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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
ELM TREE CONDOMINIUM ASSN
ATTN: ADRIENNE DAVIS
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TAYLOREVILLE UT
BY: SLR, DEPUTY - WI 22 P.

AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
ELM TREE CONDOMINIUMS
A UTAH CONDOMINIUM PROJECT

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
OF ELM TREE CONDOMINIUMS, A UTAH CONDOMINIUM PROJECT (the
"Declaration") is made and executed this _____ day of _____, 2011 by Elm Tree
Condominium HOA, Inc., a Utah Non-profit Corporation.

RECITALS

WHEREAS, a Declaration of Condominium of Elm Tree Condominiums, a Utah
Condominium Project (the "Original Declaration") was recorded by the Declarant, State
Security Investment #1 Ltd., a Utah Limited Partnership by and through its General Partner
State Security Investment Management Group, a Utah Corporation, on December 19, 1983 in
the Office of the Salt Lake County Recorder, in Book 5515, beginning at page 2754;

WHEREAS, an Amendment to Condominium Declaration, providing a new Exhibit
"A" to the Original Declaration, was recorded on July 30, 1984 in the Office of the Salt Lake
County Recorder, in Book 5577, beginning at page 984.

WHEREAS, pursuant to Section 16-05 of the Original Declaration, the Original
Declaration may be amended if Owners holding at least two-thirds (2/3) of the Total Votes of
the Association (as defined in the Original Declaration) consent and agree to such amendment
by instruments which are duly recorded in the office of the Salt Lake County Recorder.

WHEREAS, Owners holding at least two-thirds (2/3) of the Total Votes of the
Association have consented and agreed to this Declaration, as evidenced by Exhibit "A."

NOW, THEREFORE, the Original Declaration is hereby amended by striking and
deleting the Original Declaration in its entirety and substituting the following Declaration:

22-48

21-36-104-001
thru
21-36-104-025

ARTICLE I
DEFINITIONS

1.01 "Defined Terms." Unless the context clearly indicates otherwise, certain
terms as used in this declaration shall have the meanings set forth in this Article I.

1.02 "Association" shall mean Elm Tree Condominium HOA, Inc., a Utah
nonprofit corporation, organized to be the Association referred to herein.

1.03 "Board" shall mean the governing board of the Association, appointed or
elected in accordance with the Declaration and in accordance with the Articles of Incorporation
and Bylaws of the Association.

1.04 "Building" shall mean the two buildings containing twenty-four units
that have been constructed on the land, as such buildings are shown on the Map.

1.05 "Common Areas" shall mean all areas and facilities of the Project,
except the Units, including without limitation the land within the Project which has been and
continues to be submitted to the provisions of the Condominium Act; all common areas and
facilities as hereinafter described and as designated as such in the Map; all limited common
areas and facilities as hereinafter described and as designated as such in the Map; the
foundations, bearing walls, bearing columns, girders, beams, supports, perimeter walls and
roofs, designed for the use of more than one Unit in each of the buildings; all common entries,
common hallways, sidewalks, walkways, patios, landscaped and planted areas, parking areas,
access roads, driveways, fences and walls which are designated as common areas and facilities
on the Map; exterior lighting, and storage areas; installations such as power, light, gas, hot and
cold water, and all flues, ducts, conduits and wires used in connection therewith which serve
the Project as a whole and which are used in common; all apparatus and installations existing
for common use, recreational and all community facilities; and all other parts of the Project
necessary or convenient to the existence, maintenance and safety of the Project as a whole, or
normally in common use, and all areas and facilities designated as common areas and facilities
in the Condominium Act; provided, however, that 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 only that Unit shall
be deemed a part of that Unit, while any portions thereof serving more than one Unit or any
portion of the common areas and facilities shall be deemed a part of the common areas and
facilities.

1.06 "Common Expense Fund" shall mean the fund created or to be created
pursuant to the provisions of Article IX of this Declaration and into which monies of the
Association shall be deposited.

1.07 "Condominium" shall mean a Unit, the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit "B" attached hereto and incorporated herein by reference and all other appurtenances.

1.08 "Condominium Act" shall mean the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq, as amended.

1.09 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.10 "FNMA" shall mean the Federal National Mortgage Association.

1.11 "Institutional Holder" shall mean a mortgagee which is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which has a first mortgage lien on any Unit in the Project.

1.12 "Land" shall mean the land upon which the Project is situated, as more particularly described in Exhibit "C."

1.13 "Lease" shall mean any agreement for the leasing or rental of the property.

1.14 "Limited Common Areas" shall mean any Common Areas designated as reserved for the use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.03 hereof. Any porches, parking stalls, or storage facilities that are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number of designation.

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

1.16 "Map" shall mean the Record of Survey Map of Elm Tree Condominiums, recorded in the office of the Salt Lake County Recorder on December 19, 1983, in Book 83-12 at page 173 (a copy of which is attached as Exhibit "D") and any Supplemental Maps pertaining to the Project and recorded in the office of the County Recorder of Salt Lake County, Utah.

1.17 "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

1.18 "Mortgagee" shall mean any persons named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage or Deed of Trust.

1.19 "Mortgage Servicer" shall mean a Mortgagee who services any Mortgage or Deed of Trust on any individual Condominium Unit in the Project in behalf of FHLMC or FNMA.

1.20 "Owner" shall mean the person or persons owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.21 "Project" shall mean the land, the buildings, and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

1.22 "Total Votes of the Association" shall mean the total number of votes appertaining to all Condominiums in the Project, as shown in Exhibit "B" attached hereto.

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

ARTICLE II

SUBMISSION AND DIVISION OF PROJECT

2.01 Submission to Condominium Act. The Land, the Building, and all other improvements now or hereafter made in or upon the land are hereby submitted to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as Elm Tree Condominiums, a Utah Condominium Project. All of the property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set

forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums, further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the land and shall be binding upon any person acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02 **Division into Condominiums.** The Project is divided into twenty-four Condominiums, each such Condominium consisting of a Unit and an apartment undivided interest in the Common Areas, as set forth in Exhibit "B" attached hereto.

ARTICLE III

BUILDINGS AND IMPROVEMENTS

3.01 **Buildings and Improvements.** The Buildings and other improvements constructed or to be constructed on the land are described on the Map. The following information regarding the Buildings is also contained on the Map: (i) the number of floors and basements in the Buildings and (ii) the number of Units on each floor of the Buildings. The Buildings' exterior walls are frame walls covered with stucco. The Buildings' roofs are pitch shingle roofs. Partition walls between units are stud walls covered with gypsum sheet rock. The Buildings are constructed on a concrete slab on grade.

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

3.03 **Description of Common Areas.** The Map contains a description of the Common Areas of the Project.

3.04 **Description of Limited Common Areas.** The Map contains a description of the Limited Common Areas of the Project. The Map also designates the Unit or Units to which each of the Limited Common Areas is reserved.

ARTICLE IV

NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.01 **Interior of Units.** Each Owner shall have the exclusive right to paint, repair, tile, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right to construct

partition walls, fixtures, and improvements within the boundaries of his Unit, provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Board shall consent in writing to such encroachment.

4.02 **Maintenance of Units.** Each Owner shall keep the interior of his Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board, the Board in behalf of the Association shall have the right, at the expense of the Owner and without liability to the said Owner, correct or remediate the unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

4.03 **Right to Combine Units.** With the written consent of the Board, which consent shall not be unreasonably withheld, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Association, any walls, floors, or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units and the structural separations between the two Units shall thereupon become Common Areas.

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

4.05 **Ownership of Common Areas.** The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit "B" attached hereto. The percentages appurtenant to each Unit as shown in said Exhibit "B" shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have

the exclusive right to use and enjoy any limited Common Areas that may be designated for exclusive use by such Owner.

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

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

4.08 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his condominium. Any mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosures by private power of sale, judicial foreclosure, or otherwise.

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

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

4.11 **Description of Condominium.** Every contract for the sale of a Condominium and every other instrument effecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or its

shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

ARTICLE V

EASEMENTS

5.01 **Easements for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encroachments either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any Building or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.02 **Easements for Maintenance, Cleaning and Repair.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

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

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

5.05 **Essentials Deemed Created.** All conveyances of Condominiums within the Project hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE VI

RESTRICTIONS ON USE

6.01 **Primary Residential Use.** All Units within the Project shall be used exclusively for primary residential purposes and for no other purpose.

6.02 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to other Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. The Board shall have the right to adopt rules defining and regulating noxious or offensive activities and may assess reasonable fines for non-compliance with the rules.

6.03 **Signs.** Signs and flags are permitted in the Project, however the Board may adopt rules regarding the time, place, and manner in which the signs and flags may be displayed and may assess reasonable fines for non-compliance with the rules and/or may request that any sign or flag in violation of the rules be promptly removed.

6.04 **Pets and Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas. However, household pets may be kept or housed in Units. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Board shall give reasonable notice to the Owner of the pet; if such annoyance is not discontinued or corrected, the Board may impose fines against the Owner and/or have the pet removed from the Project.

6.05 **No Alterations.** No Owner shall, without the prior written consent of the Board in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impact the structural soundness or integrity of the Building or other improvements, or jeopardize the safety of persons or property or impair any easement or benefit appurtenant to the Project.

6.06 **No Obstructions.** No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board gives prior written consent.

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

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

6.09 **No Commercial Business.** No commercial business shall be permitted within the Project.

6.10 **Leases.** With the exception of a lender in possession of a Condominium following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Condominium for an initial period of less than twelve (12) months, unless the Board gives prior written permission; the lease may be month to month after the initial twelve (12) month period. No Owner shall lease less than the entire Condominium. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles, the Bylaws, Association rules and regulations, and city ordinances, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

6.11 **Smoking.** Smoking is prohibited in the Units and the Board may adopt reasonable rules and regulations regarding smoking in the Common Areas and Limited Common Areas.

6.12 **Rules and Regulations.** Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion of the Board. Reasonable fines may be assessed for non-compliance of any adopted rules and regulations.

**ARTICLE VII
THE ASSOCIATION**

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

7.02 Votes. The number of votes appurtenant to each respective condominium shall be as set forth in Exhibit "B" attached hereto and by this reference made a part hereof. The number of votes appurtenant to each Condominium as set forth in said Exhibit "B" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

7.03 Amplification. The provisions of this Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association, provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

**ARTICLE VIII
CERTAIN RIGHTS AND OBLIGATIONS OF THE
ASSOCIATION AND BOARD**

8.01 The Common Areas. The Board, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, including without limitation Section 8.02 below, shall be responsible for the exclusive management and control of the Common Areas of the Project and shall keep the same in a good, clean,

attractive, safe, and sanitary condition, order, and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including without limitation painting thereof, repair and replacement of exterior trim, roofs and fences, and maintenance of landscaping (except as otherwise provided in Section 8.02 below), common entry, common hallways, walkways, driveways, and parking areas. The Association shall be responsible for the Project's flood control drainage system, including without limitation, the detention areas, catch basin and outfall line. The Association shall also be responsible for maintenance, repair, and replacement of Common Areas within the Building, if any, including without limitation, common utility lines, common facilities, and all improvements and other items located within or used in connection with the Common Areas. The specifications of duties of the Board with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Board in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

8.02 Limited Common Areas. Each Owner shall, at his own expense, keep the Limited Common Areas, including the storage sheds, appurtenant to his Condominium in a clean, sanitary, repaired, and attractive condition. Owners are specifically responsible to maintain, repair, and/or replace the doors and the locks on their assigned storage sheds.

8.03 Manager. If the Board or at least fifty-one percent (51%) of the Total Votes of the Association so elects, the Project may be managed by an experienced, professional Manager or Management Company. The Board may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions, and powers hereunder of the Board as are delegable. The services of any Manager retained by the Board shall be paid for with funds from the Common Expense Fund.

8.04 Miscellaneous Goods and Services. The Board may, in behalf of the Association, obtain and pay for the services of such personnel as the Board shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board, may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration or other governing documents. In addition to the foregoing, the Board, may, in behalf of the Association, acquire and pay for our of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

8.05 Real and Personal Property. The Board may acquire and hold on behalf of the Association real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise, provided that any acquisition or disposition of any real, personal or mixed property by the Board wherein the value of such property exceeds \$5,000 must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose; and

provided further that any disposition, transfer, conveyance, or pledge of the Common Areas (not including the common facilities) of the Project must be approved by (a) at least seventy-five percent (75%) of all First Mortgages (based on one vote for each First Mortgage lien on any Condominium or Condominiums in the Project, and (b) an affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a special meeting of the members of the Association duly called for such purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

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

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

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

ARTICLE IX

ASSESSMENTS

9.01 Agreement to Pay Assessments. Each Owner of any Condominium by the acceptance of instruments of conveyance and transfer, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX.

9.02 Annual Assessments. Annual Assessment shall be computed and assessed against all Condominiums in the Project as follows:

(g) **Common Expenses.** Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with maintenance and operation of the Common Areas and/or furnishing commonly metered utility services and other items common to the Units. Such estimated expenses may include, among other things, the following: Expenses of management, real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.02 shall be part of the Common Expense Fund.

(h) **Apportionment.** Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas.

(i) **Annual Budget.** Annual Assessments shall be determined on the basis of a fiscal year beginning July 1 and ending June 30. The annual budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The annual budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such fiscal year.

(j) **Notice and Approval of Annual Budget.** The Board shall provide a copy of the annual budget to each Owner and notify each Owner as to the amount of the Annual Assessment against his Condominium at least ten (10) days before the beginning of the fiscal year. The annual budget shall automatically become effective unless disapproved by a vote of at least sixty-seven percent (67%) of the Total Votes of the Association at a special meeting of the Owners called for such a purpose. This special meeting shall be held on petition of Owners of at least sixty-seven percent (67%) of the Units in the Project and the petition must be presented to the Board within ten (10) days after delivery of the annual budget and notice of the Annual Assessment. If any annual budget is disapproved or if the Board fails for any reason to decrease the annual budget in any year, then the annual budget most recently in effect, increased by 10%, shall continue in effect until a new budget is determined.

(k) **Payment.** Each Annual Assessment shall be payable in twelve equal monthly installments, one such installment due on the first day of each month

during the year to which the assessment relates. All unpaid installments of any Annual Assessment shall bear interest at the rate of fifteen percent (15%) per annum from the date each such installment becomes due until paid. In addition, in the event that any installment of any Annual Assessment is not paid within fifteen (15) days of the date such installment becomes due, late fees in the amounts as the Board may from time to time determine by resolution may be imposed until such installment is paid. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment, but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(f) **Inadequate Fund.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, the Board may on behalf of the Association levy additional assessments in accordance with the procedure set forth in Section 9.03 below, except that the vote therein specified shall be unnecessary.

9.03 **Special Assessments.** In addition to the Annual Assessments authorized by this Article, the Board may, on behalf of the Association, levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of fifteen percent (15%) per annum from the date such portions become due until paid. In addition, in the event that any Special Assessment is not paid within fifteen (15) days of the date such Special Assessment becomes due, late fees in the amounts as the Board may from time to time determine by resolution may be imposed until such Special Assessment is paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.04 **Lien for Assessments.** All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with penalties, attorney fees, costs, and interest thereon as provided herein or by law, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Board may prepare a written notice of lien

setting forth the unpaid amount, the name of the Owner of the Condominium and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium in the name of the Association.

9.05 **Personal Obligation of Owner.** The amount of any Annual or Special Assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiving the lien securing the same. No owner may void or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.06 **Fines.** Any fines assessed against any Owner for failure to comply with any rules or regulations, together with any penalties, attorney fees, costs and interest thereon, as provided herein, shall constitute a lien against the Condominium and may be collected in the same manner as any unpaid Annual or Special Assessment and shall be the personal obligation of the Owner of such Condominium to the Association.

9.07 **Statement of Account.** Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner, Mortgagee, or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the following: The amount of the unpaid assessments, fees, and/or fines, if any, with respect to such Condominium; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; and credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board fails upon written request to issue such a written statement, any unpaid assessments with respect to such Condominium that became due prior to the written request of such written request by the Board shall become subordinate to a lien held by the person or entity requesting such statement.

9.08 **Personal Liability of Purchaser.** Subject to the provisions of Section 9.05, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments and fines against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.09 **Reserves.** The Board shall conduct, or cause to be conducted, a reserve analysis before July 1, 2012 and shall review and update, if necessary, the reserve analysis at least every two (2) years thereafter. The reserve analysis shall determine (1) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the Annual Budget or other funds of the Association and (2) the appropriate amount of the reserve fund. The Board shall present the reserve analysis, and any updates, annually to the Members of the Association and shall provide an opportunity for Members to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount. The Board shall maintain any reserve fund separate from other funds of the Association. The Board may not use money in the reserve fund: (1) for daily expenses unless upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association or (2) for any purpose other than the purpose for which the reserve fund was established.

ARTICLE X INSURANCE

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

(a) **Master Property Insurance.** The Association shall obtain and maintain a "master" or "blanket" multi-peril policy of property insurance on the entire Project equal to a full replacement value (excluding items normally excluded from property insurance policies) of the Project (including common areas and facilities, limited common areas and facilities, units, and any fixture, improvement, or betterment installed by an Owner to a unit or to a limited common area (including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a unit or to a limited common area)) providing as a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement

and, if required by FNNMA or FHLMC, Demolition and Contingent Liability From Operation of Building Laws Endorsements, an Increased Cost of Construction Endorsement, an Earthquake Damage Endorsement, and other endorsements as necessary. Such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage, and such other risks as are customarily covered in similar projects or as are commonly required by private institutional mortgage investors for projects similar in construction, location and use. All policies of property insurance shall provide that, despite any provisions giving the insurance carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party, or any requirement by law. Any blanket policy of property insurance shall contain or have attached a standard mortgage clause (without contribution) customarily used in the area in which the Project is located.

(b) **Public Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and facilities, commercial spaces and public ways (if any) in the Project, with a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of a Condominium Owner because of the negligent acts of the Association or another condominium Owner or Owners, with limits acceptable to FNNMA and FHLMC (not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence), including protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and such other risks as are customarily covered in similar projects. The scope of coverage also includes all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

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

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

- (i) all shall name the Association as an obligee;
- (ii) all shall be written in an amount equal to at least 150% of the estimated annual operating expenses and reserves of the Project unless a greater amount is required by FNNMA;

(iii) all shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression, or shall contain an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers;

(iv) all shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the Mortgage Servicer on behalf of FNMA, if applicable.

(e) **Flood Insurance.** The Project is not located in an area identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. In the event that at some future time the Project should be declared to be in such a flood area, the Association shall at that time obtain and maintain at all times a blanket policy of flood insurance that meets the then existing FHLMC/FNMA flood insurance requirements for similar condominium projects. Such policy shall contain the standard mortgage clause customarily used in the area in which the Project is located and provided that any proceeds shall be paid to the Elm Tree Condominium Owners Association for the use and benefit of mortgagees as their interest may appear.

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

10.02 Insurance Policy Requirements. The Master Multi-Peril Property, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 10.01 (a), (b) and (c) shall be subject to the following:

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

(b) Insurance coverage obtained and maintained pursuant to the requirement of Section 10.01 (a) and (b) shall not be brought into contribution with insurance purchased by the Owners or their mortgagees;

(c) Coverage must not be prejudiced by (i) an act or neglect of the unit owners when such act or neglect is not within the control of the Association or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(d) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insured, including the Mortgage Servicers on behalf of FNMA;

(e) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the owner of any Condominium and/or their respective agents, employees or tenants, and of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

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

(g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against a Condominium Owner, his first mortgagee or any first mortgagee's designee or such designee's designee; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payment are contingent upon action by the carrier's Board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Condominium Owner, his first mortgagee or any first mortgagee's designee or such designee's designee from collecting insurance proceeds.

(h) All policies of hazard insurance shall contain or have attached the standard mortgage clause commonly accepted by private institutional mortgage investors in the area in which the Project is located. The mortgage clause shall provide that the insurance carrier shall notify the Mortgage Servicer at the Mortgage Servicer's address at least 10 days in advance of the effective date of any reduction in or cancellation of the policy.

10.03 Custody of Insurance Policies. If requested, the Board shall provide the Mortgage Servicer with a copy of the "master" or "blanket" policy of Multi-Peril Property Insurance, including copies of endorsements to such policy as required by FHLMC or FNMA, and where applicable, a copy of any flood insurance policy, a copy of the comprehensive policy of public liability insurance, an appropriate certificate or memorandum of insurance as to each Condominium in the Project which is the subject of a mortgage being serviced for FHLMC or FNMA and all other insurance drafts, policies, notices, invoices and other similar documents.

10.04 **Notice of Loss.** The Association shall notify the Mortgage Servicer at Servicer's address whenever (a) damage to a unit covered by a mortgage owned by FINMA or FHLMC exceeds \$1,000 and/or (b) damage to Common Areas exceeds \$10,000.

10.05 **Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.06 **Owner's Own Insurance.** Each Owner, at his or her own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and any additional fixtures and improvements added by such Owner against loss by fire and other casualties which is not otherwise covered by the policies of insurance maintained by the Association, including without limitation, vandalism and malicious mischief, or other coverage upon his Condominium, personal property, or his or her personal liability as he or she may deem appropriate. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Manager, other Owners, and their respective servants, agents and guests.

10.07 **Liability for Association Insurance Deductibles.** As allowed by law, if an Owner's Unit or Limited Common Area associated with that Unit (or both) sustains damage caused by an event that is covered by the Association's property insurance, the Association may hold that Owner responsible for the percentage of the Association's deductible that correlates to the percentage of the damage sustained by the unit in relation to the total damage sustained.

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

ARTICLE XI

DAMAGE OR DESTRUCTION

11.01 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as its attorney in fact as herein provide. As

attorney in fact, the Association shall have full and complete authorization, right and power to make execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

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

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

(a) **Notice to First Mortgagees.** The Association shall give timely written notice to any Institutional Holder of any first mortgage on a Condominium in the event of substantial damage to or destruction of any unit or any part of the Common Areas.

(b) **Estimate of Costs.** As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Project damaged or destroyed.

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

(d) **Insufficient Insurance—Less than 75% Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 9.03 heretof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) **Insufficient Insurance—75% or More Destruction.** If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 11.03(c) heretof, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of

the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice the following shall occur:

(i) the Project shall be deemed to be owned in common by the Owners;

(ii) the undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;

(iii) any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

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

(j) In no event shall an Owner of a Unit or any other party have priority over the Institutional Holder of any first mortgage on such Unit with respect to the distribution to such unit of any insurance proceeds.

11.04 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before.

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

ARTICLE XII CONDEMNATION

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

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

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

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

(a) **Allocation of Award.** As soon as practicable, the Board shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

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

(ii) the total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that

have not been taken, in proportion to their respective undivided interests in the Common Areas;

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

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

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

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

(vii) no provision of this Article XII or any other provision in this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any institutional holder of any first mortgage on such unit with respect to the distribution to such unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceeding.

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

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

(ii) if any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their

respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence.

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

(iv) the Board shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.04(f); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

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

ARTICLE XIII

OBSOLESCENCE

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

13.02 **Payment for Renewal and Reconstruction.** The Association shall levy a Special Assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be

distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

13.03 Sale of Project. Subject to the provisions of Section XIV hereof, the Owners may at any time, by an affirmative vote of at least seventy-five percent (75%) of the Total Votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board shall forthwith record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts, and upon the recording of such notice by the Board, the Project shall be sold or otherwise disposed of by the Board as attorney in fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. The Board, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment or valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of any Institutional Holder of a first mortgage lien on the Condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owner.

ARTICLE XIV

MORTGAGE PROTECTION

14.01 Matters Requiring Prior Mortgage Approval. Except as provided by statute in case of condemnation or substantial loss to the Condominiums and/or Common Areas of the Project, unless at least seventy-five percent (75%) of all First Mortgages (based on one vote for each First Mortgage owned) which have a first mortgage lien on any Condominium or Condominiums in the Project have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) Cause any amendment to be made to the Declaration, the Articles, or the Bylaws, which would change the pro rata interest or obligations of any individual Condominium for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of each Condominium in the Common Areas;

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(c) Terminate professional management and assume self-management of the Project so long as FNMA is a Mortgagee or Owner of a Condominium within the Project;

(d) Partition or subdivide any Condominium;

(e) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas of the Project (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Project shall not be deemed a transfer within the meaning of this clause); or

(f) Use Hazard insurance proceeds for losses to any condominium property (whether to the Condominiums, or to the Common Areas) for other than repair, replacement or reconstruction of such condominium property.

14.02 Management. Any agreement for professional management of the Condominium Project shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

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

14.04 Subordination of Common Expense Lien. Any lien which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium shall be subordinate to the lien or equivalent security interest of any first mortgage on the Condominium recorded prior to the date on which any such common expense assessments became due.

14.05 Information Made Available to Mortgagee Upon Request. Any Institutional Holder of a first mortgage on a Condominium in the Project shall, upon written request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within 90 days following the end of any fiscal year of the Project; and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

14.06 Priority of Mortgage in Event of Damage. In the event of substantial damage to or destruction of any Condominium or any part of the Common Areas, the Holder of any first mortgage on a Condominium shall be entitled to timely written notice of any such damage or destruction and no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the Owner of a Condominium or other party to priority over such holder with respect to the distribution to such Owner of any insurance proceeds.

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

14.08 **Mortgagee Rights in Event of Foreclosure.** Each Institutional Holder of a first mortgage lien on a Condominium who comes into possession of the Condominium by the foreclosure of a mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium free of any claims for unpaid assessments and charges against the Condominium which accrue prior to the time such holder comes into possession of the Condominium, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Condominiums in the Project, including the mortgaged Condominium.

14.09 **Notice to First Mortgagees.** The Association shall give Institutional Holders of first mortgages prompt notice of any default by an Owner-Mortgagor in the performance by such Owner-Mortgagor any obligation under the condominium documents which is not cured within thirty (30) days of default.

14.10 **No Right of First Refusal.** No "right of first refusal" shall be included in or added by amendment to the Declaration, Article or Bylaws which would impair the rights of any Institutional Holder of a first mortgage on a Condominium in the project to:

- (a) Foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor, or
- (c) Interfere with a subsequent sale or lease of a Condominium so acquired by the mortgagee.

ARTICLE XV

COMPLIANCE WITH DECLARATION AND BYLAWS

15.01 **Compliance.** Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to

recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

15.02 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

ARTICLE XVI

GENERAL PROVISIONS

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

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

16.03 **Notices and Registration of Mailing Address.** Each Owner shall register with the Association his or her current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid.

addressed to the Association at the address shown on official corporate records maintained in the office of the Secretary of State of the State of Utah or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid and in the form provided for in this Section, as the case may be.

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

16.05 **Amendment.** Except as otherwise provided herein, this Declaration may be amended if Owners holding at least sixty-seven percent (67%) of the Total Votes in the Association consent and agree to such amendment by instruments which are duly recorded in the office of the County Recorder of Salt Lake County, State of Utah.

16.06 **Effective Date.** This Declaration shall take effect upon recording.

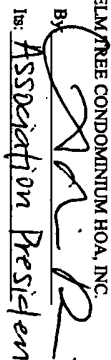
16.07 **Agent for Service.** The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Secretary of State of Utah. As of the Effective Date, the registered agent of the Association is John Jennings, 7923 Main Street #13, P.O. Box 668, Midvale, UT 84047.

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

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

16.10 **Termination.** The prior written approval of at least seventy-five percent (75%) of all First Mortgages (based upon one vote for each First Mortgage owned) which hold first mortgage liens on Condominium Units in the Project and all the Owners of Condominium Units in the Project shall be required before the Project may be abandoned or terminated, except as provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

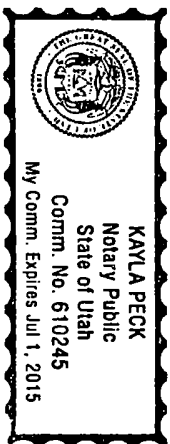
IN WITNESS WHEREOF, the Elm Tree Condominium HOA, Inc. has executed this Amendment as of the Effective Date.

THE ELM TREE CONDOMINIUM HOA, INC.
By: 
Is: Association President

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

On Dec 19 2012, personally appeared before me, a Notary Public, ~~Adrianne Davis~~, the ~~ASSN. President~~ of ELM TREE CONDOMINIUM HOA, INC., personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that she executed the above instrument on behalf of ELM TREE CONDOMINIUM HOA, INC.

WITNESS my hand and official Seal.




NOTARY PUBLIC

AMENDED AND RESTATED BYLAWS
OF
ELM TREE CONDOMINIUM HOA, INC.

These AMENDED AND RESTATED BYLAWS OF ELM TREE
CONDOMINIUM HOA, INC. (the "Bylaws") are made and executed this _____ day of
_____, 2011 by Elm Tree Condominium HOA, Inc., a Utah Non-profit Corporation.

RECITALS

WHEREAS, the original Bylaws of Elm Tree Condominium Owners Association, a Utah Nonprofit Corporation (the "Original Bylaws") were included as Exhibit "E" to the Declaration of Condominium of Elm Tree Condominiums, A Utah Condominium Project, recorded in the Office of the Salt Lake County Recorder on December 19, 1983 as Entry No. 3882766 in Book 5515, beginning at page 2754; the Bylaws were specifically recorded at pages 2804-2819.

WHEREAS, pursuant to Section 10.01 of the Original Bylaws, the Original Bylaws may be amended upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association.

WHEREAS, Owners holding at least fifty-one percent (51%) of the Total Votes of the Association have consented and agreed to these Bylaws, as evidenced by Exhibit "A."

NOW THEREFORE, the Original Bylaws are hereby amended by striking and deleting the Original Bylaws in their entirety and substituting the following Bylaws:

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01 **Name.** The name of the nonprofit corporation is Elm Tree Condominium HOA, Inc., hereinafter referred to as the "Association."

1.02 **Offices.** The principal office of the Association shall be at Elm Tree Condominiums, a Utah Condominium Project, hereinafter referred to as the "Project" located at 7923 S Main Street, Salt Lake City, Salt Lake County, State of Utah, with the current mailing address of P. O. Box 668, Midvale, UT 84047.

ARTICLE II
DEFINITIONS

2.01 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Amended and Restated Declaration of Condominium of Elm Tree Condominiums, a Utah Condominium Project, hereinafter referred to as the "Declaration" shall have such defined meanings when used in these Bylaws.

ARTICLE III
MEMBERS

3.01 **Annual Meetings.** Each Owner shall be Member of the Association. The annual meeting of Members shall be held on the first Saturday in June of each year for the purpose of electing members of the Board and transacting such other business as may come before the meeting. The Board may from time to time by resolution change the date for the annual meeting of the Members. If the election of members of the Board is not held during the annual meeting of the Members, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Members to be convened as soon thereafter as may be convenient.

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

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

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

registered with the Association, a Member's Unit address shall be deemed to be his or her registered address for purposes of notice.

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

3.06 Quorum. At any meeting of the Members, the presence of Members holding, or holders of proxies entitled to cast, more than thirty-three percent (33%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the Members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the Members as provided above. At the reconvened meeting, the Members and proxy holders present shall constitute a quorum for the transaction of business.

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

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

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

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting if written consent, setting forth the action so taken, are individually signed and dated by Members holding not less than the minimum number of votes that would be necessary to authorize or take the actions at a meeting. All written consents shall be delivered to the Board within sixty (60) days after the first consent is signed and dated or the action shall be of no effect. If consents of less than all the Members are obtained, written notice of the action shall be provided to all Members from whom consents were not obtained at least ten (10) days before the action occurs or takes effect. Members of the Board must be elected at a meeting of the Members and may not be elected via written consents of the Members.

ARTICLE IV BOARD

4.01 Number of Board Members and Eligibility. The Association shall be governed by a Board. The Board shall consist of three (3) members. Each member shall be an Owner and Member of the Association in good standing. If an Owner is not an individual, then any officer or director of such Owner shall be eligible to serve as a Board member, but no Owner may have more than one such representative on the Board at one time.

4.02 Election of Board Members. The Board shall be elected each year at the Annual Meeting of the Association or at a special meeting of the Members called for such purpose (a "Special Election Meeting"). Any Member in good standing and not delinquent in payment of assessments or fines may run for election to the Board, provided he or she is nominated by at least two (2) other Members of the Association. Members shall run for and shall be elected to specific offices on the Board. Nominations for each office may be submitted to the current Board in writing no earlier than thirty (30) days before the Annual Meeting or Special Election Meeting; nominations may also be submitted at the Annual Meeting or Special Election Meeting prior to the election taking place. The nominee for each office who receives the highest number of votes in the election shall be elected to that office on the Board. In the event of a tie-vote, a re-vote (or re-votes) shall be taken until a tie-vote no longer exists. If a tie-vote still remains after three (3) re-votes, the current Board shall determine who shall serve in the office and shall announce its decision either at the Annual Meeting or Special Election Meeting or at a reasonable time (not to exceed ten (10) days) thereafter.

4.03 Terms of Board Members. Each Board member shall serve for a term of one (1) year. Board members may serve consecutive terms if duly elected.

4.04 **Powers and Responsibilities.** The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights as set forth in the Declaration, other governing documents, and as provided by law. The Board's responsibilities shall include, but shall not be limited to, the following:

- (a) Preparing and administering an annual budget;
- (b) Establishing and administering an adequate reserve fund;
- (c) Scheduling and conducting the Annual Meeting and other meetings of the Members;
- (d) Collecting and enforcing assessments and fines assessed by the Association;
- (e) Accounting functions, banking functions, and maintaining records;
- (f) Enforcement of the Association governing documents, including the Declaration and rules;
- (g) Maintenance of the Common Areas;
- (h) Obtaining and carrying appropriate property and liability insurance and fidelity bonds, as provided in the Declaration;
- (i) Paying the cost of all services rendered to the Association;
- (j) All the other duties imposed upon the Board pursuant to the Declaration and other governing documents, including enforcement thereof.

4.05 **Quorum and Manner of Acting.** Two (2) of the three (3) Board members shall constitute a quorum for the transaction of business at any meeting of the Board. Each Board member shall have one (1) vote. The act of at least two (2) Board members present at any meeting at which a quorum is present shall be the act of the Board. The Board members shall act only as a Board, and individual Board members shall have no powers as such.

4.06 **Meetings.** The Board shall hold an organizational meeting within ten (10) days following each Annual Meeting or Special Election Meeting at such time and place as the Board may determine. Thereafter, the Board shall hold regular meetings at such time and place as the Board may determine, but the Board shall meet at least four (4) times during each fiscal year with at least one (1) meeting per quarter. Special meetings shall be held when called by written notice signed by the President or any two (2) Board members.

4.07 **Notice and Waiver of Notice.** Notices of Board meetings shall be sent to each Board member and shall specify the time and place of the meeting and, in the case of a

special meeting, the nature of any special business to be considered. However, transactions of any Board meeting, however called and noticed or otherwise held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present and (ii) either before or after the meeting the Board member not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Board member who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

4.08 **Open Meetings; Executive Session.** Subject to the provisions of 4.012 and the provisions contained in this section, all Board meetings shall be open to all Members, but only Board members may participate in any discussion unless other Members are authorized by the Board to participate. In such case, the Board may limit the time any such individual may speak. Notwithstanding the provisions above, the Board may adjourn any Board meeting and reconvene in an executive session and may exclude persons other than Board members for consideration of one or more of the following topics: (i) employment or personnel matters for employees of the Board or Association, (ii) legal advice from an attorney for the Board or the Association; (iii) pending or contemplated litigation; and/or (iv) pending or contemplated matters relating to enforcement of the Association's documents or rules.

4.09 **Compensation.** No Board member shall receive compensation from the Association or receive a waiver from the Association for any amount of assessments for any services that he or she may render to the Association as a Board member; provided, however, that a Board member may be reimbursed for expenses incurred in performance of his or her duties as a Board member to the extent such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or her capacity as a Board member.

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

4.011 **Vacancies.** If vacancies occur in the Board by reason of the death, resignation or disqualification of a Board member, the remaining Board members shall continue to act, and such vacancies shall be filled by a vote of the remaining Board members, though less than a quorum, in any way approved by such Board members at the meeting. Any vacancy in the Board occurring by reason of removal of a Board member by the Members may be filled by election at the meeting at which such Board member is removed. Any Board member elected or appointed to fill a vacancy shall serve for the unexpired term of his or her predecessor.

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

ARTICLE V

OFFICERS

5.01 Officers. The officers of the Board shall be a President, Vice President, and Secretary/Treasurer.

5.02 Tenure and Qualifications. Each Board member shall hold his or her office until his or her successor shall have been elected and qualified, or until his or her death, or until his or her resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. The President, Vice President, and Secretary/Treasurer shall be and remain Board members during the entire term of their respective offices.

5.03 The President. The President shall preside at meetings of the Board and at meetings of the Members. He or she shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that may be required of him or her.

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

5.05 The Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as the law, these Bylaws, the Declaration, or any resolution of the Board may require him or her to keep. He or she shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He or she shall have the custody and control of the funds of the Association, subject to the action of the Board, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members or at a meeting of the Board. He or she shall perform such other duties as may be required of him or her.

ARTICLE VI

COMMITTEES

6.01 Designation of Committees. The Board may from time to time designate committees as appropriate to help in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall be comprised of

Members and shall include at least one (1) Board member. No committee member shall receive compensation from the Association or receive a waiver from the Association for any amount of assessments for services that he or she may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his or her duties as a committee member to the extent that such expenses are approved by the Board and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his or her capacity as a committee member.

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

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

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

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

ARTICLE VII

INDEMNIFICATION

7.01 Indemnification. Third Party Actions. The Association shall indemnify any person who was, or is, a party, or is threatened to be made a party, to any threatened pending or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is, or was, a Board member, or is, or was, serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or

proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

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

7.03 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Sections 7.01 or 7.02 hereof, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith. Any other indemnification under Sections 7.01 or 7.02 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he or she has met the applicable standard of conduct set forth respectively in Sections 7.01 or 7.02 hereof. Such determination shall be made either (i) by the Board by a majority vote of disinterested Board members or (ii) by independent legal counsel in a written opinion, or (iii) by the Members by the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association at any meeting duly called for such purpose.

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

7.05 Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Declaration, Bylaws, agreements, vote of disinterested members or Board members, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Board members, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Board members, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

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

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

ARTICLE VIII

FISCAL YEAR AND SEAL

8.01 Fiscal Year. The fiscal year of the Association shall begin on the first day of July each year and end on the 30th day of June next following.

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

ARTICLE IX

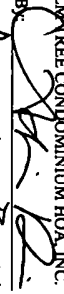
RULES AND REGULATIONS

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

ARTICLE X
AMENDMENTS

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

IN WITNESS WHEREOF, the Elm Tree Condominium HOA, Inc. has executed these Bylaws as of the Effective Date.

THE ELM TREE CONDOMINIUM HOA, INC.
By 
The Association President

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

On Dec 18 2012, personally appeared before me, a Notary Public, Ashley Davis, the Pres. President of ELM TREE CONDOMINIUM HOA, INC., personally known or proved to me to be the person whose name is subscribed to the above instrument who acknowledged to me that she executed the above instrument on behalf of ELM TREE CONDOMINIUM HOA, INC.

WITNESS my hand and official Seal.


NOTARY PUBLIC

