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DECLARATION OF CONDOMINIUM

for

ARTSPACE COMMONS

Dated as of February 22, 2016

NO NOTARY SEAL
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**DECLARATION OF CONDOMINIUM
FOR ARTSPACE COMMONS**

THIS DECLARATION OF CONDOMINIUM FOR ARTSPACE COMMONS (this “**Declaration**”) is executed as of February 22, 2016, by SCRAP, LLC, a Utah limited liability company (“**Declarant**”), whose address is 230 South 500 West, Suite 235, Salt Lake City, Utah 84101.

ARTICLE 1. - DEFINITIONS

As used in this Declaration, each of the following terms shall have the meanings given them below (other terms that are used only in one section and its subsections are defined in that section):

“**Act**” means the Utah Condominium Ownership Act, Utah Code Annotated, Title 57, Chapter 8, as in effect on, and as amended after, the date of this Declaration, and any successor or substitute provision.

“**Annual Assessment**” shall have the meaning given it in Section 7.3 hereof.

“**Annual Budget**” means a budget that sets forth an itemization of the anticipated Common Expenses for the calendar year to which such Annual Budget pertains.

“**Articles of Incorporation**” means the Articles of Incorporation of the Association.

“**Assessments**” shall mean Annual Assessments, Special Assessments, Default Assessments, and any other charge imposed or levied by the Association against an Owner, including but not limited to those related to Common Expenses as well as miscellaneous assessments for capital improvements and for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.

“**Association**” means Artspace Commons Owners Association, a Utah non-profit corporation, which comprises all of the Owners acting as a group in accordance with the Act and this Declaration.

“**Building**” means Building A or Building B, as depicted on the Plat.

“**Bylaws**” means the bylaws of the Association, a copy of which is attached hereto as Exhibit C.

“**Commercial Space**” means any portion of a Unit intended for use for commercial purposes.

“**Common Elements**” means all parts of the Project that are not Units, including but not limited to:

- (a) The Land;
- (b) All portions of the Buildings not contained within the Units, including but not limited to the foundation, columns, girders, beams, supports, perimeter and

supporting walls, chimneys, chimney chases, roofs, patios, balconies, entrances and exits, elevators, and the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith);

- (c) The yards, gardens, outdoor lighting, fences, landscaping and sidewalks;
- (d) Areas used for storage of janitorial supplies and maintenance equipment and materials, and areas used for trash and recycling;
- (e) Such community facilities as may be provided for in this Declaration;

“Common Expenses” means:

- (a) All sums lawfully assessed against the Owners;
- (b) Expenses of operation (including utilities and services), management, maintenance, repair or replacement of the Common Elements, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Elements;
- (c) Premiums for the insurance obtained by the Management Committee pursuant to Article 8;
- (d) Any other cost, expense or fee properly incurred by the Management Committee in connection with the performance of its obligations under the Governing Documents;
- (e) Other expenses agreed on as common expenses by a Majority of the Owners;
- (f) Other expenses declared common expenses by the Act or this Declaration; and
- (g) Common Expenses due but not paid to the Management Committee which are determined by the Management Committee not to be legally or practicably recoverable (after reasonable effort) from the responsible Owner, together with all interest on, and costs and attorneys’ fees incurred in connection with, such unpaid Common Expenses.

“Condominium Unit” means a Unit together with the Undivided Interest appurtenant to such Unit.

“Eligible Mortgagee” means a Mortgagee that has requested notice of certain matters from the Management Committee in accordance with 10.1.

“Emergency Repairs” means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to any Common Elements or to a Unit or Units.

“Fine” means a fine imposed by the Management Committee in accordance with the Rules and Regulations.

“Governing Documents” means the Act, this Declaration, the Plat and the Rules and Regulations, as applicable.

“Indemnified Party” means a party governed by this Declaration that is indemnified by an Indemnifying Party pursuant to the provisions of this Declaration.

“Indemnifying Party” means a party governed by this Declaration that is obligated to indemnify other parties governed by this Declaration pursuant to the provisions of this Declaration.

“Land” means that certain real property that is located in Salt Lake County, Utah and that is described on Exhibit A attached hereto. The Land includes any easements that benefit the Land from time to time including any easements that are set forth on the Plat.

“Limited Common Elements” means those portions of the Common Elements designated in this Declaration or the Plat as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

“Majority of the Owners” means the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests.

“Management Committee” means the Management Committee of Artspace Commons, as described in Article 6. The Management Committee is the board of directors of the Association.

“Manager” means a professional manager or management company engaged by the Association to manage the Project.

“Mortgage” means a mortgage, a deed of trust and any indenture secured by a security interest on any Condominium Unit.

“Mortgagee” means a mortgagee under a mortgage, a beneficiary under a deed of trust and a beneficiary under any indenture secured by a security interest on any Condominium Unit.

“Official Records” means the official records of the Salt Lake County, Utah Recorder.

“Owner” means the person or persons owning each Condominium Unit in fee simple, as shown in the Official Records. Declarant shall be deemed to be the Owner of each Unit that is created by the recording of the Plat and that has not yet been conveyed by Declarant. However, the term “Owner” does not mean a person obligated to purchase a Unit pursuant to a purchase agreement and shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons

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

“Person” (whether or not capitalized) means an individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

“Plat” means the condominium plat, recorded in the Official Records concurrently with the recordation this Declaration, entitled “Plat of Artspace Commons, a Utah Mixed Use Condominium Project,” as the same may be amended on or after the date of this Declaration.

“Property” means the Land, the Buildings, and all other structures and improvements constructed on the Land on or after the date of this Declaration and all easements, rights and appurtenances belonging to, and all articles of personal property (other than personal property owned by individual Owners) intended for use in connection with, the Land, the Building, the Units or any other structures or improvements on the Land. The Property comprises the Units and the Common Elements.

“Reserve Analysis” shall mean an analysis to determine (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Elements that have a useful life of three years or more and a remaining life of less than thirty years, but excluding any cost that can reasonably be funded from the general budget or other funds of the Association; and (ii) the appropriate amount of any reserve fund.

“Residential Space” means any portion of Building B intended for residential use.

“Rules and Regulations” means the rules and regulations for the Property adopted by the Management Committee from time to time in accordance with this Declaration, as such rules and regulations may be amended by the Management Committee after the date of this Declaration.

“Size” means the approximate number of square feet of floor space within each Unit as computed by reference to the Plat and rounded off to a whole number. The Size of each Unit is set forth in the attached Exhibit B.

“Special Assessment” shall have the meaning given it in Section 7.3 hereof.

“Super Majority of the Owners” means the Owners of more than seventy-five percent (75%) in the aggregate of the Undivided Interests.

“Two-Thirds Majority of the Owners” means the Owners of two-thirds or more in the aggregate of the Undivided Interests.

“Undivided Interest” means an undivided interest, expressed as a percentage, in the Common Elements made appurtenant to each Unit by the provisions of this Declaration, as set forth in Exhibit B.

“Unit” means each separate physical part of the Property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of

floors in the Building, as depicted on the Plat. Each Unit comprises an individual air space unit, consisting of enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit concerned. 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 the use and enjoyment of another Unit, and shall be part of the Common Elements: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Element (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed.

“Unit Number” means the number, letter or combination of numbers and letters designating the Unit in this Declaration and in the Plat. The Unit Number of each Unit is set forth in the attached Exhibit B.

“Utility Equipment” means pipes, sprinklers, wires, ducts, flues, cables, conduits, public utility lines, transformers and switch gear vaults.

ARTICLE 2. - PURPOSE; SUBMISSION TO ACT; GENERAL PROVISIONS

2.1 **Purpose.** Declarant is the sole owner of the Property. Declarant desires, by recording this Declaration and the Plat, to submit the Property and all other improvements constructed on the Land on or after the date of this Declaration to the provisions of the Act as a condominium project to be known as Artspace Commons, which is a Utah mixed use condominium project containing two Units. The Property: (a) does not contain any convertible land as contemplated by the Act; (b) is not an expandable condominium; (c) is not a contractible condominium; (d) is not a leasehold condominium; and (e) does not contain time period units, as all of such terms are defined in and contemplated by the Act.

2.2 **Submission to Act.** It is intended that the Act apply to the Property and, therefore, the Property is submitted to the Act. Notwithstanding such submission, Declarant reserves for Declarant and the Association, such transferable, perpetual easements and rights of ingress and egress over, across, through and under the Property for the purpose of making improvements on the Land and construction of and alterations to the Building and doing all things reasonably necessary and proper in connection with such improvements, and for the purpose of performing all acts necessary or appropriate under the Governing Documents.

2.3 **Description of Buildings.** The Property includes two Buildings, a parking area, and other improvements related thereto. Building A contains three stories, and Building B contains four stories. The structural system for the Buildings consists of a concrete foundation system, wood-framed walls, and wood truss joists for floor and roof framing.

2.4 General Provisions. At the time of the first conveyance of each Condominium Unit, every Mortgage and other lien affecting such Condominium Unit shall have been paid and satisfied of record, or the Condominium Unit being conveyed shall have been released therefrom by a partial release duly recorded. The right of any Owner to sell, transfer or otherwise convey its Condominium Unit shall be subject to a right of first refusal in favor of Declarant, as more particularly set forth in Article 14 hereof. In interpreting the Plat or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building and regardless of any minor variance between the boundaries shown on the Plat and those of the Building or such Unit. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and 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 the foreclosure, whether the foreclosure is by private power of sale, judicial foreclosure or otherwise.

2.5 Covenants Run with Land. This Declaration and all of the provisions of this Declaration shall constitute enforceable equitable servitudes, shall run with the land and may be enforced by Declarant, the Management Committee and any Owner and their respective successors in interest. If any person acquires through foreclosure, exercise of a power of sale or other enforcement of any lien or by tax deed the interest of any Owner, then the interest acquired shall be subject to all of the provisions of the Governing Documents and any deed affecting the interest. In a voluntary conveyance, the grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Management Committee setting forth the amount of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid Assessments against such grantor in excess of the amount set forth in such statement. All Owners and their employees and tenants, all employees of such tenants and any other person who may in any manner use or occupy the Property shall be subject to the Act and other Governing Documents. All agreements, decisions and determinations made by the Management Committee or the Association of Owners in accordance with the Act or other Governing Documents shall be binding on the Owners.

2.6 Association.

- (a) *Association.* On or about the date of this Declaration, Declarant shall cause the Association to be formed. Each Owner shall automatically be a member of the Association. The Management Committee shall act automatically as the board of directors of the Association, and all references in this Declaration to the Management Committee shall be deemed to be references to the Association's board of directors. All actions taken by the Management Committee and the officers of the Association shall automatically be actions taken for the Association. The Rules and Regulations are rules and regulations of the Association.

- (i) *Registration with the State.* In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1, the Association shall be registered with the Utah Department of Commerce, Division of Real Estate and shall update its registration of any changes to (a) the name or address of the Association; (b) the name, address, telephone number, and email address of the president of the Association; (c) the name and address of each member of the Management Committee; and (d) the name, address, telephone number, and email or facsimile number of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of a Owner's financing, refinancing, or sale of the Owner's Unit.
- (ii) *Bylaws.* The Bylaws of the Association are attached to this Declaration as Exhibit C. The provisions of the Utah Revised Nonprofit Corporation Act, Utah Code Annotated Title 16, Chapter 6a, as in effect on, and as amended after, the date of this Declaration, shall supplement the Bylaws to the extent that such statutory provisions are not inconsistent with this Declaration or the express provisions of the Bylaws.

2.7 **Mixed Use.** The Property is intended to be a condominium project with mixed residential and commercial uses. This Declaration shall be construed liberally to accommodate this intent.

ARTICLE 3. - UNITS

3.1 **Subdivision of Property.** The Property is hereby subdivided into Condominium Units, each such Condominium Unit consisting of a Unit, the right to use appurtenant Limited Common Elements, if any, and an appurtenant Undivided Interest, as set forth on Exhibit B attached to this Declaration.

3.2 **Nature of Units.** Each Condominium Unit shall for all purposes constitute real property, shall have the same incidents as real property, may be individually conveyed, leased, encumbered, inherited or devised by will and shall be subject to all types of juridic acts *inter vivos* or *mortis causa* as if it were entirely independent of all other Condominium Units, and the corresponding individual titles and interests in each Condominium Unit shall be recordable. Any Condominium Unit may be held and owned by more than one person as joint tenants, as tenants in common or in any other real property tenancy relationship recognized under the laws of the State of Utah. Each Owner shall be entitled to the exclusive ownership and possession of its Unit and, to the extent applicable, the exclusive use of any Limited Common Elements appurtenant only to its Unit subject to the provisions of this Declaration. Each Owner may separately mortgage or otherwise encumber its Condominium Unit, provided that each Mortgage of any Condominium Unit shall be subordinate to this Declaration. No Owner may mortgage or otherwise encumber the Common Elements, except to the extent of the Undivided Interest appurtenant to its Unit.

3.3 Nature of Undivided Interests. Each Owner shall be entitled to an Undivided Interest in the percentage expressed in the attached Exhibit B, which interests are allocated proportionate to the Size of each Unit. Each Owner may use the Common Elements on a nonexclusive basis, but only in accordance with the purposes for which they were intended (as reasonably designated and regulated by the Management Committee from time to time) without hindering or encroaching on the lawful rights of the other Owners, and only in a manner which is consistent with their community nature and with the covenants, conditions and restrictions applicable to the Units under the Governing Documents. Except as otherwise provided in this Declaration, each Owner shall have the exclusive right to use and enjoy any Limited Common Elements appurtenant to its Unit (except to the extent that more than one Unit enjoys the benefit of a Limited Common Element, in which case all of the benefitted Units shall the enjoy the benefit among themselves). Neither the percentage of Undivided Interest nor the right of exclusive use of any Limited Common Elements shall be separated from the Unit to which it is appurtenant. Except as otherwise expressly provided by the Act, the Undivided Interest of each Owner as described in this Section shall have a permanent character and shall not be altered without the consent of a Super Majority of the Owners that is expressed in an amendment to this Declaration duly approved and then executed by the Management Committee and recorded in the Official Records. The Common Elements shall remain undivided, and no Owner or other person shall bring any action for partition or division of any part of the Common Elements, unless the Property has been removed from the provisions of the Act in accordance with Section 12.2 or as otherwise provided in the Act. The Common Expenses shall be charged to, and the voting rights shall be available to, the Owners according to their respective Undivided Interests.

3.4 Conveyance of Units. Each deed, lease, Mortgage or other instrument may legally describe a Unit by its identifying number as designated in this Declaration or as shown on the Plat. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit's Undivided Interest and the right of exclusive use of any Limited Common Elements even though the same are not expressly mentioned or described. Subject to the immediately preceding sentence, any deed, lease, Mortgage or other instrument may legally describe a Unit as follows:

Unit ____ contained within Artspace Commons, a Utah mixed use condominium project, as the same is identified in the Declaration of Condominium recorded on _____ 2015 as Entry No. _____ in Book ____ at Page ____ of the official records of the Salt Lake County, Utah Recorder (as said Declaration may heretofore have been amended or supplemented), and in the Plat recorded on _____ 2015 as Entry No. _____ of the official records of the Salt Lake County, Utah Recorder (as said Plat may heretofore have been amended or supplemented); TOGETHER WITH a percent undivided interest in the Common Elements appurtenant to such Unit, as more particularly described in said Declaration.

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

3.5 Improvement of Units. Subject to the provisions of this Section, each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit; provided, however, that such walls, fixtures and improvements shall:

- (a) *Compliance.* Comply with all applicable laws, ordinances, codes, rules and regulations;
- (b) *No Interference.* Not interfere with facilities necessary for the support, use or enjoyment of any other part of the Property;
- (c) *Structural Integrity.* Not impair the structural integrity of any Building; and
- (d) *Encroachment.* Not encroach on or interfere with any Common Elements, unless:
(a) expressly permitted by the provisions of this Declaration; or (b) the Management Committee consents in writing to such encroachment.

No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value (but the proposed use of a Unit and any "Construction Activities," as defined below, in the improvement of a Unit shall not be deemed in any event to reduce the value of the Property) or impair any easement or hereditament, without in every such case the consent of a Majority of the Owners being first obtained. No Owner shall do any work on or make any alterations or changes to the Common Elements without the prior written consent of the Management Committee, subject to the following terms and conditions:

- (a) *Bearing Walls.* In particular, no Owner shall remove or alter any interior bearing walls within a Unit without first: (a) providing structural reinforcement beams or supports for the modified bearing walls; (b) providing to the Management Committee (at the Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations (and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building; (c) obtaining the advance written consent of the Salt Lake City Building Department (to the extent required) and the Management Committee, and (d) cause all contractors to comply with the insurance provisions of this Declaration.
- (b) *Construction Activities.* Without limiting the generality of the foregoing, the Owner of any Unit may build out, improve, remodel and remove improvements in or from its Unit ("**Construction Activities**") even though these Construction Activities may cause temporary inconveniences to the other occupants of the affected Building; provided, however, in carrying out Construction Activities,

such Owners: (a) shall take commercially reasonable steps so as to minimize inconveniences to other occupants; (b) shall abide by applicable Rules and Regulations as to permissible days and times of day; and (c) may not impede access to any Unit.

3.6 Maintenance of Units and Limited Common Elements.

- (a) *Maintenance of Units.* Each Owner, at its sole cost and expense, shall keep the interior of its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements, in good condition and repair and in a clean and sanitary condition. Each Owner, in maintaining its Unit, shall take all actions necessary to avoid damage to any other Unit or the Common Elements, including but not limited to heating the Unit as necessary to ensure that water pipes will not freeze, keeping the Unit clean and free of odors and vermin that could spread to other parts of the Building, and keeping plumbing in good repair so as to avoid water damage to any other parts of the Building.
- (b) *Maintenance of Limited Common Elements.* Notwithstanding anything herein regarding maintenance of Common Elements, each Owner, at its sole cost and expense, shall maintain in good condition and repair all Limited Common Elements appurtenant to such Owner's Unit. Without limiting the generality of the foregoing, (i) each Owner shall maintain the window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such window glass or door on removal, breakage or other damage; provided, however, that any replacement of windows or doors or any other item that constitutes an exterior surface of a building, or any action that would affect the exterior appearance of any part of the Project, shall not be made without the prior consent of the Management Committee, and (ii) each Owner shall maintain, repair, and replace the air conditioning unit(s) serving its Unit; provided, however, that replacement of an air conditioning unit shall require the prior approval of the Management Committee as to the brand and model of the replacement unit and the selection of contractor.
- (c) *Failure to Maintain.* If any Owner fails to maintain its Unit or the Limited Common Elements for which such Owner is responsible, or to satisfy any requirements set forth herein, or if any Unit or appurtenant Limited Common Elements develops an unsanitary or unclean condition or falls into a state of disrepair and the responsible Owner fails to correct such condition promptly following written notice from the Management Committee, or if any removed, broken or damaged window glass or door referred to in the preceding subsection (b) is not immediately repaired or replaced by the Owner obligated to do so, then the Management Committee may (but is not obligated to), at the expense of such Owner and without liability to such Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Management Committee pursuant to this

Section, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute a lien from and after the filing of a "Notice of Lien" with respect thereto on the Condominium Unit concerned pursuant to this Declaration, which lien may be foreclosed by the Management Committee in accordance with Section 7.4 hereof. In addition, an Owner shall be responsible for damage to any other Unit or Common Elements caused by such Owner's failure to maintain its Unit as required herein.

3.7 Division of Existing Units. With the approval of the Management Committee, which may be withheld for any reason or no reason in the Management Committee's discretion, an Owner may further divide its Unit. Any amendment to this Declaration that divides an existing Unit into two or more Units shall be executed by the Management Committee, the Owner of such Unit, and any Mortgagee holding a Mortgage encumbering such Unit, shall not require the consent or execution by any other Owner or Mortgagee, and shall set forth the new square footage and the new Undivided Interests appurtenant to the new Units (as an amendment to the attached Exhibit B). Such square footage and Undivided Interests, in the aggregate, shall be equal, respectively, to the original square footage and Undivided Interests of the Unit being divided. The Undivided Interests of the new Units shall be allocated proportionately between or among the new Units, based on the respective square footage of the new Units. In addition, the Owner of the Unit being so divided shall, at its sole cost and expense, prior to or concurrently with the recordation of such amendment, have prepared, approved by Salt Lake City, and recorded, an amendment to the Plat, reflecting such division. Following such division, any additional other structural separations constructed or installed between the new Units shall become Common Elements. A division of Units pursuant to this Section shall not, taken in the aggregate between or among the new Units created, increase or decrease the original voting rights or Undivided Interests set forth in this Declaration.

3.8 Separate Taxation. Each Condominium Unit (consisting of a Unit and an appurtenant Undivided Interest) shall be deemed to be a separate parcel for purpose of assessment and taxation and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including but not limited to, ad valorem levies and special assessments. For purposes of such assessment and taxation, the valuation of the Common Elements shall be apportioned among the Units in proportion to their respective Undivided Interests. All taxes, assessments and other governmental charges on each Condominium Unit shall be separately levied against the Owner of such Unit, and no forfeiture or sale of any Condominium Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit. Neither the Property, any Building nor any of the Common Elements may be considered as a separate parcel for purposes of assessment or taxation. All fee owners of Units on the Property shall pay real property taxes on the Units, subject to exercising rights of appeal so long as no action is taken that would result in a final tax sale or foreclosure from failure to pay real property taxes.

ARTICLE 4. - USES

4.1 **Permitted Uses.** Except as set forth in this Declaration, the Commercial Space is intended for office, retail or other commercial uses, and is restricted to such uses. The Residential Space is intended exclusively for residential use, and is restricted to such use. Notwithstanding the foregoing, Declarant, as long as it owns a Unit, may convert Residential Space to Commercial Space, or Commercial Space to Residential Space, without the consent of any other Owner or any Mortgagee.

4.2 **Prohibited Activities.** No Owner shall do or permit anything to be done in its Unit which may do any of the following: (a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property; (b) create a public or private nuisance, commit waste or unreasonably interfere with, annoy or disturb any other Owner or occupant of the Property (the uses permitted under Section 3.5 and the easements created under Article 5 shall not be deemed to constitute such unreasonable interference, annoyance or disturbance); (c) overload the floors or otherwise damage the structure of a Building; (d) violate any present or future law, ordinance, regulation or requirement, including, without limitation, those relating to hazardous substances, hazardous wastes, pollutants or contaminants, those relating to access by disabled persons and the requirements of any board of fire underwriters or other similar body relating to the Property; (e) lower the first-class character of the Property, consistent with the mixed-use nature of the Property; or (f) otherwise detract from the appearance or value of the Property (but uses and activities that are permitted under this Declaration shall not be deemed to detract from the appearance or value of the Property). No Owner may service or store (i.e., long term storage where the vehicle is not operable, registered and being used on a regular basis) vehicles on the Property.

4.3 **Prohibited Uses.** Without limiting the generality of the foregoing Section 4.2, no portion of the Property shall be used for any of the following uses:

- (a) Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;
- (b) A sexually oriented business as defined in Utah Code § 17-50-331 (as it may be amended or recodified from time to time) and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie picture, exhibition, performance, demonstration, film, video, book or other depictions of sexually oriented nature; sexually oriented live entertainment or erotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service. The foregoing exclusion shall not include pay per view video/audio services, internet and other forms of telecommunication/communication systems offered or available to Salt Lake County residents;

- (c) Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit a dry cleaning pick up facility, convenience or food store;
- (d) Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video games, or off-site pari-mutual wagering sites;
- (e) Any business involving the sale or display of weapons, self-service laundromat for nonresidents or non-occupants of a Residential Space, illegal activities, or sale of any illegal goods or products;
- (f) Any business establishment utilizing an outdoor speaker that produces in excess of 40 decibels or that can be heard by a person occupying an adjacent unit, or any business establishment utilizing an outdoor speaker during the hours of midnight to 8:00 a.m. on weekdays and 10:00 a.m. on weekends; or
- (g) Any business establishment or use creating noxious or harmful odors fumes, vapors, or odors.

4.4 Indemnity. Each Owner (as the Indemnifying Party) shall indemnify the Management Committee and each other Owner (as the Indemnified Party) from and against any claims caused by the failure to comply timely with any requirement of the Governing Documents by, or otherwise caused by any act or omission of, the Indemnifying Party, any tenant, employee, agent, licensee, guest or invitee of the Indemnifying Party, any employee, agent, licensee, guest or invitee of any tenant of the Indemnifying Party or any other person using or occupying the Unit owned by the Indemnifying Party.

4.5 Certain Compliance; Rules and Regulations. Each Owner shall comply strictly with the covenants, conditions and restrictions as set forth in this Declaration and in the deed to its Unit and with the Rules and Regulations, any other Governing Documents and any administrative rules and regulations drafted pursuant to any of the foregoing, as any of the same may be amended from time to time. The Rules and Regulations may cover rental and use of Units and may grant the Management Committee the right to evict, on behalf of the Owner, tenants of Units if those tenants do not comply with the Rules and Regulations. Failure so to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of the Owners, or in a proper case, by an aggrieved Owner. The Rules and Regulations may be amended from time to time by the Management Committee; provided, however, that (a) each Rule and Regulation must be commercially reasonable, considering the mixed-use nature of the Property; and (b) the Management Committee shall not discriminate against any specific Owner in amending or enforcing the Rules and Regulations.

4.6 Parking. The Property contains 107 parking stalls, all of which are part of the Common Elements. The Management Committee may, at its option and in its discretion, (a)

designate specific parking stalls for use by specific Owners and occupants of the Property, and (b) make and enforce rules regarding the use of the parking stalls.

4.7 Signs Displayed from Units. Without the prior written consent of the Management Committee or its designee, no occupant of the Residential Space shall permit any signs, pictures, banners, flags, posters or other commercial, political, informational or directional signs, devices and objects of any kind to be displayed to the public view from any Residential Space, other than such signs as may be used by the Owner for the purpose of selling, renting or leasing all or any portion of such Residential Space. The Owner of a Unit containing Commercial Space may place signs, pictures, banners, flags, posters and other commercial, informational or directional signs, devices and objects for display to the public view on the exterior window and door surfaces of the Unit, which form part of the Common Elements for the purposes of: (a) selling, renting or leasing that Owner's Unit; or (b) advertising the commercial uses of that Unit and other uses reasonably ancillary thereto. Nothing in this Section shall be deemed to prohibit or restrict an occupant of the Residential Space from displaying the United States flag or political signs in space under the exclusive control of the occupant if such prohibition or restriction would constitute a violation of applicable law.

ARTICLE 5. - EASEMENTS

5.1 Easements for Encroachments. If on or after the date of this Declaration: (a) any part of the Common Elements encroaches on any part of a Unit; or (b) any part of a Unit encroaches on a part of the Common, then a non-exclusive easement for each such encroachment and for the maintenance of the same shall exist immediately and automatically, and Declarant reserves such easement for the benefit of each Unit and each Common Element. Such encroachments shall not be considered to be encumbrances on any Unit or the Common Elements. Such encroachments may include, without limitation, encroachments caused by error in the original construction of the Buildings or any other improvements constructed or to be constructed on the Land in accordance with this Declaration, error in the Plat, settling, rising or shifting of the earth or changes in position caused by repair or reconstruction of the Property.

5.2 Easements for Maintenance. Some of the Common Elements may be located within the Units or may be conveniently accessible only through the Units. Declarant grants the Management Committee a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Elements at reasonable times and under reasonable circumstances as may be necessary for: (a) the maintenance, repair, replacement and cleaning of the Common Elements; or (b) making Emergency Repairs necessary to prevent damage to Common Elements or to any Unit, provided that the Management Committee shall make a reasonable effort to provide notice to the occupant of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense.

5.3 Easements for Units. Declarant reserves for each Unit a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Elements as necessary for access to and from such Unit. Declarant reserves for each Unit a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements.

Declarant reserves for each Unit a non-exclusive easement in common with all other Units for Utility Equipment and other Common Elements from time to time and at any time located in any other Units and serving the benefitted Unit. Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the Utility Equipment and other Common Elements from time to time and at any time located in such Unit and serving any other Unit. All of such Utility Equipment and other Common Elements may be installed or moved as may be reasonably necessary for use by the benefitted Unit, so long as such movement does not unreasonably interfere with the burdened Unit and is approved in advance by the Management Committee, and so long as any construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of any such construction activities, the benefitted Owner shall immediately restore any portion of the burdened Unit affected to the same condition as existed prior to the commencement of such construction activities, using the same (or better) type and quality of materials previously used.

5.4 Sign Easements.

- (a) *Easements.* Declarant reserves a non-exclusive easement on the exterior surfaces of the Buildings and on the surfaces and other portions of the Common Elements (but not the exterior window and door surfaces of Units, which exterior surfaces form part of the Common Elements), as the servient estate, for the benefit of: (a) the Property as a whole, for the purposes of providing directional signs within the Property and signs identifying the name of the Property (the Management Committee, acting on behalf of all Owners, shall administer the benefit of this portion of the Sign Easement); and (b) each Unit containing Commercial Space for the purpose of advertising on-site uses in the Commercial Space. No sign, advertisement, notice or other lettering (each a "**Sign**" and collectively the "**Signs**") shall be mounted, exhibited, inscribed, painted or fixed at any location on or within the Common Elements, including the exterior of the Buildings (other than on the exterior surfaces of doors and windows of any Commercial Space, which may be used by the Owner of such Commercial Space pursuant to Section 4.7), without the prior written consent of the Management Committee as to the form, location and content of the Sign, which consent shall not be withheld unreasonably. With the Management Committee's approval, Signs may be located anywhere on the exterior of a Building.
- (b) *Costs.* The costs of installing, operating, maintaining and removing Signs for on-site advertising shall be borne by the Owner of the benefitted Unit. An Owner shall have the electricity for such Signs, if any, covered by that Owner's own electricity meter. Other than the electricity charges described above, no fees may be charged to an Owner for the benefit of using the Sign Easements.
- (c) *Removal.* Once a Sign permitted by this Section is no longer in use or no longer accurately describes a permitted use, the benefitted party, at its expense, shall cause the Sign to be removed (and shall pay to the Association the costs incurred in repairing any damage to the Common Element caused by such removal) or to be altered appropriately.

- (d) *Standard.* All Sign usage must comply with applicable zoning regulations and other applicable law, and with any Rules and Regulations pertaining to Signs promulgated by the Management Committee. In all matters pertaining to the Sign Easements, the Management Committee shall exercise its discretion reasonably, in a reasonably timely manner, and consistently.

5.5 Easement for Effects of Commercial Uses. Declarant, as the owner of the Property, hereby grants to each Unit and its Owner and occupants, a non-exclusive easement that burdens the Property (including, but not limited to, the Residential Space, as the servient estate, and that benefits the Commercial Space, as the benefitted estate, for the purpose of allowing within the Property effects that are reasonably incidental to commercial and retail activities taking place within the Commercial Space; including, but not limited to: (a) sounds and noise; (b) smells, odors and fragrances, including those deriving from exhaust fans; (c) the placement of vent pipes on the exterior of the Building from the Commercial Space to the roof of the Buildings (in locations that are approved by the Management Committee, which approval shall not be withheld unreasonably) for the purpose of venting smoke, vapors, heat and smells from restaurant and other commercial uses; (d) the placement of radio and television antennae and satellite dishes on the roof of the Buildings and ducts and wiring on the exterior of the Building from the Commercial Space to such antennae and satellite dishes (in locations that are approved by the Management Committee, which approval shall not be withheld unreasonably) for the purpose of providing telecommunications services to the Units; and (e) light, whether emanating from the Commercial Space and/or signs on the Buildings (including light from neon signs that might be in the proximity of windows to the Units), whether any one or more of the foregoing arise from live music or artistic performances; preparation, serving and consumption of food, including restaurants; sales; set-up and take down activities; construction and remodeling activities; and/or other commercial and retail activities and whether any one or more of the foregoing occur in the evening, night or early morning hours (subject to hours restrictions that are set forth in the Rules and Regulations).

5.6 Improvement Easement. Declarant reserves a transferable non-exclusive easement (the "**Improvement Easement**") over and on the Common Elements for the purpose of making improvements on the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same, but Declarant must complete any such improvements within a reasonable period of time after commencing the improvements, free and clear of mechanics' and materialmen's liens. To the extent that damage is inflicted on any part of the Property by any person or persons utilizing the Improvement Easement, the holder of the Improvement Easement, together with the person or persons causing the same, shall be jointly and severally liable for the prompt repair of the damage and for the restoration of the same to a condition compatible with the remainder of the Property.

5.7 Easement to Use Air Space. The air space over the Property (the "**Air Space**") is reserved and retained by Declarant. Declarant, as the owner of the Air Space, hereby grants to the Owners a non-exclusive easement within the Air Space for the placement and operation of mechanical equipment as necessary solely for the operation of the Property, which easement shall be considered part of the Common Elements.

5.8 **General Provisions.** Each easement and right created by this Article 5 is an appurtenance to the real property benefitted thereby and is a burden on the real property burdened thereby. Except as is expressly provided otherwise in the Section hereof that creates an easement and right, the easement may not be transferred, assigned or encumbered except as an appurtenance to the benefitted real property. No such easement or right may be amended except with the consent of the easement holder (but as to easements benefitting more than one Unit, the consent may be given by those Owners of Units in the benefitted group that own more than 50% of the Undivided Interests related to the benefitted Units, and the consent, when so given, shall be binding upon all benefitted Units within the group). All conveyances of a Condominium Unit shall be deemed to be made together with and subject to the easements set forth in this Article 5. The easements created under this Article 5 shall terminate upon the termination of the Declaration. Subject to the mixed-use nature of the Property and any specific rights granted to the holder of an easement, the use of any easement granted under this Declaration shall not disturb unreasonably the quiet enjoyment of any other Unit by its Owner and occupants. Notwithstanding the grant of any easement herein, certain areas of the Common Elements, including but not limited to utility and janitorial closets, may, at the discretion of the Management Committee, be locked and inaccessible to Users except with the consent of the Management Committee for the purposes for which such areas are intended.

ARTICLE 6. - MANAGEMENT COMMITTEE

6.1 **Establishment.** Subject to the provisions of this Declaration, the Property shall be operated, managed and maintained by the Management Committee on behalf of the Owners, the cost of which (including, without limitation, the cost of the performance by the Management Committee of all obligations contemplated by this Article 6 and other provisions of the Governing Documents) shall be part of the Common Expenses. The Management Committee, acting on behalf of the Association, shall be vested with, and shall have the right, power and authority to exercise, all rights, powers and authority given to a Manager or the Association of Owners under the Act. The Management Committee shall, in connection with its exercise of any of the powers delineated in the Act or this Declaration, act for the Association. The Management Committee shall have, and is granted, the following irrevocable rights, authority and powers, in addition to all other rights, authority and powers existing or created on or after the date of this Declaration under the Governing Documents, but in taking any such actions, the Management Committee shall be acting for the Association:

- (a) *Administration of Governing Documents.* To administer and enforce the covenants, conditions, restrictions, easements, and other provisions of the Governing Documents;
- (b) *Maintenance.* To keep in good order, condition and repair all the Common Elements and all items of personal property, if any, used in the enjoyment of the Common Elements.
- (c) *Access.* To have access to each Unit from time to time during reasonable hours as may be necessary for the operation, maintenance, repair or replacement of any of

the Common Elements or for making Emergency Repairs necessary to prevent damage to the Common Elements or to a Unit or Units;

- (d) *Hold Title.* To acquire and hold real and personal property (in the name of the Association) of all types for the use and benefit of all of the Owners and to dispose of such property by sale or other method;
- (e) *Personnel; Manager.* To obtain and pay for the services of such personnel as are necessary or appropriate for the proper operation, management, maintenance, repair and replacement of the Property, and to retain or remove a Manager;
- (f) *Services.* To pay for utility and municipal services, insurance and other goods and services common to the Units;
- (g) *Easements.* Without the vote or consent of the Owners, Mortgagees, or of any other person, to grant or create (and/or to relocate), on such terms as it deems advisable, reasonable permits, licenses, rights-of-way and easements over, under, across and through the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper operation and maintenance of the Property, and granting easements for access and support to adjoining property owners;
- (h) *Declaration and Plat.* To execute and record, on behalf of the Owners, any amendment to this Declaration or the Plat that has been approved by the vote or consent necessary to authorize such amendment;
- (i) *Suits.* To sue and be sued;
- (j) *Contracts and Property Transfers.* To enter into contracts that in any way concern the Property and are within the scope of the powers and duties of the Management Committee, to convey or transfer any interest in real property (on behalf of the Association), to purchase, acquire and accept title to any interest in real property and to add any interest in real property so obtained to the Property (in the name of the Association), so long as any vote or consent necessitated by the subject matter of the agreement has been obtained;
- (k) *Rules and Regulations.* To promulgate such Rules and Regulations as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with this Declaration and the interests of the Owners and to establish penalties for the infraction of such Rules and Regulations;
- (l) *Assessments.* To levy and collect Assessments for the payment of Common Expenses as provided in Article 7;
- (m) *Use of Common Elements.* To make such use of the Common Elements as may be necessary or convenient to perform the duties and functions that the Management

Committee is obligated to perform pursuant to this Declaration, including the designation, from time to time, of portions of Common Elements for specific purposes for the benefit of the Property; and

- (n) *Other.* To perform any other acts and to enter into any other transactions authorized by the Governing Documents or which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

Any instrument executed by the Management Committee that recites facts which, if true, would establish the Management Committee's right, power and authority to accomplish through such instrument what is purported to be accomplished by such instrument, shall conclusively establish such right, power and authority in favor of any person who in good faith and for value relies on such instrument.

6.2 Composition. The Management Committee shall be composed of three natural persons. At the first regular Owners meeting, two Management Committee members shall be elected for two-year terms and one member for a one-year term. At each annual Owners meeting thereafter, any vacant seat on the Management Committee shall be filled with a member elected for a two-year term. Only Owners and officers, partners, managers, members and agents of Owners who are not natural persons (or of constituent entity-owners of those Owners who are not natural persons, at one or more tiers removed from the Owner itself) shall be eligible for Management Committee membership. If a member of the Management Committee fails to satisfy the foregoing requirement at any time during that member's term, then that member's term of office shall immediately and automatically terminate. Any member of the Management Committee may be removed by a vote of a Two Thirds Majority of the Owners at a meeting called for that purpose. At each annual Owners meeting the Undivided Interests appurtenant to a Unit may be voted in favor of as many candidates for Management Committee membership as there are seats on the Management Committee to be filled. There shall be no cumulative voting for members of the Management Committee. Notwithstanding the foregoing provisions, until the first annual meeting of the Owners, the members of the Management Committee shall be appointed by Declarant. In the event of a vacancy prior to the expiration of the relevant term, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration of the term for which the member being replaced was elected. Unless the member forfeits or otherwise loses the member's seat as provided in this Declaration, a member shall serve on the Management Committee until the member's successor is elected and qualifies. Management Committee members shall be reimbursed for all expenses reasonably incurred in connection with Management Committee business provided that such expenses are first approved by the Management Committee.

6.3 Officers and Agents. The Management Committee shall perform its functions through those members who are elected as officers by the Management Committee in accordance with the Bylaws and through such agents or employees as the Management Committee may appoint or employ.

6.4 Records. The Management Committee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying

and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred by the Association in accordance with the Governing Documents. Such records and the vouchers authorizing the payments involved shall be available for examination by the Owners at convenient hours on weekdays. The Management Committee shall maintain up-to-date records showing the following:

- (a) *Owners.* The name of each person who is an Owner, the address of the Unit owned by such Owner, and the mailing address and electronic mail address (if any) of such Owner; and
- (b) *Eligible Mortgagee.* The name and address of each Eligible Mortgagee and the Unit that is encumbered by the Mortgage held by such Eligible Mortgagee.

On any transfer of a fee interest in a Condominium Unit, either the transferor or transferee shall furnish the Management Committee with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the Official Records. The Management Committee may for all purposes act and rely on the information concerning Owners and Ownership that is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units that is obtained from the Official Records. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Management Committee is otherwise advised.

6.5 Professional Management. The Management Committee may (but is not obligated to) carry out through a professional Manager any of its functions that are properly the subject of delegation. The professional Manager so engaged shall be an independent contractor and not an agent or employee of the Management Committee, shall be responsible for managing the Property for the benefit of the Management Committee and the Owners and shall, to the extent permitted by law and by the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall run for a reasonable period not to exceed to three years.

6.6 Liability. No member of the Management Committee or any officer of the Association shall be liable to the Owners for any mistake of judgment, for negligence or on other grounds, except for such member's own willful misconduct, gross negligence, bad faith or more culpable conduct, subject to the following:

- (a) *General.* Members of the Management Committee and officers of the Association: (a) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (b) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them in their capacity as such, except for their own willful misconduct, gross negligence, bad faith or more culpable conduct, nor for acts performed for them in their capacity as such; and (c) shall have no personal liability arising out of the use, misuse or condition of the Property, which might in

any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

- (b) *Specific Listing.* Without limiting the generality of subsection (a) above, and notwithstanding any provision of the Governing Documents to the contrary, neither the Management Committee, the Association, nor any member of the Management Committee shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Property or other cause beyond such person's reasonable control.
- (c) *Indemnity.* The Owners and the Association (as the Indemnifying Party) shall indemnify each member of the Management Committee and each officer of the Association (as the Indemnified Party) against all claims made by third parties arising out of any contract made by the Management Committee on behalf of the Owners, unless such contract was made in bad faith. The liability of any Owner arising out of any contract made by the Management Committee or an officer of the Association or out of the indemnification provision set forth in the immediately preceding sentence shall be limited to the total liability concerned multiplied by such Owner's Undivided Interest.

6.7 **Initial Agent for Service of Process.** The following shall be the initial person to receive service of process on behalf of the Property, the Management Committee and the Association:

<i>Name</i>	<i>Address</i>
Jessica Norrie	230 South 500 West, Suite 235 Salt Lake City, Utah 84101

The Management Committee shall have the right to appoint a successor or substitute process agent at any time and from time to time. The name and address of any such successor or substitute agent shall be specified by an appropriate instrument recorded in the Official Records, a copy of which shall be delivered to each Owner. Service of process on two or more Owners in any action relating to the Common Elements or more than one Unit may be made on the agent designated above.

6.8 **General Standard.** Notwithstanding any provision in this Declaration to the contrary, the Management Committee shall act fairly and reasonably in discharging its duties under this Declaration and in so doing shall not discriminate between or among any Owners or any classifications of Owners.

ARTICLE 7. - COMMON ELEMENTS; COMMON EXPENSES; ASSESSMENTS.

7.1 **Common Elements.** The necessary work of operation, management, maintenance, repair and replacement of the Common Elements and the making of any additions or improvements to the Common Elements shall be carried out only by the Management Committee, subject to the following:

- (a) *Operation.* The Management Committee shall provide for such operation, management, maintenance, repair and replacement of the Common Elements as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, safe, functional, attractive and generally in good condition and repair, and shall pay for all utility services furnished to the Common Elements. The maintenance shall include the removal of weeds and debris on the Property and periodic cleaning, sweeping, removal of ice, snow and rubbish, re-striping and resurfacing of the Parking Area.
- (b) *Improvements.* Additions or capital improvements to the Property which cost no more than \$5,000.00 may be authorized by the Management Committee or by the Manager. Additions or capital improvements to the Property the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by a Majority of the Owners. Any addition or capital improvement that would materially alter the nature of the Property must, regardless of its cost and prior to being constructed or accomplished, be authorized by a Majority of the Owners.

7.2 **Annual Budget.** Before November 1st of each year the Management Committee shall prepare an Annual Budget for the next following calendar year; provided, however, that the first Annual Budget after the date of this Declaration shall be prepared no later than the next March 31. In preparing such Annual Budget, the Management Committee shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. Such Annual Budget shall be subject to the approval of a Majority of the Owners.

7.3 **Assessments.** Each Owner shall pay Assessments in accordance with the following:

- (a) *Annual Assessments.* Prior to the first day of January of each calendar year, the Management Committee shall notify each Owner of the amount of its share of the Common Expenses for that calendar year as set forth in the relevant budget (the Owner's "**Annual Assessment**"). Each Annual Assessment shall be paid in monthly installments, each in an amount equal to one-twelfth of the Annual Assessment, with each such installment due on the first day of each calendar month.
- (b) *Special Assessments.* Subject to the budget procedures required by this Declaration, the Board of Directors may levy in any calendar year one or more special assessments (each, a "**Special Assessment**"), applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or

reconstruction, repair or replacement of a capital improvement within the Property or any facilities located in the Property, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current Annual Budget. Notice of the amount and due dates for any Special Assessment shall be sent to each Owner at least 30 days prior to the due date. If any Special Assessment is to be used for the construction of new facilities (as opposed to repair and reconstruction of existing facilities in the Property), and if the total amount of the Special Assessment levied for such construction exceeds 10% of the total Annual Budget for that year, then the Special Assessment shall require the approval of a Majority of Owners.

- (c) *Late Payments and Assessments.* The Management Committee may establish and assess reasonable charges for delinquent payments of any Assessment or any installment thereof. A late fee equal to 5% of the delinquent amount and interest at the rate of 18% per annum on the delinquent amount shall be deemed to be reasonable. The failure of the Management Committee to give timely notice of any Assessment shall not be deemed a waiver, modification or release of the obligation of any Owner to pay any Assessment, but the date when payment shall become due in such case shall be deferred to a date that is fifteen (15) days after notice of such Assessment or installment is given to the Owner concerned; provided, however, that such deferral shall not have the effect of deferring any subsequent installment. All payments made by an Owner under this Declaration shall be applied first to pay any costs of collection, next to outstanding Fines and late charges, next to interest and finally to Assessments or other amounts due from the Owner.
- (d) *Default Assessments.* All Fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, and any expense (including without limitation attorneys' fees) incurred by the Association as a result of the failure of an Owner to comply with the Governing Documents, shall constitute a "**Default Assessment.**"
- (e) *No Exemption.* No Owner may exempt itself from liability for its Assessment obligations by waiver of the use or enjoyment of any of the Common Elements or abandonment of its Unit. 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 Property; from the exercise of any easements or rights under this Declaration, including the Commercial Easements; or from any action taken to comply with the Governing Documents or any applicable law, ordinance, rule, regulation or order.

7.4 **Collection of Assessments.** Every Owner shall pay Assessments in the amounts and at the times determined by the Management Committee in accordance with this Declaration and the Act. The obligation to pay Assessments is subject to the following terms and conditions:

- (a) *Personal Obligation.* Each Assessment assessed against each Unit is a personal debt and obligation of the Owner at the time the Assessment is made and is collectible as such and, if not paid when due, shall (together with any applicable late charges) accrue interest at the rate of 18% per annum, both before and after judgment, until paid in full. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it. The prevailing party in such action is entitled to recover its costs of suit and reasonable attorneys' fees.
- (b) *Cessation of Services.* If an Owner shall be in default for the period of one month in the payment of Assessments, then the Management Committee may, at its option, and for so long as such default shall continue, cease to provide any or all services to such Owner's Unit pertaining to such Unit.
- (c) *Collection of Rent.* If an Owner shall at any time lease or rent its Unit and shall default for a period of one month in the payment of Assessments, then the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and each Owner hereby authorizes and consents to the payment of such rent by any tenant to the Management Committee. The payment of net rent to the Management Committee shall discharge such tenant for rent due and shall discharge the Owner for such Assessments to the extent of the amount so paid.
- (d) *Lien.* If any Owner fails or refuses to pay any Assessment or installment when due, then the amount then or thereafter due (together with any applicable late charges and interest) shall constitute a lien on such Owner's Condominium Unit, and on the recording of a notice of lien (a "**Notice of Lien**") by the Management Committee in the Official Records, shall be a lien on such Owner's Condominium Unit prior to all other liens and encumbrances, recorded or unrecorded, except for: (a) tax and special assessment liens on such Condominium Unit in favor of any assessing unit or special improvement district; and (b) encumbrances on such Condominium Unit recorded on or prior to the date such Notice of Lien is recorded which by law would be a lien prior to subsequently recorded encumbrances.
- (e) *Notice of Lien.* A Notice of Lien: (a) shall set forth the amount of the unpaid assessment, the date due, the name of the Owner and a description of the Condominium Unit concerned; (b) shall be executed and acknowledged by the Management Committee; and (c) may be recorded in the Official Records.
- (f) *Appointment of Trustee.* The Declarant appoints First American Title Insurance Company, having an address at 215 South State, Suite 380, Salt Lake City, Utah

84111, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit. Pursuant to Utah Code §§ 57-1-20 and 57-8-45, the Declarant hereby conveys and warrants to such trustee, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of Assessments under the terms of the Declaration. An Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Management Committee may appoint another qualified trustee by executing a substitution of trustee form.

- (g) *Enforcement of Lien.* The lien for nonpayment of any Assessment may be enforced by sale or foreclosure of the Condominium Unit concerned by the Management Committee. Such sale or foreclosure shall be conducted in the same manner as the exercise of a private power of sale or a foreclosure under a deed of trust pursuant to the Utah Trust Deed Act, as a foreclosure of a mortgage, as the exercise of any other remedy under a mortgage or deed of trust, or in any other manner permitted by law. In any such sale or foreclosure, the Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the Notice of Lien. In the case of foreclosure, the Owner shall pay a reasonable rental for the Unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

7.5 Estoppel Statement. The Management Committee shall, on the written request of any Owner or any Mortgagee or prospective Mortgagee or prospective purchaser of a Condominium Unit, and on payment of a reasonable fee not to exceed \$10.00 (or such higher amount that is selected by the Management Committee and that is permitted by the Act), issue to the requesting person or persons a written statement setting forth the amount of any unpaid Assessments for such Condominium Unit. Such written statement shall be conclusive on the remaining Owners and on the Management Committee in favor of all persons who rely on such written statement in good faith.

7.6 Reserve Fund. The Management Committee shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Elements as determined by the Owners annually, as follows:

- (a) *Collection.* Reserve funds may be collected as part of Annual Assessments or Special Assessments.
- (b) *Surplus Monies.* If there are surplus monies after payment of all Common Expenses for any fiscal year, the Management Committee may, in its discretion, (i) retain surplus Association money and credit it the Assessments for the following fiscal year, or (ii) deposit such surplus as reserves.

- (c) *Segregation of Reserves.* The Management Committee shall segregate money held for reserves from regular operating and other accounts.
- (d) *Reserve Analysis.* The Management Committee shall cause a Reserve Analysis to be conducted no less frequently than every five (5) years. The Management Committee shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis and updates shall project a minimum of 30 years into the future.
- (e) *Qualifications for Person Preparing Reserve Analysis.* The Reserve Analysis report shall be prepared by a person or persons with a reasonable working knowledge of current building technologies and life cycle costing for facilities.
- (f) *Disclosure and Approval at Annual Meeting.* Annually, at the annual meeting of the Owners or a special meeting of Owners, the Management Committee shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Management Committee shall prepare and keep minutes of each meeting held under this Section and indicate in the minutes any decision relating to funding a reserve fund.

7.7 *Audit.* Any Owner may at any reasonable time, but not more than once per calendar year, on appointment and at its own expense, cause an audit or inspection to be made of the books and records maintained by the Management Committee.

ARTICLE 8. - INSURANCE

8.1 **Insurance.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. A summary of insurance shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within 30 days of the meeting.

8.2 **Property Insurance.**

- (a) *Hazard Insurance.* The Association shall maintain a blanket policy of property insurance covering the entire Property, including the Common Elements, the Buildings, and all fixtures and building service equipment.
 - (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or

betterment installed in or to the Unit or otherwise permanently part of or affixed to Common Elements, Units, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (iii) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
- (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of \$2,000,000 or the insurable value of the Building containing the equipment.
- (vi) If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.
- (vii) An Owner that has suffered damage to any combination of a Unit ("**Unit Damage**") as part of a loss, resulting from a single event or occurrence,

that is covered by the Association's property insurance policy ("a **Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to the Unit Damage ("**Unit Damage Percentage**") for that Unit to the amount of the deductible under the Association's property insurance policy.

- (viii) If an Owner does not pay the amount required under Subsection (vii) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Element appurtenant to the Unit, the Association may levy a Default Assessment against the Owner for that amount.
- (b) *Flood Insurance.* If any part of the Property is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Property located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Elements within the Property ("**Insurable Property**") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Property located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. If the Property is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (c) *Earthquake Insurance.* The Association may purchase earthquake insurance as the Management Committee deems appropriate.
- (d) *Association's Obligation to Segregate Property Insurance Deductible.* The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (e) *Association's Right to Not Tender Claims that are Under the Deductible.* If, in the exercise of its business judgment, the Management Committee determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.
- (f) *Notice Requirement for Deductible.* The Association shall provide notice to each Owner of the Owner's obligation under this Section for the Association's policy

deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

8.3 Commercial General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Elements or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

8.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three monthly Annual Assessment installments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Management Committee members of the Association, (b) employees and volunteers of the Association, (c) any Manager, and (c) officers, directors, and employees of any Manager.

8.6 Workers' Compensation Insurance. If the Association has any employees, the Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Management Committee deems appropriate.

8.7 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.

8.8 Named Insured. The named insured under any policy of insurance shall be the Association. The Mortgagees of the Units (excluding the Townhouse Units) and each Owner shall also be an additional insured under all property and CGL insurance policies.

8.9 Association's Right to Negotiate Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

8.10 Insurance Trustee. In the discretion of the Management Committee or upon written request executed by Owners holding at least 50% of the Undivided Interests, the Management Committee shall hire and appoint an insurance trustee ("**Insurance Trustee**"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Management Committee (as the case may be) shall require.

8.11 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.12 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

8.13 Amendments to this Section to Comply with Applicable Law. These insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Association. Notwithstanding anything contrary in this Declaration, the Management Committee may unilaterally, without approval of the Owners, amend this Article to comply with future changes to applicable law.

ARTICLE 9. - DESTRUCTION; CONDEMNATION; RESTORATION

9.1 **Definitions.** As used in Articles 10 and 11, each of the following terms shall have the meaning indicated:

“Available Funds” means any proceeds of insurance, Condemnation awards, payments in lieu of Condemnation and other uncommitted funds held by the Management Committee, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Management Committee, including a Mortgagee, or that portion of any Condemnation award or payment in lieu of Condemnation payable to an Owner or its Mortgagee for the Condemnation of the Condominium Unit in which it is interested.

“Condemnation” means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

“Estimated Cost of Restoration” means the estimated cost of Restoration as determined by the Management Committee in its sole discretion.

“Restoration” means restoration of the Property to the extent reasonably possible in accordance with this Declaration, the Plat and the original plans and specifications for the Property and to substantially the same condition in which the Property existed prior to the damage or destruction concerned, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, and to the extent not so possible, **“Restoration”** means restoration of the Property to an attractive, sound and desirable condition. Any Restoration not in accordance with this Declaration, the Plat and the original plans and specifications for the Project shall require the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees.

“Restored Value” means the value of the Property after Restoration.

“Substantial Condemnation” means the occurrence of: (a) the Condemnation of all of the Property; or (b) the Condemnation of part of the Property where the Estimated Costs of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Condemnation”** means the occurrence of any Condemnation which is not a Substantial Condemnation.

“Substantial Destruction” means the occurrence of any damage or destruction of the Property where the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Destruction”** means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

9.2 Management Committee Determinations. On the occurrence of any Condemnation of, or damage or destruction to, the Property, the Management Committee shall make a determination as to whether the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. In making such determinations the Management Committee may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

9.3 Restoration. Restoration of the Property shall be undertaken by the Management Committee promptly without a vote of the Owners on the occurrence of Partial Condemnation or Partial Destruction, and shall also be undertaken on the occurrence of Substantial Condemnation or Substantial Destruction unless the election to not undertake Restoration is consented to by a Two-thirds Majority of the Owners and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees. Within 30 days after the Management Committee has determined that Substantial Condemnation or Substantial Destruction has occurred, it shall send to each Owner and Eligible Mortgagee a written description of the Condemnation or the damage or destruction involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. If Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Management Committee exceed the cost of Restoration when Restoration is undertaken, then the excess shall be paid and distributed to the Owners in proportion to their respective Undivided Interests or, in the discretion of the Management Committee, shall be held to defray future Common Expenses. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, then all of the Units shall be assessed for the deficiency on the basis of their respective Undivided Interests. If all or any portion of one or more Units is damaged or destroyed but is not the subject of Restoration (even through the Property will continue as a condominium project) or is taken in a Condemnation, then the Undivided Interest of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 9.6 below.

9.4 Sale of Property. Unless Restoration is accomplished pursuant to Section 9.3, the Property shall be sold following the occurrence of Substantial Condemnation or Substantial Destruction. On such sale, condominium ownership under this Declaration and the Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Management Committee to the Owners in proportion to their respective Undivided Interests. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

9.5 Authority to Represent Owners. The Management Committee, as attorney-in-fact for each Owner, shall represent all of the Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their

Mortgagees as their respective interests may appear. The Management Committee, as attorney-in-fact for each Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

9.6 Reallocation of Interests on Condemnation. If any Unit is taken by Condemnation, then the Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests. The court shall enter a decree reflecting the reallocation of the Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit taken for its Undivided Interest as well as for its Unit. If any portion of any Unit is taken by Condemnation, then the court shall determine the fair market value of the portion of the Unit not taken, and the Undivided Interest appurtenant to such Unit shall be reduced in proportion to the diminution in the fair market value of such Unit resulting from such Condemnation. The Undivided Interest thus divested from the Owner of such Unit shall be reallocated among such Unit and the other Units in proportion to their respective Undivided Interests, with any Unit partially taken in Condemnation participating in the reallocation on the basis of its Undivided Interest as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of the Undivided Interest so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit partially taken for that portion of its Undivided Interest divested from it and not revested in it as well as for that portion of its Unit taken by Condemnation. If, however, the Condemnation of a portion of any Unit makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the entire Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests, and the remaining portion of such Unit shall thereafter be part of the Common Elements. The court shall enter a decree reflecting the reallocation of Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of such Unit for its entire Undivided Interest and for its entire Unit.

9.7 Allocation of Proceeds upon Partial Condemnation. If a portion of the Common Elements is taken by Partial Condemnation, then the award for it shall be allocated to the Owners in proportion to their respective Undivided Interests; provided, however, that the Management Committee may elect to retain the award to defray Common Expenses rather than to distribute the award to Owners.

ARTICLE 10. - RIGHTS OF CERTAIN PARTIES

10.1 Mortgagee Protection. The lien or claim against a Condominium Unit for unpaid Assessments levied by the Management Committee pursuant to the Act or this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, and shall not be affected by any sale or transfer of such Condominium Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Condominium Unit or the exercise of a power of sale available thereunder shall extinguish a

subordinate lien for such Assessments which became payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the immediately preceding sentence may be reallocated and assessed to all Condominium Units as Common Expenses, including the Condominium Unit that is the subject of such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Condominium Unit from liability for, nor such Condominium Unit from the lien of, any Assessments or charges becoming due thereafter or reallocated pursuant to the immediately preceding sentence. The Management Committee shall make available for inspection on request during normal business hours or under other reasonable circumstances to Owners and Mortgagees, current copies of this Declaration, the Plat, the Rules and Regulations and the books, records and financial statements of the Management Committee. On written request to the Management Committee by any Mortgagee (which request identifies the name and address of such Mortgagee and the Unit Number or address of the Unit encumbered by the Mortgage concerned), such Mortgagee shall thereafter be deemed to be an Eligible Mortgagee and shall be included on the appropriate lists maintained by the Management Committee, and shall be entitled to timely written notice of any of the following:

- (a) *Condemnation or Casualty Loss.* Any Condemnation or casualty loss that affects a material portion of the Property or any Unit on which there is a Mortgage held by such Eligible Mortgagee;
- (b) *Delinquencies.* Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held by such Eligible Mortgagee, which delinquency remains uncured for a period of 60 days;
- (c) *Insurance.* Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Management Committee; and
- (d) *Consent.* Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 9.3.

10.2 **Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. All references in this Declaration to Declarant shall include any successor to Declarant, either by operation of law or through specific assignments of rights under the Declaration.

ARTICLE 11. - ENFORCEMENT

11.1 **Liens Against Units.** Subsequent to the recording of this Declaration in the Official Records and while the Property remains subject to the Act, no new lien or encumbrance shall thereafter arise or be created against the Property as a whole. During such period, liens or encumbrances shall arise or be created only against each Condominium Unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created on or against any other separate parcel of real property subject to individual ownership. No labor performed or materials furnished with the consent or at the request of an Owner or its agent, contractor or subcontractor shall be the basis for the filing of a lien against the Condominium

Unit of any other Owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Owner of any Unit in the case of Emergency Repairs. Labor performed or materials furnished for the Common Elements, if authorized by the Owners or the Management Committee in accordance with the Governing Documents, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien against each of the Condominium Units. If a lien against two or more Condominium Units becomes effective, then any Owner of any Condominium Unit may remove its Condominium Unit from such lien by payment of the proportional amount attributable to such Condominium Unit. Such individual payment shall be computed by reference to the Undivided Interest comprising a part of the Condominium Unit concerned. Subsequent to any such payment, discharge or other satisfaction, the Condominium Unit shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge of the proportional amount attributable to any Condominium Unit shall not prevent the lienor from proceeding to enforce its rights against such Condominium Unit to the extent not so paid, satisfied or discharged.

11.2 Certain Actions. Without limiting the rights of any Owner, actions may be brought by the Management Committee, in its discretion, on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or any portion thereof or more than one Unit.

11.3 Payment of Costs and Expenses. If there is a dispute concerning any Governing Document or if the Management Committee or any Owner seeks to enforce its rights under a Governing Document against the Association, the Management Committee or any Owner, then the non-prevailing party shall pay all costs and expenses, including reasonable attorneys' fees, that the prevailing party incurs in connection with the dispute or enforcement or in pursuing any remedy provided hereunder or by relevant statutes or other laws, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any proceedings under any present or future federal bankruptcy act or state receivership act; or in connection with any mediation, arbitration or other alternative dispute resolution proceeding initiated by the parties.

11.4 Indemnity. Whenever an Indemnifying Party indemnifies or holds harmless an Indemnified Party from any claims, then (except as the indemnity might be specifically limited in such provision of this Declaration) the Indemnifying Party shall indemnify and hold harmless the Indemnified Party and its successors, assigns and legal representatives from and against any and all losses, damages, claims, injuries, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorney's fees, whether they are incurred with or without the filing of a suit or on appeal or otherwise, and whether they relate to the defense of any claims made against the Indemnified Party by third parties or to the enforcement of the indemnity by the Indemnified Party against the Indemnifying Party), liabilities, judgments and liens, of whatever kind or character, that are caused by, that relate to or that arise out of the claims being indemnified against.

11.5 Right to Cure. If any Owner fails to perform any obligation under this Declaration, then the Management Committee may proceed to cure the default after 30 days

written notice and failure of the Owner to commence, and thereafter diligently to prosecute, such cure, and the Management Committee shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the rate of 18% per annum from the date such costs were paid, plus collection costs. Furthermore, the Management Committee shall have a lien on the Unit of the defaulting Owner for all such amounts in the same manner as if it were a lien for nonpayment of Assessments.

ARTICLE 12. - MODIFICATIONS.

12.1 Amendment. Except as provided in this Section, the vote of a Two Thirds Majority of the Owners shall be required and shall be sufficient to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section for amendment has occurred and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. Notwithstanding the foregoing, the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees shall be required to amend any material provision of this Declaration or the Plat that provides for any of the following, unless made in accordance with Article 10: (a) voting; (b) Assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance, repair and replacement of the Common Elements; (d) insurance; (e) rights to use the Common Elements (other than as effectuated by reasonable Rules and Regulations); (f) responsibility for maintenance and repair of the Property; (g) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (h) the allocation of Undivided Interests; (i) imposition of any restrictions on the right of an Owner to sell, transfer or otherwise convey a Unit; and (j) express benefits or rights of Mortgagees or Eligible Mortgagees. An addition or amendment shall not be considered material for purposes of this Section if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat (or to approve a decision of the Owners or the Management Committee with respect to the nature of Restoration or a decision not to undertake Restoration pursuant to Article 10) is mailed in the United States mail, postage prepaid, certified and return receipt requested, to the address for such Eligible Mortgagee shown on the list maintained by the Management Committee who has not delivered to the Management Committee a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

12.2 Removal of Property from Act. The Owners may remove the Property from the provisions of the Act by an affirmative vote of all (but not less than all) of the Owners, at a meeting of Owners duly called for such purpose, provided that the holders of all liens affecting the Condominium Units consent or agree by instruments duly recorded that their liens may be transferred to the undivided interest of the Owner concerned in the Property. On removal of the Property from the provisions of the Act, the Property shall be deemed to be owned in common by the Owners. The undivided interest in the Property owned in common by each Owner shall be equal to the Undivided Interest previously owned by such Owner. Any removal so authorized

shall be accomplished through the recordation of an instrument in the Official Records executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section for removal has occurred. The removal provided for in this Section shall not bar the subsequent resubmission of the Property to the provisions of the Act.

12.3 **Sale of Property.** The Owners may, by an affirmative vote of a Super Majority of the Owners, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Notwithstanding the foregoing, sale of the Property in the event of damage, destruction, or condemnation shall be governed by the provisions of Section 9.4 above.

ARTICLE 13. - INTERPRETATION

13.1 **Priority Over Act.** In the event of any conflict between the provisions of this Declaration and the provisions of the Act, including, without limitation, Section 57-8-31 of the Act (or any successor or substitute provisions), the provisions of this Declaration shall control to the extent permitted by applicable law.

13.2 **Construction.** This Declaration shall inure to the benefit of, and be binding on, Declarant, the Management Committee, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Titles and headings of articles and sections of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person to whom reference is made may require. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

ARTICLE 14. - DECLARANT'S RIGHT OF FIRST REFUSAL

14.1 Declarant shall have a right of first refusal (the "**Refusal Right**") with respect to the sale of any Unit not then owned by Declarant. Any sale or conveyance of a Unit by any seller other than Declarant shall be subject to the provisions of this Article.

14.2 If an Owner (the "**Selling Owner**") desires to sell or convey its Unit (the "**Subject Unit**"), the Selling Owner shall deliver to Declarant a notice of the Selling Owner's intent to sell or convey the Subject Unit, together with: (i) a copy of a bona fide enforceable written agreement (the "**Offer**"), clearly and accurately setting forth all the terms and conditions of such sale or conveyance, including without limitation the identities of the proposed purchaser or transferee (the "**Proposed Purchaser**"), the amount, and terms of payment, of the

consideration to be paid for the Subject Unit, the intended closing date, and all other material terms of the proposed sale or conveyance, which Offer shall be expressly subject to the Refusal Right and the rights of Declarant under this Article, (ii) any information reasonably required by Declarant with respect to the nature and character of the Proposed Purchaser, the Proposed Purchaser's business, and the intended use of the Subject Unit by the Proposed Purchaser, and (iii) any references and current financial information reasonably required by Declarant with respect to the net worth, credit and financial responsibility of the Proposed Purchaser and its principals.

14.3 Declarant shall have an irrevocable option, for a period of thirty (30) days after receipt of the notice, the Offer and the other materials required by Declarant pursuant to the foregoing Section 14.2 (the "**Option Period**"), to elect to purchase the Subject Unit for the purchase price set forth in the Offer, free and clear of all monetary liens and encumbrances. During the Option Period, Declarant and its agents shall have access to the Subject Unit.

14.4 If within the Option Period Declarant delivers notice to the Owner that Declarant elects to purchase the Subject Unit, the Selling Owner and Declarant shall proceed to consummate the purchase in accordance with the terms and conditions specified in the Offer, except that the closing date may be ninety (90) days after such election by Declarant. In the event that any of the terms and conditions of the Offer are not within the power of Declarant to perform (other than payment of the Purchase Price), such terms and conditions shall be waived by the Selling Owner. Failure of Declarant to deliver notice to the Selling Owner during the Option Period shall be deemed an election not to purchase the Subject Unit.

14.5 If Declarant does not exercise the Refusal Right, the Selling Owner may sell the Subject Unit to the Proposed Purchaser in accordance with all the terms and conditions set forth in the Offer. After such sale or conveyance, the Refusal Right shall continue and shall be binding on the new Owner or the Subject Unit. If such sale is not consummated, the Refusal Right shall continue in full force and effect in favor of Declarant.

ARTICLE 15. - GENERAL PROVISIONS

15.1 **Exhibits.** Each of the exhibits that is referred to herein and that is attached hereto is an integral part of this Agreement and is incorporated herein by reference.

15.2 **Notices.** The Management Committee shall maintain records setting forth the names and mailing addresses of each Owner, and it shall be the responsibility of each Owner (and not the Management Committee) to insure that such records are current as to its Unit. All notices, writings, information, documents or other communications that are required or permitted to be given hereunder: (a) shall be in writing; (b) shall be deemed to be given and received either (i) on the date of delivery, if personally delivered; (ii) on the third business day following mailing, if delivered by certified mail, return receipt requested; (iii) on the next business day, if marked for next business day delivery and delivered by guaranteed overnight express courier or delivery service, such as Federal Express, which provides for evidence of receipt at the office of the intended addressee; or (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of the date of the attempted delivery or refusal to accept

delivery, the date of the postmark on the return receipt, or the date of receipt of notice of refusal or notice of nondelivery by the sending person; and (c) shall be addressed to: (i) any Owner in accordance with the Management Committee's records (and/or to the address of the Owner as set forth in the Official Records); and (ii) the Association.

15.3 Conflicts Among Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

[Signature page follows]

The foregoing Declaration of Condominium for Artspace Commons has been executed as of the date first set forth above.

SCRAP, LLC,
a Utah limited liability company

By: Artspace, a Utah nonprofit corporation
Its: Manager

By: 

Jessica Norie
Its: President

EXHIBIT A
Legal Description

The following described property, located in Salt Lake County, State of Utah:

ALL OF LOTS 7 AND 8, PLAT "A", SALT LAKE CITY SURVEY,
ACCORDING TO THE OFFICAL PLAT THEREOF ON FILE AND OF
RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER

Tax Parcel Number: 15-12-176-013-0000

EXHIBIT B
Units and Ownership Percentages

Unit No.	Square Footage	Undivided Interest
1	96,268	90.59%
2	<u>10,005</u>	<u>9.41%</u>
TOTALS:	106,273	100%

EXHIBIT C
Bylaws

BYLAWS OF
ARTSPACE COMMONS OWNERS ASSOCIATION, INC.

The following shall be the Bylaws of Artspace Commons Owners Association, Inc., a Utah nonprofit corporation (the “**Association**”). All capitalized terms used but not defined herein shall have the meaning given them in the Declaration of Condominium for Artspace Commons, of even date herewith, pertaining to the Property (the “**Declaration**”), as it may be modified or amended from time to time.

1. NAME AND LOCATION

The name of the corporation is Artspace Commons Owners Association, Inc. The principal office of the corporation shall be located at 230 South 500 West, Suite 235, Salt Lake City, Utah 84101, or such other location as may be designated by the Board of Directors from time to time, but the meetings of Members (as defined below) and of the Board of Directors may be held at such places in the State of Utah as may be designated by the Board of Directors.

2. PURPOSE; ASSENT

2.1 Purposes. The specific purposes for which the Association is formed are (i) to provide for the operation, administration, use and maintenance of the Units and the Common Elements within the Property; (ii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto; (iv) to preserve, protect, and enhance the values and amenities of the Property; and (v) to promote the health, safety, and welfare of the Owners, occupants, and users of the Property.

2.2 Assent. All present and future Owners, Mortgagees, lessees and occupants of any Unit and any other persons who may use the Property or any portion thereof in any manner are subject to the Declaration, these Bylaws, and all Rules and Regulations made pursuant hereto and any amendments thereto. The acquisition, lease, or occupancy of a Unit shall constitute acceptance and ratification of, and an agreement to comply with, the provisions of the Declaration and these Bylaws and any Rules and Regulations made pursuant thereto, as they may be amended from time to time.

3. MEMBERSHIP

Each Owner of a Unit shall be, and no person or entity other than an Owner of a Unit may be, a member of the Association (“**Member**”). Membership in the Association for each Owner shall be mandatory, and not optional, and shall be appurtenant to and may not be separated from the ownership of a Unit. Membership in the Association shall begin immediately and automatically upon acquisition of a Unit and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit, but such termination shall not relieve or release any such

former Owner from any liability or obligation incurred under the Declaration during the period of such ownership. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association. The rights and duties appertaining to membership in the Association, including voting rights, shall be governed by the Declaration. With respect to any matter coming before the Members for a vote, each Member shall be entitled to cast the number of votes equal to such Member's percentage ownership of the Common Elements of the Association, as set forth in the Declaration.

4. MEETINGS OF MEMBERS

4.1 Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular meeting of the Members shall be held at some reasonable location in Salt Lake County, Utah on a date and at a time fixed by the Board of Directors. The purpose of the annual meetings is for the election of Directors and the transaction of such other business of the Association as may properly come before the meeting.

4.2 Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of Members entitled to cast twenty percent (20%) of all of the votes in the Association.

4.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or other person authorized to call the meeting, by sending a copy of such notice not less than ten (10) nor more than forty-five (45) days before the meeting to each Member entitled to vote at the meeting. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Such notice shall be sent by electronic mail, to the Member's email address last appearing on the books of the Association; provided, however, that if a Member so requests by written notice to the Association, all notices to such Member shall be sent by first class U.S. mail, postage prepaid, addressed to the Member's mailing address last appearing on the books of the Association.

4.4 Waiver of Notice. Waiver of notice of a meeting of the Members will be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, will be deemed waiver by such Member of notice of the time, date, and place of the meeting unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting will also be deemed waiver of notice of all business transacted at the meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

4.5 Quorum. The presence at the meeting of Members, in person or by proxy, entitled to cast at least 50% of all the votes in the Association shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled

to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented by proxy.

4.6 Actions Binding on Members. A simple majority vote cast by Members constituting a quorum in person or by proxy will be sufficient to make decisions binding on all Owners, unless a different percentage of votes is expressly required by statute or by the Declaration, the Articles, or these Bylaws.

4.7 Action Taken Without a Meeting . Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

(a) A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time (not to exceed sixty (60) days) for the Member to return the ballot to the Association.

(b) The votes cast by ballot within the specified time under Subparagraph (a) above equals or exceeds the quorum required to be present at a meeting authorizing the action.

(c) The number of approvals of the action equals or exceeds the percentage of votes required to approve the action at a meeting at which the total percentage of votes cast was the same as the percentage of votes cast by written ballot.

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

4.9 Designation of Voting Representative by Non-Individual Owners. If title to a Unit is held by a corporation, partnership, association, limited liability company or other legal entity, the voting privilege appurtenant to that Unit may be exercised only by a proxy executed on behalf of such entity, filed with the secretary of the Association, appointing and authorizing one person or alternate persons to attend all annual and special meetings of the Members and to cast the vote allocated to that Unit at the meeting.

4.10 Voting by Multiple Owners. If title to a Unit is held by more than one Owner, the vote for such Unit shall be cast as determined by a majority of such Owners, and if a majority of the Owners for a Unit cannot agree, then the Owners of such Unit shall not be entitled to vote.

An Owner may not revoke a proxy given pursuant to this Section 4.10 except by actual notice of revocation to the person presiding over a meeting of the Association, which notice must be signed by a majority of the Owners of the Unit.

5. BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE

5.1 Number. The affairs of the Association shall be managed by a Board of not less than three (3) and no more than nine (9) Directors, who need not be Members of the Association. The number of Directors shall be established from time to time by amendment to these Bylaws. The initial number of Directors shall be three (3).

5.2 Term of Office. Until the first annual meeting of the Members, the Board of Directors shall consist of three Directors appointed by Declarant. At the first annual meeting the Members shall elect one (1) Director for a term of one (1) year and two (2) Directors for a term of two (2) years, and at each annual meeting thereafter the members shall elect, for a two (2) year term, Directors to fill the positions vacated at such meeting (or created by an amendment increasing the number of Directors).

5.3 Removal. Any Director may be removed from the Board of Directors, with or without cause, by a simple majority of the votes of the Association. In the event of death, resignation or removal of a Director, his or her successor shall be selected by the remaining Members of the Board of Directors and shall serve for the unexpired term of his or her predecessor.

5.4 Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

5.5 Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

6. NOMINATION AND ELECTION OF DIRECTORS

6.1 Nominations. Nominations for positions on the Board of Directors shall be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by an Owner and signed by the nominee named therein indicating his or her willingness to serve as a Director, if elected.

6.2 Election. Voting for the Board of Directors shall be by secret written ballot. Each Member shall be entitled to cast the vote appertaining to such Member's Unit multiplied by the number of Board of Director seats to be filled. Each Member may cumulate its votes and cast all of them in favor of a single candidate, or distribute its votes on the same principle among as many candidates as the Member sees fit.

7. MEETINGS OF DIRECTORS

7.1 Regular Meetings. The Board of Directors shall hold a regular meeting at least annually, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Should a regularly scheduled meeting date fall upon a legal holiday, then that meeting shall be held at the same time on the next business day which is not a legal holiday.

7.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

7.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors.

7.4 Actions Binding. Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present will be regarded as the act of the Board.

7.5 Waiver of Notice. Attendance of a Director at any meeting will constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Before, at, or after any meeting of the Board of Directors, any member of the Board may waive in writing notice of such meeting, and such waiver will be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting.

7.6 Action Taken without a Meeting. The Directors will have the right to take any action which they could take at a meeting in the absence of a meeting by obtaining the written approval of all the Directors. Any action so approved will have the same effect as though taken at a meeting of the Directors.

8. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

8.1 General Powers. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. Except as provided by these Bylaws, the Declaration, or the Act, the Board of Directors may do all such acts and things which are not specifically required to be done by the members and may otherwise act in all instances on behalf of the Association.

8.2 Specific Powers and Duties. Without limiting the generality of powers and duties set forth in Section 8.1 above, the Board of Directors shall have all the powers and duties granted to the Management Committee in the Declaration, and the following powers and duties, subject only to applicable requirements of the Act:

(a) To establish bank accounts for the operating account of the Association and for all separate funds as required or deemed advisable by the Board;

(b) To cause to be kept and maintained full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof by Members or their Mortgagees during convenient weekday business hours;

(c) To cause to be maintained the insurance coverage as may be necessary to comply with the requirements of the Declaration, these Bylaws, and the Act;

(d) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;

(e) To prepare a budget before the close of each fiscal year of the Association in accordance with the Declaration and the Act;

(f) To suspend a Member's voting rights during any period in which such Member shall be in default in the payment of any Assessment levied by the Association; and

(g) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles, or the Declaration.

8.3 Manager. The Board may employ a professional management agent or agents as a Manager, with compensation established to perform such duties and services as authorized by the Board. The Board may delegate to the Manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws, except that the Board may not delegate the power to determine and levy annual, special, or other Assessments or any other powers or duties reserved to the Board by law. If the Board delegates to the Manager powers relating to collection, deposit, transfer, or disbursement of Association funds: (a) the Board, in its discretion, may require the Manager to maintain fidelity insurance coverage or a bond in such amount as the Board may determine, and (b) the Manager shall maintain all funds and accounts of the Association separate from the funds and accounts of the Manager and of other associations managed by the Manager.

9. OFFICERS AND THEIR DUTIES

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

9.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

9.3 Term. The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for one (1) year or until his or her successor is elected and

has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

9.4 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

9.5 Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.6 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

9.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 9.4 above.

9.8 Duties. The duties of the officers are as follows:

(a) President:

The President shall preside at all meetings of the Members and the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all contracts to which the Association is a party.

(b) Vice President:

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

(c) Secretary:

The Secretary (or the Manager at the direction of the Secretary) shall: (i) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; (ii) serve notice of meetings of the Board of Directors and of the Members; (iii) keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as may be required by the Board of Directors.

(d) Treasurer:

The Treasurer (or the Manager at the direction of the Treasurer) shall: (i) receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; (ii) keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and (iii) prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

10. INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall provide any indemnification required by the laws of Utah and shall indemnify Directors, officers, agents and employees as follows:

10.1 Third Party Litigation. The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any action, suit or proceedings, 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 or she is or was a Director or officer of the Association, against expenses (including attorney's 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 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 no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, 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 interest of the Association, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

10.2 Association Litigation. The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any 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 Director or officer of the Association, 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, 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, or any other court having jurisdiction in the premises, 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.

10.3 Expenses. To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 10.1 or 10.2 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 10.4 below.

10.4 Determination of Right to Indemnity. Any indemnification under Section 10.1 or 10.2 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 10.1 or 10.2 above. Such determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.

10.5 Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article 10.

10.6 Other Indemnification Rights. Agents and employees of the Association who are not Directors or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Directors of the Association.

10.7 Benefitted Parties. Any indemnification pursuant to this Article 10 shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

11. **BOOKS AND RECORDS**

11.1 Accounting.

(a) The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

(b) At the close of each fiscal year, the books and records of the Association shall be reviewed by an independent public accountant approved by the Association, and financial statements shall be prepared by such accountant and distributed to all Members.

11.2 Inspection of Records. The membership register, books of account and minutes of meetings of the Association, the Board of Directors and committees of the Board of Directors

and all other records of the Property maintained by the Association or Manager shall be made available for inspection and copying by any Member or his or her duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his or her interest as a Member, at the office where the records are maintained. Upon receipt of a written request from a Member along with the fee prescribed by the Board of Directors to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Board of Directors shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Directors, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

12. AMENDMENTS

12.1 Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of the Members present in person or by proxy.

12.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

13. FISCAL YEAR

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association and end on the 31st day of the following December.