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Pinehurst At 800 North, L.L.C.
c/o Bruce R. Dickerson
1013 South Orem Blvd.
Orem, UT 84058

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RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2007 Jan 09 4:00 pm FEE 94.00 BY SS
RECORDED FOR OREM CITY CORPORATION

AMENDED AND RESTATED

**DECLARATION OF CONDOMINIUM
(Including Owner Association Bylaws)**

PINEHURST PLAZA OFFICE CONDOMINIUMS

**(An Expandable Condominium Project)
Orem, Utah County, Utah**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM (herein the "Declaration") is made as of this 9th day of JANUARY 2007, by **PINEHURST AT 800 NORTH, L.L.C.**, a Utah limited liability company ("Declarant"), pursuant to the provisions of Title 57 Real Estate, Chapter 8 of the *Utah Code*, as amended, known as the Condominium Ownership Act (the "Act").

RECITALS:

A. Declarant is the developer of Pinehurst Plaza Office Condominiums, an expandable office condominium project in Orem, Utah (the "Project").

B. On or about July 26, 2001, Declarant caused to be recorded in the Public Records as Entry 73686:2001 Map #9173 the Condominium Plat entitled **Pinehurst Office Condominiums, Phase "1"** (herein "the Original Plat"). Concurrently with such recording, Declarant also caused to be recorded in the Public Records as Entry 73686:2001 pages 1-29, inclusive, that certain **Declaration of Condominium (Including Owner Association Bylaws)** (herein "the Original Declaration"), relating to the Project. (Note: The Project's Original Plat pertained to and described Building "B".)

C. Thereafter, on or about November 15, 2004, and pursuant to Sections 2.03 and 2.04 of the Original Declaration, Declarant expanded the Project by recording in the Public Records as Entry 128419:2004 Map #10794 that certain Condominium Plat entitled **Pinehurst Plaza Office Condominiums, Phase "2"** (herein "the Second Phase Plat"). Concurrently with such recording, Declarant also caused to be recorded in the Public Records as Entry 128420:2004 Pages 1-5, inclusive, that certain instrument entitled **First Supplement to Declaration of Condominium (Including Owner Association Bylaws)** (herein "the First Supplement to Original Declaration"). (Note: The Project's Second Phase Plat pertained to and described Building "A".)

D. Thereafter, on or about October 14, 2005, Declarant caused to be recorded in the Public Records as Entry 117217:2005 Pages 1-29, inclusive, that certain instrument entitled **Amended**

Declaration of Condominium (Including Owner Association Bylaws) which instrument was defective because it was not recorded concurrently with an amendment to the Original Plat, yet purported to amend the percentage allocations of undivided ownership interests and votes in Unit 103 of said Original Plat as if an amended Original Plat had been filed, and, ignored the fact that the Project had been previously enlarged by the addition of the Second Phase Plat, containing additional Units which needed to be included in such allocations. Such defective instrument shall be referred to herein as “the First Defective Amended Declaration”.

E. Thereafter, on or about November 3, 2005, Declarant caused to be recorded in the Public Records as Entry 126680:2005 Map #11350 the Condominium Plat entitled **Pinehurst Plaza Office Condominiums, Amended Phase “1”** (herein “the Amended Original Plat”), the effect of which was to subdivide Unit 103 of Phase “1” into three Units: 103A, 103B and 103C. Concurrently with such recording, Declarant also caused to be recorded as Entry 126681:2005, Pages 1-29, inclusive, that certain instrument entitled **Amended Declaration of Condominium (Including Owner Association Bylaws)** (herein “the Second Defective Amended Declaration”). The Second Defective Amended Declaration was defective in that it failed to include in the gross undivided percentage ownership interests reflected in **Amended Exhibit A** thereto, any allocations to the Units created by the Second Phase Plat (see RECITAL C., above), being applicable only to the real property and improvements set forth in the Amended Original Plat, ignoring entirely any allocations of undivided percentage interests and votes as set forth in the recorded First Supplement to Declaration which included Units of both Phase “1” (Building “B”) and Phase “2” (Building “A”).

F. Thereafter, on or about March 3, 2006, and pursuant to Sections 2.03 and 2.04 of the Original Declaration, Declarant expanded the Project and annexed the balance of the Additional Land thereto by recording in the Public Records as Entry 25243:2006 Map #11546 the Condominium Plat entitled **Pinehurst Plaza Office Condominium, Phase “3”** (herein “the Third Phase Plat”). Concurrently with such recording, Declarant also caused to be recorded in the Public Records as Entry 25244:2006 Pages 1-6, inclusive, that certain instrument entitled **Second Supplement to Declaration of Condominium (Including Owner Association Bylaws)** (herein “the Second Supplement to Original Declaration”). (Note: The Project’s Third Phase Plat pertained to and described Building “C”).

G. Declarant desires to amend the Third Phase Plat to provide for eight rather than four Units, and in connection therewith has caused to be prepared a Condominium Plat entitled **Pinehurst Plaza Office Condominiums, Amended Phase “3”** (herein “the Amended Phase “3” Plat”) which has been approved by the City and will be recorded in the Public Records concurrently with this Declaration (See ARTICLE II Section 2.01 for the recordation data pertaining to the Amended Phase “3” Plat).

H. To avoid possible future confusion for Owners in interpreting the terms and provisions of the Original Declaration and the Supplements thereto, and because of the defective past attempts at amending said documents, a super majority interest of Unit Owners, including Declarant, have consented to the amendment and restatement of the Original Declaration and the First and Second Supplements to Original Declaration. Such action will also have the practical effect of eliminating and expunging the Public Records of the First and Second Defective Amended Declarations, as well as updating certain terminology to conform with various amendments to the Act made by the Utah State Legislature in 2003.

NOW, THEREFORE, in consideration of the foregoing, Declarant hereby makes this Amended and Restated Declaration of Condominium for the Project which, upon the concurrent recordation thereof with the Amended Phase "3" Plat, will become the sole Declaration for the Project replacing the Original Declaration, the First Supplement to Original Declaration and the Second Supplement to Original Declaration; will, for all practical purposes, eliminate and expunge the Public Records of the First Defective Amended Declaration and the Second Defective Amended Declaration; and will provide to the Owners, the Association and Board, a single, updated and more efficient document with which to manage, operate and care for the Project.

ARTICLE I

Definitions

When used in this Declaration (including that portion captioned RECITALS) each of the following bolded terms used shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act:

Act shall mean and refer to the Condominium Ownership Act, Title 57, Chapter 8, *Utah Code* (1953), as the same may be amended from time to time, including any successor statutory provisions thereto.

Additional Land shall mean and refer to the real property from which Phases "2" and "3" of the Project were developed. There is no further Additional Land to annex into the Project.

Assessment shall mean the amount which is to be levied and assessed against each Owner and such Owner's Unit by the Association (whether as an Annual, Special or Specific Assessment) as further set forth and described in the Bylaws in ARTICLE XIII.

Association shall mean **Pinehurst Plaza Office Condominiums Owners Association**, a Utah nonprofit corporation.

Board shall mean and refer to the Board of Directors of the Association.

Building shall mean and refer to any of the three main structures as reflected on a Condominium Plat of the Project containing multiple Units and underground Limited Common Area parking and storage.

Bylaws shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in ARTICLES XI, XII, and XIII, as authorized by Section 57-8-15 of the Act.

City shall mean and refer to Orem City, Utah County, Utah.

Common Areas or Common Areas and Facilities shall mean, refer to and include:

(a) The real property and interests in real property which this Declaration submits to the provisions of the Act, including the entirety of the Tract and any Building, including the

underground parking in the basement of any Building, but excluding all individual Condominium Units as herein defined;

(b) All Common Areas and Facilities, as above defined, which may be designated as such on a Condominium Plat, and all Common Areas and Facilities and all Limited Common Areas and Facilities as defined in the Act, which are part of the Project, whether or not expressly listed herein or on a Plat;

(c) All foundations, columns, beams, girders, interior load-bearing walls, and supports of any Building;

(d) Any halls, corridors, stairs, stairways, elevators and shafts, entrances, exits, and landings within any Building which are designed for the use of more than one Unit and which are not contained within a Unit;

(e) Those portions of the exterior walls of any Building (excluding glass in windows) beyond the exposed face of the dry wall on the Unit side of such walls; those portions of all walls which enclose Units and divide them from corridors, stairs and other Common Areas and which are located beyond the unfinished surface on the Unit side of such walls; those portions of all walls located between the Units within the unfinished surfaces of such walls on either side thereof; the floors, but not the coverings thereon, and all unfinished area between said floors and the unfinished surface of any Unit ceiling; and the roof;

(f) All installations and equipment designed and intended to provide utility services for common use, including (but not limited to) telephone, electricity, gas, water, sewer, heat, ventilation and air conditioning (including all pipes, ducts, vents, wires, cables, and conduits designed and intended for common use in connection therewith), whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such installations and equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(g) All apparatus and equipment designed and intended for common use such as (but not necessarily limited to) pumps, motors, fans, clocks, compressors and control apparatus and equipment, whether or not located within the horizontal and vertical boundaries of a Unit, but excluding from such apparatus or equipment all parts thereof, and all items affixed or connected thereto, located within the exterior boundaries of a Unit and designed and intended for the sole use of such Unit;

(h) All cleaning and maintenance equipment and other personal property at any time leased, acquired, owned, or held by the Association for the common use or benefit of all Owners; and

(i) All other parts of the Project designed and intended for, or normally in, common use or necessary or convenient to the existence, maintenance, safety, or management of the Project.

The term "common use", as used in the above definition of Common Areas includes, without limitation, use by or for any two or more Units.

Common Expenses shall mean all items and sums described in the Act which are lawfully assessed against the Unit Owners in accordance with the provisions of the Act, this Declaration, the Rules and Regulations, and other determinations and agreements pertaining to the Condominium Project as the Board or the Association may from time to time adopt.

Condominium Plat or **Plat** shall mean and refer to any Plat of the Project as approved by the City and recorded in the Public Records.

Condominium Project or **Project** shall mean and refer to **Pinehurst Plaza Office Condominiums** as the same shall exist at any given time.

Condominium Unit or **Unit** shall mean any of the individual spaces which is designated as a numbered Unit on the Condominium Plat. Notwithstanding any information on the Plat to the contrary, each Unit is, or shall be deemed to be, bounded by the interior surfaces of the walls, floors, and ceilings, and the exterior surfaces of all window glass and doors on or along the perimeter boundaries of such individual space, as said boundaries are shown on the Plat. All interior portions of walls and that portion of floors and ceilings under or over them, on or along the perimeters of a Unit shall constitute a part of the Common Areas and Facilities. A Unit shall also include any non-load bearing walls and partitions which are wholly confined within its vertical and horizontal perimeters; provided, however, that a Unit shall not include any part or portion of the Common Areas defined in paragraphs (c), (f), or (g) contained in the above definition of Common Areas, but shall include all installations, equipment, apparatus, and items, if any, affixed or connected thereto of the character contemplated by said paragraphs (f) and (g) which are located within the exterior boundaries of such Unit and which are designed for the sole use of such Unit. A Unit shall also include all fixtures confined within its vertical and horizontal perimeters and intended for the sole use of such Unit. The exterior surface of a window glass or door shall mean the plane at which such surface is located when the window or door is closed.

Declarant Control Period shall mean the period of time established by the provisions of Section 11.03 during which Declarant has or will manage and control the Project.

Declaration shall mean and refer to this **Amended and Restated Declaration of Condominium (Including Owner Association Bylaws)** as the same may hereafter be amended in accordance with the Act and the provisions hereof. Any ambiguities, omissions or conflicts herein shall be construed to comply with the provisions of the Act.

Limited Common Areas and Facilities or **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration, or the Act, or shown on the Plat as reserved for the exclusive use of a certain Unit or Units to which the same shall thereby be made appurtenant, to the exclusion of other Units. Certain types of Limited Common Areas are governed by the provisions of ARTICLE III.

Manager shall mean an individual or entity to whom the Board may delegate any or all of its duties relative to the Project.

Mortgage shall mean a recorded first mortgage or first deed of trust encumbering a Unit; and a **Mortgagee** shall mean the mortgagee or beneficiary named in a Mortgage.

Owner or Unit Owner shall mean and refer to the person or persons owning a fee simple interest in a Condominium Unit. In the event a Unit is the subject of an executory contract of sale, the buyer shall, unless the seller and the buyer have otherwise agreed and have informed the Board in writing of such agreement, be considered the Unit Owner for all purposes.

Public Records shall mean and refer to the Office of the County Recorder of Utah County, Provo, Utah.

Rules and Regulations shall mean and refer to those Rules and Regulations authorized, adopted and promulgated to the Owners by the Board, Manager, and/or the Association pursuant to Section 11.10.

Unit Number shall mean and refer to the number which designates a Unit on a Plat.

ARTICLE II

Submission of the Project

2.01 **Submission, Description, and Reservations.** There have previously been submitted to the provisions of the Act the following Condominium Plats which describe real property and improvements comprising the Condominium Project as of the date of recordation of this Declaration in the Public Records:

Pinehurst Plaze Office Condominiums, Phase "2" recorded in the Office of The Recorder of Utah County, Provo, Utah, on November 15, 2004, as Entry 128419:2004 Map #10794 (**Building A, Units 101, 102, 103, 104, 105, 201, 202, 203 and 204**).

Pinehurst Plaza Office Condominiums, Amended Phase "1" recorded in the Office of the Recorder of Utah County, Provo, Utah, on November 3, 2005, as Entry 126680:2005 Map #11350 (**Building B, Units 101, 102, 103A, 103B, 103C, 201, 202, 203 and 204**).

Pinehurst Plaza Office Condominiums, Amended Phase "3" recorded in the Office of the Utah County Recorder, Provo Utah, concurrently with this Amended and Restated Declaration of Condominium on JANUARY 9, 2007, as Entry 4502:2007 Map # 12053 (**Building C, Units 101, 102, 103, 104, 201, 202, 203 and 204**).

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described real property, Plats, and in-place-improvements;

RESERVING UNTO THOSE ENTITLED, however, such easements and rights of ingress and egress over, across, through, and under such real property and improvements as may be reasonably necessary to complete or maintain Buildings and Units and all of the other improvements described in the above recorded Condominium Plats, and to do all things reasonably necessary or proper in connection therewith for the use and enjoyment of all the Owners as may reasonably be determined to be appropriate. If, pursuant to the foregoing reservations, the above-described real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which the Declaration is filed for record in the Public Records.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described real property or any portion thereof, including, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plats or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described real property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities; **AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS CONTAINED IN THIS DECLARATION.**

2.02 **Division of Project into Condominium Units; Ownership Interests.** The Project is hereby divided into 26 office Condominium Units as set forth on the Plats described in Section 2.01, each such Unit having an appurtenant and undivided ownership interest in and to the Common Areas and Facilities as is set forth in **Amended Exhibit A**, attached hereto and incorporated herein by this reference.

2.03 **Project Expansion Complete.** All Additional Land designated for expansion of the Project has been utilized for such purposes and the Project will not be further expanded.

ARTICLE III

Limited Common Areas/Storage and Parking

3.01 **Storage Areas.** A limited number of Limited Common Area storage spaces exist in the lower level (basement) of each Building in the Project. The Unit to which each such storage space is appurtenant is indicated on the Plat to which the particular storage space and Building pertain. The determination of such appurtenancy relationship to a particular Unit has been made by Declarant as a factor of marketing and not upon any theory of Unit square footage ownership proration within a particular Building.

3.02 **Underground Parking Spaces.** A limited number of Limited Common Area underground parking spaces exist in the lower level (basement) of each Building and in a connecting underground drive-through between the Phase "1" Building (B) and the Phase "2" Building (A) of the Project. The underground parking for the Phase "3" Building (C) does not connect underground with either Building (A) or (B). Plats reflect the general Limited Common Area parking space designations and space appurtenancy to a particular Unit.

3.03 **Appurtenancy Designation of Underground Parking.** In the event any underground Limited Common Area parking spaces remain undesignated on a Plat as being appurtenant to a given Unit, the Board shall have, and is hereby given, the authority to make fair and equitable designations thereof based on proportional Unit square footages. Buildings B and A, constructed in connection with Phases "1" and "2", respectively shall be considered together when making such allocations, regardless of in which of said Phases the connecting underground drive-through containing Limited Common Area parking spaces was constructed. Allocations with Building C shall be made based only on Unit square footages in Building C. Decisions of the Board shall be final but may be appealed and changed when based on obvious allocation errors.

3.04 **Maintenance.** Care and maintenance of the Limited Common Areas referred to in this ARTICLE III shall follow the standards and provisions set forth in Section 5.10.

ARTICLE IV

Improvements

4.01 **Improvements.** The improvements included in the Project are described on the Condominium Plats, including the Buildings, the Units, their respective dimensions, and other significant facts relating thereto.

4.02 **Description of Building and Units.** The Project was constructed over time in three phases, each containing a single class "A" two-story office Building with Units configured on two floors as reflected on the Plats. Buildings A and B each have nine Units and Building C has eight for a Project total of 26 Units. Each Building has underground Limited Common Area parking and storage; central Common Area stairways, lobbies, an elevator, restrooms, electrical equipment and HVAC rooms and systems; and interior Limited Common Area stairwells in each Building wing between

floors. Construction is of steel and concrete, flat roof, granite and Ameristone stucco finish with glass curtain.

4.03 **Description and Legal Status of Units.** The Plats reflect the Unit Number of each Unit, its location and dimensions from which its area may be determined. Each Unit is designated and described by a Unit Number.

4.04 **Common Areas.** Common Areas and Limited Common Areas contained in the Project are described and identified in ARTICLE I and ARTICLE III hereof and on the Plats. Neither the ownership of undivided interests in and to the Common Areas, nor the right of exclusive use of a Limited Common Area, shall be separated from the Unit or Units to which they appertain, or to which they are a part. Even if not specifically mentioned in the instrument of conveyance, such percentage of undivided interest and such right of exclusive use shall automatically accompany the conveyance of the Unit to which they relate, as will any separate obligations or Assessments which pertain thereto.

4.05 **Conveyance Description of a Unit.** Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the Unit Number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear in the Public Records and in substantially the following form:

Unit _____, contained within **Pinehurst Plaza Office Condominiums Phase “___” (or Amended Phase “___”)** as the same is identified in the Condominium Plat therefor recorded in Utah County, Utah, as Entry _____ Map # _____ (as said Condominium Plat may have heretofore been amended) and in the **Amended and Restated Declaration of Condominium, Pinehurst Plaza Office Condominiums (Including Owner Association Bylaws)** recorded in Utah County, Utah as Entry _____ as said Declaration may have heretofore been amended; **TOGETHER WITH** the undivided ownership interest in and to the Common Areas and Facilities appurtenant to said Unit, as more particularly described in said Declaration (as said Declaration may have heretofore been amended).

Such description will be construed to describe the Unit, together with the appurtenant undivided ownership interest in and to the Common Areas and Facilities as the same are established and identified in the Declaration and/or on the Plat, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Declaration. Each such conveyance shall be subject to all of the provisions of this Declaration.

ARTICLE V

Nature and Incidence of Ownership

5.01 **Holding Title.** Title to a Unit shall be in fee simple and may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the state of Utah, including, but without limitation, joint tenancy or tenancy in common.

5.02 **No Separation.** No part of a Unit, nor any part of the legal rights comprising ownership of a Unit, may be separated from any other part thereof during the period of condominium ownership described herein, so that each Unit, the undivided interest in and to the Common Areas appurtenant to such Unit, and the exclusive right to use and occupy any Limited Common Areas appurtenant to any Unit, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another. Every gift, devise, bequest, transfer, encumbrance or other disposition of a Unit or any part thereof, shall constitute a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law, the Act or this Declaration.

5.03 **Membership in Association.** Each Unit Owner, including Declarant, shall be a Member of the Association. Membership in the Association is mandatory, is appurtenant to, and will not be separated from the Unit to which it appertains.

5.04 **Undivided Interest in Common Areas and Facilities.** Each Unit Owner, including Declarant, shall have, for each Unit owned, an appurtenant undivided ownership interest in and to the Common Areas and Facilities as set forth and described in **Amended Exhibit A** hereto.

5.05 **No Partition.** The Common Areas and Facilities shall be owned in common by all the Owners of Units in the ratio of their undivided appurtenant interest as reflected in **Amended Exhibit A** hereto and no Unit Owner shall bring action for partition thereof.

5.06 **Use of Common Areas and Limited Common Areas.** Subject to the limitations contained in this Declaration, each Unit Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy any Limited Common Areas designated or provided for herein or on a Plat or inferred by the Act which appertains to such Owner's Unit.

5.07 **Title to and Taxation of Common Areas.** Consistent with the provisions of Section 10-9a-606 of the *Utah Municipal Code*, title to the Project's Common Area real property shall not be separately owned or conveyed independent of the Units created by the Plats. For purposes of tax assessment, ownership of such property shall be divided among the Units pursuant to the percentages reflected in **Amended Exhibit A** hereto.

5.08 **Duty to Pay Association Assessments.** Each Unit Owner is obligated to pay and discharge all Assessments and charges levied by the Association as set forth herein as **ARTICLE XIII**.

5.09 **Unit Maintenance.** Each Owner shall at his own cost and expense maintain, repair, paint, re-paint, tile, paper or otherwise finish and decorate the interior walls and trim the interior surfaces of the walls, ceilings, floors, and windows and doors forming the boundaries of his Unit and all walls, ceilings, floors, windows and doors within such boundaries. In addition to decorating and keeping the interior of his Unit in good repair and in a clean and sanitary condition, he shall be responsible for the maintenance, repair or replacement of any plumbing or lighting fixtures, or other appliances, equipment or fixtures that may be in, or connected with his Unit.

5.10 **Maintenance of Limited Common Areas.** Each Owner shall make every effort to keep any Limited Common Areas designed for use in connection with his Unit in a clean, sanitary and

attractive condition at all times, notwithstanding any duty or obligation of the Committee, on behalf of the Association, to maintain and repair Common Areas and Limited Common Areas pursuant to the provisions of ARTICLE XI.

5.11 Division of Utility Costs. The cost of all utility or municipal services (including, without limitation, water, sewer, garbage collection, telephone, electrical, and gas) which are separately metered (if metering is applicable to the service in question) and billed by the suppliers involved to the individual Units shall be paid by the Owner of the respective Unit. The cost of all such services which are not separately metered and billed to such individual Units but which benefit all Units and the Project as a whole, shall be paid by the Association as a Common Expense. Notwithstanding anything to the contrary contained within the preceding portion of this Section 5.11, in the event that any utility or municipal service is separately metered (if metering is applicable to the service in question) and billed to one or more Units and a portion of such service benefits in whole or in part any other Unit or the Common Areas, the Association shall reimburse or credit the Owner of the Unit so billed for the cost of such portion; the determination of such portion, and the cost related thereto which shall be borne by the Association as a Common Expense, shall be made by the Association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Unit Owners.

ARTICLE VI

Easements

6.01 Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same, shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for its maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either in the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of Buildings within the Project, by errors in a Plat, by settling, raising or shifting of the earth, or by changes in position caused by repair or reconstruction within the Project, or any part thereof.

6.02 Repair of Common Areas. If any of the Common Areas are or may be located within any of the Units or may be conveniently accessible only through such Unit, the Owners of the other Units shall have the irrevocable right, to be exercised by the Board as their agent, to have access to such Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Board shall also have such rights independent of the agency relationship. Damage to the interior of any part of the Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Board or of Unit Owners, shall be an expense of all the affected Unit Owners and assessed proportionately; provided, that if such damage is the result of negligence of the Owner of the Unit, his guests or invitees, then such Owner shall be

financially responsible for all such damage. Amounts owing by Owners pursuant hereto shall be collected by the Board by Specific Assessment pursuant to ARTICLE XIII of this Declaration.

6.03 Board of Directors. The Board of Directors and its authorized agents, shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to the provisions of this Declaration.

6.04 Utility Services. There shall be a utility easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to, water, sewer, gas, telephone, electricity, and other utility services.

6.05 Right of Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to any Common Area designated for use in connection with his Unit, and each Owner shall have the right to the horizontal, vertical and lateral support of his and any adjoining Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

ARTICLE VII

Restrictions

7.01 Commercial Use. The Project is zoned or permitted for commercial or professional office usage pursuant to City ordinances and all Units and Unit Owners are subject to the uses and restrictions imposed thereby, including, but not limited to, occupancy and parking restrictions. All Units within the Project shall be used exclusively for business and professional offices and uses commonly found in office complexes of the nature of the Project, and for no other purposes. No Unit within the Project shall be used for the following purposes: restaurants or food service facilities (provided, however, that a coffee or lunch room may be provided for the employees of an establishment occupying a Unit), manufacturing facilities, or residential uses.

7.02 Leasing. A Unit Owner may lease his Unit for any term evidenced by a writing executed by the Owner and the lessee/tenant and containing a specific statement that such lease is subject to the provisions of this Declaration. An Owner may lease less than his entire Unit, but only upon the prior written approval of the Board of Directors.

7.03 Restrictions Concerning Common Areas. There shall be no obstructions of the Common Areas by the Owners, their tenants, guests or invitees. The Board of Directors may, by Rules and Regulations, prohibit or limit the use of the Common Areas and Facilities as may be reasonably necessary for protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board of Directors. Nothing shall be altered on, constructed on, or removed from the Common Areas except upon the prior written consent of the Board of Directors.

7.04 Miscellaneous Restrictions. Nothing shall be done or kept in any Unit or in the Common Areas, or any part thereof, which would result in the cancellation of insurance coverages on

the Project, or increase the rate of the insurance on the Project, or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board of Directors. Nothing shall be done or kept in any Unit or in the Common or Limited Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of the City. No damage to, or waste of, the Common or Limited Common Areas, or any part thereof, shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common or Limited Common Areas, nor shall anything be done therein which is, may be or may become an annoyance or nuisance to any other Owner or tenant occupying a Unit.

7.05 No Pets or Animals. No pets or animals of any kind or nature whatsoever (including fish in aquariums) shall be permitted in any Unit, in the Common or Limited Common Areas, or in any other part of the Project without first obtaining written approval of the Board of Directors.

7.06 No Violation of Rules and Regulations. No Owner shall violate the Rules and Regulations as adopted and promulgated to the Owners from time to time by the Board of Directors as provided in Section 11.10.

7.07 Restrictions on Alterations. No structural alterations to any Unit shall be made by any Owner without the prior written consent of the Board of Directors or an architectural or design review committee established by the Board.

7.08 Declarant's Right to Sell Units. Notwithstanding anything contained herein to the contrary, until the Declarant has completed and sold all of the Units, the Unit Owners who have purchased Units from the Declarant shall not interfere with the completion of contemplated construction and sale of the remaining Units. The Declarant may make such use of the unsold Units and the Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the Units, and the display of signs.

7.09 Restrictions on Signs. No signs, flags, or advertising devices of any nature, including without limitation commercial, political, real estate, informational, or directional signs or devices shall be erected or maintained at any place on the exterior of a Building, Unit, or on any other part of the Project without the prior inspection and written approval of the Board of Directors, except as may be necessary temporarily to caution or warn of danger. All signage, whether original or replacement, shall be professionally made and shall be of the style and theme established by the Declarant or the Association for the Project as a whole. Any sign, banner, or similar devices located in the Project shall comply with applicable zoning or sign ordinances of the City. Any signage so approved shall be at the expense of the Unit Owner (or his tenant).

ARTICLE VIII

Insurance

8.01 Insurance and Bonds. The Association shall secure or caused to be secured and maintained at all times the following insurance and bond coverage with respect to the Project:

(a) A policy or policies of fire and casualty insurance with extended coverage endorsement, for at least the full insurable replacement value of the entire Project, **including the Buildings and Units but excluding contents of Units**. Such policy or policies shall be made payable to the Association and all persons holding an interest in the Project or any of the Units, as their interests may appear.

(b) An appropriate fidelity bond coverage for any person or entity (other than Declarant during the Declarant Control Period) handling funds of the Association, including, but not limited to, employees of a professional manager, if any, the amount of such coverage to be not less than the estimated maximum of funds, including reserves, in the custody of such person or entity at any given time during the bond term, all as determined by the Board, but in no event less than a sum equal to three months' aggregate of Annual Assessment installments on all Units, plus any reserve funds.

(c) A policy or policies insuring the Association, the Board, and the Unit Owners against any liability incident to the ownership, use or operation of the Project, or of any Unit, which may arise among themselves, to the public, and to any invitees or tenants of the Project or of the Unit Owners. Limits of liability under such insurance shall not be less than \$1,000,000 for any person injured, \$2,000,000 for all persons injured in any one accident, and \$500,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced.

8.02 Additional Insurance Provisions. The following additional provisions may apply with respect to insurance:

(a) In addition to the insurance described above, the Association may secure and at all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with commercial condominium projects similar to the Project in construction, nature and use.

(b) The Association shall have the authority to adjust losses and, upon good cause appearing therefor, to increase coverages from any then existing levels.

(c) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

(d) Each policy of insurance obtained by the Association shall, if possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Board, the Unit Owners, and their respective agents and guests; that it cannot be canceled, suspended, or invalidated due to the conduct of any member, officer, or employee of the Association or of the Board without prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners.

(e) Each Unit Owner shall, at his own expense, obtain and maintain in force at all times policies of hazard and casualty insurance relative to his Unit's contents, and liability insurance relative to such Owner's business operations conducted within his Unit.

(f) The cost for the insurance required under Section 8.01(a) to cover Units shall be allocated and assessed to Unit Owners in proportion to their respective undivided ownership interests as set forth in **Amended Exhibit A** hereto.

ARTICLE IX

Damage, Destruction and Restoration

9.01 In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

(a) If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out as quickly as possible.

(b) If less than seventy-five percent (75%) of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out; and upon approval of the Unit Owners, all Owners shall be assessed for any deficiency in proportion to their respective undivided ownership interests pursuant to **Amended Exhibit A** hereto.

(c) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Unit Owners, within 100 days after the destruction or damage, vote to repair or reconstruct the affected improvements, restoration and assessment therefor shall be accomplished in the manner directed under subsection (b), above.

(d) If seventy-five percent (75%) or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage, vote to repair or reconstruct the affected improvements, the Association or Board shall promptly record a notice in the Public Records setting forth such facts. Upon the recording of such notice, the provisions of Section 57-8-31 (1) through (4) of the Act shall apply and govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this ARTICLE IX shall be accomplished at the instance and direction of the Association or Board. Any determination which is required to be made by this ARTICLE IX regarding the extent of the damage to or destruction of Project improvements, shall be made by three qualified appraisers selected by the Board. The concurring decision of any two such appraisers shall be conclusive.

ARTICLE X**Mortgages and Mortgagee Protection**

10.01 Notice of Mortgage. Any Owner who mortgages his Unit shall furnish the Association the name and address of such Mortgagee, and the Board shall maintain such information in a book entitled "Mortgages of Units." The Board shall report to such Mortgagee any unpaid Assessments due from the Owner of such Unit at the same time as the Board makes demand on the Owner thereof for payment of such unpaid Assessments. Each Mortgagee shall also be entitled to written notification from the Board of any other default by its Owner/Mortgagor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within 30 days after written notice to such Owner/Mortgagor by the Board specifying such default.

10.02 Right to Examine. A Mortgagee shall have the right to examine the books and records of the Association upon request and to require annual reports of the financial status of the Association.

10.03 Notice of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, the Mortgagee of such Unit shall be entitled to timely written notice thereof. No Owner or other party shall be entitled to priority over such Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

10.04 Notice of Default. Any Mortgagee is entitled to written notification from the Association of any default by the Owner of such Unit in the performance of any obligation required under the Declaration which is not cured within 30 days of written notice to cure given by the Association to such Owner.

10.05 Effect of Foreclosure on Liens. A Mortgagee who comes into possession of a Unit through foreclosure of a Mortgage, or the purchaser at a foreclosure sale of such a Mortgage, shall take the Unit free of any unpaid claims of Assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a pro-rata share of such Assessments or charges resulting from a pro-rata reallocation by the Association of such Assessments or charges to all Units in the Project, including the mortgaged Unit.

10.06 General Mortgagee Protection. Unless all of the Mortgagees of Units have given their prior written approval, neither the Association nor the Board shall:

(a) By act or omission, seek to abandon or terminate the Project, except for abandonment or termination provided by the Act in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) Change the pro-rata interest or obligations of any Unit for: (i) purposes of levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the percentage share of undivided ownership interest of each Unit in the Common Areas;

(c) Make any material amendment to the Declaration or to the Bylaws of the Association, including but not limited to, any amendment which would change the percentage of undivided ownership interest of the Unit Owners in the Common Areas;

(d) By act or omission, seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Areas of the Project shall not be deemed a transfer within the meaning of this Section 10.06; or

(e) Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Areas) for other than the repair, replacement or reconstruction of such improvements, except as provided in ARTICLE IX or pursuant to the Act in cases of substantial loss to the Units or the Common Areas of the Project.

ASSOCIATION BYLAWS

PURSUANT TO SECTION 57-8-15 OF THE ACT, THE ASSOCIATION'S BYLAWS ARE HEREBY EMBODIED IN THIS DECLARATION AS ARTICLES XI, XII AND XIII. THE GENERAL PROVISIONS OF ARTICLE XIV OF THIS DECLARATION SHALL BE APPLICABLE TO BOTH THE BYLAW PROVISIONS AND THE OTHER PROVISIONS IN THIS DECLARATION.

ARTICLE XI

Bylaws - Association and Board

11.01 **Status and General Authority.** Except as otherwise herein provided, the Condominium Project shall be managed, operated, and maintained by the Board of Directors on behalf of the Association. The Board shall, in connection with its exercise of any of the powers hereinafter provided, be deemed to be the legal agent of the Association capable of dealing in the Association's name. The Board shall have, and is hereby granted, the following authority and powers:

(a) Without the vote or consent of the Unit Owners or of any other person, except for Mortgagees if required by the terms of their Mortgage, to grant or create on such reasonable terms as it deems advisable, utility and similar easements over, under, across, and through the Common Areas and Facilities;

(b) To execute and record in the Public Records, on behalf of all Unit Owners, any amendments to the Declaration which have been approved by the vote or consent of Unit Owners necessary to authorize such amendments as set forth in Section 14.03 of the Declaration;

(c) To sue and be sued on behalf of the Association;

(d) To enter into contracts relating to the Common Areas and other matters over which it has jurisdiction, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the agreement has been obtained;

(e) To convey or transfer any interest in real property, so long as the vote or consent necessary under the circumstances has been obtained, including that of any Mortgagee if required by the terms of its Mortgage;

(f) To purchase, or otherwise acquire, and accept title to any interest in real or personal property so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

(g) To promulgate such reasonable Rules and Regulations pursuant to Section 11.10 as may be necessary or desirable to aid the Association in carrying out its functions or to insure that the Project is maintained and used in a manner consistent with the interests of the Unit Owners;

(h) To engage the services of a Manager pursuant to Section 10.07; and

(i) To perform any other acts and to enter into any other transactions which may be reasonably necessary for the Association to perform its functions as agent for the Unit Owners. Any instrument executed by the Board relating to the Common Areas of the Project that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

11.02 Indemnification of Board of Directors. Each member of the Board of Directors shall be indemnified and held harmless by the Unit Owners against all costs, expenses, and liabilities whatsoever (excluding fraudulent or criminal actions) including, without limitation, attorney's fees reasonably incurred by him in connection with any proceeding to which he may become involved by reason of his being or having been a member of said Board.

11.03 Management: Declarant Control Period. The following provisions pertain to the control of the Association by Declarant:

(a) Declarant has controlled the Association, or its unincorporated predecessor Association, since the inception of the Project in 2001. Pursuant to provisions of Section 11.03 of the Original Declaration recorded in the Public Records on July 26, 2001, Declarant was permitted to retain such control for a period of up to six years; or upon the expiration of 120 days following the conveyance of Units to which at least 75% of the undivided ownership interest in the Project's Common Areas and Facilities appertain; except that Declarant may at any time waive its rights to such control in which event control shall be determined by the Owners pursuant to the provisions of Section 11.04 of the Original Declaration, which are identical in application to the provisions of Section 11.04 of this Declaration.

(b) By its execution of this Declaration, Declarant states that its control of the Association will terminate on March 1, 2007, or upon the sooner election of Directors by the Owners pursuant to Section 11.04, below.

11.04 Management: Owner Control, Composition, Election, Vacancies. Subject to the provisions of Section 11.03, above, the Board shall be composed of five Directors, two to be elected to a three-year term, two to a two-year term and one to a one-year term. As Directors' terms expire, new

Directors shall be elected for three-year terms. Directors shall serve on the Board until their successors are elected. Directors must be Owners or officers, directors, trustees, agents or employees of non-individual Owners. Vacancies in the Board shall be filled by appointment by the remaining Directors or Director of the Board and said appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Director they were appointed to replace. The number of Directors to serve on the Board of Directors of the Association shall not be increased, but shall remain at five .

11.05 Rights and Duties; No Remuneration. On behalf of the Association, the Board of Directors, subject to the rights and duties of the Unit Owners, the provisions of the Declaration, and the Bylaws, shall be responsible for the general management and administration of the Project, including the obligation to provide for maintenance of the Common Areas. Members of the Board shall serve without remuneration.

11.06 Interior and Exterior Maintenance. In connection with its duty to maintain Common Areas, the Board will provide maintenance upon the interior and exterior of the Buildings as follows: Paint, repair, replace, or otherwise care for as needed Building lobbies, roof, gutters, downspouts, exterior surfaces, elevator, stairs, parking areas, and other Building exterior improvements except glass surfaces, unless such surfaces are part of Common Areas. Costs of such maintenance items shall be Common Expenses.

11.07 Right of Delegation to Manager. The Board of Directors may carry out any of its functions which are capable of delegation through a Manager. The Manager so engaged shall be responsible for managing the Common Areas and shall, to the extent permitted by law and the terms of the Manager's agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself.

11.08 Third Party Services. The Board of Directors may obtain and pay for the services of such professional or nonprofessional personnel as the Board shall determine to be necessary or desirable for the proper operation and function of the Project, including enforcement of the provisions of this Declaration.

11.09 Personal Property Ownership and Use. The Board of Directors may acquire and hold for the use and the benefit of all of the Unit Owners tangible personal property and may dispose of the same by sale or otherwise. The beneficial interest in any such property shall be deemed to be owned by the Owners in undivided interests in the same proportion as their respective interests in and to the Common Areas pursuant to **Amended Exhibit A** hereto, and shall be transferable only with the transfer of a Unit.

11.10 Rules and Regulations. The Board of Directors shall make reasonable Rules and Regulations governing the operation and use of the Common Areas and of other matters over which it has jurisdiction, which Rules and Regulations shall be consistent with the rights and duties established in the Declaration. The Board may suspend any Owner's voting rights at any meeting of Unit Owners or for periods during which such Owner fails to comply with such Rules and Regulations, or with any other obligations under the Declaration, including failure to pay Assessments. The Board may also take judicial action against any Owner to enforce compliance with such Rules and Regulations or other obligations or to obtain damages for noncompliance, all to the extent provided by the provisions of the Declaration and/or the Act.

11.11 **Capital Improvements.** There shall be no structural alterations, capital additions to, or capital improvements of the Buildings or of the Common Areas by the Board of Directors without the prior approval of the Unit Owners holding at least sixty percent (60%) of the total votes of the Association.

11.12 **Extended Rights.** The Board of Directors may exercise any other right or privilege given to it expressly by the Declaration or by the Act and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

11.13 **Architectural or Design Control.** Except for original construction, the Board of Directors shall act in all matters pertaining to architectural or design review and control of the Project and shall establish rules and procedures for submitting plans for approval of any proposed construction, alteration, remodeling, etc., involving the exteriors of Buildings or any Common Area. The Board may establish a committee of Owners to act pursuant to the provisions of this Section 11.13.

11.14 **Board Meetings, Quorum, Consent.** The Board of Directors shall establish its rules for meetings, whether regular or special. A majority of current Board members shall constitute a quorum and the action of a majority of those attending a properly noticed meeting, or a meeting held pursuant to written waiver of notice, at which a quorum is present shall be sufficient to constitute the action of the Board. Action by written consent shall require the unanimous consent of all current Board members.

ARTICLE XII

Bylaws - Association Voting, Meetings and Officers

12.01 **Voting.** The Association shall have a total of 10,000 votes. The number of votes appurtenant to each Unit is set forth in **Amended Exhibit A** hereto, as it may, from time to time, be further amended. As used throughout this Declaration, unless otherwise qualified, the phrases "vote of the Owners", "approval of the Owners", "Owners vote", "consent of the Owners", "by the Owners", or words of similar import, shall be deemed to require a majority of the total voting power of all Owners, including Declarant.

12.02 **Multiple Ownership.** In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the number of appurtenant votes, as reflected on **Amended Exhibit A** hereto, be cast for such Unit with respect to any issue. Votes cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the applicable Unit unless an objection is made at the meeting or in writing by a co-Owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

12.03 **Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Board of Directors in its notice therefor.

12.04 Annual Meetings. Annual meetings of Owners of the Association shall be held each year beginning in the year 2007 on such day and time as is set forth in the notice therefor; provided, that after the first such annual meeting, a month other than that in which the first annual meeting is held may be chosen if it is deemed by the Owners to be more convenient. At such annual meetings there shall be elected members of the Board of Directors, as needed, pursuant to the provisions of the Declaration as set forth in Section 11.04. Financial and budget reports shall also be presented, as well as other business of the Association properly placed before such meeting.

12.05 Special Meetings. The President shall call a special meeting of the Association as directed by a resolution of the Board of Directors or upon the request of Owners holding at least thirty percent (30%) of the total votes of the Association having been presented to the Board. No business shall be transacted at a special meeting except as stated in the notice therefor, unless consented to by the Owners present at such meeting, either in person or by proxy.

12.06 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least 10, but not more than 20, days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

12.07 Quorum. Owners present at any meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast in person or by proxy at least forty percent (40%) of the total Association votes eligible to be voted.

12.08 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than 48 hours from the time the original (or a previously adjourned) meeting was called, at which time the requirements for a quorum shall be reduced by one-half that required for the previously called (or adjourned) meeting.

12.09 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer **each of whom shall be elected by and from the Board of Directors**; provided that an Assistant Secretary can be elected or appointed by the Board who is not an Owner for the purposes of taking minutes and preparing Board records. Only the offices of Secretary and Treasurer may be filled by the same person. The officers, subject to the power of Declarant as set forth in Section 11.03, shall be elected by the Board in an organizational meeting of the Board immediately following each annual meeting of Owners at which the new Board of Directors or any of its members has been elected or re-elected.

(a) **President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties that are usually vested in the office of president of a similar type association.

(b) **Vice President.** The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. The Vice President shall also perform such other duties as shall from time to time be imposed on him by the Board.

(c) **Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; and shall have charge of such books and records as the Board may direct and shall, in general, perform all duties incident to the office of secretary of a similar type association. The Secretary/Treasurer shall have responsibility for Association funds and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Secretary/Treasurer shall be responsible for the deposit of all money and any other valuable effects in the name and to the credit of the Association in such depositories as may from time to time be designated by the Board of Directors.

ARTICLE XIII

Bylaws - Assessments

13.01 Agreement to Pay Assessments. Each Unit Owner, by the acceptance of a deed or contract therefor, whether or not it be so expressed in the deed or contract, shall be deemed to covenant and agree with all other Unit Owners and with the Association and the Board of Directors to pay to the Association the Annual Assessments and any Special Assessments and Specific Assessments described in this ARTICLE XIII, together with late payment fees, interest and costs of collection if and when applicable, as the same may apply to such Owner and his Unit. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit with respect to which the Assessment is made until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the Assessment falls due. No Unit Owner may exempt himself or his Unit from liability for payment of Assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments, late payment fees, interest and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

13.02 Purpose of Assessments. Assessments levied by the Board of Directors for the Association shall be used exclusively for the purpose of promoting the Project and the interests of the Owners therein, and paying Common Expenses properly incurred by the Association or the Board in the maintenance, operation and carrying of the Common Areas. The use made of funds obtained from Assessments may include, but shall not be limited to, payment of the cost of: insurance premiums on policies required to be obtained and held by the Association hereunder; maintenance, repair, and improvement of the Common Areas; legal and accounting fees; any deficit from a previous period; establishment and funding of a reserve to cover major repair or replacement of improvements within Common Areas; and any expense necessary or desirable to enable the Board to perform or fulfill its obligations, functions or purposes pursuant to the Declaration, the Act, these Bylaws or the Rules and Regulations.

13.03 Annual Assessments. Annual Assessments shall be computed and assessed against all Units in the Project based upon advance estimates of the Board's cash requirements to provide for payment of Common Expenses as set forth in Section 13.02, which costs shall be apportioned among the Units in proportion to their respective undivided interests in and to the Common Areas as set forth in **Amended Exhibit A** hereto. However, for purposes of such apportionment, Declarant shall be deemed to own the undivided interest in the Common Areas based only upon Units which have been completed

and used by Declarant for rental purposes or as models for marketing purposes, or fully completed ready for move-in (carpeted and painted) but not yet conveyed by Declarant to a third party grantee. During the Declarant Control Period, if Assessments collected fail to adequately meet the Common Expenses, Declarant shall pay any shortfall.

13.04 Annual Budget. Annual Assessments shall be determined on the basis of a fiscal year ending December 31. On or before December 15 of each fiscal year, the Board shall prepare and furnish to each Owner an operating budget for the upcoming fiscal year. Each budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for each upcoming fiscal year and as the major guideline under which the Project shall be operated during each such fiscal period.

13.05 Notice and Payment of Annual Assessments. The Association shall notify each Owner as to the amount of the Annual Assessment against his Unit on or before December 15 of the year preceding the year for which such Annual Assessment is made. Each Annual Assessment shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the Assessment relates. The failure of the Board to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Annual Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date 15 days after notice of such Assessment shall have been given to the Owner in the manner provided in Section 14.01.

13.06 Initial and Transfer Fees. Each Owner (other than Declarant), shall be required to prepay at the time of purchase of his Unit, **whether as a first time or subsequent Owner**, the sum of \$300, which sum shall be in addition to any proration of the monthly installment of Annual Assessment which may be due for the month in which such purchase takes place if other than the first or last day of a month. Such fees shall become part of the Association's general fund to be utilized as necessary and to compensate the Association for administrative start up or records changing costs.

13.07 Maximum Annual Assessment. The Annual Assessment, as established by the Board pursuant to Section 13.05 shall be considered to be a maximum amount for the fiscal year following its determination. Thereafter, such sum may be increased for the next fiscal year by not more than twenty percent (20%) above that of the current year, without the vote of Owners entitled to cast a majority of the Association votes; provided, however, that such determination is made and communicated to all Owners each year on or before December 15.

13.08 Special Assessments. The Association may levy Special Assessments for the purpose of defraying, in whole or in part: (a) any Common Expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required addition to or replacement of infrastructure or improvements within the Common Areas. Any such Special Assessment shall be apportioned among and assessed to all Units in the same manner as Annual Assessments. Special Assessments must be assented to by at least sixty percent (60%) of the total Association votes which Owners present in person or represented by proxy are entitled to cast at a meeting duly called for such purpose. Written notice setting forth the purpose of such meeting shall be sent to all Owners at least 10 but not more than 30 days prior to the meeting date.

13.09 **Uniform Rate of Assessment.** Except as provided in Section 13.03, all Annual and Special Assessments authorized by this ARTICLE XIII shall be fixed at a uniform rate for all Units.

13.10 **Quorum Requirements.** The quorum at any meeting of Owners required for any action authorized by Section 13.08 shall be as follows: At the first meeting called, the presence of Owners or proxies entitled to cast at least sixty percent (60%) of the total Association votes eligible to vote, shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent adjourned meeting, another meeting may be called (subject to the notice requirements set forth in Section 13.08, above) at which the requirements for a quorum shall be one-half (½) of that which was required at the previously called or adjourned meeting.

13.11 **Specific Assessment.** In addition to the Annual Assessment and any Special Assessment authorized pursuant to this ARTICLE XIII, the Board may levy at any time Specific Assessments: (a) on every Unit especially benefitted by any improvement made by the Association on the written request of the Owner of the Unit to be charged; (b) on every Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on every Unit to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration. The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all applicable attorneys' fees and costs, and shall be allocated to or among the affected Unit or Units according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work when appropriate. If a special benefit arises from any improvement which is part of the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Units benefitted.

13.12 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit and upon the payment of a reasonable fee to the Association to cover administrative costs, the Board shall issue a certificate stating whether or not payments of all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who rely thereon in good faith.

13.13 **Effect of Nonpayment; Remedies.** Any Assessment (whether Annual, Special or Specific) not received within 10 days of the date on which it or any instalment thereof becomes due shall be subject to a late charge not to exceed five percent (5%) thereof, which, together with interest and costs of collection shall be, constitute, and remain a continuing lien on the affected Unit. If any Assessment is not received within 10 days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of one and one-half percent (1½ %) per month; and the Board, on behalf of the Association, may bring an action against the Owner who is personally liable therefor or may foreclose its lien against the Unit pursuant to the provisions of Title 57 of the *Utah Code*, 1953, as amended, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law. Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorneys fees, court costs and every other expense incurred by the Board in enforcing the Association's rights. Failure of the Board to promptly enforce any remedy granted pursuant to this Section 13.13 shall not be deemed a waiver of any such rights.

13.14 Subordination of Lien to Mortgages. The lien of the Assessments provided herein shall be subordinate to the lien of any Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender. The holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such Mortgage or the exercise of a power of sale under such Mortgage, or by deed in lieu of foreclosure, shall take free of such Assessment lien as to any Assessment installment which accrues or becomes due prior to the time such holder or purchaser comes into possession or ownership of such Unit. However, to the extent there are any proceeds of the sale on foreclosure of such Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a Mortgage shall relieve any Unit from the lien of any Assessment installment thereafter becoming due.

13.15 No Abatement. No diminution or abatement of any Assessments under the Declaration shall be claimed or allowed for inconvenience, annoyance or discomfort arising from: (a) any construction (or lack of construction) within the Project; (b) the making of (or failure to make) any repairs or improvements to or the maintenance of any Common Areas of the Project, or any part thereof; or (c) from any action taken to comply with the provisions of the Declaration or with the laws, ordinances, regulations, rules, or order of the City.

ARTICLE XIV

General Provisions

14.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association or to the Board may be given by delivering or mailing the same to the Manager, if any, or any member of the Board.

14.02 Agent for Service of Process. Bruce R. Dickerson, whose address is 1013 South Orem Blvd., Orem, UT 84058, is designated initially as the person to receive service of process in cases authorized by the Act; provided, however, that the Association shall have the right to appoint a successor agent for service of process who shall be a resident of Utah. The name and address of such successor shall be specified by an appropriate notice filed by the Association with the Utah Division of Corporations and Commercial Code, Utah Department of Commerce.

14.03 Amendment. This Declaration may be amended (as opposed to terminated) by an instrument recorded in the Public Records which is executed either: (a) by Owners who collectively hold at least sixty percent (60%) of the total votes in the Association; or, (b) by the President and Secretary of the Association, on behalf of the Association, who shall certify that the required sixty percent (60%) vote was obtained in a meeting of Owners, or by their consent, and is so documented in the records of the Association. No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant in its capacity as Declarant, shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is specifically consented to in writing by Declarant.

14.04 Party Walls. Each wall which is built as a part of the original construction of the Units within the Project and placed on the dividing line between Units shall constitute a party wall, and the following provisions regarding such party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto:

(a) The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(b) If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Unit thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use. The foregoing provision shall not prejudice, however, the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(c) The right of any Owner to contribution from any other Owner under this Section 14.04 shall be appurtenant to the land and Unit and shall pass to such Owner's successors in title.

14.05 Action Without Meeting; Action by Written Ballot. Any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice by written consents upon compliance with the provisions of Section 16-6a-707 of the Utah Revised Nonprofit Corporation Act. Similarly, action may be taken by written ballot upon compliance with the provisions of Section 16-6a-709 of such Act.

14.06 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Project may be assigned.

14.07 Interpretation. The captions pertaining to the ARTICLE and Section numbers of this Declaration are for convenience only and shall in no way effect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of Utah shall govern the validity, construction and enforcement of this Declaration.

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

14.09 Enforcement. The Association, any Owner or any Mortgagee shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain

redress for violation of this Declaration. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for the violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys fees.

14.10 **Waiver.** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches which may occur.


14.11 **Duration/Termination.** This Declaration shall remain in effect until such time as there is recorded in the Public Records following the approval of the City authorizing such action, the appropriate instruments or documentation to remove the Project from the provisions of the Act as provided by Section 57-8-22 of the Act or any successor provision thereto.

14.12 **Effective Date.** This Declaration, and any subsequent amendments thereto, shall take effect upon being recorded in the Public Records.

Dated as of the day and year first above set forth.

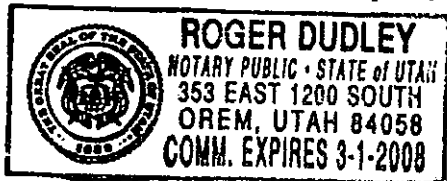
DECLARANT:

PINEHURST AT 800 NORTH, L.L.C.

By: 
Bruce R. Dickerson, Manager

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 22nd day of DEC, 2006, by **Bruce R. Dickerson** in the capacity indicated.




NOTARY PUBLIC

CERTIFICATION

Pinehurst at 800 North, L.L.C., a Utah limited liability company ("Pinehurst"), acting as Declarant under the original Declaration of Condominium pertaining to Pinehurst Plaza Office Condominiums (the "Project"), has also acted in the capacity of the Management Committee of the Association of Unit Owners pursuant to the provisions of Section 11.03 entitled **Declarant Control Period**. As such Management Committee, Pinehurst, pursuant to the provisions of Section 14.03 entitled **Amendment**, is authorized to execute any amendment to the Declaration on behalf of the Association and to certify that the required sixty percent (60%) or more of the total Association votes of Unit Owners to such amendment has been obtained in a meeting of Owners or by written consent in lieu of such meeting. Therefore, Pinehurst, acting as the Management Committee, hereby joins in the execution of the above **Amended and Restated Declaration of Condominium (Including Owner Association Bylaws)** of the Project, and certifies that:

1. Written Statements of Consent (or Non-Consent) were prepared and sent to all Unit Owners within the Project requesting their consent or non-consent to the amendment to the original Declaration.
2. In excess of sixty percent (60%) of the total 10,000 votes allocable to the Project's Association of Unit Owners, have been obtained by written consent and are so documented in the permanent records of the Association.

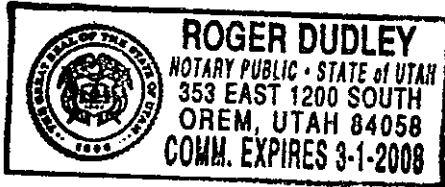
MANAGEMENT COMMITTEE:

PINEHURST AT 800 NORTH, L.L.C.

By: 
Bruce R. Dickerson, Manager

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 27nd day of DEC, 2006, by **Bruce R. Dickerson** in the capacity indicated.




NOTARY PUBLIC

AMENDED EXHIBIT "A"

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

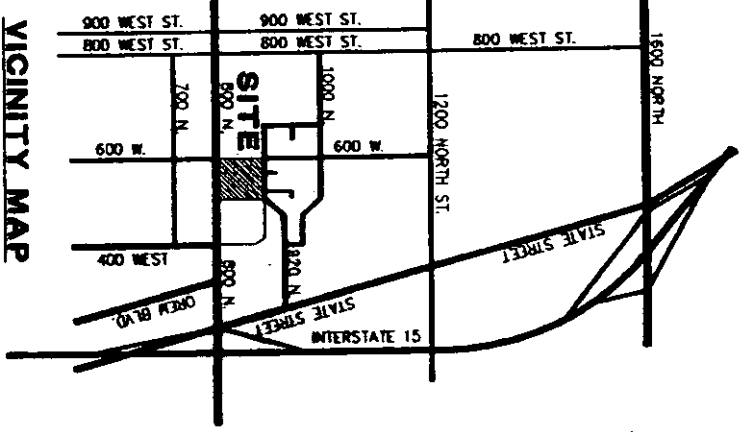
PINEHURST PLAZA OFFICE CONDOMINIUMS
OREM, UTAH

UNIT, SIZE, UNDIVIDED PERCENTAGE OWNERSHIP, AND VOTES

Phase "1"(B) Building Unit No.	Size Square Feet (1)	Percentage (2)	Votes
101	4.764	5.366%	536.6
102	1.607	1.810%	181.0
103 A	3.145	3.542%	354.2
103 B	1.477	1.663%	166.3
103 C	3.041	3.425%	342.5
201	3.647	4.107%	410.7
202	2.725	3.069%	306.9
203	2.075	2.338%	233.8
204	5.631	6.342%	634.2
Phase "2" (A) Building Unit No.	Size Square Feet (1)	Percentage (2)	Votes
101	4.325	4.871%	487.1
102	2.047	2.305%	230.5
103	2.439	2.747%	274.7
104	2.574	2.899%	289.9
105	2.694	3.035%	303.5
201	3.647	4.107%	410.7
202	2.725	3.069%	306.9
203	2.075	2.338%	233.8
204	5.631	6.342%	634.2
Phase "3" (C) Building Unit No.	Size Square Feet (1)	Percentage (2)	Votes
101	2.626	2.958%	295.8
102	5.446	6.134%	613.4
103	2.626	2.958%	295.8
104	5.464	6.155%	615.5
201	2.626	2.958%	295.8
202	5.551	6.252%	625.2
203	2.626	2.958%	295.8
204	5.551	6.252%	625.2
Total	88.784	100.000%	10,000.0

(1) Size based on the approximate number of square feet of floor space within each respective Unit as shown on the respective Condominium Plats of the three phases and rounded off (including to center under interior walls and to exterior surface of exterior walls), as determined by Dudley & Associates Engineers-Planners-Surveyors- Orem, Utah

(2) Percentages may be adjusted by one one-thousandth of a percentage point in order to provide for a total of one hundred percent (100%)



VICINITY MAP

SURVEYOR'S CERTIFICATE

I, ROGER D. DUDLEY, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, AND THAT I HOLD CERTIFICATE NO. 147089 AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT AT THE REQUEST OF THE OWNER OF THE BELOW - DESCRIBED LAND, I PERFORMED A SURVEY OF SAID LAND. THAT THE BOUNDARY DESCRIPTION BELOW CORRECTLY DESCRIBES THE LAND SURFACE UPON WHICH WILL BE CONSTRUCTED Pinehurst Plaza Office Condominiums, Phase 3 Amended, AN EXPANDABLE CONDOMINIUM PROJECT. THAT THE CONDOMINIUM PLAT FOR SAID CONDOMINIUM PROJECT, CONSISTING OF TWO(2) PAGE(S), IS ACCURATE AND COMPLIES WITH THE PROVISIONS OF SECTION 57-8-13(2) OF THE UTAH CONDOMINIUM OWNERSHIP ACT; AND THAT THE REFERENCE MARKERS SHOWN ON SAID PLAT ARE LOCATED AS SHOWN AND ARE SUFFICIENT TO READILY RETRACE OR RE-ESTABLISH THIS SURVEY.

DATE 12/14/06
 (Registered Land Surveyor (see ged below))

BOUNDARY DESCRIPTION

Commencing at a point located North 00°39'38" West along the Section line 360.42 feet and East 1661.70 feet from the West Quarter Corner of Section 10, Township 6 South, Range 2 East, Salt Lake Base and Meridian, said point also being on the Easterly boundary line of Phase 2, Pinehurst Plaza Office Condominiums; thence along the Easterly boundary line of said Phase 2, Pinehurst Plaza Office Condominiums as follows: North 45°24'16" West 195.28 feet; thence North 00°40'37" West 51.69 feet; thence South 89°19'23" West 19.97 feet; thence North 00°40'37" West 65.17 feet; thence North 08°21'42" East 30.32 feet; thence North 00°24'16" West 40.71 feet to the South boundary line of Sunridge Subdivision Plat "D"; thence North 89°35'44" East, along the South boundary of said Sunridge Subdivision Plat "D" to a point on the Westerly boundary line of Amended Phase 1, Pinehurst Plaza Office Condominiums; thence along the Westerly boundary line of Amended Phase 1, Pinehurst Plaza Office Condominiums as follows: South 00°24'16" East 40.71 feet; thence South 03°46'38" West 30.08 feet; thence South 00°24'16" East 20.00 feet; thence South 03°22'27" West 45.10 feet; thence South 00°07'55" East 52.22 feet; thence South 44°35'44" West 194.58 feet, to the point of beginning.

Area = 1.69 Acres

2-10-TIAS-RZE TU 090 (BCT)
 01, 102, 201, 202 PINEHURST PLAZA OFFICE CONDO PHASE 3