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DECLARATION OF CONDOMINIUM

OF THE

MILLPOINTE OFFICE CONDOMINIUMS, PHASE 1

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DECLARATION OF CONDOMINIUM  
OF THE  
MILLPOINTE OFFICE CONDOMINIUMS PHASE 1

THIS DECLARATION is made and executed by MILL POINTE ASSOCIATES, L.L.C., a Utah Limited Liability Company ("Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Ann., Sections 57-8-1 et seq. (the "Act").

1. RECITALS.

1.1 Declarant is the sole owner of certain real property and improvements located in Salt Lake County, Utah, more particularly described in Section 3 of this Declaration.

1.2 Declarant, by recording this Declaration, submits the Project to the provisions of the Act.

1.3 The covenants, conditions and restrictions contained in this Declaration and in the appendices hereto shall be enforceable equitable servitudes and shall run with the land.

1.4 Recorded simultaneously herewith is a Record of Survey Map of the Project as required by the Act.

1.5 The administration of the Project shall be governed by this Declaration, the Articles of Incorporation for the Millpointe Office Condominiums Phase 1 Association of Unit Owners, a Utah Nonprofit Corporation, and the Bylaws of such Nonprofit Corporation, a true copy of which is appended to and recorded with this Declaration as Appendix B, and incorporated herein for all purposes by this reference.

1.6 All terms used in this Declaration and the appended Bylaws shall have the same definition as the terms defined in the Act, except as otherwise set forth herein.

1.7 The Project shall be known as Millpointe Office Condominiums Phase 1.

2. DEFINITIONS.

When used in this Declaration, including the Recitals in Section 1, each of the following terms 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.

2.1 Act shall mean and refer to the Utah Condominium Ownership Act, Utah Code Ann., Sections 57-8-1 et seq.

2.2 Articles shall mean and refer to the Articles of Incorporation for the Millpointe Office Condominiums Phase 1 Association of Unit Owners, as amended from time to time.

2.3 Association shall mean and refer to the Millpointe Office Condominiums Phase 1 Association of Unit Owners, a Utah Nonprofit Corporation.

2.4 Building or Buildings shall mean and refer to all structures in which Convertible Space or Units are located in the Project, as described in Section 4.

2.5 Bylaws shall mean and refer to the Bylaws of the Association, as amended from time to time.

2.6 Common Areas and Facilities shall mean and refer to those areas and facilities described in Section 6 and those additional common areas and facilities added to the Project pursuant to the provisions of this Declaration.

2.7 Common Expenses shall mean and refer: to all sums which are expended by the Association on behalf of the Unit Owners; all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration and the Bylaws, including an adequate reserve fund for maintenance, repair and replacement of Common Areas and Facilities; all sums paid pursuant to any management agreement which may be entered into for operation of the Project; and all other items, things and sums which are lawfully assessed against the Unit Owners in accordance with the Act, this Declaration, the Bylaws and such rules and regulations as the Management Committee may from time to time make and adopt; all sums for repair, maintenance and snow removal for that portion of the non-exclusive right of way known as Lion Lane and described in Section 3 and identified on the Map.

2.8 Convertible Space shall mean and refer to those tenant spaces designated on the Map as Convertible Space or Tenant Space, as more particularly set forth in Section 5.

2.9 Declarant shall mean and refer to Mill Pointe Associates, L.L.C., a Utah Limited Liability Company; any successors to or grantees of such Company which, either by operation of law or through a voluntary conveyance, transfer, or assignment, come to stand in the same relation to the Project as their predecessor; any person or persons who might acquire title from it through sale, exchange, foreclosure or deed in lieu of foreclosure; or, in the situation where there remain unsold three or more Units, any person or entity who should purchase all, or substantially all, of such remaining unsold Units in a sale in the nature of a bulk sale.

2.10 Declaration shall mean and refer to this Declaration of Condominium of the Millpointe Office Condominiums Phase 1, as the same may be hereafter modified, amended, supplemented or expanded in accordance with law and the provisions hereof.

2.11 Limited Common Areas and Facilities shall mean and refer to those Common Areas and Facilities designated in this Declaration or in the Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

2.12 Management Committee or Committee shall mean and refer to the Management Committee of the Association.

2.13 Map or Record of Survey Map shall mean and refer to the Record of Survey Map of the Millpointe Office Condominiums Phase 1, executed and acknowledged by Declarant, and filed of record in the office of the Salt Lake County Recorder concurrently with this Declaration, as the same may hereafter be modified, amended, supplemented, or expanded in accordance with law and the provisions hereof.

2.14 Mortgage shall mean and include both a first mortgage on any Unit and a first deed of trust on any Unit or any equivalent security interest.

2.15 Mortgagee shall mean and include both a mortgagee under a first mortgage on any Unit and a beneficiary under a first deed of trust on any Unit, or any successor to the interest of such person under such Mortgage.

2.16 Project shall mean and refer to the Property and the Buildings and all improvements submitted by this Declaration to the provisions of the Act.

2.17 Property shall mean and refer to that certain real property located in Salt Lake County, State of Utah and more particularly described in Section 3 hereof.

2.18 Unit shall mean and refer to that separate physical part of the Property designated as a Unit on the Record of Survey Map and in Appendix A attached hereto, as further described in Section 5, together with its appurtenant undivided ownership interest in the Common Areas and Facilities, and its appurtenant right to exclusive use of Limited Common Areas and Facilities associated with such Unit.

2.19 Unit Number shall mean and refer to the number, letter, or combination thereof which designates a Unit in the attached Appendix A and on the Record of Survey Map.

2.20 Unit Owner shall mean and refer to the person who is the owner of record (in the office of the County Recorder of

Salt Lake County, State of Utah) of a fee or an undivided fee interest in a Unit, and shall also mean any purchaser of a Unit pursuant to an installment sales contract. However, the term Unit Owner shall not include persons obligated to purchase a Unit or Units pursuant to Earnest Money Agreements or other similar offers to purchase. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner shall not mean or include a mortgagee or a beneficiary or trustee under a mortgage or deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

3. DESCRIPTION OF THE LAND.

The land on which the Building and other improvements of the Project are located is situated in Salt Lake County, State of Utah, and is more particularly described as follows:

BEGINNING AT A POINT THAT IS NORTH  $00^{\circ}03'09''$  WEST 545.85 FEET ALONG THE QUARTER SECTION LINE FOR THE CENTER OF SECTION 23, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE NORTH  $00^{\circ}03'09''$  WEST ALONG SAID QUARTER SECTION LINE 209.70 FEET; THENCE SOUTH  $89^{\circ}25'07''$  EAST 367.51 FEET; THENCE SOUTH 224.43 FEET; THENCE NORTH  $75^{\circ}34'40''$  WEST 124.89 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF A 141.64 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS SOUTH  $82^{\circ}59'23''$  WEST 103.51 FEET, A DISTANCE OF 105.97 FEET; THENCE SOUTH  $61^{\circ}33'26''$  WEST 114.07 FEET TO BIG COTTONWOOD CANYON ROAD; THENCE NORTHWESTERLY ALONG SAID ROAD ALONG THE ARC OF A 348.55 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS NORTH  $33^{\circ}33'43''$  WEST 69.67 FEET, A DISTANCE OF 69.58 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH A 60 FOOT WIDE NON-EXCLUSIVE RIGHT OF WAY, BEGINNING AT THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY, SAID POINT BEING NORTH  $00^{\circ}03'09''$  WEST 491.53 FEET ALONG THE QUARTER SECTION LINE AND EAST 43.25 FEET FROM THE CENTER OF SECTION 23, TOWNSHIP 2 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH  $61^{\circ}33'26''$  EAST 114.07 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 141.64 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARS NORTH  $82^{\circ}59'24''$  EAST 103.51 FEET, A DISTANCE OF 105.97 FEET; THENCE SOUTH  $75^{\circ}34'40''$  EAST 124.89 FEET; THENCE SOUTH 61.95 FEET; THENCE NORTH  $75^{\circ}34'40''$  EAST 140.32 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF AN 81.64 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARS SOUTH  $82^{\circ}59'24''$  WEST 59.66 FEET, A DISTANCE OF 61.08 FEET; THENCE SOUTH  $61^{\circ}33'26''$  WEST 114.63 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A 348.55 FOOT RADIUS CURVE TO THE LEFT AND THE EASTERLY RIGHT OF WAY LINE OF BIG COTTONWOOD CANYON ROAD, CHORD BEARS NORTH  $27^{\circ}54'18''$  WEST 60.00 FEET, A DISTANCE OF 60.08 FEET TO THE POINT OF BEGINNING.

4. DESCRIPTION OF THE BUILDINGS.

4.1 The Project shall be improved with one (1) Building, containing fourteen (14) Tenant Spaces or Convertible Space, as well as certain Common Areas and Facilities and Limited Common Areas and Facilities.

4.2 The Building shall be of wood frame and steel construction, with an outer shell of brick and stucco and a shingle roof. The Building will be supplied with gas, electricity, water and sewage service. The Units shall each have individual gas meters, water meters, sewer hookups and electric meters.

5. DESCRIPTION OF CONVERTIBLE SPACE AND UNITS.

5.1 In order to allow maximum flexibility to Unit Owners purchasing space in the Buildings, Declarant has designated certain space (as identified on the Map) in the Buildings as Convertible Space. When all or portions of such Convertible Space have been identified and purchased by Unit Owners, such space will be converted into numbered Units by the recording of one or more supplemental Maps and amendments to this Declaration describing the conversion pursuant to Section 57-8-13(3) and 57-8-13.4 of the Act. There shall be allocated to each Unit thus formed a portion of the undivided interest in the Common Areas and Facilities based on the ratio of such Unit's approximate square footage to the total approximate square footage area of all Units. Appendix A contains a summary listing of each Unit's interest in the Common Areas and Facilities. Declarant reserves the right to round off or otherwise adjust the square footages and undivided interests as may be necessary to assure that the total interests equal 100% as required by the Act. All Unit Owners agree to execute any such documents as are necessary to convert the Convertible Space into Units.

5.2 The boundary lines of each Unit are the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. Each Unit shall include both the portions of the Buildings that are not Common Areas and Facilities within such boundary lines and the space so encompassed within such boundary lines. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceilings; and all utility pipes, lines, meters, systems, fixtures or appliances in the Project and serving only that Unit or its appurtenant Limited Common Area.

6. DESCRIPTION OF COMMON AREAS AND FACILITIES.

The Common Areas and Facilities shall mean and include the land on which a Building is located and all portions of the Property not contained within any Convertible Space or Unit, including, but not by way of limitation, the foundations, columns,



girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, elevators, fire escapes, and entrances and exits of the Buildings; the grounds; the parking terrace or parking areas available for the use of Unit Owners; the areas used for storage of janitorial supplies and maintenance equipment and materials; installations of all central services, including power, light, gas, hot and cold water, fire sprinklers, heating, air conditioning and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; any common recreational facilities; all sidewalks and roads; any utility pipes, lines or systems servicing more than a single Unit; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map; and all repairs and replacements of any of the foregoing.

7. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas and Facilities shall mean and include those portions of the Common Areas and Facilities reserved for the use of a certain Unit or Units to the exclusion of other Units as shown on the Map, including, without limitation, parking stalls, separate entrances and exits, and storage areas. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to its associated Unit or Units; and each Unit Owner is hereby granted an irrevocable license to use and occupy such Limited Common Areas and Facilities, and shall have responsibility to pay the cost of maintaining and repairing such Limited Common Areas and Facilities as hereinafter provided. Declarant reserves the exclusive right to assign covered parking stalls to the Units as Limited Common Areas and Facilities, which assignment shall be evidenced by an amendment to the Declaration signed by Declarant.

8. OWNERSHIP OF UNITS AND COMMON AREAS AND FACILITIES.

8.1 The percentage of undivided interest in the Common Areas and Facilities appertaining to each Unit and its Unit Owner for all purposes, including voting, is set forth in Appendix A. Each Unit shall have an equal undivided interest in the Common Areas and Facilities. Declarant reserves the right to round off or otherwise adjust the undivided interests, as may be necessary to assure that the total interests equal one hundred percent (100%), as required by the Act. Except as provided in Section 24, the fractional interest of each Unit as shown in Appendix A shall have a permanent character and shall not be altered without the unanimous written consent of all Unit Owners of altered Units, expressed in a duly recorded amendment to this Declaration. Except as otherwise provided in this Declaration, each Unit Owner shall be entitled to use the Common Areas and Facilities in any manner

that does not hinder or encroach upon the rights of other Unit Owners and is not contrary to any rules and regulations promulgated by the Association.

8.2 A Unit Owner shall have the exclusive ownership and use of his or her Unit, subject to the provisions of this Declaration and Bylaws, and shall have a common right to share with other Unit Owners in the Common Areas and Facilities of the Property.

#### 9. PURPOSE OF THE PROJECT.

The purpose of the Project is to provide commercial and business space for Unit Owners. No Units shall be used as a personal residence. The Project and each Unit Owner shall be subject to the covenants, conditions and restrictions of this Declaration.

#### 10. TITLE TO UNITS.

10.1 Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, occupied, improved and otherwise used in accordance with the provisions of this Declaration.

10.2 Title to a Unit within the Project 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 not limited to, tenancy in common or joint tenancy.

10.3 Each Unit and its appurtenant undivided interest in the Common Areas and Facilities shall always be conveyed, devised, encumbered or otherwise affected together, and every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit or any undivided interest therein shall be construed to be a gift, devise, bequest, transfer, encumbrance, conveyance or disposition, respectively, of the Unit or any undivided interest therein, together with its appurtenant undivided interest in the Common Areas and Facilities and with all rights and responsibilities created by this Declaration, including appurtenant membership in the Association.

10.4 The Common Areas and Facilities shall be owned in common by all Unit Owners, with legal title in the name of the Association, and no Unit Owner may bring an action for partition thereof except as provided in this Declaration.

10.5 Each Unit Owner shall have the right to mortgage or otherwise encumber his or her Unit. However, no Unit Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas and Facilities, except as to the

appurtenant undivided interest therein of his or her Unit. Any mortgage or other encumbrance of any Unit within the Project shall be subject to 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 Unit Owner whose title is derived through the foreclosure, whether such foreclosure is by private power of sale, judicial foreclosure or otherwise.

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

10.7 Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe such Unit by its identifying number as shown on the Map. Such description will be construed to describe the Unit together with its appurtenant undivided interest in the Common Areas and Facilities and its interest in Limited Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on and responsibilities of such ownership described in this Declaration and the Bylaws of the Association.

10.8 It is understood and agreed that under the Act each Unit is deemed a parcel and subject to separate assessment and taxation by each assessing entity and district for all types of taxes authorized by law. Each Unit Owner will accordingly pay and discharge any and all taxes which may be assessed against his or her Unit.

#### 11. RESTRICTIONS ON USE.

11.1 Except as otherwise permitted in writing by the Association, Units, Common Areas and Facilities and Limited Common Areas and Facilities shall be used and occupied only as follows:

11.1.1 A Unit Owner shall not permit his or her Unit to be occupied or used other than for commercial sales, services or office space, light manufacturing (so long as Declarant or the Management Committee of the Association does not deem such use to be noxious, offensive or a nuisance to other Unit Owners), or for other consistent uses commonly found in office buildings and commercial structures.

11.1.2 Without the prior written consent of the Management Committee or its designee, a Unit Owner shall not obstruct access to nor make any alteration, addition, removal or improvement thereon nor store or place anything within the Common Areas and Facilities or any part thereof.

11.1.3 Without the prior written consent of the Management Committee or its designee, a Unit Owner shall not construct any additions on or exterior improvements to any Building or Unit.

11.1.4 Without the prior written consent of the Management Committee or its designee, a Unit Owner shall not permit anything to be done or kept in his or her Unit or in the Limited Common Areas and Facilities appurtenant to his or her Unit that would result in an increase in the cost of insurance on the Property, or that would result in the cancellation of insurance with respect to all or any part of the Property, or that would be in violation of any governmental law, ordinance or regulation.

11.1.5 No activity shall be carried on, improvement constructed nor anything brought or placed in or upon any part of the Project which is or may become a nuisance to Unit Owners or which is or may become unsafe or hazardous to any person or property or which will cause damage to or impair the structural soundness and integrity of any Buildings or other improvements in the Project.

11.1.6 A Unit Owner shall not, by deed, plat or otherwise, subdivide or in any manner cause his or her Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map, without the prior written approval of the Management Committee of the Declarant.

11.1.7 A Unit Owner shall not violate any of the rules and regulations for the use of Units, Common Areas and Facilities or Limited Common Areas and Facilities adopted by the Management Committee and furnished in writing to the Unit Owners.

11.2 During the course of actual construction of any permitted structures or improvements, the provisions, covenants, conditions and restrictions contained in this Declaration shall be deemed waived to the extent necessary to permit construction, provided that during the course of such construction, nothing is done which will result in a violation of any such provisions, covenants, conditions or restrictions upon completion of construction.

## 12. ASSOCIATION OF UNIT OWNERS; MANAGEMENT COMMITTEE.

12.1 The persons or entities who are Unit Owners at the time of reference shall be members of a Utah Non-profit

Corporation, the characteristics and nature of which are determined by the Act, the Declaration, the Articles and the Bylaws. The name of the corporation and the name in which contracts shall be entered into, title to property shall be acquired, held, dealt in and disposed of, bank accounts shall be opened and suits shall be brought and defended by the Management Committee or officers thereof on behalf of, or as agent for the Unit Owners in the manner specified by the Act, this Declaration, Articles and/or Bylaws is: MILLPOINTE OFFICE CONDOMINIUMS PHASE 1 ASSOCIATION OF UNIT OWNERS.

12.2 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of three (3) natural persons, all of whom shall be Unit Owners except persons appointed to the Management Committee by the Declarant, who need not be Unit Owners. The Management Committee shall be elected as provided in the Bylaws. The rights, duties and functions of the Management Committee may be exercised by Declarant until the date the Articles are filed with the Utah Department of Commerce, after which the initial Management Committee named in the Articles shall serve until the date of the first meeting of the Association. Notwithstanding anything contained herein or the Bylaws to the contrary, Declarant alone shall have the right to select all members of the Management Committee until the first to occur of the following:

(a) Declarant, at its option, terminates such right by written notice to all Unit Owners;

(b) The expiration of seven (7) years from the original recording of this Declaration; or

(c) Units to which two-thirds (2/3) of the undivided interest in the Common Areas and Facilities appertain have been conveyed by Declarant.

12.3 The Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, the Declaration, the Articles and Bylaws, including, but not limited to, the following:

12.3.1 To make and enforce all rules and regulations covering the operation and maintenance of the Project.

12.3.2 To engage the services of a manager or managing company, accountants, attorneys or other employees or agents and to pay to such persons a reasonable compensation for such services, provided that the term of any such agreement for services may not exceed one (1) year, renewable by agreement of the parties for successive one year periods, and further provided that any management agreement for the Project shall be terminable by the Association upon 30 days prior written notice.

12.3.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities.

12.3.4 To determine and pay the Common Expenses.

12.3.5 To assess and collect the proportionate share of Common Expenses from the Unit Owners.

12.3.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

12.3.7 To open bank accounts on behalf of the Association and to designate the signatures therefor.

12.3.8 To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

12.3.9 To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Management Committee, the Association or the Project in excess of Ten Thousand Dollars (\$10,000.00) without prior approval of a majority of Unit Owners.

12.3.10 To obtain insurance for the Association with respect to the Common Areas and Facilities, as well as workmen's compensation insurance, if required.

12.3.11 To repair or restore the Common Areas and Facilities of the Project following damage, destruction or a permanent taking by the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act, in accordance with the provisions of this Declaration.

12.3.12 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Unit Owners, items of personal property necessary or convenient to the management of the business and affairs of the Association and the Management Committee or for the operation of the Project, including, without limitation, furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

12.3.13 To keep adequate books and records.

12.3.14 To do all other acts necessary for the operation and maintenance of the Project and the performance of its duties as agent for the Association, including the maintenance and repair of any Unit if the same is necessary to protect or preserve

the Project and the enforcement of any of the provisions of Section 11.

12.4 The Management Committee may delegate to a manager or managing company all of the foregoing powers, duties and responsibilities referred to in Section 12.3 above except: the final determination of Common Expenses, budgets and assessments based thereon; the promulgation of rules and regulations; the power to enter into any contract involving more than Ten Thousand Dollars (\$10,000.00) in any one fiscal year; the opening of bank accounts and the selection of signatories therefor; the power to purchase, hold, sell, convey, mortgage or lease any Units in the name of the Association; the authority to bring, prosecute and settle litigation.

12.5 Members of the Management Committee, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Unit Owners as a result of their activities as such for any mistake of judgment, negligent or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to a Unit 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; (iii) shall have no personal liability in tort to any Unit 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 or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

12.6 The Unit Owners shall indemnify and hold harmless any person, his or her heirs and personal representatives, from and against all personal liability and all expenses, including attorneys' fees, incurred, imposed or arising out of or in settlement of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, instituted by any one or more Unit Owners, or any other persons or entities, to which he shall be, or shall be threatened to be, made a party be reason of the fact that he is or was a member of the Management Committee or an officer or assistant officer, agent or employee of the Association, other than to the extent, if any, that such liability or expense shall be attributable to his or her willful misconduct or bad faith, provided that in the case of any settlement, the Management Committee shall have approved the settlement, which approval is not to be unreasonably withheld. Such right of indemnification shall not be deemed exclusive of any other rights to which such person may be entitled as a matter of law or agreement, vote of Unit Owners or the Management Committee or otherwise. The

indemnification by the Unit Owners as contained herein shall be paid by the Management Committee on behalf of the Unit Owners and shall constitute a Common Expense and shall be assessed and collectible as such.

12.7 The Management Committee may procure appropriate fidelity bond coverage for any person or entity handling funds of the Association, including, but not limited to, employees of any manager or managing company engaged by the Management Committee pursuant to Subsection 12.3.2 above.

### 13. MAINTENANCE, ALTERATION AND IMPROVEMENT.

13.1 The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. All incidental damages caused to a Unit or Limited Common Areas and Facilities by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

13.2 A Unit Owner shall be responsible to maintain, repair, replace and keep in a clean and sanitary condition, at the Unit Owner's expense, all portions of his or her Unit and all portions of any Limited Common Areas and Facilities appertaining thereto. The Management Committee is authorized to adopt rules and regulations with respect to maintenance to preserve the overall aesthetic appearance of the Project.

13.3 The Management Committee shall have a reasonable right of entry upon the premises of any Unit or upon the Limited Common Area to effect any emergency or other necessary repairs which the Unit Owner has failed to perform, and the cost of such repairs shall be charged to the Unit Owner of that Unit.

### 14. INSURANCE.

14.1 Insurance coverage on any personal property or equipment within a Unit in the Project shall be the sole responsibility or obligation of the Unit Owner thereof, and neither the Association nor the Management Committee shall be required to obtain or maintain insurance on any such personal property or equipment.

14.2 The Management Committee, for the benefit of the Project and the Unit Owners, shall maintain a policy or policies of casualty and multi-risk "all peril" insurance, if obtainable, for the full insurable replacement value of the Buildings, Units, Common Areas and Facilities, and common personal property, fixtures and equipment, payable to the Management Committee as insurance trustee to be disbursed in accordance with the terms of this Declaration, with the following provisions or endorsements:



14.2.1 Exclusive authority to adjust losses shall be vested in the Management Committee as insurance trustee;

14.2.2 The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective Mortgagees;

14.2.3 Each Unit Owner may obtain additional insurance covering his or her personal property interests at his or her own expense;

14.2.4 The insurer waives its right of subrogation as to any claims against each Unit Owner, the Association, the Management Committee, and their respective agents, employees and tenants, and waives any defense it might have based upon co-insurance;

14.2.5 The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any one or more individual Unit Owners or their respective tenants, employees, agents, contractors and guests;

14.2.6 The insurance coverage cannot be cancelled, invalidated or suspended because of the conduct of any officer or employee of the Association or Management Committee or their employees, agents or contractors, without prior demand in writing that the Management Committee cure the defect, and then only if the defect is not cured within fifteen (15) days after receipt of such demand by the Management Committee.

14.2.7 The named insured shall be the Association, for the use and benefit of the individual Unit Owners.

14.3 The Management Committee shall obtain a policy or policies of insurance insuring the Management Committee, the Unit Owners and their respective tenants, servants, agents or guests against any liability to the public or to the Unit Owners, members of the households of Unit Owners and their respective invitees or tenants, arising out of and incident to the ownership and/or use of the Project, including the personal liability exposure of the Unit Owners incident to the ownership and/or use of the Project. Limits of liability under such insurance shall not be less than One Million Dollars (\$1,000,000.00) for any one person injured in any one occurrence, and shall not be less than Three Hundred Thousand Dollars (\$300,000.00) for property damage in each occurrence. Such policy or policies shall be issued on a comprehensive liability basis, and if possible, shall provide cross-liability endorsements for possible claims of any one or more insureds against any one or more insureds without prejudice to the right of a named insured under the policies to maintain an action against another named insured.

14.4 The limits in coverage of all policies shall be reviewed at least annually by the Management Committee and increased or decreased at its discretion, provided that such limits shall not fall below the minimums specified in this Section 14. If, due to changed circumstances, excessive cost, or any other reason, any of the insurance coverage required to be obtained and maintained under Section 14.2 or 14.3 cannot reasonably be secured, the Management Committee shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist, and shall notify the Unit Owners in writing of such substitute, different or other coverage.

14.5 Each Unit Owner shall be required to notify the Management Committee of all improvements made to his or her Unit, the value of which is in excess of Three Thousand Dollars (\$3,000.00), and shall be liable for any increased insurance premium for insurance maintained by the Management Committee occasioned thereby. Each Unit Owner shall bear the risk of loss for all improvements made to his or her Unit that were not the subjects of notice to the Management Committee.

14.6 Any Unit Owner who obtains individual insurance coverage covering any portion of the Project, other than the personal property belonging to such Unit Owner, shall be required to file a copy of such individual policy or policies with the Management Committee within thirty (30) days after obtaining such insurance coverage.

14.7 No Unit Owner shall be entitled to exercise his or her right to maintain insurance coverage in such a way as to decrease the amount that the Management Committee, on behalf of all the Unit Owners, may realize under any insurance policy that the Management Committee may have in force covering the Project or any part thereof at any time.

## 15. DESTRUCTION OR DAMAGE.

15.1 In case of fire, avalanche or any other disaster which causes damage or destruction to all or part of the Project, the Management Committee shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Unit Owners shall be liable for assessment for any deficiency in proportion to their respective percentages of undivided interest in the Common Areas and Facilities. Reconstruction of the Project shall mean the restoring of Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Section 17 shall apply.

15.2 If three-fourths (3/4) or more of the Project is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Unit Owners for the purpose of deciding whether or not the Project shall be repaired and restored. If Unit Owners holding three-fourths (3/4) or more of the undivided interests in the Common Areas and Facilities vote, in person or by proxy, to repair or restore the Project, the Management Committee shall promptly arrange for the reconstruction of the Project using the proceeds of insurance on the Project for that purpose, and the Unit Owners shall be liable for assessment for any deficiency in proportion to their respective interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of Section 17 hereof shall apply. If Unit Owners holding three-fourths (3/4) or more of the undivided interests in the Common Areas and Facilities do not vote, either in person or by proxy, to make provision for reconstruction, the Management Committee shall record with the Salt Lake County Recorder a notice setting forth such facts, and upon the recording of such notice: (i) the Project and the Property shall be deemed to be owned in common by the Unit Owners as tenants in common, each Unit Owner owning an undivided interest in the Property equal to his percentage ownership of the Common Areas and Facilities; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with existing priorities to the undivided interest of the Unit Owners of such Unit; and (iii) the Property shall be subject to an action for partition at the suit of any Unit Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Unit Owners in a percentage equal to the percentage of undivided interest owned by each Unit Owner in the Common Areas and Facilities, after first paying out of the respective shares of the Unit Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the property owned by each Unit Owner.

15.3 For purposes of this Section 15, the terms "disaster", "destruction" or "substantial damage" shall also mean and include a temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities by the exercise of the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation. In the event of a conflict between this Section and Section 17 concerning eminent domain, the provisions of Section 17 shall take precedence.

15.4 In the event of substantial damage to or destruction of any Unit or any part of the Common Areas and Facilities or Limited Common Areas and Facilities, the Mortgagees of any affected Unit will be entitled to a timely written notice of any such damage or destruction, and no provision of an document establishing this

Project shall entitle the Unit Owner or any other party to priority over such Mortgagee with respect to the distribution of such Unit of any insurance proceeds.

15.5 Any reconstruction or repair which is required to be carried out by this Section shall be accomplished at the instance and direction of the Management Committee.

## 16. TERMINATION.

16.1 In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of Section 15.2, and the Unit Owners do not vote to reconstruct or repair the Project as provided herein, the Project shall be removed from the provisions of the Act within one hundred and one (101) days after such destruction or damage.

16.2 All of the Unit Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree, by instruments duly recorded, that their liens be transferred to the percentage of the undivided interest of the Unit Owners in the Project.

16.3 After removal of the Project from the Act, the Unit Owners shall own the Project and all assets of the Association as tenants in common and the respective Mortgagees and lienholders shall have mortgages and liens upon the respective undivided interests of the Unit Owners. Such undivided interests of the Unit Owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit Owners' Units prior to removal from the Act.

16.4 This Section 16 cannot be amended without consent of all Unit Owners and all Mortgagees on Units.

## 17. EMINENT DOMAIN.

17.1 Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or of one or more Units or portions thereof by the exercise of the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Unit Owner and Mortgagee shall be entitled to timely notice thereof, and the Management Committee shall, and the Unit Owners and Mortgagees at their respective expense may, participate in the proceedings incident thereto.

17.2 With respect to the Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest

therein. After such determination, each Unit Owner shall be entitled to a share in the damages in the same proportion as his or her percentage of undivided interest in the Common Areas and Facilities. This provision does not prohibit a majority of Unit Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Map are duly amended. No provision of any document establishing this Project shall entitle any Unit Owner or other party to priority over the Mortgagee of any Unit with respect to the distribution to the Unit of the proceeds of any award or settlement.

17.3 If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Section 15 and shall be deposited with the Management Committee as trustee. In the event a Unit Owner refuses to so deposit his or her award with the Management Committee, then at the option of the Management Committee, either a special assessment shall be made against the defaulting Unit Owner and his Unit in the amount of such award or the amount of such award shall be set off against any sum hereafter made payable to such Unit Owner. Such taking shall also have the following effects:

17.3.1 If the taking reduced the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be paid by the Unit Owner of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Unit Owner. The affected Unit Owner's percentage of undivided interest in the Common Areas and Facilities shall be equitably reduced, in accordance with the provisions of Section 57-8-32.5 of the Act.

17.3.2 If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee and other lienholders of record of the Unit to the extent of the amounts owing to them, and the excess, if any, shall be distributed to the Unit Owner. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Unit Owners in a manner approved by the Management Committee. The percentage of undivided interest in the Common Areas and Facilities appurtenant to the Units that continue as part of the Property shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Unit Owners.

17.4 Changes in Units, in the Common Areas and Facilities and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section 17 shall be evidenced by an amendment to this Declaration and the Map, which need not be approved by the Unit Owners, but may be executed on their behalf by the Association.

17.5 In the event the Project is removed from the provisions of the Act pursuant to Sections 15 or 16 above, the proceeds of the damages or awards shall be distributed or used in the accordance with, and the Unit Owners of affected Units shall have the rights provided in, Section 13.2.

#### 18. MORTGAGEE PROTECTION.

18.1 The Management Committee shall maintain a roster of Unit Owners from the evidence of change of ownership furnished to the Management Committee, which roster shall include the mailing addresses of all Unit Owners. The Management Committee will also maintain a roster containing the name and address of each Mortgagee of a Unit if the Committee is provided notice of such Mortgage by way of a certified copy of the recorded instrument evidencing the Mortgage and containing the name and address of the Mortgagee. The Mortgagee shall be stricken from the roster upon request by such Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded release or satisfaction of the Mortgage. Notice of such removal shall be given to the Mortgagee unless the removal is requested by the Mortgagee.

18.2 The Management Committee shall, upon written request, give to any Mortgagee on the roster written notification of any default by the mortgagor of the respective Units in the performance of such mortgagor's obligations under the Declaration which is not cured within thirty (30) days.

18.3 Any Mortgagee shall, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual financial statement of the Association within a reasonable time following the end of any fiscal year of the Association; and (c) receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

18.4 A Mortgagee of any Unit who comes into possession of the Unit by virtue of any of the remedies provided in the Mortgage, including foreclosure of the Mortgage, or by way of deed or assignment in lieu of foreclosure, shall take such Unit free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such assessment or charges resulting from a pro rata reallocation

of such assessment of charges to all Units, including the Mortgaged Unit.

18.5 Any liens created under the Act or pursuant to this Declaration or the Bylaws upon any Unit shall be subject and subordinate to and shall not affect the rights of a Mortgagee under a Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, the Declaration and/or the Bylaws.

18.6 Any lien which the Association may have on any Unit for the payment of assessments for Common Expenses attributable to such Unit shall be subordinate to the lien or equivalent security interest of any Mortgage on the Unit recorded prior to the date any such common expense assessments become due.

18.7 The prior written approval of each Mortgagee of any Unit will be required for the following:

18.7.1 The abandonment or termination of the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

18.7.2 Any material amendment to this Declaration or to the Articles or Bylaws of the Association, including, but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Property, except such amendments made by Declarant for Convertible Space.

18.7.3 The partition or subdivision of any Unit or of the Common Areas and Facilities or Limited Common Areas and Facilities.

18.8 No amendment to this Section 18 shall adversely affect a Mortgagee who has recorded a valid Mortgage prior to the recordation of any such amendment.

## 19. ENCROACHMENTS.

19.1 None of the rights and obligations of any Unit Owners created by this Declaration, the Bylaws or by deed conveying a Unit shall be affected in any way by an encroachment (i) by any portion of the Common Areas and Facilities upon any Unit; (ii) by any Unit upon any portion of the Common Areas and Facilities; or (iii) by any Unit upon another Unit, due to minor and professionally acceptable errors in the construction, reconstruction, shifting, settlement or movement of Buildings or other structures, including the reconstruction of Buildings or other structures after fire or other casualty or after taking by eminent domain taking or delivery of a deed in lieu of

condemnation, unless such encroachment results from the willful or negligent act or omission of the Unit Owner of the encroaching Unit, or of the Unit Owners of the Units to which the use of the encroaching Limited Common Areas and Facilities is appurtenant, or of the Management Committee in the event of an encroachment by any portion of the Common Areas and Facilities other than the Limited Common Areas and Facilities.

19.2 There are hereby created valid easements for any encroachments permitted by this Section, and the maintenance thereof, so long as such encroachments exist.

## 20. CONVEYANCES; EASEMENTS; LEASES.

20.1 Every deed, lease, Mortgage or other instrument may describe a Unit by its identity number as set forth in Appendix A and in the Map and any amendments thereto. 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 Owner's corresponding percentage of undivided ownership in the Common Areas and Facilities even though the same is not mentioned or exactly described.

20.2 Any lease covering a Unit shall be in writing and shall provide that the terms of the lease are subject in all respects to the provisions of the Declaration, the Articles and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease.

20.3 Every deed, lease, Mortgage or other similar instrument shall be deemed to:

20.3.1 Except and reserve with respect to a Unit (i) any portion of the Common Areas and Facilities lying within such Unit; (ii) easements through such Unit appurtenant to the Common Areas and Facilities and to all other Units for support and repair of the Common Areas and Facilities and of all other Units; and (iii) easements appurtenant to the Common Areas and Facilities for encroachments upon the air space of such Unit by those portions of the Common Areas and Facilities located within such Unit.

20.3.2 Include with respect to a Unit non-exclusive easements for ingress and support of such Unit through the Common Areas and Facilities for the repair of such Unit and for the use of the Limited Common Areas appurtenant to such Unit as indicated in Section 7 above and on the Map.

20.3.3 Except and reserve with respect to the percentage of undivided interest in the Common Areas and Facilities non-exclusive easements appurtenant to all Units for ingress, egress, support and repair and exclusive easements appurtenant to



each Unit for the use of the Limited Common Areas appurtenant to such Unit as set forth in Section 7, above and on the Map.

21. COMBINATION OF UNITS.

Two or more Units may not be combined into a single Unit for any purpose, regardless of common ownership of such Units. For purposes of this Declaration, each such Unit shall retain its separate character.

22. AMENDMENT.

Except as otherwise provided in this Declaration and except as prohibited by the Act, the provisions of this Declaration may be amended by the affirmative vote or approval and consent of Unit Owners who own three-fourths (3/4) or more of the undivided interests in the Common Areas and Facilities. Any amendment so authorized shall be accomplished by recordation of an instrument executed by the Management Committee. In such instrument, the Management Committee shall certify that the vote or consent required by this Section has occurred. Notwithstanding any other provision contained herein, no amendment to the Map or to any provision of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection or control given 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 consented to in writing by Declarant.

23. ASSESSMENTS.

23.1 The making and collection of assessments from Unit Owners for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

23.1.1 Each Unit Owner, including Declarant so long as Declarant owns any Units, shall be liable for a proportionate share of the Common Expenses, such share being the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit or Units owned by him. Assessments of Common Expenses shall commence as to all Units on the first day of the month following the closing of the first Unit sold.

23.1.2 Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the minimum rate of twelve percent (12%) per annum, or at such higher rate or interest as may be set by the Management Committee, from the date when due until paid. All payments on account shall be first applied to interest and then to the assessment payment first due.

23.1.3 There shall be a lien upon the applicable Unit for unpaid assessments which shall also secure reasonable attorney's fees and all costs and expenses, including taxes, if any, incurred by the Management Committee because of such a lien. The lien for assessments shall be superior (prior) to all other liens and encumbrances except assessments, liens and charges in favor of the State or any political subdivision thereof, for taxes past due and unpaid on the Unit, and amounts due under duly recorded mortgages which were recorded prior to the recording of the lien for assessments. The lien for nonpayment of Common Expenses may be enforced by sale or foreclosure of the Unit Owner's interest by the Management Committee or the Association, such sale or foreclosure to be conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any manner permitted by law. In connection therewith, each Unit Owner is hereby deemed to have given and granted a power of sale to any attorney licensed in the State of Utah and selected by the Management Committee to act as trustee in the event that any such lien is foreclosed in the manner provided by law for foreclosure of deeds of trust.

23.1.4 In any foreclosure of a lien for assessments, the Unit Owner subject to the lien shall be required to pay a reasonable rental for the Unit, and the Management Committee shall be entitled to the appointment of a receiver to collect the same.

23.2 The Management Committee may include in the monthly assessments amounts representing contributions to the capital of the Association to be used for the replacement of or additions to capital items or improvements in the Project, and such amounts shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account shall be deemed transferred to the transferee of the Unit.

23.3 In assessing the Unit Owners for capital improvements to the Common Areas and Facilities, there shall be no single improvement exceeding the sum of Ten Thousand Dollars (\$10,000.00) made by the Management Committee without the same having been first voted on and approved by a majority vote of the fractional ownership interest of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Section 15 hereof or to such structural alterations of capital additions or capital improvements to the Common Areas and Facilities as are necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities.

23.4 If a Unit Owner shall at any time lease or rent his or her Unit or any portion thereof and shall default for a period of one month in the payment of assessments, the Management Committee may, at its option, so long as such default shall

continue, demand and receive from any tenant of the Unit Owner the rent due or becoming due and the payment of such rent to the Management Committee shall discharge such tenant for rent due, and shall discharge the Unit Owner for such assessments to the extent of the amount so paid.

23.5 The Management Committee shall handle all assessments hereunder, whether for Common Expenses or as capital contributions, so as to comply with applicable provisions of the Internal Revenue Code and the regulations adopted thereunder as well as applicable State and local tax laws and to avoid undue adverse tax consequences that might result to the Association or individual Unit Owners.

#### 24. VOTING.

At any meeting of the Association, each Unit Owner, including Declarant, either in person or by proxy, shall be entitled to cast the same number of votes as the percentage of undivided interest assigned to his or her Unit in Appendix A or any amendment thereto. The voting rights appurtenant to each Unit shall vest at the time that assessments for Common Expenses are first levied against such Unit by the Association. If there is more than one Unit Owner with respect to a particular Unit, any or all of such Unit Owners may attend any meeting of the Association, but it shall be necessary for all such Unit Owners present, in person or by proxy, to act unanimously in order to cast the votes appertaining to their Unit.

#### 25. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to be delivered three (3) days after a copy of the same has been deposited in the U.S. Postal Service, postage prepaid, return receipt requested. Notice to Unit Owners shall be addressed to each Unit Owner at the address given by such Unit Owners to the Management Committee for the purpose of service of such notice, or to the Unit of such Unit Owner if no such address has been given to the Management Committee. Such address may be changed from time to time by notice in writing to the Management Committee. Notice to the Management Committee shall be addressed to:

Millpointe Office Condominiums Phase 1  
Association of Unit Owners  
c/o Pete Williams  
331 South Rio Grande St., Suite E  
Salt Lake City, Utah 84101

The address for giving notice to the Management Committee may be changed by the recordation by the Management Committee of an appropriate instrument in the Salt Lake County Records Office,

and by delivery of written notice of such change to all Unit Owners.

26. AGENT FOR SERVICE.

Until such time as Declarant transfers the right and responsibility to elect a Management Committee to the Unit Owners as provided in the Bylaws, the name and address of the person in Salt Lake County, Utah, for the service of notice of process in matters pertaining to the Property as provided under the Act is:

Pete Williams  
331 South Rio Grande St., Suite E  
Salt Lake City, Utah 84101

The agent for service of process may be changed by the recordation by the Management Committee of an appropriate instrument in the office of the Salt Lake County Recorder.

27. NO WAIVER.

The failure of the Management Committee or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, the Articles, the Bylaws or any rules and regulations promulgated by the Management Committee, to exercise any right or option herein contained, to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agent or designee of the payment of any assessment from a Unit Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

28. ENFORCEMENT.

Each Unit Owner shall strictly comply with the provisions of the Declaration, the Articles, the Bylaws, the rules and regulations of the Project and decisions issued pursuant thereto. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or its agent or designee on behalf of the Unit Owners, or in an appropriate case, by an aggrieved Unit Owner.

29. DECLARANT AND DECLARANT'S USE.

Declarant and persons it may select from time to time shall have the rights granted under Section 57-8-13.14 of the Act,

including, but not limited to, the right of ingress and egress over, upon and across the Common Areas and Facilities and Limited Common Areas and Facilities and the right to store materials therein and to make such other use thereof as may be necessary and incident to the development and sale of all of the Units as determined by the Declarant in its sole discretion.

30. SEVERABILITY.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

31. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

32. LAW CONTROLLING.

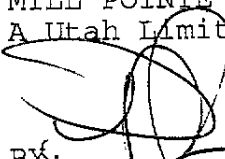
This Declaration, the Map, the Articles and the Bylaws shall be construed and controlled by and under the laws of the State of Utah.

33. EFFECTIVE DATE.

This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 19<sup>th</sup> day of NOVEMBER, 1999.

MILL POINTE ASSOCIATES, L.L.C.,  
A Utah Limited Liability Company



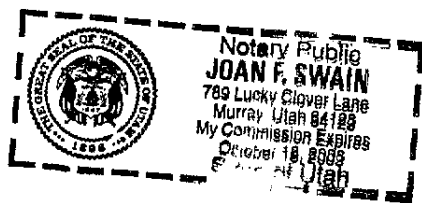
BY: \_\_\_\_\_  
ITS: MANAGING MEMBER

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

On the 19<sup>th</sup> day of NOVEMBER, 1999, personally appeared before me PETER N. WILLIAMS, who, being by me duly sworn, did say that he is the MANAGING MEMBER of Mill Pointe Associates, L.L.C., a Utah Limited Liability

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Company, and that the within and foregoing instrument was signed in behalf of the Company by authority of its Operating Agreement.



*Joan F. Swain*  
\_\_\_\_\_  
NOTARY PUBLIC

APPENDIX A - PHASE 1 UNITS AND INITIAL INTERESTS

NO UNITS HAVE BEEN DESIGNATED AT THIS TIME.

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APPENDIX B -- BYLAWS



BYLAWS OF  
MILLPOINTE OFFICE CONDOMINIUMS PHASE 1  
ASSOCIATION OF UNIT OWNERS  
A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, the Management Committee of Millpointe Office Condominiums Phase 1 Association of Unit Owners, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I - NAME, PRINCIPAL OFFICE

1.01. Name. The name of the nonprofit corporation is Millpointe Office Condominiums Phase 1 Association of Unit Owners ("Association").

1.01 Office. The principal office of the Association shall be at 331 South Rio Grande St., Suite E, Salt Lake City, Utah 84101.

ARTICLE II - DEFINITIONS

2.01 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article II of the Declaration of Condominium of the Millpointe Office Condominiums Phase 1 ("Declaration") shall have such defined meanings when used in these Bylaws.

ARTICLE III - PURPOSES

The Association is organized as a nonprofit corporation and shall be operated exclusively for the purpose of maintaining, operating and governing the Units within a certain tract of real property in Salt Lake County, State of Utah, commonly referred to as Millpointe Office Condominiums Phase 1 ("Project").

No dividend shall be paid and no part of the net income of the Association, if any, shall be distributed to the Members, Management Committee or Officers of the Association, except as otherwise provided herein, or under Utah law.

ARTICLE IV - POWERS OF THE ASSOCIATION

Subject to the purposes declared in Article III above and any limitations herein expressed, the Association shall have and may exercise each and all of the following powers and privileges.

(a) All of the powers and privileges to perform all of the duties and obligations of the Association as set forth in the Declaration as recorded in the office of the county recorder of Salt Lake County, State of Utah and as the same may be amended from time to time as therein provided; and

(b) The power to acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

#### ARTICLE V - MEMBERSHIP

Declarant and each Unit Owner shall constitute the Members of the Association. No persons or entities other than Declarant or the Unit Owners in the Project may be members of the Association.

#### ARTICLE VI - MEMBERSHIP CERTIFICATES

The Association may issue certificates of Membership, but such certificates shall not be necessary to evidence Membership in the Association. Membership in the Association shall begin:

(a) for each Unit Owner, upon acquisition of a Unit; and

(b) for Declarant upon the filing of the Declaration in the office of the Salt Lake County Recorder.

Membership in the Association shall immediately and automatically cease:

(a) for each Unit Owner, upon the sale of his or her Unit; and

(b) for Declarant, at such time as all the Units have been sold.

#### ARTICLE VII - MEMBERS MEETINGS

7.01 Annual Meetings. The annual meeting of Members of the Association shall be held on the first Monday in February of each year at 9:00 a.m. However, the initial meeting of the Association shall be held within 45 days after the closing of the sale of all the Units in the Project. The initial meeting and each annual meeting of the Association shall be held for the purpose of electing the Management committee and transacting such other business as may come before the meeting. The Management Committee

may from time to time by resolution change the date and time for the annual meeting of the Members.

7.02 Special Meetings. Special meetings of the members shall be promptly called by the Management Committee upon:

(a) the vote for such meeting by a majority of a quorum of the Management Committee; or

(b) the written request of Members representing at least fifty percent (50%) of the total voting power of the Association.

7.03 Place of Meetings. Meetings of the Association shall be held within the Project or at some other location in Salt Lake County, Utah, as designated by the Management Committee. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be at the principal office of the Association, as set forth in Article I hereto.

7.04 Notice of Meetings. The Management Committee shall cause written or printed notice of regular and special meetings to be delivered, personally or by mail, to each member of record. This notice shall be given not less than ten (10) nor more than ninety (90) days before the date of any meeting. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at its registered address, with first-class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice thereunder. Such registered address may be changed from time to time by notice in writing to the Association.

7.05 Quorum. At any meeting of the Association, the presence of Members holding at least a majority of the total votes of the Association shall constitute a quorum for the transaction of business. In the absence of a quorum at an Association meeting, those representing a majority of the voting power present may adjourn the meeting to another time but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall be the presence of Members holding at least twenty-five percent (25%) of the total votes of the Association. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 7.04 hereof for regular meetings.

7.06 Votes. Except for the votes of Declarant, all voting rights of the Association shall be exercised by the Members, or their duly authorized proxies, in accordance with the provisions of the Declaration and these Bylaws.

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

7.08 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Association, except the election of the Management Committee, complying with the provisions of applicable state law, setting forth the action so taken, shall be signed by the authorized representatives of all of the Members entitled to vote with respect to the subject matter thereof.

#### ARTICLE VIII - MANAGEMENT COMMITTEE

8.01 General Powers. The property affairs and business of the Association shall be managed by its Management Committee. The Management Committee may exercise all of the powers of the Association, whether derived from law, the Articles of Incorporation, the Declaration, or these Bylaws, except such powers as are by law, by these Bylaws, by the Articles of Incorporation or by the Declaration vested solely in the Members.

8.02 Election, Number, Tenure and Qualifications. The number of members of the Management Committee shall be three (3). The initial Management Committee specified in the Articles of Incorporation shall serve until the initial meeting of the Association as specified in Section 7.01 hereof, at which time all seats on the Committee shall be filled by the vote of the Association as provided herein. All Management Committee members shall be elected to one-year terms. Voting shall be by written secret ballot. Each Committee member shall hold office until his or her successor shall have been elected and qualified, or until he resigns or is removed pursuant to Section 8.07 hereof. All members of the Management Committee, except the initial members listed in the Articles of Incorporation, must be owners of one or more Units in the Project.

8.03 Regular Meetings. Regular meetings of the Management Committee shall be held at least semi-annually:

(a) immediately after, and at the same place as, the annual meeting of the Members; and

(b) on the first Thursday of December at 7:00 p.m. at a place within the Project as determined by the Management Committee. The Management Committee may from time to time, by resolution, change the dates and times for the regular meetings of the Committee, so long as a meeting is held at least once every six months. Notice of the time and place of each meeting of the Management Committee shall be posted at a prominent place or places within the Project, and shall be communicated to each of the Committee members not less than four (4) days prior to the meeting; provided, however, that notice of a meeting need not be given to any committee member who has signed a waiver of notice or a written consent to holding of the meeting.

8.04 Special Meetings. Special meetings of the Management Committee may be called by written notice signed by the President of the Association or by any two members of the Management Committee. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be posted at a conspicuous place in the Project, and shall be sent to all members of the Committee not less than 72 hours prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any Committee member signing a waiver of notice or a written consent to the holding of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid.

8.05 Quorum and Manner of Acting. A majority of the Management Committee members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Committee members shall act only as a Committee, and individual Committee members shall have no powers as such. Regular and special meetings of the Management Committee shall be open to all Unit Owners in the Project. The Management Committee may, with the approval of a majority of the quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personal matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

8.06 Compensation. No member of the Management Committee shall receive compensation for any services that he may render to the Association as a Committee member; provided, however, that a Committee member may be reimbursed for expenses incurred in performance of his or her duties as a Committee member to the extent such expenses are approved by the unanimous vote of the Management Committee and may be compensated for services rendered to the Association other than in his or her capacity as a Committee

member, if such compensation is approved in advance by the unanimous vote of the Management Committee.

8.07 Resignation and Removal. A Committee member may resign at any time by delivering a written resignation to the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Committee member who has been elected by the voting power of the Association may be removed from office prior to the expiration of his or her term by the vote of at least a simple majority of the Association.

8.08 Vacancies and Newly Created Committee Memberships. If vacancies shall occur in the Management Committee by reason of the death, resignation or disqualification of a Committee member, or if the unauthorized number of Committee members shall be increased, the Committee members then in office shall continue to act, and such vacancies or newly created positions on the Committee shall be filled by a majority vote of the Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Committee member by the Association may be filled by election at the meeting at which such Committee member is removed or at any other regular or special meeting of the Association. The Management Committee is not authorized to fill any vacancies on the Committee resulting from the removal of a Committee member. Any Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his or her predecessor or for the term of the newly created Trusteeship, as the case may be.

8.09 Information Action by Management Committee. Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Committee members, and an explanation of the action so taken is posted at a prominent place or places within the Common Area of the Project within three (3) days after the written consent of all Committee members has been obtained.

8.10 Budgets and Financial Statements. The Management Committee shall be responsible for the preparation of budgets and financial statements of the Association and for distributions of the same to the Owners in accordance with the requirements set forth in the Declaration. Preparation of those financial documents may be delegated, assigned or contracted for as the Committee sees fit.

#### ARTICLE IX - OFFICERS

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

9.02 Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Unit Owners annually at the regular meeting of the Association. Each such officer shall hold his or her office until the next ensuing annual meeting of the Association, or until his or her death, or until his or her resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. The President, Vice President, and Secretary/Treasurer (other than the initial ones) shall be and remain Unit Owners in the Project and members of the Management Committee during the entire term of their respective offices.

9.03 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers shall be Unit Owners.

9.04 Resignation and Removal. Any officer may resign or be removed in the same manner and for the same reasons as provided in Section 8.07 hereof for the resignation and removal of Management Committee members.

9.05 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, disqualification or any other cause, except removal by the Association, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting thereof.

9.06 President. The President shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Association all membership certificates, conveyances, mortgages and contracts and shall do and perform all acts and things which the Management Committee may require of him.

9.07 The 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 by the Management Committee.

9.08 The Secretary/Treasurer. The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Management Committee may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Management Committee may require of him. He shall also have the custody and

control of the funds of the Association, subject to the action of the Management Committee, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Management Committee. He shall perform such other duties as the Management Committee may require of him.

9.09 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, than an officer may be reimbursed for expenses incurred in performance of his or her duties as an officer to the extent such expenses are unanimously approved by the Management Committee and may be compensated for services rendered to the Association other than in his or her capacity as an officer, if such compensation is approved in advance by the unanimous vote of the Management Committee.

#### ARTICLE X - INDEMNIFICATION

10.01 Indemnification. Each Management Committee member now or hereafter serving as such shall be indemnified to the Association against any and all claims and liabilities to which he has or shall become subject by reason of serving or having served as such Committee member or officer, or by reason of any action alleged to have been taken, omitted or neglected by him as such Committee member or officer; and the Association shall reimburse each such person for all legal expenses reasonably incurred by him in connection with any such claim or liability; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of his or her own willful misconduct or gross negligence.

10.02 Vote of Committee. The amount paid to any Management Committee member by way of indemnification shall not exceed his or her actual, reasonable and necessary expenses incurred in connection with the matter involved, and such additional amount as may be fixed by a committee of not less than three persons, selected by the Management Committee, who shall be members of the Association, and any determination so made shall be binding on the indemnified officer or trustee.

10.03 State Law. The right of indemnification hereinabove provided for shall not be exclusive of any rights to which any member of the Management Committee of the Association may otherwise be entitled by law.

#### ARTICLE XI - FISCAL YEAR AND SEAL

11.01 Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January each year and shall end on the 31st day of December next following, except that the first fiscal year



shall begin on the date of the closing of the sale of the first Unit in the Project.

11.02 Seal. The Management Committee may by resolution provide an Association seal which shall be circular in form and shall have inscribed thereon the name of the Association.

#### ARTICLE XII - RULES AND REGULATIONS

12.01 Rules and Regulations. The Management Committee may from time to time adopt, amend, repeal and enforce reasonable rules and regulations are not inconsistent with the rights and duties set forth in the Declaration or these Bylaws. Each Owner shall be provided with copies of all rules and regulations affecting his or her Unit as well as copies of all amendments and revisions thereof.

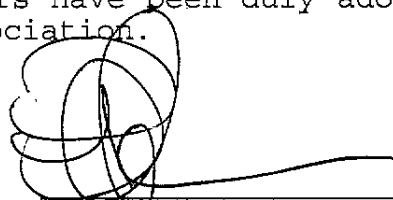
#### ARTICLE XIII - INSPECTION OF BOOKS AND RECORDS

13.01 Inspection of Books and Records. The membership register, books of account and minutes of meetings of the Members, of the Management Committee and of any committees of the Management Committee shall be made available for inspection and copying by any Unit Owner or his or her duly appointed representative as provided in this Declaration.

#### ARTICLE XIV - AMENDMENTS

14.01 Amendments. Except as otherwise provided by law, by the Declaration or by these Bylaws, these Bylaws may be amended, altered or repealed and new bylaws may be made and adopted by the Unit Owners upon the affirmative vote of a majority of the total votes of the Association. No amendment shall be effective unless and until a written instrument setting forth (i) the amended, altered, repealed or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total votes by the Association shall have been executed and verified by the current President of the Association and recorded in the official record of the Association.

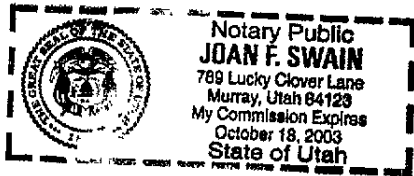
The foregoing Bylaws of the Millpointe Office Condominiums Phase 1 Association of Unit Owners have been duly adopted by the Management Committee of such Association.



PETE WILLIAMS  
President

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

On the 19th day of NOVEMBER, 1999, personally appeared before me Pete Williams, who, being by me duly sworn, did say that he is the President of Millpointe Office Condominiums Phase 1 Association of Unit Owners, a nonprofit corporation, and that the within and foregoing instrument was signed on behalf of such corporation by authority of a resolution of its Board of Trustees, and Pete Williams duly acknowledged to me that such corporation executed the same.



Joan F. Swain  
NOTARY PUBLIC