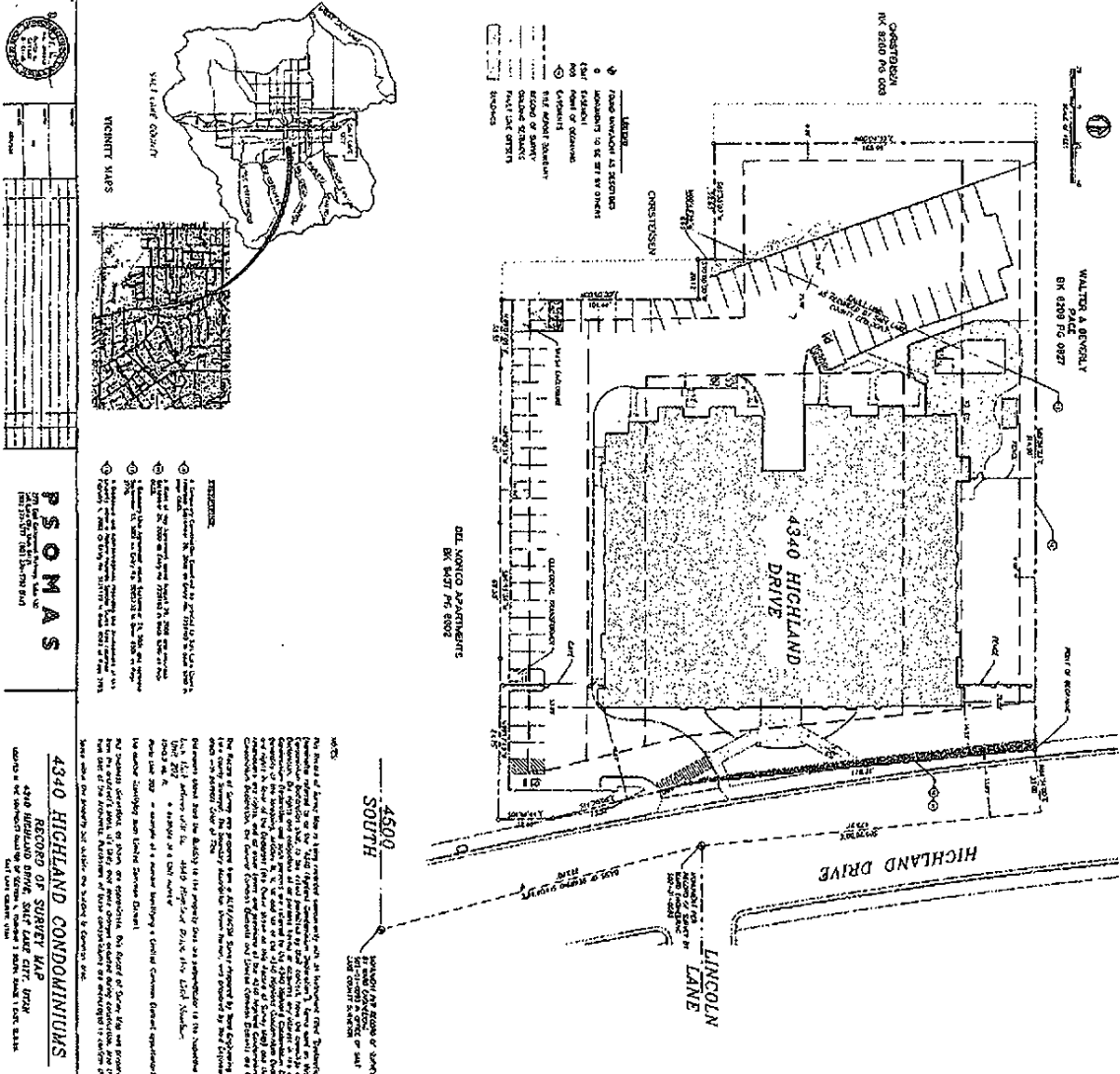
Fee: \$361.00

of Pages: TEN

PLAT

SEE ONLINE PLATS AT
[HTTP://REC.CO.SLC.UT.US/](http://REC.CO.SLC.UT.US/)

~~BK 9918 PG 399~~



SUBDIVISION DESCRIPTION
 This subdivision is a condominium project consisting of 10 units, located at 4340 Highland Drive, City of Denver, Colorado. The project is bounded by Highland Drive to the north, Lincoln Lane to the east, and 4500 South to the south. The project is subject to the provisions of the Colorado Condominium Act, C.R.S. 557.

PROPERTY ASSOCIATION
 The property association is a legal entity created for the purpose of owning, managing, and maintaining the common areas of the project. The association will be responsible for the maintenance and repair of the building, grounds, and other common areas. The association will also be responsible for the collection of dues from the owners and the enforcement of the rules and regulations of the project.

OWNER'S CERTIFICATE
 I, the undersigned, being the duly authorized representative of the City of Denver, Colorado, do hereby certify that the information contained in this plat is true and correct to the best of my knowledge and belief. I further certify that the project is in compliance with all applicable laws and regulations, including the Colorado Condominium Act, C.R.S. 557.

ACKNOWLEDGMENT
 I, the undersigned, do hereby acknowledge that I have read and understand the contents of this plat and the rules and regulations of the project. I further acknowledge that I agree to be bound by the terms and conditions of this plat and the rules and regulations of the project.

SEVERAL EASEMENTS
 The project is subject to several easements, including utility easements, access easements, and other easements. The location and extent of these easements are shown on this plat.

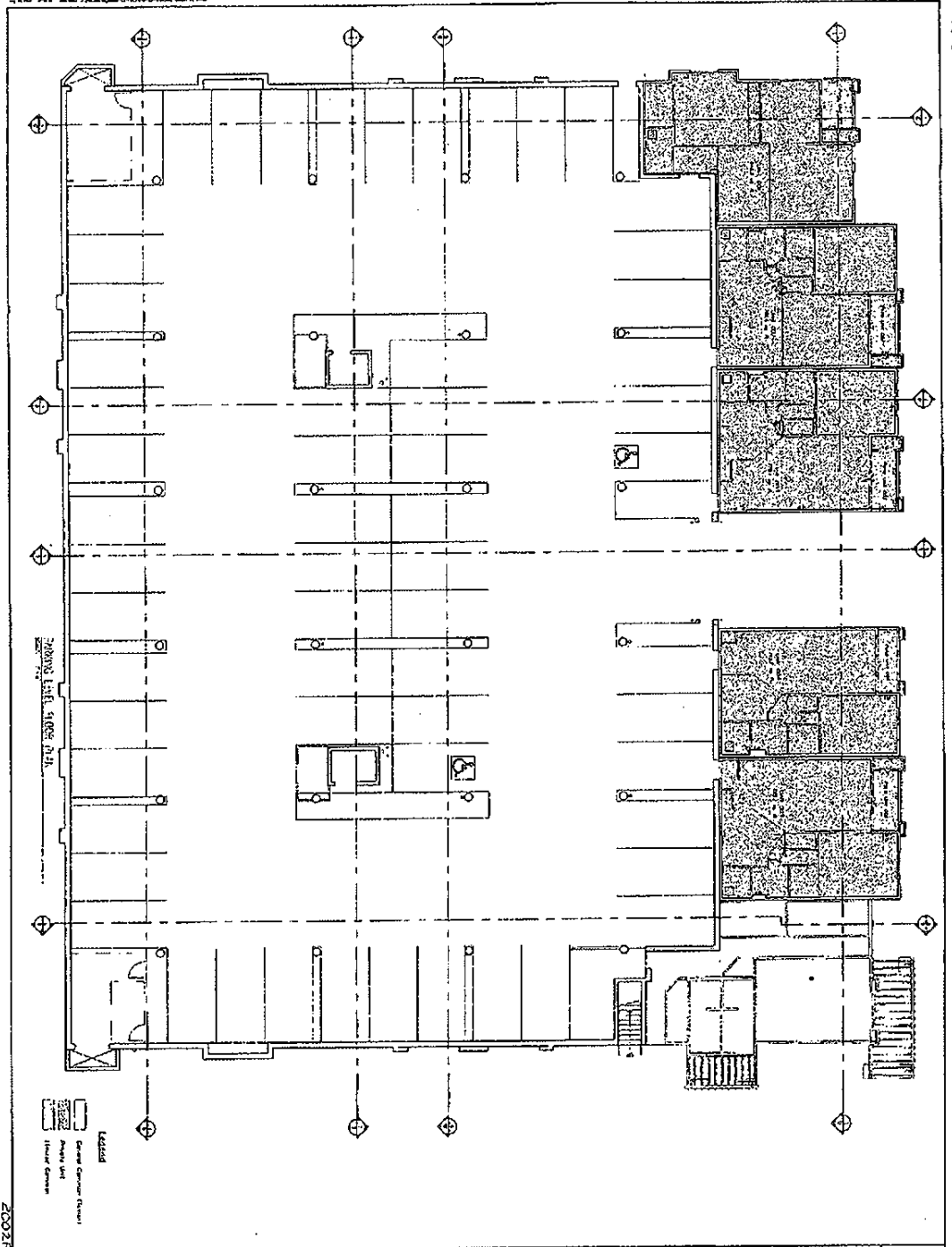
SHOULD BE 1 OF 10

4340 HIGHLAND DRIVE
 RECORD OF SUBDIVISION MAP
 4340 HIGHLAND DRIVE, SUITE 400, DENVER, CO 80202

P S O M A S
 P. SOMAS
 1535 BROADWAY, SUITE 1000
 DENVER, CO 80202

4340 HIGHLAND DRIVE
 RECORD OF SUBDIVISION MAP
 4340 HIGHLAND DRIVE, SUITE 400, DENVER, CO 80202

SEVERAL EASEMENTS
 The project is subject to several easements, including utility easements, access easements, and other easements. The location and extent of these easements are shown on this plat.



20002P-225

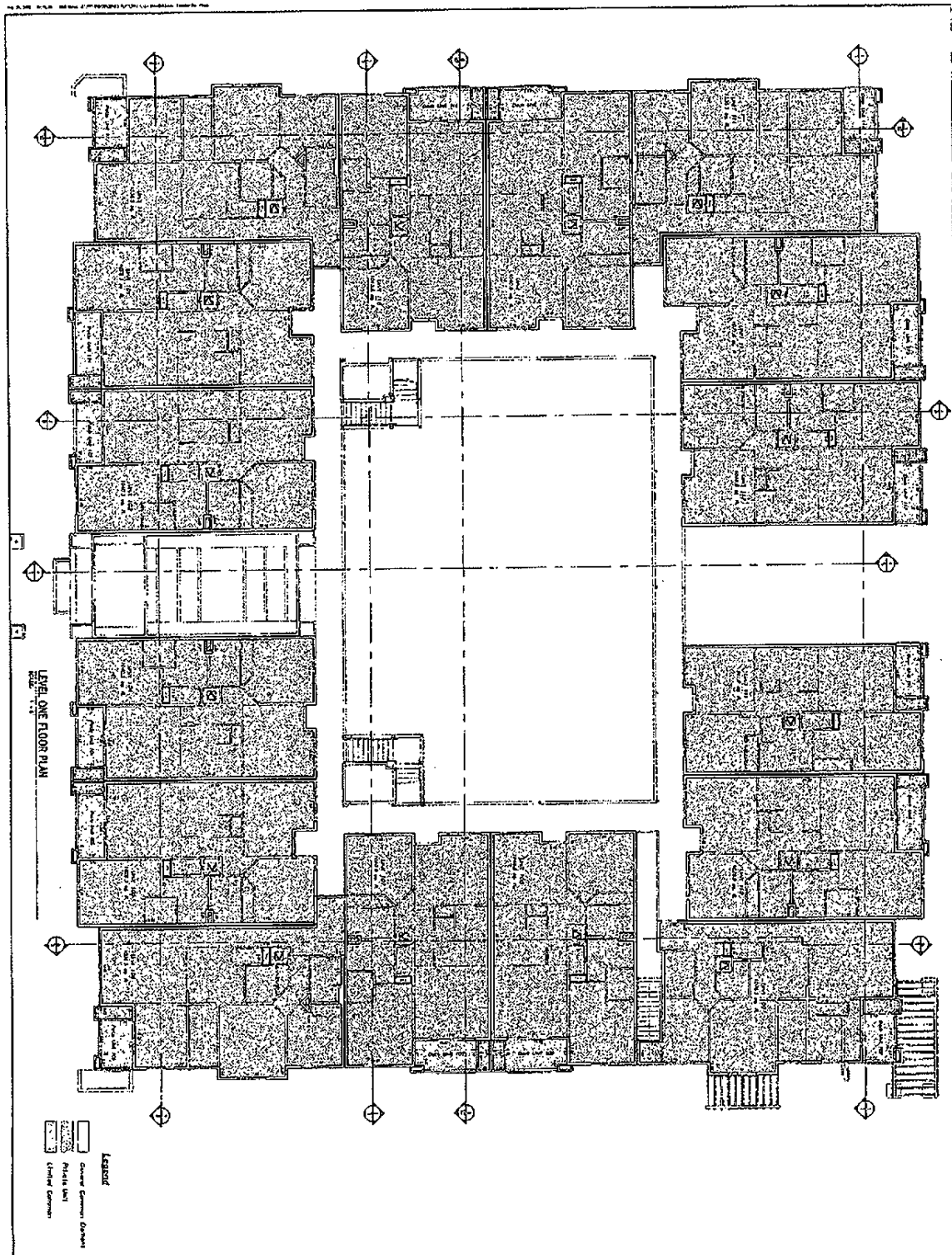
NO.	DATE	DESCRIPTION
1		
2		

PSOMAS
 201 East Commercial Street, Suite 100
 Chicago, IL 60601-1000
 TEL: 312.467.1000
 FAX: 312.467.1001

DATE: 02/22/01
 DRAWN BY: [Signature]

**4340 HIGHLAND CONDOMINIUM
 RECORD OF SURVEY
 PARKING LEVEL FLOOR PLAN**

DATE: 02-22-2002
 SCALE: 1" = 10'
 DRAWING NO.: 01-01-001



LEVEL ONE FLOOR PLAN

Legend
 Stippled Pattern: Owner's Common
 Dashed Line: Private Unit
 Solid Line: Limited Common

2002 P-275

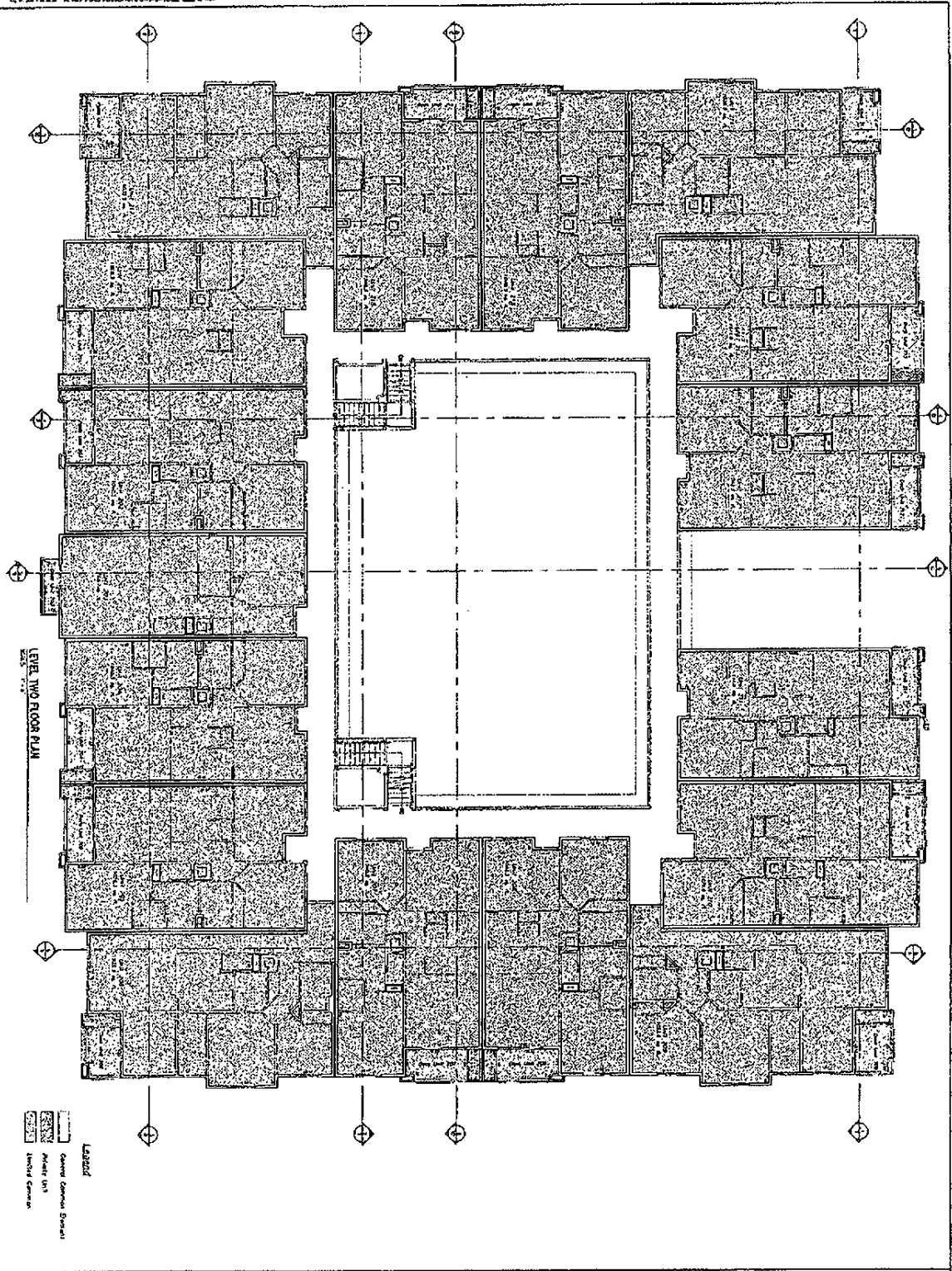
NO.	REVISION
1	AS SHOWN
2	
3	
4	
5	
6	
7	
8	
9	
10	

PSOMAS
 2075 East Colfax Avenue, Suite 100
 Denver, CO 80202
 (303) 733-7371 FAX (303) 733-7372

DATE: 06-17-2002
 DRAWN BY: MLL
 CHECKED BY: MLL
 SCALE: 1/8" = 1'-0"

4340 HIGHLAND CONDOMINIUM
RECORD OF SURVEY
LEVEL ONE FLOOR PLAN

06-17-2002
 1" = 1'-0"
 5/10/02



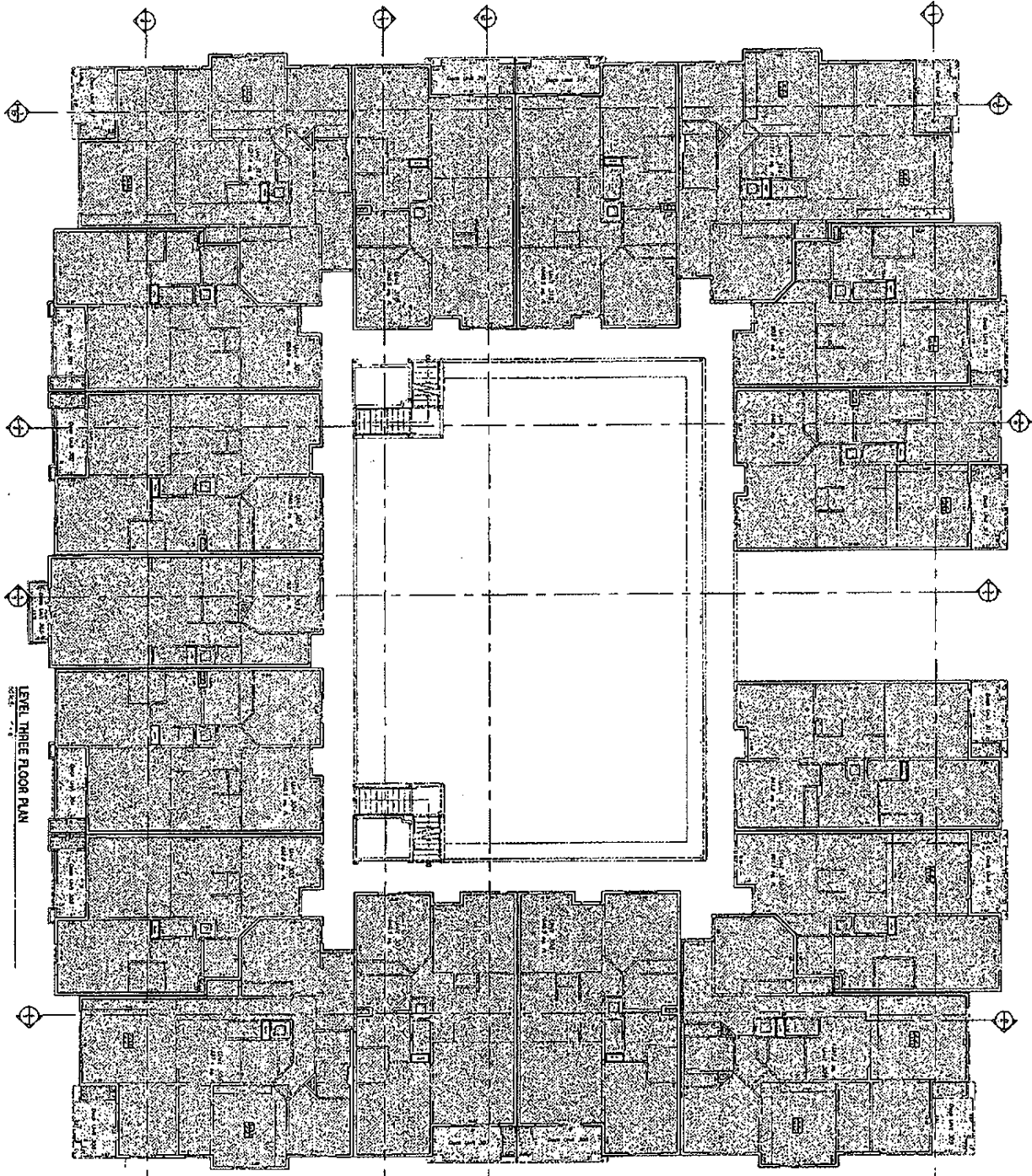
Legend
 General Common Element
 Access Unit
 Limited Common

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

PSOMAS
 1011 1st Street, Suite 100
 St. Louis, MO 63102-1001
 TEL: 314-433-7400
 FAX: 314-433-7401

4340 HIGHLAND CONDOMINIUM
 RECORD OF SURVEY
 LEVEL TWO FLOOR PLAN

20 99-7022
 1" = 6'
 8/1/98 JDD



LEVEL THREE FLOOR PLAN

Legend
 Stippled pattern: General Common Element
 Dotted pattern: Private Unit
 Solid line: Limited Common

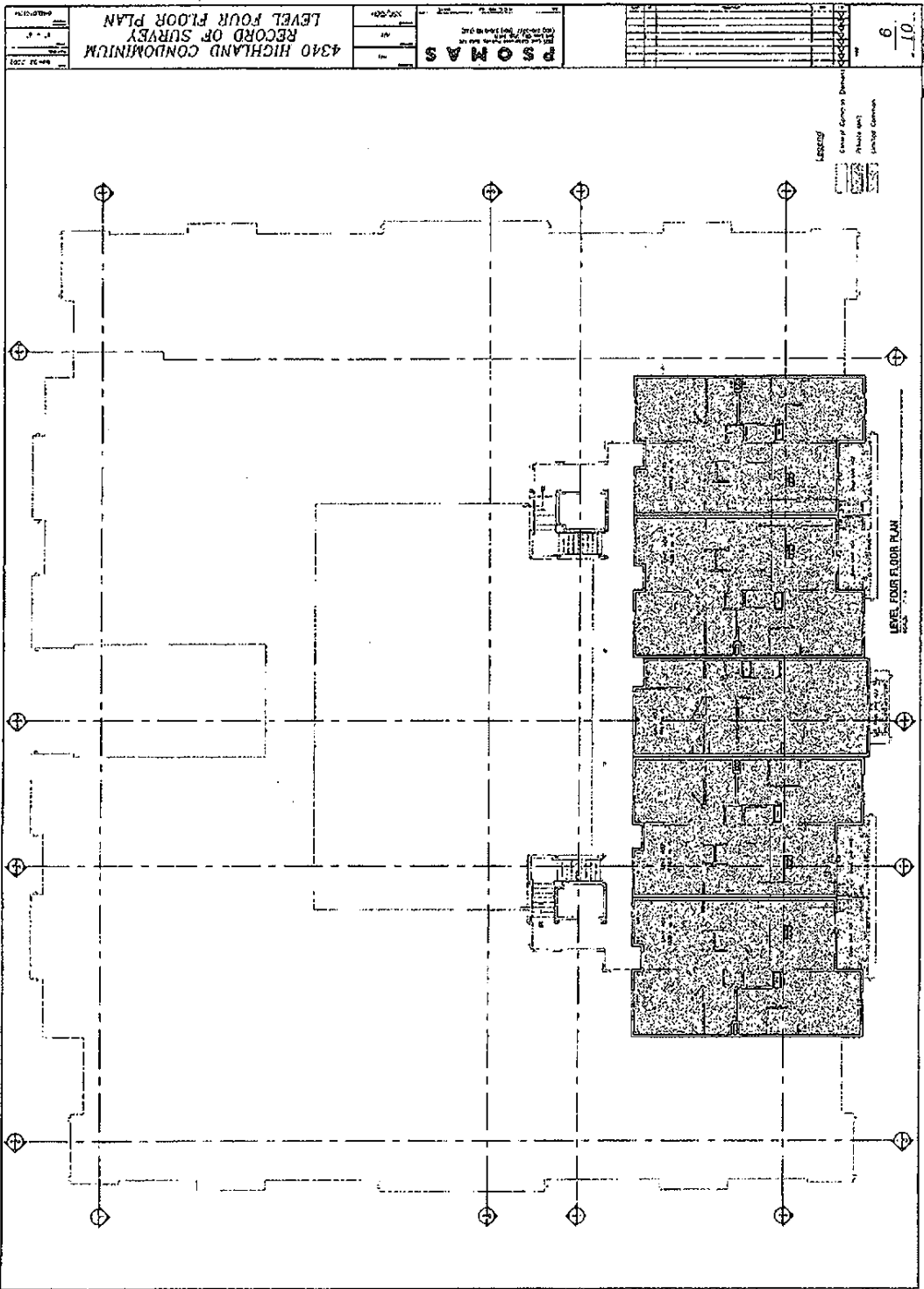
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---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

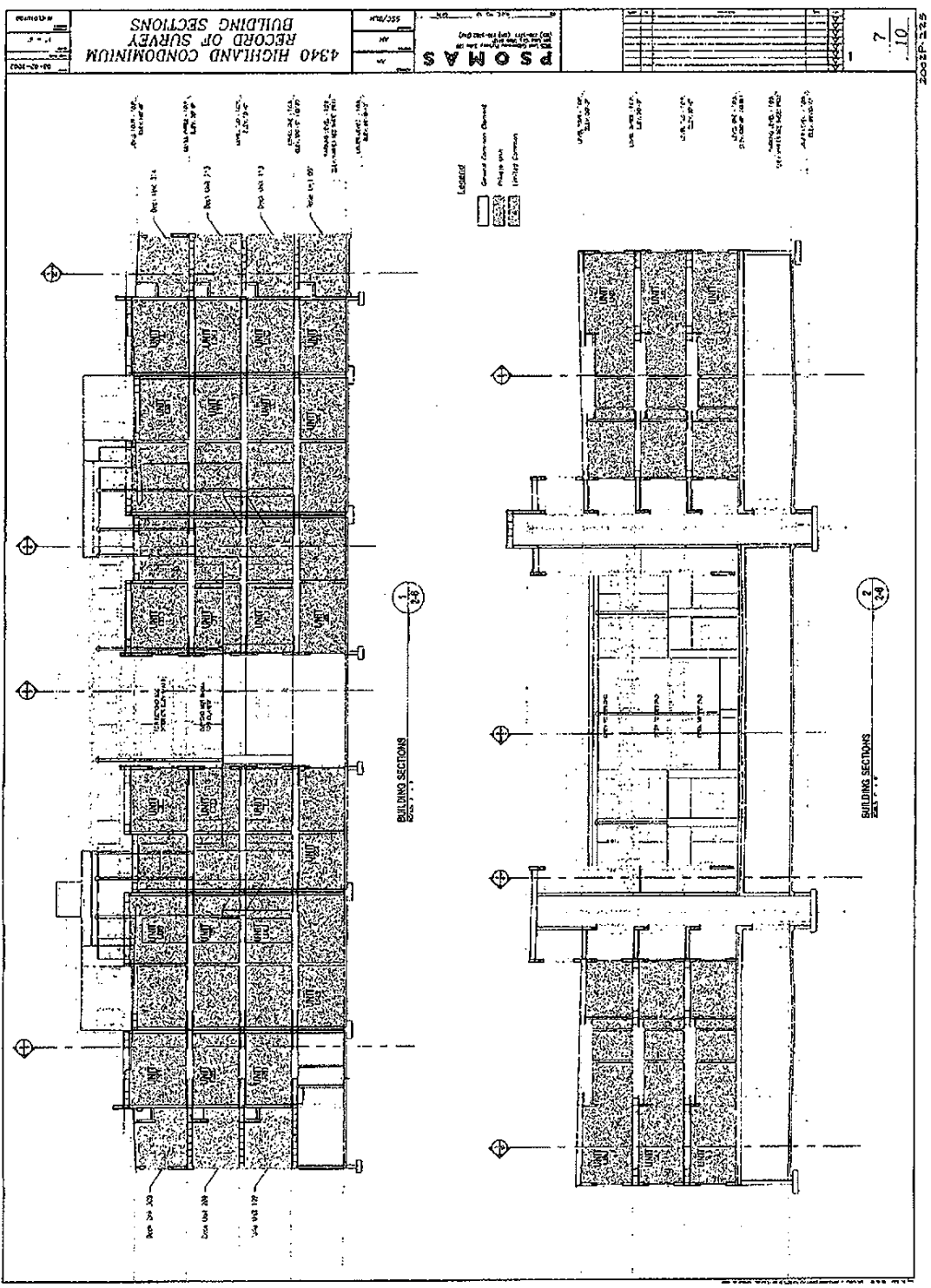
PSOMAS
 702 East Delaware Parkway, Suite 120
 2nd York City, NY 10012
 (917) 750-3177 (917) 270-3182 (fax)

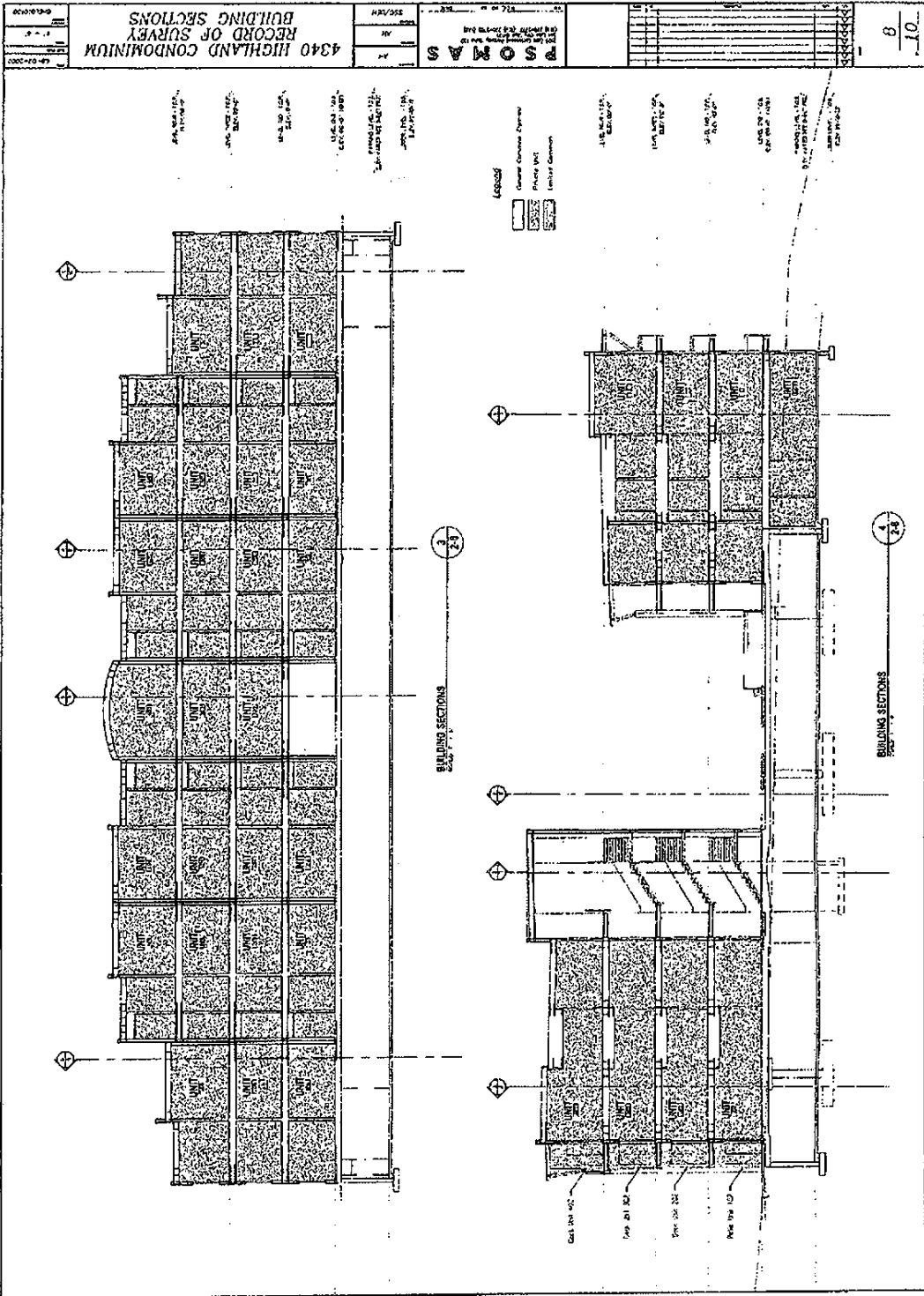
AK
 JH
 SSC/DH

4340 HIGHLAND CONDOMINIUM
RECORD OF SURVEY
LEVEL THREE FLOOR PLAN

08-02-2022
 1" = 8'
 SHD-218106





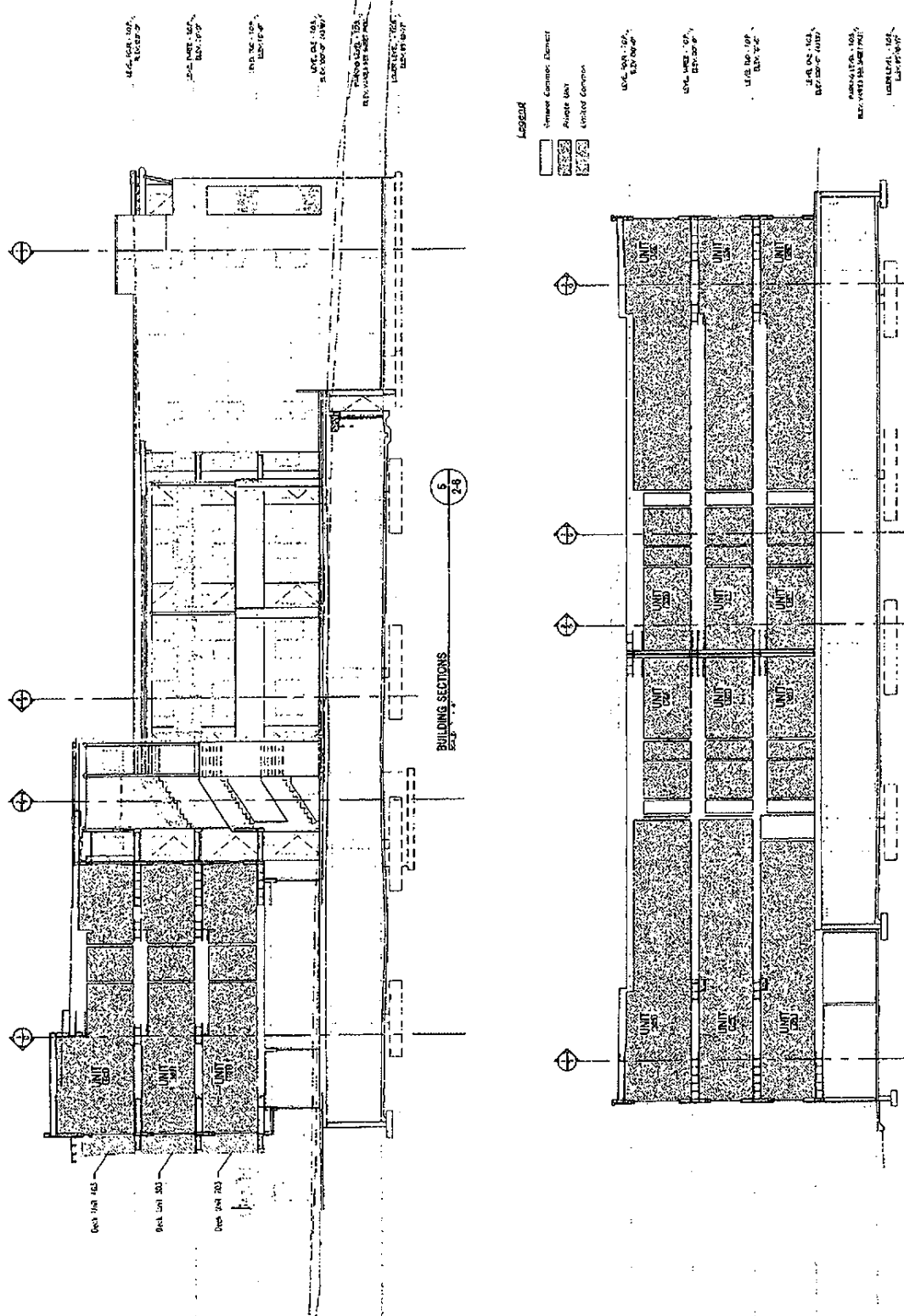


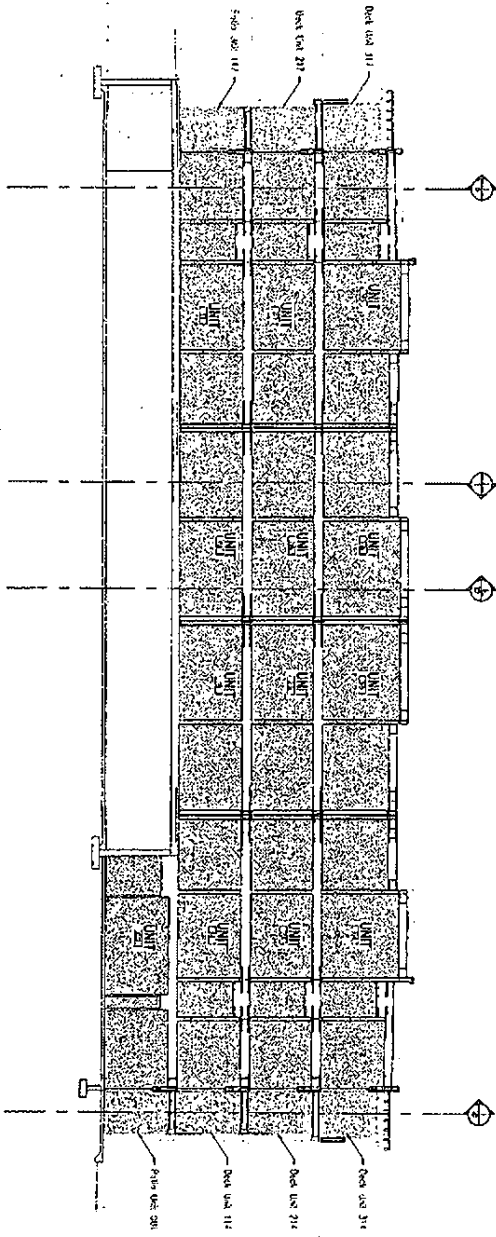
10
6
7507-255

B S O M A S
222 1st Avenue, Suite 215
New York, NY 10003
Tel: (212) 279-1100
Fax: (212) 279-1101

SSC/004
AM
AM

4340 HIGHLAND CONDOMINIUM
RECORD OF SURVEY
BUILDING SECTIONS
09-07-2002



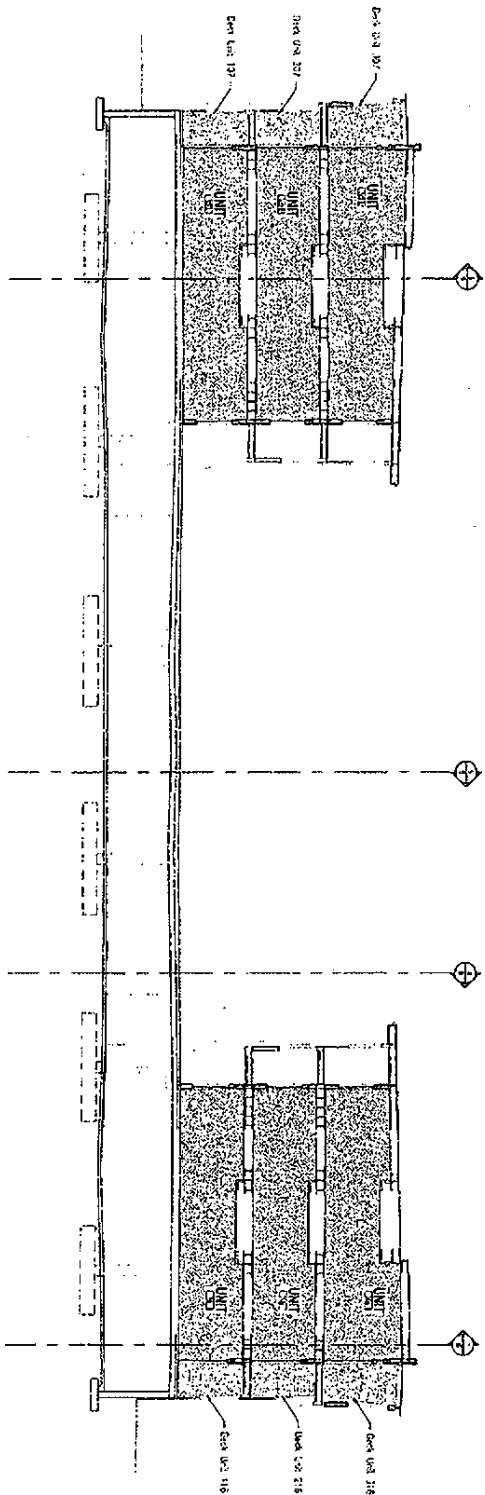


BUILDING SECTIONS
7
20

LEGEND

- General Common Element
- Private Unit
- Limited Common

UNIT 210: 1200 sq. ft., Elev. 150.0'
 UNIT 211: 1200 sq. ft., Elev. 150.0'
 UNIT 212: 1200 sq. ft., Elev. 150.0'
 UNIT 213: 1200 sq. ft., Elev. 150.0'
 UNIT 214: 1200 sq. ft., Elev. 150.0'
 UNIT 215: 1200 sq. ft., Elev. 150.0'
 UNIT 216: 1200 sq. ft., Elev. 150.0'
 UNIT 217: 1200 sq. ft., Elev. 150.0'
 UNIT 218: 1200 sq. ft., Elev. 150.0'
 UNIT 219: 1200 sq. ft., Elev. 150.0'
 UNIT 220: 1200 sq. ft., Elev. 150.0'
 UNIT 221: 1200 sq. ft., Elev. 150.0'
 COMMON ELEMENTS: 10%
 ELEVATIONS ARE BASED ON
 10/15/2005, 10.0'
 SEE DRAWINGS



BUILDING SECTIONS
8
20

10 / 10

PSOMAS
 1995 East Montgomery Parkway, Suite 101
 244 Lake City Park Drive
 (404) 242-3177 (404) 242-1242 (fax)

DATE:	04/11/05
BY:	AS
APP:	AS
CHK:	SSC/DCH

**4340 HIGHLAND CONDOMINIUM
 RECORD OF SURVEY
 BUILDING SECTIONS**

NO.	04-02-2602
DATE	04/11/05
SCALE	1" = 4'
BY	04/11/05

APPENDIX C

PERCENTAGE OF OWNERSHIP
INTEREST IN THE COMMON ELEMENTS

(Attached)

4340 Highland Condominium Association Proposed Fee
Structure

Unit Number	Bed	Bath	Sq. Ft.	Percentage
1	1	1	848	1.3816%
2	1	1	790	1.2671%
3	1	1	778	1.2675%
4	1	1	714	1.1632%
5	1	1	788	1.2836%
101	2	2	1,028	1.6748%
102	2	2	1,041	1.6960%
104	2	2	1,041	1.6960%
105	2	2	1,028	1.6748%
106	2	2	1,037	1.6895%
107	2	2	1,041	1.6960%
108	2	2	1,041	1.6960%
109	2	2	1,077	1.7548%
110	2	2	1,030	1.6781%
111	2	1	942	1.5347%
112	2	2	1,043	1.6993%
113	2	2	1,072	1.7465%
114	2	2	1,037	1.6895%
115	2	2	1,041	1.6960%
116	2	2	1,041	1.6960%
117	2	2	1,037	1.6895%
201	2	2	1,028	1.6748%
202	2	2	1,041	1.6960%
203	1	1	759	1.2366%
204	2	2	1,041	1.6960%
205	2	2	1,028	1.6748%
206	2	2	1,037	1.6895%
207	2	2	1,041	1.6960%
208	2	2	1,041	1.6960%
209	2	2	1,084	1.7660%
210	2	2	1,072	1.7465%
211	2	1	942	1.5347%
212	2	2	1,043	1.6993%
213	2	2	1,072	1.7465%
214	2	2	1,037	1.6895%
215	2	2	1,041	1.6960%
216	2	2	1,041	1.6960%
217	2	2	1,037	1.6895%
301	1	1	858	1.3978%
302	2	2	1,041	1.6960%
303	1	1	769	1.2529%
304	2	2	1,041	1.6960%
305	1	1	858	1.3978%
306	3	2	1,327	2.1619%
307	2	2	1,041	1.6960%
308	2	2	1,041	1.6960%
309	3	2	1,387	2.2597%
310	1	1	902	1.4695%
311	2	2	942	1.5347%
312	2	2	1,041	1.6960%
313	1	2	904	1.4728%
314	3	2	1,327	2.1619%
315	2	2	1,041	1.6960%
316	2	2	1,041	1.6960%
317	3	2	1,327	2.1619%
401	3	2	1,383	2.2532%
402	2	2	1,039	1.6927%
403	1	1	768	1.2512%
404	2	2	1,039	1.6927%
405	3	2	1,383	2.2532%
Total			51,380	

APPENDIX D

PARKING SPACE ALLOCATION

(Attached)

4340 Highland Condominium
Parking Stall Assignment

Unit No	Parking Stall No
001	6
002	42
003	14
004	1
005	3
101	18
102	60
104	8
105	23
106	31
107	19
108	9
109	26
110	4
111	49
112	16
113	20
114	51
115	32
116	56
117	41
201	50
202	29
203	47
204	53
205	11
206	34
207	44
208	54
209	12
210	36
211	45
212	57
213	27
214	28
215	25
216	48
217	52
301	46
302	39
303	55
304	32
305	59
306	10
307	37
308	5
309	15
310	38
311	24
312	43
313	58
314	30
315	22
316	40
317	35
401	2
402	17
403	13
404	21
405	7

APPENDIX E

BY-LAWS OF ASSOCIATION

(Attached)

**AMENDED AND RESTATED
BY-LAWS
OF
4340 HIGHLAND HOMEOWNERS ASSOCIATION**

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**AMENDED AND RESTATED
BY-LAWS
OF
4340 HIGHLAND HOMEOWNERS ASSOCIATION**

**ARTICLE I
General Provisions**

The Association is responsible for the overall administration of the Property through its duly elected Board. The Association shall have such powers, not inconsistent with the Act, as are now or may hereafter be granted by the Utah Revised Nonprofit Corporations Act. The Association shall have and exercise all powers necessary or convenient to effect any or all of the purposes for which the Association is organized and to do every other act not inconsistent with any law and which may be appropriate to promote and attain the purposes set forth in the Act or the Condominium Instruments.

The provisions of these By-Laws, the Act, the Declaration and all other Condominium Instruments, and any and all rules and regulations that relate to the use of a Unit or the Common Elements shall be applicable to any person leasing a Unit. All such provisions shall be deemed to be incorporated into any lease executed with respect to any Unit. The capitalized terms used but not defined herein that are defined in the Second Amended and Restated Declaration of Condominium 4340 Highland Condominium Project pursuant to the Utah Condominium Ownership Act shall have the same meaning as ascribed to such terms in the Declaration.

**ARTICLE II
Members**

Section 1. Classes of Members, Membership, and Termination Thereof. The Association shall have one class of members. The designation of such class and the qualifications of the members of such class shall be as follows:

Each Unit Owner shall be a member of the Association, and such membership shall terminate upon the sale or other disposition of such member's Unit, at which time the new Unit Owner shall automatically become a member of the Association. Such termination shall not relieve or release any such former Unit Owner from any liability or obligation incurred under or in any way connected with the condominium or the Association, during the period of such ownership and membership in the Association. Furthermore, such termination shall not impair any rights or remedies which the Board or others may have against such former Unit Owner arising from, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto. No certificates of stock or other certificates evidencing membership shall be required to be issued by the Association.

Section 2. Votes and Voting Rights.

(a) Until the date of the first annual meeting of the members, as provided in Article III, Section 1 hereof, no member of the Association shall have the right to elect the Board of Trustees; all such members of the Board shall be appointed and shall hold office as provided in Article IV, Section 2 of these By-Laws.

(b) Commencing with the date of the said first annual meeting of the members, the total number of votes of all members shall be one hundred (100). Each member shall be entitled to the number of votes equal to his or her percentage ownership interest in the Common Elements (as defined in the Declaration) at the time any matter is submitted to a vote of the members.

(c) If a Unit is owned by more than one person, the voting rights with respect to such Unit shall not be divided, but shall be exercised as if the Unit Owner consisted of only one person in accordance with the proxy or other designation made by the persons constituting such Unit Owner. Any proxy must be executed in writing by the Unit Owner or his or her duly authorized attorney in fact, must bear the date of execution, and shall be invalid after eleven (11) months from the date of its execution. If only one of the multiple owners of a Unit is present, and if any one of the multiple owners casts the votes allocated to that Unit without protest to the person presiding over the meeting being made promptly by any of the other Owners of the Unit, there is deemed to be majority agreement.

(d) Any specified percentage of the members, whether majority or otherwise, for purposes of voting or for any other purpose, wherever provided in these By-Laws, shall mean such percentage of the total number of votes herein above set forth. Such percentage shall be computed in the same manner as is a specified percentage of the Unit Owners of the condominium as provided in the Declaration, provided, however, that when thirty percent (30%) or fewer of the Units, by number, possess over fifty percent (50%) in the aggregate of the votes as provided herein, any percentage vote of the members specified herein or in the Declaration shall require the specified percentage by number of Units rather than by percentage of interest in the Common Elements allocated to Units that would otherwise be applicable.

Section 3. Transfer of Membership. Membership in this Association is not transferable or assignable, except as provided in Article II, Section 1 hereof.

Section 4. Installment Contracts. Anything herein to the contrary notwithstanding, in the event of a sale of a Unit, the purchaser of such Unit from a seller other than the Developer pursuant to an installment contract for deed shall, during such times as he or she resides in the Unit, be counted toward a quorum for purpose of election of members of the Board at any meeting of the Unit Owners called for the purposes of electing members of the Board, shall have the right to vote for the election of members of the Board and to be elected to and serve on the Board unless the seller expressly retains in writing any or all of such rights. In no event may the seller and purchaser both be counted toward a quorum, be permitted to vote for a particular office or be elected and serve on the Board. Satisfactory evidence of the installment contract

shall be made available to the Association or its agents. "Installment Contract" shall mean a contract for the purchase of a Unit where the buyer agrees to make multiple payments towards the purchase price of such Unit and the seller agrees to convey title to such Unit upon receipt of all payments provided for in such contract.

ARTICLE III Meetings of Members

Section 1. Annual Meeting. The first annual meeting of the members shall be held on such date as is fixed by the Developer, which date shall in no event be later than the earlier of (a) three (3) years from the date the Declaration is recorded in the Office of the Recorder of Deeds of Salt Lake County, Utah, (b) sixty (60) days from the date when seventy-five (75%) of the Units have been conveyed by the Declarant, or (c) such earlier time as selected by the Developer. Thereafter, an annual meeting of the members for the purpose of electing Board members and for the transaction of such other business as may come before the meeting shall be held on the first Tuesday after the anniversary date of the first annual meeting or such other date as is selected by the Board which date is within sixty (60) days before or after the first Tuesday after the anniversary date of the first annual meeting, provided, however, that no such meeting need be held less than one year after the first annual meeting of the members. If the election of members of the Board shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the members called as soon thereafter as conveniently may be.

Section 2. Special Meetings. Special meetings of the members may be called by the Board, the President, or not less than twenty percent (20%) of the members. All matters to be considered at special meetings of the members called by not less than twenty percent (20%) of the members shall first be submitted in writing to the Board not less than ten (10) days prior to the date of the special meeting of the members called to consider such matters.

Section 3. Place and Time of Meeting. All meetings of the members shall take place at such reasonable place or time designated by the Board or the person or persons calling the meeting.

Section 4. Notice of Meetings. Written or printed notice stating the purpose, place, day and hour of any meeting of members shall be mailed or delivered to each member entitled to vote at such meeting, not less than ten (10) days nor more than thirty (30) days before the date of such meeting, by or at the direction of the President or the Secretary, or the officer or persons calling the meeting, provided that notice of the first annual meeting of the members shall be mailed or delivered not less than twenty-one (21) nor more than thirty (30) days before the date of such meeting. The notice of a meeting shall be deemed mailed when deposited in the United States mail addressed to the member at his or her address as it appears on the records of the Association, with proper postage thereon prepaid.

Section 5. Quorum. The members present at a meeting in person or by proxy, holding twenty percent (20%) of the votes which may be cast at any meeting, shall constitute a

quorum at such meeting. If a quorum is not present at the commencement of any meeting of members, the meeting shall be adjourned and may only be called again in accordance with the provisions of these By-Laws.

Section 6. Proxies. At any meeting of members, a member entitled to vote may vote either in person or by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy, and every proxy must bear the date of execution. Any proxy distributed by the Board for election of members of the Board shall give Unit Owners the opportunity to designate any person as the proxy holder and shall give the Unit Owner the opportunity to express a preference for any of the known candidates for the Board or to write in a name.

Section 7. Manner of Acting. Except as set forth below and except as otherwise required by the Declaration or the Act, any action to be taken at any meeting of the members at which a quorum is present shall be upon the affirmative vote of more than fifty percent (50%) of the members represented at such meeting. The following matters shall require the affirmative vote of not less than sixty-six and two-thirds percent (66 2/3%) of all the members at a meeting duly called for that purpose:

- (a) Merger or consolidation of the Association;
- (b) Sale, lease or exchange or other disposition (excluding the mortgage or pledge) of all, or substantially all, of the property and assets of the Association; or
- (c) The purchase and sale of land or Units on behalf of the Unit Owners.

ARTICLE IV Board

Section 1. In General. The affairs of the Association shall be managed by its Board of Trustees, which shall act as the Board of Trustees of the condominium as provided in the Act and the Declaration.

Section 2. Number, Tenure and Qualifications. The initial number of members of the Board shall be three (3) until the turnover by the Developer of the Association, at which time the Board shall be made up of a minimum of three (3) members and a maximum of seven (7) members. Until the date of the first annual meeting of the members as hereinabove provided, members of the Board shall be the directors named in the Articles of Incorporation of the Association; otherwise, the members of the Board shall be as appointed by the Developer. Such members of the Board shall hold office until the first annual meeting of the members. Commencing with the date of the first annual meeting of the members, the members of the Board shall each be elected solely by, from and among, the members and shall be classified with respect to the time for which they severally hold office into two (2) classes, with each member of the Board in each class to hold office until his or her successor is elected and qualified. The two

members who receive the most votes will serve for a two (2) year term and the remaining elected members who receive the next highest number of votes will serve for a one (1) year term. Those members of the Board, excluding the two members who receive the highest number of votes, shall hold a term expiring one year after the first annual meeting, and the two members of the Board who received the most votes shall hold a term expiring in two (2) years thereafter. At each annual meeting of the members commencing with the first annual meeting of the members, the successors of the class of members of the Board whose term expires at such meeting shall be elected by a vote of a plurality of the members present at such meeting, to hold office for a term expiring at the annual meeting of members to be held in the second year following the year of their election. All members of the Board shall be elected at large. The Board elected at such first annual meeting shall be the initial Board of Trustees. Each member of the Board shall hold office without compensation. In the event that a member of the Board is a legal entity other than a natural person or person, then any shareholder, officer or director of such corporation, partner of such partnership, beneficiary or individual trustee of such trust, or manager of such other legal entity, may be eligible to serve as a member of the Board. Notwithstanding the above, only one person from each Unit may be a member of the Board. A member of the Board may succeed himself or herself in office.

Section 3. Election. At each annual meeting of the members, the members shall be entitled to vote for candidates naming for the Board. The candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected. Any candidate for election to the Board or such candidate's representative shall have the right to be present at the counting of the ballots at such election. The Board may disseminate to Unit Owners biographical and background information about candidates for election to the Board if (a) no preference is expressed in favor of any candidate; and (b) reasonable efforts to identify all candidates are made and all candidates are given an opportunity to include biographical and background information in the information to be disseminated.

Section 4. Regular Meetings. A regular annual meeting of the Board shall be held immediately after, and at the same place as, the annual meeting of members. The Board shall, by regulations which the Board may from time to time adopt, provide the time and place for the holding of additional regular meetings of the Board, provided that the Board shall meet at least four times per year.

Section 5. Special Meetings. Special meetings of the Board may be called by or at the request of the President or any two members of the Board. The person or persons permitted to call special meetings of the Board may fix the time and place for holding any special meeting of the Board called by them.

Section 6. Notice. Written notice of any special meeting of the Board shall be mailed or delivered to all members of the Association at least forty-eight (48) hours prior to date of such special meeting. Written notice of regular meetings of the Board shall be mailed or delivered to all members of the Association at least forty-eight (48) hours prior to the date of such meeting. All such notices shall be deemed to be mailed when deposited in the United States mail addressed to each member at his or her address as it appears on the records of the Association, with proper postage thereon prepaid. The business to be transacted at, or the

purpose of any regular or special meeting of the Board, shall be specified in the notice. Notices of a regular meeting of the Board need not be served on members of the Board. However, copies of said notices of meetings of the Board shall be posted in entranceways or other conspicuous places in the condominium designated by the Board at least forty-eight (48) hours prior to the meeting.

Section 7. Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If less than a majority of the members of the Board are present at the commencement of said meeting, the meeting shall be adjourned and may only be called again in accordance with the provisions of these By-Laws.

Section 8. Manner of Acting. The act of a majority of the members of the Board present at a meeting at which a quorum is present at the commencement of the meeting shall be the act of the Board, except where otherwise provided by law or in the Condominium Instruments.

Section 9. Vacancies. Any vacancy occurring in the Board by reason of death, removal or resignation of a member of the Board shall be filled by a two-thirds vote of the remaining members of the Board. A member elected to fill a vacancy shall be elected until the next annual meeting of the members of the Association; provided that if a petition signed by members of the Association holding twenty percent (20%) of the votes in the Association requesting a meeting of the members to fill the vacancy for the balance of the unexpired term of his predecessor, the term of the member so elected by the Board shall terminate thirty (30) days after the filing of the petition and a meeting of the members for the purpose of filling such vacancy for such unexpired term shall be called no later than thirty (30) days following the filing of such petition. Members of the Board, including those appointed by the Developer, may resign at any time by written resignation delivered or mailed to any officer of the Association, which resignation shall be effective upon receipt of said resignation. If as the result of death, removal or resignation of a member of the Board, no member of the Board remains in office, a special meeting of the members of the Association may be called to fill all vacancies for the unexpired term of the members of the Board.

Section 10. Removal. From and after the date of the first annual meeting of the members, any member of the board may be removed from office by the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of all the members of the Association at a special meeting called for such purpose.

Section 11. Adoption of Rules and Regulations. All rules and regulations, or amendments thereto, shall be adopted by the Board in a meeting of the members called for the specific purpose of discussing the proposed rules and regulations, notice of which contains the full text of the proposed rules and regulations. No quorum is required at such meeting of the members. No rules or regulations may impair any rights guaranteed by the First Amendment to the Constitution of the United States or Section 15 of Article I of the Utah Constitution. Such rules and regulations shall be effective sixty (60) days after their adoption, provided that the members may veto the rules or regulations at a special meeting of the members called for such

purpose, and held before the effective date of the rule or regulation, by a vote of sixty-six and two-thirds percent (66 2/3%) of all the members of the Association.

Section 12. Open Meetings. All meetings of the Board, whether regular or special, shall be open to the members of the Association except for meetings:

(a) To discuss litigation when an action against or on behalf of the Association has been filed and is pending in a court or administrative tribunal, or when the Board finds that such an action is probable or imminent;

(b) To consider information regarding appointment, employment or dismissal of an employee; or

(c) To discuss violations of rules and regulations of the Association or a Unit Owner's unpaid share of Common Expenses.

Any vote on the above matters shall be taken at a meeting or portion thereof open to any member. Any member may record the proceedings at meetings required to be open by the Act or these By-Laws by tape, film, or other means, subject to reasonable rules and regulations prescribed by the Board to govern the right to make such recordings.

Section 13. Contracts. Following the first annual meeting of the members, the Board may not enter into a contract with a current board member or with a corporation or partnership in which a board member or a board member's immediate family has a twenty-five percent (25%) or more interest, unless notice of intent to enter the contract is given to Unit Owners within twenty (20) days after a decision is made to enter into the contract and Unit Owners are afforded an opportunity by filing a petition, signed by twenty percent (20%) of the Unit Owners, for an election to approve or disapprove the contract. Such petition shall be filed within twenty (20) days after such notice and such election shall be held within thirty (30) days after filing the petition. For purposes of this Section 13, a board member's immediate family means the board member's spouse, parents and children.

Section 14. Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the operation, care, upkeep, maintenance, replacement and improvement of the Common Elements. However, nothing in the foregoing sentence shall be deemed to invalidate any provision in the Condominium Instruments placing limits on expenditures for capital additions or capital improvements to the Common Elements (other than for purposes of repairing, replacing or restoring existing portions of the Common Elements) by the Board without the prior approval of the Unit Owners.

Section 15. Board's Determination Binding. In the event of any dispute or disagreement between any Unit Owners relating to the Property, or any questions of interpretation or application of the provisions of the Declaration, the rules and regulations or By-Laws, the determination thereof by the Board shall, absent manifest error, be final and binding on each and all of such Unit Owners.

ARTICLE V
Officers

Section 1. Officers. The officers of the Association shall be a President, one or more Vice-Presidents, (the number thereof to be determined by the Board), a Treasurer and a Secretary.

Section 2. Election and Term of Office. The officers of the Association shall be elected annually by the Board at the regular annual meeting of the Board, from among the members of the Board. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as conveniently possible. Vacancies may be filled or new offices created and filled at any meeting of the Board. Each officer shall hold office until his or her successor shall have been duly elected and shall have qualified. An officer may succeed himself or herself in office. Officers shall serve without compensation.

Section 3. Removal. Any officer elected by the Board may be removed by a majority vote of the members of the Board.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the principal executive officer of the Association and shall in general supervise and control all of the business and affairs of the Association. The President shall preside at all meetings of the members and of the Board. The President may sign, with the Secretary or any other appropriate officer of the Association authorized by the Board, any deeds, mortgages, contracts, or other instruments which the Board has authorized to be executed and any amendment to the Declaration or Plat as provided in the Act, and, in general, shall perform all duties incident to the office of the President and such other duties as may be prescribed by the Board from time to time.

Section 6. Vice-President. In the absence of the President or in the event of inability or refusal to act, the Vice-President, if elected, (or in the event there be more than one Vice-President, the Vice-Presidents in the order of their election) shall perform the duties of the President, and, when so acting, shall have all the power of, and be subject to all the restrictions upon, the President. Any Vice-President shall perform such other duties as from time to time may be assigned by the President or by the Board.

Section 7. Treasurer. The Treasurer shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever (except that the Treasurer shall not have to give receipts for regular assessment payments), and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article VII of these By-Laws; and in general, perform all

the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the President or by the Board.

Section 8. Secretary. The Secretary shall keep the minutes of the meetings of the members and of the Board in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; receive all notices on behalf of the Association and, together with the President, execute on behalf of the Association, amendments to Condominium Instruments and other documents as required or permitted by the Declaration, these By-Laws or the Act; be custodian of the records of the Association; and in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the President or by the Board.

ARTICLE VI Powers and Duties of the Association and Board

Section 1. General Duties, Powers, Etc. of the Board. The Board shall exercise for the Association all powers, duties and authority vested in the Association by the Act and the Condominium Instruments, including but not limited to the following:

- (a) Operation, care, upkeep, maintenance, replacement and improvement of the Common Elements, and, to the extent not imposed on the Unit Owners, the Limited Common Elements, including payments therefor, including approving payment vouchers therefor;
- (b) Preparation, adoption and distribution of the annual budget for the Property;
- (c) Levying and spending of assessments;
- (d) Collection of assessments from Unit Owners;
- (e) Employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Common Elements;
- (f) Obtaining adequate and appropriate kinds of insurance, which shall include a fidelity bond insuring the Association, the Board and the Unit Owners against loss of funds as a result of the fraudulent or dishonest acts of any employee of the Association or its management agent or of any other person handling the funds of the Association, the Board or the Unit Owners in such amounts as the Board shall deem necessary. The premium for such fidelity bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without thirty (30) days prior written notice to all holders of first mortgages of record;
- (g) Owning, conveying, encumbering, leasing and otherwise dealing with Units and land conveyed to or purchased by it;

(h) Adoption and amendment of rules and regulations covering the details of the operation and use of the Property, but no such rule shall make improper or illegal any program or activity of the Developer which immediately prior to the adoption or amendment of the rule or regulation was otherwise proper or legal hereunder.

(i) Keeping of detailed, accurate records of the receipts and expenditures affecting the use and operation of the Property,

(j) Having access to each Unit, from time to time, as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units;

(k) Paying real property taxes, special assessments, any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed and levied upon the Property. In the event that borrowing is to be incurred for the purposes of this subsection, approval of the membership shall not be required.

(l) Imposing charges for late payments of a Unit Owner's assessments, or any other expenses lawfully agreed upon, and after notice and an opportunity to be heard, levying reasonable fines for violation of the Declaration, By-Laws, and rules and regulations of the Association;

(m) Assigning its right to future income, including the right to receive assessments;

(n) Recording the dedication of a portion of the Common Elements to a public body for use as, or in connection with, a street or utility where authorized by the Unit Owners under the provisions of the Declaration;

(o) Recording the granting of an easement for the laying, maintenance and repair of cable television cable or other communications infrastructure or for construction, maintenance and repair of a project to prevent water damage or erosion where authorized by the Unit Owners under the provisions of the Declaration;

(p) Borrowing money at such rates of interest as it may determine; issuing its notes, bonds and other obligations to evidence such borrowing; and securing any of its obligations by making a mortgage or giving a security interest in all or any of its property or income.

(q) Making reasonable accommodation for the needs of handicapped Unit Owners, required by the Human Rights Act, in the exercise of its powers with respect to the use of Common Elements or approval of modification in an individual Unit.

(r) Establishing and maintaining, if applicable, a system of master metering of public services and collection of payments in connection therewith.

(s) Obtaining, if available and determined by the Board to be in the best interests of the Association, cable television service or other communications infrastructure for all of the Units of the condominium on a bulk identical service and equal cost per unit basis; and to assess and recover the expense as a Common Expense and, if so determined by the Board, to assess each and every Unit on the same equal cost per Unit basis.

In the performance of their duties, the officers and directors, whether appointed by the Developer or elected by the members, shall exercise the care required by a fiduciary of the members, subject to the limitations on financial liability contained elsewhere in these By-Laws and/or in the Articles of Incorporation of the Association.

Section 2. Specific Powers and Duties. Anything herein contained to the contrary notwithstanding, the Association shall have the power.

(a) To engage the services of a manager or managing agent which may be any person, firm or corporation, upon such terms and compensation as the Association deems fit, and to remove such manager or managing agent at any time, provided any agreement with such manager or managing agent shall extend for not more than two years and must be terminable by either party to such agreement without cause and without payment of a termination fee, upon ninety (90) days or less prior written notice;

(b) To engage the services of any persons (including, but not limited to, accountants and attorneys) deemed necessary by the Association at such compensation as is deemed reasonable by the Association, in the operation, repair, maintenance and management of the Property, or in connection with any duty, responsibility or right of the Association and to remove any such personnel at any time;

(c) To establish or maintain one or more bank accounts, or functionally similar accounts such as money market fund accounts, for the deposit of any funds paid to, or received by, the Association;

(d) To invest any funds of the Association in certificates of deposit, money market funds, or comparable investments;

(e) Upon authorization of a two-thirds vote by the members of the Board or by affirmative vote of not less than a majority of the Unit Owners at a meeting duly called for such purpose, the Board acting on behalf of all Unit Owners shall have the power to seek relief from or in connection with the assessment or levy of any real property taxes, special assessments or charges of the State of Utah or any political subdivision thereof or of any lawful taxing or assessing body, and to charge and collect all expenses incurred in connection therewith as Common Expenses.

(f) Nothing herein shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Unit Owners or any of them. The granting of

leases, easements, concessions or licenses as provided in the Declaration shall not be considered conducting an active business for profit.

Section 3. Authorized Expenditures. In addition to the manager, managing agent or other personnel above provided for, the Association shall acquire and make arrangements for, and pay for out of the Maintenance Fund:

(a) Water, waste removal, heating, electricity, telephone and other necessary utility service for the Common Elements and such services to the Units as are not separately metered or charged to the owners thereof.

(b) Such insurance as the Association is required or permitted to obtain as provided in the Declaration.

(c) Landscaping, gardening, snow removal, painting, cleaning, facade examination, tuckpointing, maintenance, decorating, repair and replacement of the Common Elements and Recreational Facilities (but not including the Limited Common Elements not visible from the exterior of the Building, which the Unit Owners enjoying the use there of shall paint, clean, decorate, maintain and repair) and such furnishings and equipment for the Common Elements and Recreational Facilities as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the Common Elements and Recreational Facilities.

(d) Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or assessments which the Association deems necessary or proper for the maintenance and operation of the Property or for the enforcement of any restrictions or provisions contained herein.

(e) Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof which in the opinion of the Association may constitute a lien against the Property or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners is responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens including but not limited to, any interest, late charges, reasonable attorneys' fees, costs of collections and the amount of unpaid fines shall be specially assessed to said Unit Owners and shall, until paid by such Unit Owners, constitute a lien on the interest of such Unit Owners in the Property; which lien may be perfected and foreclosed in the manner provided in Section 57-8-20 of the Act with respect to liens for failure to pay a share of the Common Expenses and such failure or refusal will entitle the Association to exercise all rights and remedies under the Condominium Instruments or the Act or otherwise, arising from the failure of a Unit Owner to pay the Unit Owner's share of Common Expenses.

(f) Landscaping, cleaning, decorating, maintaining and repairing or replacing any Unit or any other portion of the Property which a Unit Owner is obligated to maintain or repair under the terms hereof, if such maintenance or repair is necessary, in the discretion of the

Association, to protect the Common Elements, or any other portion of the Property, and the owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said Unit Owner; provided that the Association shall levy a special assessment against such Unit for the cost of said maintenance or repair and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 57-8-20 of the Act with respect to liens for failure to pay a share of the Common Expense. All expenses, charges and costs of the maintenance, repair or replacement of the Common Elements, and any other expenses, charges or costs which the Association may incur or expend pursuant hereto, shall be approved by the Board by the passage of the annual budget, and a written memorandum thereof prepared and signed by the treasurer, subject to the Act.

(g) If, due to the act or neglect of a Unit Owner or of a member of its family or household pet or of a guest or other authorized Occupant or visitor of such Unit Owner, damage shall be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs, and replacements as may be determined by the Board, to the extent not covered by insurance, as a special assessment and the amount of such special assessment shall constitute a lien on the interest of such Unit Owner in the Property, which lien may be perfected and foreclosed in the manner provided in Section 57-8-20 of the Act with respect to liens for failure to pay a share of the Common Expenses.

As used herein, the term "repairing, replacing and restoring" means to repair, replace or restore deteriorated or damaged portions of the then existing decorating, facilities, structural or mechanical components, interior or exterior surfaces or energy systems and equipment to their functional equivalent prior to the deterioration or damage. In the event the replacement of a Common Elements may result in an improvement over the quality of such Common Elements as originally designed, the Board may provide for such improvement provided, that unless the improvement is mandated by law or is an emergency, if the improvement over and above the functional equivalency of what existed before results in a proposed expenditure in excess of Twelve Thousand Dollars (\$12,000), the Board, upon receipt of a written petition by Unit Owners with twenty percent (20%) of the votes of the Association within fourteen (14) days after the Board's action to approve such expenditure, shall call a special meeting of Unit Owners within thirty (30) days after its receipt of such petition. Unless a majority of the total votes of the Unit Owners are cast at such special meeting to reject the expenditure, the Board's decision to make the expenditure is ratified.

Section 4. Annual Budget.

(a) Each year on or before April 1st, the Board shall estimate the annual budget of Common Expenses (the "Annual Budget") including: the total amount required for the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, all anticipated

assessments and income and each Unit Owner's proposed Common Expense assessment, together with an indication of which portions of the Annual Budget are intended for capital expenditures or repairs or payment of real estate taxes. The Board shall deliver a copy of the proposed Annual Budget to each Unit Owner at least thirty (30) days prior to the adoption thereof. The Association shall give Unit Owners notice as provided in Article III, Section 4, of the By-Laws of the meeting of the Board at which the Board proposes to adopt the Annual Budget, or at which any increase or establishment of any assessment, regular or special, is proposed to be adopted.

(b) If an adopted Annual Budget requires assessment against Unit Owners in any year exceeding one hundred fifteen percent (115%) of the assessments for the preceding year, the Board, upon written petition by Unit Owners representing twenty percent (20%) of the votes of the Association may, within fourteen (14) days of the Board action, petition and require the Board to call a meeting of the Unit Owners within thirty (30) days of the date of filing of the petition to consider the budget. Unless a majority of the votes of the Unit Owners are cast at the meeting to reject the budget, it is ratified whether or not a quorum is present. In determining whether assessments exceed one hundred fifteen percent (115%) of similar assessments in the preceding year, any authorized provisions for reasonable reserves for repair or replacement of the condominium property, and budgeted expenses by the Association which are not anticipated to be incurred on a regular or annual basis shall be excluded from the computation.

(c) The Annual Budget shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements. Each Unit Owner shall be obligated to pay to the Association, or as it may direct, the portion of the Annual Budget assessed to such owner in equal monthly installments (subject to acceleration as hereinafter provided) on or before January 1st of the ensuing year, and on the 1st day of each and every month of said year. The Association does not have the authority to, and cannot, forbear the payment of assessments by any Unit Owners.

(d) The failure or delay of the Association to prepare or serve the Annual Budget on the Unit Owners shall not constitute a waiver or release in any manner of the Unit Owners' obligation to pay the maintenance and other costs and necessary Reserves, as herein provided, whenever the same shall be determined, and, in the absence of any annual or adjusted budget, the Unit Owners shall continue to pay the monthly assessment charges at the then existing monthly rate established for the previous period. The monthly assessment payment which reflects the new Annual Budget and the new monthly established rate for the period shall have been mailed to the Unit Owners and shall be effective fifteen (15) days after mailing as the payment amount for the next assessment payment. If not mailed at least fifteen (15) days before the due date of the assessment, such new monthly rate shall be applicable for the next assessment payment.

(e) Anything herein or in the Declaration to the contrary notwithstanding, the Board may charge to fewer than all Unit Owners such portion of the insurance premium for insurance the Association is required or permitted to obtain which reflects increased charges for coverage on the Units owned by such Unit Owners, on such reasonable basis as the Board shall determine. Such charge shall be considered a Common Expense with respect to the Units owned by such Unit Owners for all purposes herein and under the Declaration.

(f) All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Unit Owners and except for such special adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Unit Owners in their relative percentages of ownership interest in the Common Elements.

Section 5. Annual Accounting.

(a) On or before the 1st day of April of each calendar year commencing 2011, the Association shall supply to all Unit Owners an itemized account of the Common Expenses for the preceding calendar year actually incurred and paid together with an indication of which portions of the Annual Budget were for capital expenditures or repairs or payment of real estate taxes and with a tabulation of the amounts collected pursuant to the budget or assessment, and showing the net excess or deficiency of income over expenditures plus Reserves. Any amount accumulated in excess of the amount required for actual expenses and Reserves in such preceding year shall be maintained as additional Reserves, and any net shortage shall be added, according to each Unit Owner's percentage of ownership of the Common Elements, to the installments due in the succeeding six months after the rendering of the accounting.

(b) The Association shall allow any First Mortgagee to examine the books and records of the Association during reasonable business hours and to receive, on request, annual reports and other financial data prepared by the Association or at its direction.

Section 6. Reserves.

(a) The Association shall build up and maintain a reasonable Reserve as required by applicable laws. The Reserves disclosed in the Association budget distributed in accordance with Section 4 of this Article 6 shall constitute such Reserves. The Association shall also establish such Reserves, individually identified as Capital Reserves and Operating Reserves as defined in Sections 1(f) and 1(r) of the Declaration. The contribution to working capital made at closing by the initial purchasers shall be credited to the Operating Reserve. Extraordinary expenditures not originally included in the Annual Budget which may become necessary during the year shall be charged first against such Reserve. In addition, the Association or the Board shall have the right to segregate all or any portion of the Reserve for any specific replacement or contingency upon such conditions as the Association or the Board deems appropriate.

(b) The Annual Budget shall provide for reasonable Reserves for capital expenditures and deferred maintenance for repair or replacement of the Common Elements. To determine the amount of Reserves appropriate for the Association, the Board shall take into consideration the following: (1) the repair and replacement cost and the estimated useful life of the property the Association is obligated to maintain, including but not limited to structural and mechanical components, surfaces of the Building and Common Elements, and energy systems and equipment; (2) the current and anticipated return on investment of Association funds; (3) any independent professional reserve study the Association may obtain; (4) the financial impact

on Unit Owners, and the market value of the Units, of any assessment increase needed to fund Reserves; and (5) the ability of the Association to obtain financing or refinancing. Anything to the contrary in the foregoing notwithstanding, the Association may elect to waive in whole or in part the Reserve requirements of this section by a vote of not less than 67% of the total votes of the Association. In the event the Association elects to waive all or part of the Reserve requirements of this section, such fact must be disclosed after the meeting at which such waiver occurs by the Association in the financial statements of the Association and highlighted in bold print, and no member of the Board or managing agent of the Association shall be liable, and no cause of action may be brought for damages against these parties, for the lack or inadequacy of Reserve funds in the Annual Budget. If the Association elects to waive all or part of the Reserve requirements, the Association may by a vote of not less than 67% of the total votes of the Association elect to again be governed by the Reserve requirement of this section.

Section 7. Special Assessments.

(a) If sufficient monies are not collected (for any reason, including non-payment of any Unit Owner's assessment) to meet obligations as they fall due, or any non-recurring Common Expense or any Common Expense not set forth in the Annual Budget as adopted, the Board may at any time levy a further assessment, which shall be assessed to the Unit Owners according to each Unit Owner's percentage of ownership in the Common Elements, and which may be payable in one lump sum or in such installments as the Board may determine. The Board shall serve notice of such further assessment on all Unit Owners (as provided in Article III, Section 4, of the By-Laws) by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective and shall be payable at such time or times as determined by the Board, provided, however, that in the event such further assessment exceeds 115% of the assessments for the preceding year, such further assessment for all Units shall not be effective until approved in accordance with Article VI, Section 4(b) hereof. All Unit Owners shall be obligated to pay the further assessment.

(b) The Board may adopt separate assessments for expenditures relating to emergencies or mandated by law without being subject to Unit Owner approval or the provisions of Article VI Section 7(a). Herein, "emergency" implies an immediate danger to the life, health, safety of property of the Unit Owners or the Association or the structural integrity of the Common Elements.

(c) On the date a Condominium Unit is conveyed by Declarant to a Unit Owner, there shall be due and payable to the Association by the new Unit Owner of such Condominium Unit an amount equal to Two Months' Common Expenses assessments which shall be deposited in the Operating Reserve Fund maintained by the Association.

(d) Within thirty (30) days following subjecting a Condominium Unit to the Declaration, Declarant shall deposit with the Association for each such unit a Capital Reserves assessment equal to two (2) months estimated regular assessments which sum shall be deposited in the Capital Reserves Fund maintained by the Association. On the date a Condominium Unit is conveyed by Declarant to a third-party Owner, there shall be due and payable to the Association by the new Owner of such Condominium Unit a Capital Reserves assessment equal to two (2)

months estimated Regular Assessments which shall be deposited in the Capital Reserves Fund. At such time, the Association shall reimburse Declarant for its original contribution to the Working Capital Fund for such Condominium Unit. The Capital Reserves Fund shall be used by the Association to meet unforeseen expenditures or to purchase additional equipment and/or services. The Association shall be prohibited from reimbursing Declarant out of the Capital Reserves Fund for Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits

Section 8. Default in Payment.

(a) If a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Association may assess a service charge of up to four percent (4%) of the balance of which the aforesaid charges and assessments for each month, or part hereof, that said balance, or any part thereof remains unpaid. In addition to any remedies or liens provided by law, if a Unit Owner is in default in the monthly payment of the aforesaid charges or assessments for sixty (60) days, all other monthly payment of charges and assessments due for the calendar year in which such default occurs shall accelerate and become immediately due and payable. The Association may bring suit for and on behalf of itself and as representative of all Unit Owners, to enforce collection thereof or to foreclose the lien therefor as provided by law; and there shall be added to the amount due, the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the court. In addition, the Association may also take possession of such defaulting Unit Owner's interest in the Property and maintain an action for possession of the Unit in the manner provided by law. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his or her Unit.

(b) Each such assessment, together with interest, court costs, late charges, reasonable attorneys' fees, costs of collections, and the amount of any unpaid fines shall also be the personal obligation of the person who was the Unit Owner at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law.

Section 9. Unit Owner Accounts. Upon ten (10) days notice to the Association, the payment of a reasonable fee, if any, fixed by the Association, not to exceed Fifteen Dollars (\$15.00), any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner.

Section 10. Rules and Regulations. The Association may, pursuant to the provisions of Article IV, Section II and Article VI, Section I (h) of these By-Laws, from time to time, adopt or amend such rules and regulations governing the operation, maintenance, beautification and use of the Common Elements and the Units, not inconsistent with the terms of the Declaration, as it sees fit, and the Unit Owners shall conform to, and abide by, such rules and regulations. Written notice of such rules and regulations shall be delivered to all Unit Owners and occupants. A violation of such rules or regulations shall be deemed a violation of the terms of the Declaration.

Section 11. Duties. No Unit Owner may assign, delegate, transfer, surrender or avoid the duties, responsibilities and liabilities of a Unit Owner under the Act, the Condominium Instruments or the rules and regulations of the Association. Any such attempted assignment, delegation, transfer, surrender or avoidance shall be deemed void.

ARTICLE VII Contracts, Checks, Deposits and Funds

Section 1. Contracts. The Board may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer and countersigned by the President of the Association.

Section 3. Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board may elect.

Section 4. Gifts. The Board may accept on behalf of the Association any contribution, gift, bequest, or devise for the general purposes or for any special purpose for the Association.

ARTICLE VIII Books and Records

Section 1. Maintaining Books and Records. The Association shall keep and maintain the following records of the Association, or true and complete copies of these records:

- (a) the Association's Declaration, By-Laws and plats of survey, and all amendments of these;
- (b) the rules and regulations of the Association, if any;
- (c) if the Association is incorporated as a corporation, the articles of incorporation of the Association and all amendments to the articles of incorporation;
- (d) minutes of all meetings of the Association and the Board for the immediately preceding 7 years;

- (e) all current policies of insurance of the Association;
- (f) all contracts, leases, and other agreements then in effect to which the Association is a party or under which the Association or the Unit Owners have obligations or liabilities;
- (g) a current listing of the names, addresses, and weighted vote of all members entitled to vote;
- (h) ballots and proxies related to ballots for all matters voted on by the members during the immediately preceding 12 months, including but not limited to the election of the Board; and
- (i) the books and records of account for the Association's current and 10 immediately preceding fiscal years, including but not limited to itemized and detailed records of all receipts and expenditures
- (j) such other records of the Association as are available for inspection of a not-for-profit corporation pursuant to the General Not For Profit Corporation Act of 1986 of the State of Illinois, as amended.

Section 2. Availability for Examination. Any member shall have the right to inspect, examine, and make copies of the records described in subdivisions (a), (b), (c), (d) and (e) of Section I of this Article, in person or by agent, at any reasonable time or times, at the Association's principal office. In order to exercise this right, a member must submit a written request to the Board or its authorized agent, stating with particularity the records sought to be examined. Failure of the Board to make available all records so requested within thirty (30) days of receipt of the member's written request shall be deemed a denial

Section 3. Limited Availability for Examination. Except as otherwise provided in Section 5 of this Article, any member shall have the right to inspect, examine and make copies of the records described in subdivisions (f), (g), (h) and (i) of Section 1 of this Article, in person or by agent, at any reasonable time or times but only for a proper purpose, at the Association's principal office. In order to exercise this right, a member must submit a written request, to the Board or its authorized agent, stating with particularity the records sought to be examined and a proper purpose for the request. Subject to the provisions of Section 5 of this Article, failure of the Board to make available all records so requested within thirty (30) business days of receipt of the member's written request shall be deemed a denial; provided, however, that if the Board has adopted a secret ballot election process, then the Board shall not be deemed to have denied a member's request for records described in subdivision (h) of Section I of this Article if voting ballots, without identifying Unit Owners, are made available to the requesting member within thirty (30) days of receipt of the member's written request.

Section 4. Retrieval and Reproduction Costs. The actual cost to the Association of retrieving and making requested records available for inspection and examination under this Article shall be charged by the Association to the requesting member. If a member requests

copies of records requested under this Article, the actual costs to the Association of reproducing the records shall also be charged by the Association to the requesting member.

Section 5. Records Not Available for Inspection. Notwithstanding the provisions of Section 3 of this Article, unless otherwise directed by court order, the Association need not make the following records available for inspection, examination, or copying by the members:

(a) documents relating to appointment, employment, discipline, or dismissal of Association employees;

(b) documents relating to actions pending against or on behalf of the Association or the Board in a court or administrative tribunal;

(c) documents relating to actions threatened against, or likely to be asserted on behalf of, the Association or the Board in a court or administrative tribunal;

(d) documents relating to Common Expenses or other charges owed by a member other than the requesting member; and

(e) documents provided to the Association in connection with the lease, sale or other transfer of a Unit by a member other than the requesting member.

ARTICLE IX Fiscal Year

The fiscal year of the Association shall begin on the first day of January and shall end on the last day of December.

ARTICLE X Waiver of Notice

Whenever any notice whatsoever is required to be given under the provisions of the Utah Condominium Ownership Act, the Utah Revised Nonprofit Corporation Act, the provisions of the articles of incorporation or By-Laws of the Association, or the Declaration, a waiver thereof (subject to all the provisions of such instruments) in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XI Amendments to By-Laws

These By-Laws may be altered, amended or repealed and new By-Laws may be adopted upon the affirmative vote of sixty-six and two-thirds percent (66 2/3%) of all of the members at a

regular meeting or at any special meeting called for such purpose, by Recording an instrument in writing setting forth such alteration, amendment or repeal, which is signed and acknowledged by the President or Vice-President and the Secretary of the Association and which contains an affidavit by an officer of the Board certifying that the necessary affirmative vote of the members of the Association has been obtained.

Notwithstanding anything contained in these By-Laws to the contrary, no amendment to or repeal of Article XII of these By-Laws, or adoption of any bylaw or provision of these By-Laws which has the effect of increasing Board member liability, shall apply to or have any effect on the rights of any individual referred to in Article XII for or with respect to acts or omissions of such individual occurring prior to such amendment or repeal or the adoption of such bylaw or provision.

ARTICLE XII Exculpation and Indemnification

Section 1. Limitation of Board Member Liability. No Board member shall be liable to the Association or its members for any mistake of judgment or for any other acts or omissions of any nature whatsoever as a Board member, except for any acts or omissions found by a court to constitute willful misconduct in the performance of the Board member's duty as a Board member.

Section 2. Mandatory Indemnification and Advancement. The Association shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, an action by or which exists as a right of the Association), by reason of his or her acting as a Board member of the Association, (or his or her service at the request of the Association in any other capacity for or on behalf of the Association) against any expenses (including attorneys' fees), judgments, fines, ERISA or other excise taxes, penalties, and amounts paid in settlement actually and reasonably incurred by such person in respect thereof. Expenses that may be subject to indemnification hereunder shall be paid in advance of the final disposition of the action, suit or proceeding, to the full extent permitted by applicable law, subject to the Association's receipt of any undertaking required thereby. The provisions of this Article shall be deemed to constitute a contract between the Association and each Board member who serves in such capacity at any time while this Article and the relevant provisions of the applicable laws are in effect, and each such Board member shall be deemed to be serving as such in reliance on the provisions of this Article, and an repeal of any such provisions or of such Article shall not affect any rights or obligations then existing with respect to any action, suit or proceeding theretofore or thereafter brought or threatened based in whole or in part upon any such state of facts.

Section 3. Right of Claimant to Bring Suit. If a claim under Section 2 of this Article is not paid in full within thirty (30) days after a written claim is received by the Association, the claimant may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim, and, if successful in whole or in part, the claimant shall also be entitled to

be paid the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any, has been provided by the Association) that the claimant has not met the standards of conduct that make it permissible under the applicable laws for the Association to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Association. Neither the failure of the Association to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because the claimant has met the applicable standard of conduct set forth in the applicable laws, nor the actual determination by the Association that the claimant has not met such standard of conduct shall be a defense to the action or create a presumption that claimant has not .

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board, or otherwise, both as to action in his official capacity and as to action in other capacity while holding such office, and shall continue as to a person who has ceased to be a member of the Board or an officer of the Association.

Section 4. Other Indemnification Rights. The rights of indemnification and advancement provided by this Article are not exclusive of any other right to indemnification or advancement provided by law, agreement or otherwise and shall apply to actions suits or proceedings commenced after the date hereof, whether or not arising from acts or omissions occurring before or after the adoption hereof, and shall continue as to a person who has ceased to be a director of the Association and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE XIII Construction

(a) Nothing hereinabove contained shall in any way be construed as altering, amending or modifying the Declaration. Said Declaration and these By-Laws shall always be construed to further the harmonious, beneficial, cooperative and proper use and conduct of the Property. If there is any inconsistency or conflict between these By-Laws and the aforesaid Declaration, the provisions of the Declaration shall control.

(b) All words and terms used herein which are also used in the Declaration shall have the same meaning as provided in the Declaration for such words and terms.

(c) The words, "Board of Directors" and "Director" may be substituted for the words "Board" and "Member of the Board," respectively, wherever they appear herein.

(d) Whenever possible, each provision of these By-Laws shall be interpreted in such a manner as to be effective and valid under applicable law; but if any provision of these By-Laws or the application of these By-Laws to any party or circumstances is prohibited by or invalid

under applicable law, such provision shall be effective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions hereof or the application of such provision to other parties or circumstances.