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Springville City  
50 S. Main  
Springville, UT  
84663

When Recorded Return to:  
Dee Thatcher, Manager  
Duck Creek Development, L.L.C.  
1882 East Maple Street  
Mapleton, Utah 84664

ENT 76761:2006 PG 1 of 34  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2006 Jun 20 8:43 am FEE 123.00 BY SW  
RECORDED FOR SPRINGVILLE CITY CORPORATIO

DECLARATION OF CONDOMINIUM  
OF  
DUCK CREEK CONDOMINIUMS  
A UTAH CONDOMINIUM PROJECT

THIS DECLARATION, containing covenants, conditions and restrictions relating to Duck Creek Condominiums, a Utah Condominium Project, is made on the date set forth at the end hereof by Duck Creek Development, L.L.C., a Utah limited liability company ("Declarant"), for itself, its successors, grantees and assigns, pursuant to the Condominium Ownership Act of the State of Utah.

RECITALS

A. Declarant is the owner of the following described real property ("Property") in Utah County, Utah, to-wit:

Lot 71, Duck Creek Plat "A", a subdivision according to the official plat thereof, more particularly described as follows:

Commencing at a point located North 88°33'19" East along the section line 528.12 feet and North 1,056.06 feet from the South 1/4 Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 02°22'50" East 306.93 feet; thence South 89°58'42" West 44.79 feet; thence North 00°39'52" East 95.57 feet; thence South 89°20'08" East 46.99 feet; thence along a curve having a radius of 50.00 feet to the right 32.59 feet, (chord bears South 70°39'47" East 32.02 feet); thence along a reverse curve having a radius of 50.00 feet to the left 128.58 feet, (chord bears North 54°20'18" East 95.97 feet); thence along a reverse curve having a radius of 50.00 feet to the right 32.59 feet, (chord bears North 00°39'37" West 32.02 feet); thence North 18°00'43" East 92.53 feet; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears North 63°00'43" East 21.21 feet); thence South 71°59'17" East 239.51 feet; thence along a curve having a radius of 15.00 feet to the right 23.56 feet, (chord bears South 26°59'17" East 21.21 feet); thence South 18°00'43" West 256.66 feet; thence along a curve having a radius of 466.50 feet to the right 180.10 feet, (chord bears South 29°04'20" West 178.99 feet); thence along a reverse curve having a radius of 533.50 feet to the left 104.70 feet, (chord bears South 34°30'36" West 104.54 feet); thence North 89°04'15" West 183.24 feet to the point of beginning.

Wetland Area – Condo: Commencing at a point located North 88°33'19" along the section line East 536.78 feet and North 1,264.19 feet from the South 1/4 Corner of

Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 22°41'36" East 3.30 feet; thence South 48°23'31" East 4.24 feet; thence South 27°44'46" East 6.27 feet; thence South 09°57'32" East 4.34 feet; thence South 00°19'36" West 4.87 feet; thence South 16°40'46" West 5.71 feet; thence South 53°47'55" West 1.13 feet; thence South 68°13'54" East 3.20 feet; thence South 12°46'19" East 32.34 feet; thence South 28°41'03" East 13.69 feet; thence South 45°25'36" East 32.68 feet; thence South 50°51'26" East 40.22 feet; thence South 41°14'55" East 34.57 feet; thence South 25°19'17" East 29.37 feet; thence North 88°26'30" East 36.90 feet; thence North 89°13'42" East 34.06 feet; thence North 83°28'38" East 4.68 feet; thence along a non tangent curve having a radius of 543.50 feet to the left 33.54 feet, (chord bears South 31°34'33" West 33.54 feet); thence South 77°58'20" West 11.15 feet; thence North 89°33'33" West 33.21 feet; thence North 78°17'26" West 32.85 feet; thence North 36°13'17" West 31.31 feet; thence North 47°55'26" West 28.96 feet; thence North 66°11'44" West 26.84 feet; thence North 43°39'28" West 29.80 feet; thence North 39°42'55" West 20.18 feet; thence North 02°22'50" East 101.78 feet to the point of beginning.

Storm Drainage Detention Basin #1 - Condo Area: Commencing at a point located thence North 88°33'19" East along the section line 536.78 feet and North 1,264.19 feet from the South 1/4 Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence North 02°22'50" East 98.40 feet; thence North 02°22'50" East 2.57 feet; thence along a curve having a radius of 10.00 feet to the left 10.44 feet, (chord bears North 27°32'23" West 9.98 feet); thence North 57°27'37" West 12.73 feet; thence along a curve having a radius of 15.00 feet to the right 21.55 feet, (chord bears North 16°18'25" West 19.74 feet); thence North 24°50'46" East 6.65 feet; thence along a curve having a radius of 15.00 feet to the left 10.45 feet, (chord bears North 04°53'35" East 10.24 feet); thence North 15°03'36" West 12.55 feet; thence along a curve having a radius of 15.00 feet to the right 11.45 feet, (chord bears North 06°48'23" East 11.17 feet); thence North 28°40'21" East 8.64 feet; thence along a curve having a radius of 15.00 feet to the left 7.33 feet, (chord bears North 14°40'06" East 7.26 feet); thence North 00°39'52" East 3.93 feet; thence South 89°20'08" East 16.33 feet; thence along a curve having a radius of 50.00 feet to the right 32.59 feet, (chord bears South 70°39'47" East 32.02 feet); thence along a reverse curve having a radius of 50.00 feet to the left 19.45 feet, (chord bears South 63°08'10" East 19.33 feet); thence South 18°06'36" West 21.75 feet; thence along a curve having a radius of 27.25 feet to the left 64.84 feet, (chord bears South 50°03'31" East 50.59 feet); thence along a reverse curve having a radius of 5.00 feet to the right 11.89 feet, (chord bears South 50°06'28" East 9.28 feet); thence South 18°00'43" West 9.41 feet; thence along a curve having a radius of 225.00 feet to the right 86.87 feet, (chord bears South 29°04'20" West 86.33 feet); thence along a reverse curve having a radius of 775.00 feet to the left 41.05 feet, (chord bears South 38°36'54" West 41.05 feet); thence North 86°07'56" West 23.57 feet to the point of beginning.

Storm Drainage Detention Basin #3 - Condo Area: Commencing at a point located North 88°33'19" East along the section line 536.78 feet and thence North 1,264.19 feet from the South 1/4 Corner of Section 32, Township 7 South, Range 3 East, Salt Lake Base and Meridian; thence South 86°07'56" East 23.57 feet; thence South 52°45'17" East 15.53

feet; thence along a curve having a radius of 5.00 feet to the right 7.67 feet, (chord bears South 08°47'56" East 6.94 feet); thence South 35°56'13" West 20.68 feet; thence South 56°46'43" East 211.17 feet; thence along a non tangent curve having a radius of 543.50 feet to the left 24.33 feet, (chord bears South 34°37'35" West 24.33 feet); thence South 83°28'38" West 4.68 feet; thence South 89°13'42" West 34.06 feet; thence South 88°26'30" West 36.90 feet; thence North 25°19'17" West 29.37 feet; thence North 41°14'55" West 34.57 feet; thence North 50°51'26" West 40.22 feet; thence North 45°25'36" West 32.68 feet; thence North 28°41'03" West 13.69 feet; thence North 12°46'19" West 32.34 feet; thence North 68°13'54" West 3.20 feet; thence North 53°47'55" East 1.13 feet; thence North 16°40'46" East 5.71 feet; thence North 00°19'36" East 4.87 feet; thence North 09°57'32" West 4.34 feet; thence North 27°44'46" West 6.27 feet; thence North 48°23'31" West 4.24 feet; thence North 22°41'36" West 3.30 feet to the point of beginning.

B. Declarant has constructed or will construct certain buildings and improvements on the property in accordance with the plans and drawings set forth in the Record of Survey Map ("Map") filed concurrently herewith, consisting of three (3) sheets, prepared and certified by F. Lewis Pratt, a Utah Registered Land Surveyor.

C. Declarant desires by filing this Declaration and the aforesaid Record of Survey Map to submit the Property and the buildings and other improvements being constructed or to be constructed thereon to the provisions of the Utah Condominium Ownership Act Utah Code Ann. §§ 57-8-1 et seq. ("Condominium Act") as a fee simple Condominium Project known as Duck Creek Condominiums ("The Project").

D. Declarant desires and intends to sell fee title to the individual Units contained in the Project, together with undivided ownership interests in the Common Area and Facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, and restrictions contained herein.

DECLARATION

NOW, THEREFORE, for such purposes and pursuant to the Condominium Act, Declarant hereby makes the following Declaration containing covenants, conditions and restrictions relating to this Project which shall be enforceable equitable servitudes and shall run with the land:

ARTICLE I  
(Definitions)

1.1 Definitions. When used in this Declaration each of the following terms shall have the meaning indicated:

(a) "Assessment" means any charge imposed by the association, including common expenses on or against a unit owner pursuant to the provisions of the declaration, bylaws, or this chapter.

(b) "Board of Trustees" means the governing board or management committee of the Association, appointed or elected in accordance with this Declaration, the Articles of Incorporation and Bylaws of Duck Creek Condominium Owner's Association.

(c) "Association of unit owners" or "Association" means all unit owners acting as a group in accordance with the declaration and bylaws.

(d) "Building" means one of four (4) buildings, containing one or more units, that have been or will hereafter be constructed on part of the Property as shown on the Map.

(e) "Common areas and facilities" or "Common Areas" shall include all Property, except Units, unless otherwise provided in this Declaration or lawful amendments to the Declaration:

(i) the Property included within the Project, whether leasehold or in fee simple, including wetlands and storm drainage detention basins;

(ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, entrances, and exits of each Building;

(iii) the yards, gardens, parking areas (not designated Parking Stall Units);

(iv) installations of central services such as power, light, gas, hot and cold water, heating, telephone, cable, broadband, refrigeration, and air conditioning;

(v) the tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(vi) such community and commercial facilities, including the Tot Lot, as may be provided for in this Declaration or the Map; and

(vii) all other parts of the property necessary or convenient to its existence, maintenance, and safety, or normally in common use.

(f) "Common expenses" means:

(i) all sums lawfully assessed against the unit owners;

(ii) expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(iii) expenses agreed upon as common expenses by the association of unit owners; and

(iv) expenses declared common expenses by Utah law, or by this Declaration or the Bylaws.

(g) "Common profits," unless otherwise provided in the Declaration or lawful amendments to the Declaration, means the balance of all income, rents, profits, and revenues from the common areas and facilities remaining after the deduction of the Common Expenses.

(h) "Condominium" means the ownership of a single unit in a multi-unit Project together with an undivided interest in common in the Common Areas and Facilities of the Property.

(i) "Condominium Act" means the Utah Condominium Ownership Act Utah Code Ann. §§ 57-8-1 et seq.

(j) "Condominium plat" means a plat or plats of survey of land and Units prepared in accordance with Utah Code Ann. Section 57-8-13.

(k) "Condominium project" or "Project" means the real estate development of the Property into units within residential buildings or structures, with other improvements to the Property, to be separately offered or proposed to be offered for sale and hereby submitted by this Declaration and Map to the provisions of the "Condominium Act".

(l) "Condominium unit" means a unit together with the undivided interest in the common areas and facilities appertaining to that unit. Any reference to a Condominium Unit includes both a physical unit together with its appurtenant undivided interest in the Common Areas and Facilities.

(m) "Declarant" means Duck Creek Development, L.L.C., a Utah limited liability company who executes this Declaration or on whose behalf the Declaration is executed. From the time of the recordation of any amendment to the Declaration, all persons who execute that amendment or on whose behalf that amendment is executed shall also come within this definition. Any successors of Duck Creek Development, L.L.C., a Utah limited liability company, who come to stand in the same relation to the Condominium Project as their predecessors, also come within this definition.

(n) "Declaration" means this instrument by which the Property is submitted to the provisions of the Utah Condominium Ownership Act, as it from time to time may be lawfully amended.

(o) "Limited common areas " means those common areas designated in this Declaration and in the Map as reserved for exclusive use of a certain unit.

(p) "Majority" or "majority of the unit owners," unless otherwise provided in this Declaration or lawful amendments to this Declaration, means the Unit Owners of more than 50% in the aggregate in interest of the undivided ownership of the common areas and facilities.

(q) "Management Committee" means the Board of Trustees as provided in this Declaration charged with and having the responsibility and authority to make and to enforce all of the reasonable rules covering the operation and maintenance of the Property.

(r) "Map" means the Record of Survey Map for Duck Creek Condominiums containing three (3) sheets prepared by F. Lewis Pratt, a Utah licensed land surveyor.

(s) "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

(t) "Mortgagee" means either any person named as the mortgagee or beneficiary under any mortgage or deed of trust by which the interest of any Owner is encumbered or any successor to the interest of such person under such mortgage or deed of trust.

(u) "Par value" means the fractional interest assigned to each unit by this Declaration. Because the Units are substantially identical, they shall be assigned the same par value.

(v) "Parking Stall Unit" means a specific parking stall shown on the Record of Survey Map, which Parking Stall Unit shall be appurtenant to the apartment Unit.

(w) "Person" means an individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.

(x) "Property" means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

(y) "Unit" means an individual air space unit consisting of enclosed rooms occupying part of a building and bounded by the interior surfaces of the walls, floors, ceilings, windows, railings, and doors along the perimeter boundaries of the air space, as these boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit.

(z) "Unit number" means the number designating the Unit in this Declaration and in the Map for the Project.

(aa) "Unit owner" means the person or persons owning a Unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified and established in this Declaration.

## ARTICLE 2

(Submission to Condominium Act and Name and Binding Effect)

2.1 Submission to Condominium Ownership. Declarant hereby submits the Property, tract of land, buildings, and other improvements constructed thereon or hereafter to be constructed, together with all appurtenances thereto, to the provisions of the Utah Condominium Ownership Act as a Condominium Project. This Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. Declarant intends that the provisions of the Act shall apply to the Property.

2.2 Covenants to Run with the Land. This Declaration containing covenants, conditions and restrictions relating to the Project shall be enforceable equitable servitudes which shall run with the land and be binding upon the successors and assigns of Declarant and upon all Unit Owners or subsequent Unit Owners, their grantees, mortgagees, successors, heirs, personal representatives, devisees and assigns. This Declaration shall run for twenty-five (25) years and shall automatically renew thereafter for ten (10) year terms unless terminated by a majority of the then Unit Owners.

2.3 Name of the Condominium Project. The name by which the Project shall be known is Duck Creek Condominiums.

2.4 Division into Condominiums. The Project is hereby divided into Condominiums as shown on the Map. Each Condominium consists of a Unit and an appurtenant undivided interest in the Common Areas and Facilities.

ARTICLE 3  
(Buildings and Improvements)

- 3.1 Description of Land. The land is that tract or parcel in Utah County, Utah, more particularly described in Recital A of this Declaration.
- 3.2 Description of Units. The Map shows the Unit Number of each Unit, its dimensions, its building location, those Limited Common Areas reserved for its use, and the Common Areas and Facilities to which it has access. The Unit may be described as follows:

Unit \_\_, Building \_\_, DUCK CREEK CONDOMINIUMS, according to the Record of Survey Map recorded on \_\_\_\_\_, 20\_\_ as Entry No. \_\_\_\_\_ and according to the Declaration of Condominium recorded on \_\_\_\_\_, 20\_\_ as Entry No. \_\_\_\_\_, together with its assigned Parking Stall Unit as designated on the Map, and together with an undivided 1/48 interest in the Common Areas and Facilities and its exclusive right of use in the Limited Common Areas.

- 3.3 Buildings. Buildings shall be constructed substantially in accordance with the information contained in the Map and with the Plans and Specifications therefor. There will be four buildings. Each building shall have three floors with four units per floor. The Project will contain forty-eight apartment Units. The buildings will be constructed principally of wood with exterior walls of stucco and rock or brick frame with manufactured insulated windows, and interior walls and floors of wood studs, plywood and dry wall plaster.
- 3.4 Unit Boundaries. In addition to the definition of a Unit in Article 1 above, each apartment Unit shall be determined in the following manner:
- 3.4.1 The upper boundary shall be the place of the lower surface of the ceiling slab;
  - 3.4.2 The lower boundary shall be the plane of the upper surface of the floor slab; and
  - 3.4.3 The vertical boundaries of the Unit shall be (i) the interior surface of the outside walls of the building bounding a Unit; (ii) the center-line of any non-bearing interior walls bounding a Unit; and (iii) the interior surface of any interior bearing walls bounding a Unit.
- 3.4.4 Each apartment Unit contains a living room, dining room, kitchen, 3 bedrooms, 2 bathrooms, a utility room, a patio, a storage room and such other rooms, if any, as shown on the Map.

3.5 Other Improvements. There are one hundred and eight parking stall Units located in the Project with designated handicapped parking as required by law. At least forty-eight Parking Stall Units shall be covered and designated with a Unit number matching the apartment Unit number. The Project will also include a playground, designated as a Tot Lot on the Map, and landscaping and other facilities located substantially as shown in the Map.

3.6 Parking Stall Units. As appears more fully in the Map and Exhibit B, the Project contains a number of parking stalls, which constitute part of the Units. In addition to providing the vertical dimensions of such Units, the Map shows the horizontal dimensions thereof. Except for a roof over some of the parking stall Units, such parking stalls are not enclosed. Declarant shall have no obligation and no other person shall have the right to enclose or further cover the parking stall units. No parking stall Unit shall be separate from the apartment Unit to which it appertains. If the Parking Stall Unit is not mentioned in the instrument of transfer of an apartment Unit, the ownership interest in the Parking Stall Unit shall automatically pass with the transfer of the apartment Unit to which it relates. Parking Stall Units shall for all purposes, except as otherwise specifically provided in the Declaration, be accompanied with the same rights and obligations as pertain to apartment Units. For maintenance purposes, parking stall Units shall be maintained like those parking stalls which comprise a part of the Common Areas and Facilities.

3.7 Common Areas and Facilities. Except as otherwise provided in the Declaration and excluding all Units, the Common Areas and Facilities shall consist of the areas and facilities described in the definitions and constitute in general all of the parts of the Property. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following whether located within the bounds of a Unit or not:

- 3.7.1 All structural parts of the buildings including, without limitation, foundations, columns, joists, beams, supports, supporting walls, floors, ceilings and roofs;
- 3.7.2 Driveways, parking areas (other than parking stall Units), lawns, shrubs, gardens, entrance ways, stairways and recreation areas, including the Tot Lot as shown on the Map;
- 3.7.3 Any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith;
- 3.7.4 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 in the Map;
- 3.7.5 The Limited Common Areas and Facilities herein described; and
- 3.7.6 All repairs and replacements of any of the foregoing.



3.8 Description of Limited Common Area and Facilities. The entry-ways immediately outside the front door of each Unit are the Limited Common Area for the exclusive use of the Units that are serviced by such entry-ways. The exclusive right to use the Limited Common Area shall be appurtenant to and shall pass with the title to the Unit with which it is associated.

#### ARTICLE 4

##### (Nature and Incidents of Ownership)

4.1 Alterations by Declarant. For the two (2) years following the recordation hereof and notwithstanding anything to the contrary herein, the Declarant reserves the right to change the interior design and interior arrangement of any Unit and to alter the boundaries between Units, so long as the Declarant owns the Units so altered. Any such change shall be reflected by an amendment of this Declaration and of the Map which may be executed by the Declarant alone, notwithstanding the procedures for amendment described in Section 27 of this Declaration. Such change may increase or decrease the number of Units and alter the boundaries of the Common Areas and Facilities. If the boundaries between Units are altered or the number of Units increased or decreased, in the amendment related thereto the Declarant shall reapportion the percentage of ownership in the Common Areas and Facilities. This reallocation shall be based on the change in floor space caused by the boundary alteration.

4.2 Prohibition Against Subdivision of Unit. Except as permitted by Section 4.1, no Unit Owner, by deed, plat or otherwise, shall subdivide or in any manner cause the ownership of his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map.

4.3 Interior of Units. Each Owner shall have the exclusive right to paint, repair, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the interior boundaries of such Owner's Unit. Each Owner shall also have the right to construct partition walls, fixtures, and improvements within the interior boundaries of the Owner's Unit; provided, however, that such partition walls, fixtures and improvements: (a) shall comply with all applicable laws, ordinances, and building codes; (b) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project; (c) shall not impair the structural soundness or integrity of the Building in which it is located; and (d) shall not encroach upon the Common Areas or any part thereof, unless the Board of Trustees shall consent in writing to such encroachment.

4.4 Maintenance. Each Owner of an apartment Unit at his own expense shall keep the interior of such Unit and its fixtures and equipment and appurtenances in good order, condition and repair and in a clean and sanitary

condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit.

- 4.5 Repairs. Except to the extent that the Management Committee is protected by insurance against such injury, the Unit Owner shall repair all injury or damages to the Unit, building or buildings caused by the act, negligence or carelessness of the Unit Owner or that of any tenant or subtenant or any member of the Unit Owner's family or of the family of any tenant or subtenant or any agent, employee or guest of the Owner or his tenant or subtenant and all such repairs, redecorating and painting shall be of a quality and kind equal to the original work. In addition to decorating and keeping the interior of the apartment Unit in good repair, the Unit Owner shall be responsible for the maintenance or replacement of any plumbing fixtures that may be in or connected with the Unit.
- 4.6 Title. Title to a Condominium may be held or owned by any person or entity and in any manner by which title to real property may be held in Utah.
- 4.7 Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and to the ownership of an undivided interest in the Common Areas and Facilities in the percentage expressed in Exhibit B.
- 4.8 Nature of Ownership. Each Unit Owner shall have and enjoy the rights and privilege of fee simple ownership of his Unit. Thus, each Unit shall be capable of being independently owned, encumbered and conveyed. There shall be no requirements concerning who may own apartment Units, it being intended that they may and shall be owned as any other property rights by persons, corporations, partnerships, limited liability companies, or trusts and in the form of common tenancy accepted in Utah. Parking Stall Units shall be owned by, or conveyed to, only owners of apartment Units, and shall be leased to or used by only persons who reside in apartment Units.
- 4.9 Ownership and Use of Common Areas. Except as provided in Section 4.1, the undivided ownership interests in the Common Areas shall be allocated equally amongst all Units regardless of the size or value of any Unit. The Common Areas and Facilities shall be owned by the Unit Owners as tenants in common. The initial undivided ownership interest in the Common Areas appurtenant to each Unit is shown in Exhibit B attached hereto. Except as reserved herein, the percentages appurtenant to each Unit shall not be altered except by the three-fourths written consent of all Owners. Any change in the percentage interest shall be memorialized by an amendment to this Declaration. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (except the Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other

Owners and is not contrary to any rules and regulations promulgated by the Association.

- 4.10 Computation of Undivided Interest. The percentage of undivided ownership interest in the Common Areas and Facilities which are appurtenant to each Unit has been computed by determining the ratio between the par value associated with such Unit (as set forth in Exhibit B) and the aggregate par values of all Units in the Project (with such minor adjustments in some or all of the resulting percentage interests as may have been necessary to assure that the total undivided interest respecting the Project equals 100%). Substantially identical Units have been assigned the same par value and the total of all undivided interests equals 100%. A Unit Owner's percentage of ownership interest in the Common Area and Facilities shall be for all purposes, including voting and assessment of common expenses.
- 4.11 Use of Common Areas and Facilities. Except with respect to Limited Common Areas, each Unit Owner may use the Common Areas and Facilities in accordance with the purpose for which they are intended, but subject to this Declaration and the By-Laws. This right of use shall be appurtenant to and run with each Unit.
- 4.12 Taxes. It is understood that under the Act each Unit, together with its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Unit Owner will pay and discharge any and all taxes, which may be assessed against his Condominium Unit.
- 4.13 Lease of Unit. No Unit Owner shall be permitted to lease his Unit for transient or hotel purposes. No Unit Owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the By-Laws attached hereto as Exhibit "A". Any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there shall be no restriction on the right of any Unit Owner to lease his unit.
- 4.14 Amendment. Subject to Section 4.9, this Declaration and/or the Map may be amended upon the affirmative vote or approval and consent of the Unit Owners holding not less than fifty-one percent (51%) of the undivided interest in the Common Areas and Facilities. Any amendment so authorized shall be executed by the Unit Owners and confirmed by the Management Committee. The Amendment shall be recorded in the office of the Utah County Recorder. In any amendment the Committee shall certify that the vote or consent required by this Section has occurred. Notwithstanding any other provision contained herein, until occurrence of the "Event" referred to in Section 8.4

hereof, 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 accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

ARTICLE 5  
(Easements)

- 5.1 Easement over Common Areas. The Association and Declarant shall have an easement to make such use of the Common Areas as may be necessary or convenient for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within or adjacent to the boundaries of such Unit.
- 5.2 Easement for Encroachments. In the event that, by reason of the construction, reconstruction, settlement or shifting of any part of a building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing or be reconstructed after destruction. However, in no event shall a valid easement or any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of such Unit Owner or Owners.
- 5.3 Easements for Maintenance, Cleaning and Repair. Some of the Common Areas may be located within the Units or may be conveniently accessible only through the Units. Therefore, an easement is hereby granted to the Association who shall promptly and adequately complete the maintenance, cleaning or repair of these portions of the Common Areas.

ARTICLE 6  
(Restrictions on Use)

- 6.1 Purpose. The purpose of this Project is to provide residential housing space for Unit Owners and to their tenants and guests and to provide parking and recreational space and facilities for use in connection therewith, all in accordance with the provisions of the Act.
- 6.2 Single Family Residence. Each of the apartment Units shall be occupied by the Unit Owner, his immediate family, servants, tenants or guests as a private

single family residence and for no other purpose. Each parking stall Unit shall be used by the Unit Owner, his family, tenants, servants or guests for the parking or storage of an operable motor vehicle and for no other purpose. The Common Areas and Facilities shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit Owners.

- 6.3 Compliance with Law. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, or will result in the cancellation of insurance on the buildings, or the contents thereof, without the prior written consent of the Management Committee. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Area and Facilities that is in violation of any law, ordinance or regulation of any governmental authority.
- 6.4 Exterior Limitations on Units. No Unit Owner shall cause or permit anything (including without limitation, a sign, awning, canopy, shutter, radio, wireless or satellite dish, or television antenna) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of window or doors, without the prior written consent of the Management Committee. The exterior portion of any drape or curtain must be white and the Management Committee shall determine the color of carpet and/or paint used on the balconies.
- 6.5 Noxious Activities. No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. Unit Owners shall not commit waste on the Project.
- 6.6 Structural Integrity of Buildings. Nothing shall be done in any Unit or in, on, or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof or which would structurally change the buildings or any part thereof except as otherwise provided herein.
- 6.7 Animals and Pets. Except for dogs, cats and other household pets, no animals of any kind shall be raised, bred or kept in any Unit or in the Common Areas or Limited Common Area. Owners keeping dogs, cats and other household pets in Units shall be subject to the rules and regulations adopted by the Association and to any law, ordinance or regulation of any governmental authority.
- 6.8 Garbage and Debris. The Common Areas and Facilities shall be kept free and clear of all rubbish, garbage, debris, and other unsightly materials.

ARTICLE 7  
(The Association)

- 7.1 Membership. Upon delivery and acceptance of a deed to a Unit, the grantee thereof automatically becomes a member of the Association.
- 7.2 Board of Trustees. The Board of Trustees is the Management Committee of the Association.
- 7.3 Voting-Multiple Ownership. The vote attributable to and exercisable in connection with a Unit shall be the percentage of undivided ownership interest in the Common Areas and Facilities which is appurtenant to such Unit. 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 among themselves. A vote cast at any meeting by any of such Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.
- 7.4 Consent in Lieu of Vote. In any case in which the Act or this Declaration requires the vote of a stated percentage of the Project's undivided ownership interest for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of undivided ownership interest. The following additional provisions shall govern any application of this section:
- 7.4.1 After notice has been given to all record Unit Owners (as of the date of the notice), all necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner;
  - 7.4.2 Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and
  - 7.4.3 Unless the consent of all Owners having an interest in the same Unit are secured, the consent of none of such Owners shall be effective.
- 7.5 Administrative Rules and Regulations. The Association shall have the power to adopt and establish by resolution, such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the Project. The Association may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment, alteration or

provision shall be taken to be a part of such rules. Unit Owners shall obey such rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision. It is understood that such rules shall apply and be binding upon all Unit Owners, tenants, subtenants or other occupants of the Units.

## ARTICLE 8

(Rights and Obligations of Association and Board of Trustees)

**8.1 Person to Receive Service of Process.** The person to receive service of process in the cases provided herein or in the Act is Dee Thatcher, whose address is 1882 East Maple Street, Mapleton, Utah 84664. This person shall be changed to the registered agent for the Homeowner's Association filed with Division of Corporations and Commercial Code for the State of Utah.

**8.2 Authority of Association.** The business, property and affairs of the Project shall be managed, operated and maintained by the Board of Trustees also known as the Management Committee. The Management Committee shall have, and is hereby granted, the following authority and powers:

- 8.2.1 The authority, with the appropriate vote or consent of the Unit Owners or of any other person(s), to grant or create, on such terms as it deems advisable, utility and similar easements, over, under, across and through the Common Area and Facilities; any work performed pursuant to such easements must be done in a workmanlike manner and any damage to the interior structure or décor of a Unit must be repaired;
- 8.2.2 The authority to execute and record, on behalf of all Unit Owners, any amendment to the Declaration or Map which has been approved by the vote or consent necessary to authorize such amendment;
- 8.2.3 The authority to enter into contracts which in any way concern the Project, so long as any vote or consent of the Unit Owners necessitated by the subject matter of the contracts has been obtained;
- 8.2.4 The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;
- 8.2.5 The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long a such action has been authorized by any vote or consent which is necessary under the circumstances;
- 8.2.6 The power and authority to add any interest in real property obtained pursuant to sub-paragraph 8.2.5 above to the

Condominium Project, so long as such action has been authorized by the necessary vote or consent;

- 8.2.7 The authority to promulgate such reasonable rules, regulations, and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the project is maintained and used in a manner consistent with the interests of the Unit Owners; and
- 8.2.8 The power and authority to perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions as agent for the Unit Owners.

**8.3 Certifications.** Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish certain acts shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.

**8.4 Composition of Management Committee.** The Management Committee shall be composed of three (3) members. At the first regular Association meeting one (1) Committee member shall be elected for three-year term, one (1) Committee member shall be elected for two-year term and one (1) Committee member for a one-year term. At each annual Association meeting thereafter any vacant seat on the Committee shall be filled with a member elected for a three-year term. Only Unit Owners and officers and agents of Owners other than individuals shall be eligible for Committee membership. At the annual meeting the percentage of undivided ownership interest appurtenant to a Unit may be voted in favor of as many candidates for Committee membership as there are seats on the Committee to be filled; provided, however, no meeting shall occur until the annual Owners meeting held on the second Tuesday in January, 2007, or until Units to which an aggregate of at least three-fourths (3/4) of the undivided Ownership interest in the Common Areas and Facilities appertain have been conveyed by Declarant, whichever occurs first (hereinafter referred to as the "Event"). Declarant alone shall be entitled to select two (2) of the original three (3) Committee members. Notwithstanding the foregoing limitations, until the first annual meeting of the Owners, the members of the Committee, although numbering less than three (3), shall be the following persons and each shall hold the office indicated opposite his name: Dee Thatcher, President; Gordon Livingston, Vice-President, and Ryan Livingston, Secretary, Treasurer. Any Committee member who fails on three successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least 25% of all Committee meetings (whether regular or special) held during any twelve-month period shall automatically forfeit his seat. In the event a Committee seat, which was filled by Declarant, becomes vacant prior to the Event, whether by reason of



forfeiture or due to another cause, Declarant shall select a replacement member to sit on the Committee for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Committee until his successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business.

- 8.5 Responsibility. The Management Committee shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Declaration, and rules adopted by the Association and agreements and determinations the Management Committee duly makes.
- 8.6 Additional facilities. The Management Committee shall, subject to any necessary approval, have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interests of the Unit Owners and to effect the necessary amendment of documents and maps in connection therewith.
- 8.7 Name. The Management Committee shall be known as the Management Committee of Duck Creek Condominium Owners Association.
- 8.8 Manager. If delegable, the Management Committee may carry out through a Project Manager any of its functions. Any Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Unit Owners, and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the function or acts required or permitted to be performed by the Management Committee itself. Any agreement for professional management of the Project shall call for a term not exceeding three (3) years and shall provide that for cause such management agreement may be terminated by the Management Committee or by the Association with no more than ninety (90) days written notice.
- 8.9 Change in Ownership. The Management Committee shall maintain up-to-date records showing the name of each person who is an Owner, the address of such person, and the Unit owned by him. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Management Committee with a copy of the Deed or other instrument recorded with the Utah County Recorder. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Management Committee may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the Utah

County Recorder. The address of an Owner shall be deemed to be the address of the Owner's Unit unless the Owner otherwise advises Management Committee.

- 8.10 No Income Producing Activities. No admission fees, charges for use, leases or other income-generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas and Facilities.
- 8.11 Injunctive Relief. Any failure to comply with any of the provisions thereof shall be grounds for an action by the Management Committee or other aggrieved party for injunction relief or specific performance or to recover any loss or damage resulting therefrom.
- 8.12 Maintenance of Common Areas. Except as hereinafter provided, the Management Committee shall provide for such maintenance and operation of the Common Areas and Facilities and of the Limited Common Areas and Facilities as may be reasonably necessary to keep them clean, functional, attractive and generally in good condition and repair. The Management Committee shall have no obligation to maintain the apartment Units, but shall maintain Limited Common Areas and all parking stalls which constitute Units in the same manner that it is required to maintain parking stalls comprising a part of the Limited Common Areas and Facilities.
- 8.13 Right of Entry. The Management Committee and its duly authorized agents shall have the right to enter any and all of the Units and the Limited Common Areas appurtenant thereto in case of an emergency originating in or threatening such Unit or any other part of the Project, whether or not the Unit Owner or occupant thereof is present at the time. The Management Committee and its duly authorized agents shall also have the right to enter into any and all of the Units and Limited Common Areas at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities. The Management Committee may further make emergency installations, alterations or repairs to the mechanical or electrical devices or installations so long as the work is necessary to prevent damage or threatened damage to other Units in the Project. The Unit Owner affected by such entry under this Section shall first be notified thereof if available and if time permits.
- 8.14 Indemnification of Management Committee. Each member of the Management Committee shall be indemnified and held harmless by the Association against all costs, expenses and liabilities whatsoever, 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 Committee. The foregoing indemnification

shall not apply if the loss, expense or liability involved resulted from the willful misconduct, gross negligence or other intentional act of the member.

- 8.15 Limitation on Improvements by Association. Until the Occurrence described in Article 14, neither the Association nor the Management Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities, other than such repairs, replacements or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.
- 8.16 Reserve. To the extent the same is reasonably possible and practical and is not inconsistent with the significant interests of the Association, the Management Committee and the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities. The reserve shall be funded by regular monthly or other periodic assessments against the Units rather than by special assessments unless extraordinary.

#### ARTICLE 9 (Assessments)

- 9.1 Assessments. Every Unit Owner shall pay his proportionate share of the Common Expenses. The portion assessed to and payable by each Unit shall be a sum equal to the aggregate amount of such cash requirements for such year, or portion of year, determined as aforesaid, multiplied by the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit, as shown in Exhibit B. No assessment for a single improvement in the nature of a capital expenditure which exceeds the sum of \$5,000 shall be made without the same having been first voted on and approved by at least a majority of the Project's undivided ownership interest.
- 9.2 Payment. Each Unit Owner shall pay the Management Committee his allocated portion of the cash requirement necessary to manage and operate the Project. Payment shall be made upon the terms, at the time, and in the manner herein provided. No Unit Owner shall deduct from his assessment any set-off or claim which the Owner may have against the Management Committee or Association. Each installment shall be due on or before the first day of each month. If the Unit Owner shall fail to pay any installment within five (5) days of the time when the same becomes due, the Owner shall pay a late charge of ten percent (10%) of the assessment due together with interest at eighteen percent (18%) per annum, and all costs and expense, including attorney's fees, incurred in any proceedings brought to collect such unpaid assessment.
- 9.3 Expenses. The Management Committee shall estimate the annual cash requirements necessary to manage and operate the Project. The expenses to

maintain and operate the Project may include, among other things, the cost of management, special assessments, fire, casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and the care of the grounds, repairs and renovations to Common Areas and Facilities, snow removal, water charges, utility services (except telephone and other services which are separately billed or metered to the individual Units by the utility or party furnishing such service), legal and accounting fees, management fees, expenses and liabilities incurred by the Management Committee under or by reason of this Declaration, the payment of any deficit or expense remaining from the previous period, the creation of a reasonable contingency or other necessary reserve or surplus fund, as well as all other costs and expenses relating to the Project. The Management Committee may, from time to time, up to the close of the year for which such cash requirements have been so determined, increase or diminish the amount previously fixed or determined for such year. Every such reasonable determination by the Management Committee for normal operating expenses, consistent with the Act and this Declaration, shall be final and conclusive to the Owners.

**9.4 Collection of Assessment from Tenant.** If an Owner shall rent his Unit and shall default for a period of one month in the payment of any assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant the portion of the rent due sufficient to discharge the delinquent assessment.

**9.5 Collection and Lien.** Each monthly assessment and each special assessment shall be separate, distinct and personal obligations of the Owner(s) of the Unit against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid common expenses may be maintained without foreclosing or waiving the lien securing the same. The amount of any assessment, whether regular or special, assessed to a Unit plus after accruing late fees and interest at eighteen percent (18%) per annum and costs, including reasonable attorney's fees, and subsequent assessments, shall become a lien upon such Unit immediately upon non-payment of the assessment. The lien for non-payment of assessments and other charges shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

9.5.1 Tax and special assessment liens on the Unit in favor of any assessment unit, and special district; and

9.5.2 Encumbrances on the interest of the Unit Owner recorded prior to the date such notice of lien is recorded which by law would be a lien prior to subsequently recorded encumbrances.

9.6 Certificate. The Management Committee may issue a certificate stating the unpaid common expenses then outstanding with respect to a Unit. The certificate shall be conclusive upon the Management Committee and the Owner as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith. The certificate shall be furnished to any Owner or prospective Owner or Mortgagee of a Unit upon request at a reasonable fee not to exceed Fifteen Dollars (\$15.00). Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid assessments which became due prior to the date of making of such request shall be senior to the lien or interest held by or obtained by the person making the request.

9.7 Release of Lien. Upon payment of delinquent assessments and charges concerning which a notice of lien has been recorded, the Management Committee shall cause to be recorded a release of the lien in the office of the Utah County Recorder.

9.8 Foreclosure. Such lien for nonpayment of assessment may be enforced in accordance with the provisions of the law applicable to the foreclosure of mortgages or in any manner then permitted by law.

#### ARTICLE 10 (Insurance)

10.1 Hazard Insurance. The Association shall maintain in force a multi-peril type hazard insurance policy covering the entire Condominium Project (both Unit and Common Areas and Facilities). Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage endorsement and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to condominium projects similar to the Project in construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable value (based upon replacement cost). Such policy shall include an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary or appropriate, an "Increased Cost of Construction Endorsement" or its equivalent, and a "Contingent Liability from Operation of Building Laws Endorsement" or its equivalent.

10.2 Flood Insurance. If the Project is located in an area having special flood hazards, a "blanket" policy of flood insurance on the Condominium Project shall be obtained and maintained if available. The minimum amount of coverage afforded by such policy shall be the lesser of the maximum amount of insurance available under said Act or the aggregate of the unpaid principal balances of the

Mortgages affecting the individual Units. Such policy shall be in the form of the standard policy issued by members of the National Flood Insurers Association or in the form of a policy that meets the criteria established by the Flood Insurance Administration.

- 10.3 Insured. The named insured under each policy required by this Article shall be in form and substance essentially as follows: “Duck Creek Condominium Owners Association, a nonprofit corporation, or its authorized representative, for the use and benefit of the individual Owners.”
- 10.4 Mortgagee Protection. Each such policy shall include the standard mortgage clause (without contribution) which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear or shall be otherwise endorsed to fully protect the interests of Mortgagees. In addition, the mortgage clause shall provide that the insurance carrier shall notify each Mortgagee, at least thirty (30) days in advance of the effective date, of any reduction in or cancellation of the policy.
- 10.5 Limitation on Insurer. Each such policy shall provide that notwithstanding any provision thereof which gives the carrier the right to elect to restore damage in lieu of making a cash settlement, such option shall not be exercisable if it is in conflict with any requirement of law or without the prior written approval of the Association.
- 10.6 Fidelity Insurance. The Management Committee or Association shall at all times maintain in force fidelity coverage against dishonest acts on the part of managers (and employees of managers), trustees, employees, officers, Committee members, or volunteers responsible for handling funds belonging to or administered by the Management Committee or Association of Unit Owners. The fidelity bond or insurance shall name the Association as the obligee or insured and shall be written in an amount sufficient to afford the protection reasonably necessary, but in no event less than one hundred and fifty percent (150%) of the Project’s estimated annual operating expenses, including reserves. Such fidelity bond or insurance shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.
- 10.7 Liability Insurance. The Association shall maintain in force a comprehensive policy of public liability insurance covering all of the Common Areas and Facilities. Such Insurance shall include a “Severability of Interest Endorsement” or its equivalent which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of other Owners, the Management Committee. The coverage afforded by such public liability insurance shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for property of others, and such other risks as customarily are covered with respect to condominium projects similar to the

Project in construction, location, and use. The limits of liability under such insurance shall not be less than \$1,000,000.00 for all claims for personal injury and/or property damage arising out of a single occurrence.

10.8 General Requirements Concerning Insurance. Each insurance policy or fidelity bond maintained pursuant to this Article shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a financial rating by Best's Insurance Reports of its highest classification. No such policy or fidelity bond shall be maintained where: (1) under the terms of the carrier's charter, By-Laws, bond or policy, contribution may be required from, or assessments may be made against, a Unit Owner, a Mortgagee, the Management Committee, the Association, a Unit, the Common Areas, or the Project; (2) by the terms of the carrier's charter, By-Laws, bond or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or member; (3) the bond or policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled from collecting insurance proceeds; or (4) the bond or policy provides that the insurance there under shall be brought into contribution with insurance purchased by the individual Unit Owners or their Mortgagees. Each such fidelity bond or policy shall provide that: (a) coverage shall not be prejudiced by any neglect of the Unit Owners when such act or neglect is not within the control of the Association or the Management Committee; (b) coverage shall not be prejudiced by any failure by the Association or Management Committee to comply with any warranty or condition with regard to any portion of the Project over which the Association and Committee have no control; (c) coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds named therein, including any Mortgagee named as an insured; and (d) the insurer waives any right of subrogation it might have as to any and all claims against the Association, the Management Committee, any Unit Owner, and/or their respective agents, employees or tenants. If due to changed circumstances, excessive cost, the contrary vote of a majority of the Owners, or any other reason, any of the insurance coverage required to be obtained and maintained under this Article hereof cannot reasonably be secured, with respect to such coverage, the Association shall obtain and maintain such substitute, different or other coverage as may be reasonable and prudent under the circumstances as they then exist.

## ARTICLE 11

(Damage or Destruction)

11.1 Destruction or Damage. In the event of destruction or damage of part or all of the improvements in the Condominium Project, the procedures of this Article shall apply subject to the rights of mortgage holders.

11.2 Sufficient Insurance Proceeds. If proceeds of the insurance maintained by the Management Committee are alone sufficient to repair or reconstruct the

damaged or destroyed improvement, such repair or reconstruction shall be carried out.

- 11.3 Less than 75% Damage. If less than 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 all of the Units shall be assessed for any deficiency on the basis of their respective appurtenant percentages of undivided ownership interest.
- 11.4 Seventy Five Percent or More Damage. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if at least 75% of the Unit Owners, within 100 days after the destruction or damage, vote to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection 11.2 above.
- 11.5 Insufficient Insurance Proceeds. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if at least 75% of the Unit Owners do not, within 100 days after the destruction or damage, vote to repair or reconstruct the affected improvements, the Management Committee shall promptly record with the Utah County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of Section 57-8-31, Utah Code Annotated (1953), as amended from time to time, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.
- 11.6 Reconstruction and Repair. Any reconstruction or repair, which is required to be carried out by this Article, shall be accomplished at the instance and direction of the Management Committee. Any determination required by this Article regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Management Committee shall elect three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Article shall be the average of the two closest appraisal figures.

## ARTICLE 12 (Eminent Domain)

- 12.1 Eminent Domain. In the event that eminent domain proceedings are commenced against the Project or any portion thereof, the provisions of Section 57-8-32.5 of the Utah Code Annotated (1953), as amended from time to time, shall apply. The Management Committee shall give written notice of such proceedings to all Mortgagees of record. No first lien priority of any



Mortgagee shall be diminished or otherwise disturbed by virtue of such proceedings.

ARTICLE 13  
(Mortgage Protection)

- 13.1 Mortgage Protection. Except as provided in Section 9.5, the Association's lien against a Unit for unpaid assessments or charges shall be subordinate to the previously recorded Mortgage, without notice, affecting such Unit. The Mortgagee under the prior Mortgage, which comes into possession of the Unit, shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage shall be collected or enforced by either the Management Committee or the Association from or against a Mortgagee, or its successor.
- 13.2 Protection to Mortgagees. Unless the same percentage of Mortgagees as required for Owners of the individual Units have given their prior written approval, neither the Management Committee nor the Association of Unit Owners shall be entitled, by act, omission, or otherwise:
- 13.2.1 To abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey map (except as provided in Article 11 hereof in the event of certain destruction or damage);
  - 13.2.2 To partition or subdivide any Unit except as reserved by Declarant;
  - 13.2.3 To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas and Facilities (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas and except as provided in Article 11 hereof in the event of certain destruction or damage);
  - 13.2.4 To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement, or reconstruction of such improvements, except as provided in Article 11 hereof in the event of certain destruction or damage;
  - 13.2.5 To change the pro rata interests or obligations of any Unit which apply for (a) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (b) determining the pro rata share of ownership of each Unit in the Common Areas and Facilities;

- 13.2.6 To alter the provisions of Article 8 hereof in such a way as to diminish the protections afforded to the Owners regarding the duration or terminability of agreements for managerial services; or
- 13.2.7 To alter the provisions of Article 10 hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.
- 13.3 Inspection of Records. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. From and after the time a Mortgagee makes written request to the Association, the Management Committee shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Committee, the Association, or the Unit Owners.
- 13.4 Notice of Damage. From and after the time a Mortgagee makes written request to the Association, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (a) The Common Areas involving an amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.
- 13.5 Amendments. Except for rights reserved in this Article, amendments to this Declaration may be made without the consent of the Mortgagees. If the rights reserved in this Article are amended, at least a majority of the Mortgagees must approve the amendment in writing.

Article 14  
(Rights of Declarant)

- 14.1 Declarants' Sales Program. Notwithstanding any other provision in this Declaration until Declarant ceases to be a Unit Owner or the expiration of four (4) years after the date on which this Declaration is filed for record in the office of the County Recorder of Utah County, Utah, whichever first occurs (hereinafter referred to as the "Occurrence"), Declarant shall have the rights set forth in this Article in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant.
- 14.2 Sales Office. Declarant shall have the right to maintain at least one (1) or sales office and/or model apartment Unit. Such office and/or model apartment Unit may be one or more Units owned by it in one or more

separate buildings placed on the Property for the purpose of aiding Declarant's sales effort.

14.3Signage. Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or directional signs, banners or similar devices at any place or places on the Property, but any such device shall be of a size and in a location as is reasonable and customary.

14.4Use of Common Area. Declarant shall have the right to use the Common Areas and Facilities of the Project to entertain prospective purchasers or to otherwise facilitate Unit sales, provided said use is reasonable as to time and manner.

14.5Relocation of Sales Office and Signage. Declarant shall have the right from time to time to locate or relocate any of their sales offices, model apartment Units, and/or signs, banners or similar devices. In connection with each such location or relocation, Declarant shall observe the limitations imposed by the preceding portion of this Article. Within a reasonable period of time after the happening of the Occurrence in Section 14.1, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

14.6Completion Obligation. Declarant hereby covenants in favor of each Owner that no later than 12/31/2009:

14.6.1 The Unit which such Owner has contracted to purchase, the building within which such Unit is contained or is to be contained, and each Limited Common Area appurtenant to such Unit shall be fully constructed and ready for use or occupancy (as the case may be); and

14.6.2 There shall be substantially completed and usable as part of the Common Areas all planned landscaping, sidewalks, parking facilities, roads, fences, outdoor lighting, playground facilities, and utility lines and conduits necessary to enable full use and enjoyment of the Unit concerned.

14.7Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any mortgage given by Declarant covering all Condominium Units in the Project, automatically covers, encumbers, and includes all of the then unexercised or then unused rights, powers, authority, privileges, protections and

controls which are accorded to Declarant (in its capacity as Declarant) herein.

ARTICLE 15  
(General Provisions)

- 15.1 Severability. The invalidity of any one or more phrases, sentences, subparagraphs, paragraphs, subsections or sections hereof shall not affect the remaining portions of this instrument or any part there, and in the event that any portion or portions of this instrument should be invalid or should operate to render this instrument invalid, this instrument shall be construed as if such invalid phrase or phrases, sentence or sentences, subparagraph or paragraphs, subsection or subsections or section or sections had not been inserted.
- 15.2 Gender. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, male or female, shall in all cases be assumed as though in each case fully expressed.
- 15.3 Waivers. No provision contained in the Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.
- 15.4 Topical Headings. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.
- 15.5 Effective Date. This Declaration shall take effect upon recording.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 16 day of FEB, 2006.

Duck Creek Development, L.L.C., a  
Utah limited liability company

By   
its Manager

STATE OF UTAH )  
 : ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 16 day of February 2006, by Dee Thatcher, Manager of Duck Creek Development, L.L.C., a Utah limited liability company.

Teresa Tipton  
NOTARY PUBLIC  
Residing: Springville

My Commission Expires:  
6-11-2007



## EXHIBIT A

BY-LAWS OF DUCK CREEK CONDOMINIUM OWNERS ASSOCIATION  
A NONPROFIT CORPORATION

## I. IDENTITY

These are the By-Laws of Duck Creek Condominium Owners Association, duly made and provided for in accordance with the Act. All terms used herein, which are defined in the Declaration to which these By-Laws are appended, shall have the meaning ascribed therein.

## II. APPLICATION

All present or future owners, tenants, or any other persons who might use the facilities of Duck Creek Condominiums (the "Project") in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or parts thereof, or the mere act of occupancy or use of any of said Units or parts thereof or the Common Areas and Facilities will signify that these By-Laws are accepted, ratified, and will be complied with by such persons.

## III. ADMINISTRATION OF CONDOMINIUM PROJECT

1. Place of Meetings. Meetings of the Association shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.
2. Annual Meetings. The first annual meeting of the Association shall be held at the Project on the second Tuesday in January, 2007. Thereafter, the annual meetings shall be held on such day of each succeeding year. However, whenever such date of any annual meeting falls on a legal holiday, the meeting shall be held on the next succeeding business day. Further, the Management Committee may by resolution fix the date of the annual meeting on such date or at such other place as the Management Committee may deem appropriate.
3. Special Meetings. Special Meetings of the Association may be called at any time by the Management Committee or by Unit Owners who collectively hold at least thirty (30) percent of the total vote. Such meeting shall be held on the Project or such other place as the Management Committee may specify and the notice thereof shall state the date, time and matters to be considered.
4. Notice. Written or printed notice stating the place, day and hour of all meetings of the Association and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail to each

Unit Owner. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, with postage thereon prepaid, addressed to the Unit Owner at his address as it appears on the records of the Association.

5. Quorum. At any meeting of the Association, the Owners of more than fifty (50) percent in the aggregate of interest in the undivided ownership of the Common Areas and Facilities shall constitute a quorum for any and all purposes, except where express provisions of these By-Laws, the Articles of Incorporation or the Declaration of Condominium require a vote of more than fifty (50) percent of the Association, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.
6. Voting. When a quorum is present at any meeting, the vote of the Unit Owners representing more than fifty (50) percent of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Board of Trustees, unless the question is one upon which, by express provision of the Declaration or these By-laws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the secretary at least prior to the commencement of the annual meeting. Proxies for special meetings of Unit Owners must be of record with the secretary at least two days prior to such special meeting.
7. Waivers of Notice. Any Unit Owner may at any time waive any notice required to be given under these By-Laws, or by statute or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

#### IV. MANAGEMENT COMMITTEE

1. Purpose of Powers. The business, property and affairs of the Condominium Project shall be managed and governed by the Management Committee which for purposes of the Utah Nonprofit Corporation and Cooperative Association Act shall be the same as the Board of Trustees as used in said Act.

2. Election. The Management Committee shall be elected as provided in the Declaration.
3. Vacancies. Vacancies on the Management Committee shall be filled as provided in the Declaration.
4. Regular Meetings. A regular annual meeting of the Management Committee shall be held immediately after the adjournment of each annual meeting of the Unit Owners. Regular meeting, other than the annual meeting, shall or may be held at regular intervals at such place and at such times as either the president or the Management Committee may from time to time designate.
5. Special Meetings. Special Meetings of the Management Committee shall be held whenever called by the president, vice president, or by two members. By unanimous consent of the Management Committee, special meetings may be held without call or notice at any time or place.
6. Quorum. A quorum for the transaction of business at any meeting of the Management Committee shall consist of a majority of the members of the Management Committee then in office.
7. Compensation. Members of the Management Committee as such, shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed to preclude any member of the Management Committee from serving the Project in any other capacity and receiving compensation therefor.
8. Waiver of Notice. Before or at any meeting of the Management Committee, any member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.
9. Adjournments. The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

## V. OFFICERS

1. Designation and Election. The principal officers of the Management Committee shall be a president, a vice president, a secretary/treasurer, all of whom shall be elected by and from the Management Committee. Such election or appointment shall regularly take place at the first meeting of the Management Committee immediately following the annual meeting of the Unit Owners or at any other meeting of the Management Committee.



2. Other Officers. The Management Committee may appoint such other non-voting officers, in addition to the officers hereinabove expressly named, as they shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Management Committee.
3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Management Committee.
4. President. The president shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Project all conveyances, mortgages and contracts of material importance to its business, and shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Unit Owners and the Management Committee. He shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium Project.
5. 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. If neither the president nor the vice president is able to act, the Owners shall call a special meeting to select replacement members of the Board of Trustees. The vice president shall also perform such other duties as shall from time to time be prescribed by the Management Committee.
6. Secretary. The secretary shall keep the minutes of all meetings of the Management Committee and of the Unit Owners. He shall also have charge of the books and papers as the Management Committee may direct. Further, he shall in general perform all the duties incident to the office of secretary.
7. Treasurer. The treasurer shall have the responsibility for the funds of the Management Committee and shall be responsible for keeping full and accurate account of all receipts of all disbursements in books belonging to the Management Committee. He shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may from time to time be designated by the Management Committee.
8. Compensation. Without a three-fourths vote of the Owners, no compensation shall be paid to the officers for their services as officers.

## VI. ACCOUNTING

1. **Books and Accounts.** The books and accounts of the Management Committee shall be kept under the direction of the treasurer, and in accordance with the reasonable standards of accounting procedures.
2. **Report.** At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Unit Owners. Report of such review shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners. A certified audit of the records by a certified public accountant shall be made only if seventy-five (75) percent of the Owners determine to require the it.
3. **Inspection off Books.** All books and records at the Association shall be available at the the principal office of the Management Committee and may be inspected by any Unit Owner, or his agent or attorney, for any proper purpose at any reasonable time.

## VII. BUILDING RULES

The Unit Owners shall have the power to adopt and establish, by resolution, such building, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Condominium Project, and the Management Committee shall enforce them. Unit Owners shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision. It is clearly understood that such rules and regulations shall apply and be binding upon all Unit Owners of the Condominium Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

## VIII. AMENDMENT OF THE BY-LAWS

These By-Laws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration.

## IX. OPERATION AND MAINTENANCE OF CONDOMINIUM PROJECT

The Management Committee shall be responsible for the maintenance, control, operation and management of the Condominium Project in accordance with the provisions of the Act, the Declaration under which the Condominium Project was established and submitted to the provisions of the Act, these By-Laws and such rules and regulations as the Association of Unit Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Association.