

WHEN RECORDED, MAIL TO:

Tandem RE SPV I (Easton-Payson), LLC  
12459 S 300 E Ste. 102  
Draper, Utah 84020



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**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
2024 Nov 12 10:25 AM FEE 40.00 BY LH  
RECORDED FOR PAYSON CITY

**DECLARATION OF CONDOMINIUM  
FOR  
THE EASTON**

(A Utah Condominium Project in Payson City, Utah County, Utah)

**DECLARATION OF CONDOMINIUM  
FOR  
THE EASTON**

This *Declaration of Condominium for The Easton* (this “**Declaration**”) is made and executed effective as of this 28<sup>th</sup> day of October, 2024, by the undersigned owners of the subject property (collectively referred to herein as the “**Declarant**”), for themselves and their successors and assigns, pursuant to the provisions of the Utah Condominium Ownership Act in Title 57, Chapter 8, Utah Code Annotated, as amended (the “Act”).

**RECITALS:**

A. All capitalized terms used in this Declaration and not defined in connection with their initial use shall be defined as set forth in Article I, below.

B. Declarant is the owner of the Land, which is located in Payson City, Utah County, State of Utah, and is more particularly described on Exhibit “A” attached hereto and incorporated herein by this reference.

C. Declarant plans to develop the Land as a commercial condominium development constituting a condominium project.

D. Declarant shall organize and cause the Association to be incorporated as a Utah non-profit corporation, which Association will maintain the Common Areas within the Project as hereinafter described, provide for the management and operation of the Common Areas, levy assessments, and administer and enforce the terms of this Declaration.

E. The Declarant intends, by recording this Declaration and the Plat, to submit the Land, the Building and all other improvements situated thereon from time to time to the provisions of the Condominium Act, as a fee simple condominium project and to impose upon said property mutually beneficial covenants, conditions and restrictions under a general plan of improvement for the benefit of all Condominiums within said Project and the Owners thereof.

NOW, THEREFORE, the Declarant does hereby make the following declaration:

**ARTICLE I  
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.1 “Articles” shall mean the Articles of Incorporation prepared and filed for the formation of the Association in accordance with the requirements of applicable laws and regulations of the State of Utah.

1.2 “Association” shall mean the The Easton Condominium Owner Association, a Utah nonprofit corporation, organized for the purposes set forth in this Declaration; provided that during the Declarant Control Period, Declarant shall have all of the

authority of the Association under this Declaration, and any reference in this Declaration to the rights, authority and duties of the Association shall be deemed to refer solely to the rights, authority and duties of the Declarant. Prior to the end of the Declarant Control Period, Declarant shall cause the Association to be duly organized and the Bylaws of the Association to be duly adopted by the Board. To the extent Utah Code Ann. § 57-8-16.5(c) is applicable to the Project, the period of Declarant control and authorization shall begin on the recording of this Declaration and, except as provided herein, shall continue for the maximum period permitted by applicable law.

1.3 **“Board of Trustees”** or **“Board”** shall mean the governing board of the Association which constitutes the management committee under the Condominium Act and which shall be appointed or elected in accordance with the Declaration and the Bylaws.

1.4 **“Building”** shall mean the building shown on the Plat and identified on Exhibit “B” attached hereto that has been or will be construction on the Land, and any modifications and replacements thereof.

1.5 **“Bylaws”** shall mean the written procedures, if any, adopted for the regulation or management of the affairs of the Association which may from time to time be adopted by (or revised by) the Board, which shall be initially adopted in accordance with Exhibit “D” attached hereto and incorporated herein by reference.

1.6 **“City”** shall mean City of Payson, located within the State of Utah.

1.7 **“Common Areas”** shall mean all real property in the Project owned in common by the Owners including but not limited to the real property and interests in real property submitted hereby, including the entirety of the Land and all Improvements constructed thereon, excluding the individual Units. The Common Areas specifically include, without limitation: (a) the Land; (b) the Building, including, but not limited to: the footings, foundation, demising and bearing walls, columns, girders, beams, supports, roofs (including the air space that extends 1’ below the bottom of the roofing joist), rain gutters and downspouts, overhangs, gables and eaves, stairs, stairways, fire escapes, eaves, and common areas intended for the common use of the Building (excluding any Units); (b) paved surfaces, including, without limitation, driveways, private roads, sidewalks, walkways, common parking areas located on the Land; (c) all utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of the Building; (d) tanks, pumps, motors, fans, compressors, ducts and in general all apparatus, equipment, and installations existing for common use; (e) all landscaping, including, but not limited to yards, gardens, lawns, shrubs, trees, irrigation systems, etc.; (f) fences or walls; (g) garbage dumpsters and enclosures; (h) maintenance sheds and facilities; (i) exterior lighting; and (k) all other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management by the Association for the common benefit of its Members. Notwithstanding the above, utility installations, such as telephone, electricity, gas, water, and sewer, may be dedicated to the City or the utility provider and, if so, this definition shall not be construed to allow the Association to exclude the City and the utility provider from the ownership and control of the utility systems so dedicated.

1.8 **“Common Expenses”** shall mean all sums which are expended on behalf of

the Owners and all sums which are expended by the Association to perform or exercise its functions, duties, or rights under the Condominium Act, this Declaration, the Articles, the Bylaws, any management agreement which may be entered into for the operation of the Project, and such rules and regulations as the Association may from time to time make and adopt.

1.9 “Common Expense Fund” shall mean one or more deposit or investment accounts to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.

1.10 “Common Facilities” shall mean all furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.11 “Condominium” shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit “C” which is attached hereto and incorporated herein by this reference.

1.12 “Condominium Act” or “Act” shall mean the Utah Condominium Ownership Act, Utah Code Annotated, as amended, Section 57-8-1 et seq.

1.13 “Declarant” shall mean Tandem RE SPV I (Easton-Payson), LLC, a Utah limited liability company, and its successors and assigns.

1.14 “Declaration” shall mean this Declaration, and all amendments, modifications and supplements hereto.

1.15 “Declarant Control Period” shall mean the period of Declarant control of the Association described in Section 7.3 below.

1.16 “First Mortgagee” shall mean a Mortgagee which has a first mortgage lien on any Condominium in the Project. “Eligible First Mortgagee” shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 14.1.

1.17 “Limited Common Area” shall mean any physical portion of the Common Areas designated by the Declaration or the Act, or as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units. Limited Common Area include, without limitation: shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, and exterior windows.

1.18 “Land” shall mean the certain real property upon which the Units, Building and other improvements are situated, as more particularly described in the Recitals above.

1.19 “Manager” shall mean the person, firm or company, if any, designated, from time to time, by the Association to manage, in whole or in part, the affairs of the

Association and the Common Areas.

1.20 “Mortgage” shall mean any mortgage or deed of trust by which a Condominium or any part thereof is encumbered. “First Mortgage” shall mean any first mortgage or deed of trust by which a Condominium or any part thereof is encumbered.

1.21 “Mortgagee” shall mean (a) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, or (b) any successor to the interest of such person or entity under such Mortgage or Deed of Trust.

1.22 “Occupant” shall mean any person other than an Owner, including any guest, invitee, tenant, lessee, or employee of an Owner, occupying or otherwise utilizing a Unit.

1.23 “Owner” shall mean the person or persons, including the Declarant, owning, in fee simple, a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Utah County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Condominium pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.24 “Plat” shall mean that certain The Easton Condominium plat, amending Lot 5, Payson Business Park Subdivision Plat “G” attached hereto as Exhibit “C” to be recorded by Declarant in the office of the Utah County Recorder depicting the Project, as may be amended from time to time, pursuant to this Declaration and the Condominium Act. The initial Plat may be amended by Declarant in the event there are material changes in the Unit boundaries or elevations as constructed, or as otherwise provided herein. Such amendments to the Plat are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. All other amendments to the Plat are governed by Section 16.3.

1.25 “Prohibited Use” shall mean each of the following uses: (a) Any use in violation of applicable governmental laws, ordinances, codes, and regulations; (b) Any use which constitutes a public or private nuisance; (c) Any use which produces noise or sound which may be heard outside of any Unit and is objectionable due to intermittence, beat, frequency, shrillness or loudness; (d) Any use which produces any noxious odor or which may be smelled outside any Unit; (e) Any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition shall not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers); (f) Any use involving unusual fire, explosive or other damaging or dangerous hazards; (g) Any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation; (h) Any cocktail lounge or bar, nightclub, bowling alley, pool hall, billiard parlor, bingo parlor, gambling enterprise, skating rink, roller rink, or amusement arcade; (i) Any operation for drilling for and/or removal of subsurface substances, including but not limited to oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind; (j) Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in

enclosed receptacles intended for such purposes; (k) Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions, and strip clubs and the like, and marijuana dispensers; (l) Any food processing or any other use that requires the use of a grease trap; or (m) Any other such prohibitions established by the Board pursuant to the Bylaws.

1.26 “Project” shall mean the Land, the Building and all improvements submitted by this Declaration to the provisions of the Condominium Act.

1.27 “Restrictions” shall mean the covenants, conditions and restrictions, and reciprocal easements contained herein and recorded concurrently with this Declaration, which encumbers the Land.

1.28 “Total Votes of the Association” shall mean the total number of votes appertaining to all Condominiums in the Project. The initial Total Votes of the Association, as of the effective date of this Declaration, are shown on Exhibit “C.”

1.29 “Unit” shall mean an individual air space unit occupying part of the Building designed for separate ownership as described herein, consisting of enclosed rooms and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Plat, together with all the fixtures and improvements therein contained. Paint and other wall, ceiling or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof and the separate HVAC systems for each Unit which may be connected thereto), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed. Furthermore, the air space which is located one (1) foot below the bottom of the roofing joist shall also be excluded from the Unit and shall be deemed herein as Common Area.

## **ARTICLE II SUBMISSION AND DIVISION OF PROJECT**

2.1 Submission to Condominium Act: Covenants Running with the Land. Declarant hereby submits and subjects the Land, the Building and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a commercial condominium project known as The Easton Condominium. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums. Further, each and all of the provisions of this Declaration shall be deemed to be covenants running with the Land and shall be a burden and a benefit on the Land and shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and to any person acquiring, managing, leasing, or owning any interest in the Land, the Building, or any of the

improvements comprising the Project and to their respective personal representatives, heirs, successors, assigns, business invitees, licensees, tenants, mortgagees, customers, and clients.

2.2 Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas. The initial Units are located as depicted on the Plat as shown on Exhibit "B" and the respective square footage, appurtenant undivided interest in the Common Areas, calculated in accordance with Section 4.5, and number of Votes for each Condominium are as shown on Exhibit "C."

### **ARTICLE III BUILDING AND IMPROVEMENTS**

3.1 Building and Improvements. The Building constructed on the Land consists of one (1) commercial Building which will have sixteen (16) ground level connected Units. Sidewalks as well as the exterior loading dock abutting the north end of the Building located on the Common Areas will be available for use in connection with the Units on a non-exclusive basis pursuant to the terms and conditions of this Declaration, and Rules and Regulations implemented from time to time.

3.2 Description of Units. The Plat contains the Unit number, location and dimensions of each initial Unit in the Project and all other information necessary to identify each such Unit.

3.3 Description of Common Areas. The Common Areas of the Project are as depicted in the Plat and as further described herein.

3.4 Utilities and Services. The Building will be supplied with electricity, gas, water, and sewerage service. In addition, each Owner shall be responsible for supplying, maintaining, repairing, and replacing, when necessary, a separate HVAC system for such Owner's Unit at the Owner's sole cost and expense.

3.4.1 Notwithstanding the foregoing, in the event that the operations at a Unit of an Owner or a tenant of such Unit includes the discharging of waste down the sewer line, where such waste is either (a) industrial, automotive, or otherwise similar to those two in nature, or (b) the product of the production, manufacturing, processing, or other similar operations of food, pharmaceuticals, packaging, or other similar activities in nature that produce such waste, then prior to initiating such operation at the Unit, such Owner or tenant shall be required to install a process waste line, sampling manhole, and grease interceptor after first obtaining the City's approval by submitting a pretreatment application, which shall include a set of civil plans showing the process waste line, sampling manhole, and grease interceptor, to the City for its review. All such process lines required by the preceding sentence shall be separated from the sanitary waste line and shall flow through the installed sampling manhole and grease interceptor to the sewer main outside of the Building. Notwithstanding anything contained in this Declaration to the contrary, and in addition to any affirmative vote, approval, or consent requirements required under this Declaration, any amendments to this Section 3.4.1 shall require the prior written approval of the City.

3.5 As Constructed. Notwithstanding the description of Units described in Section 3.2 above, for the purposes of interpreting this Declaration and the Plat, the boundaries of all Units constructed in substantial accordance with the Plat and this Declaration shall be conclusively presumed to be the actual boundaries rather than the description and depiction of the Units set forth on the Plat, regardless of the settling or lateral movement of the Units and regardless of minor variances between boundaries shown on the Plat and the constructed boundaries of the Units. It is acknowledged that the Plat is prepared from the architectural drawings of the Project, prior to construction, and that there will be variances between the boundaries and other features shown on the Plat and the actual construction of the Project.

#### **ARTICLE IV NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

4.1 Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries, construct and remove partition walls, fixtures, and other improvements within the boundaries of its Unit; provided, however, that such improvements (a) shall not impair the structural soundness or integrity of the Building; (b) shall not interfere with facilities, necessary for the support, use or enjoyment of any other part of the Project; (c) shall be built to construction standards comparable or better than the original construction of the Project; and (d) shall not encroach upon the Common Areas or any part thereof, unless the Board shall consent in writing to such encroachment.

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

4.3 Right to Combine Units. Two or more Units may be utilized by the Owner or Owners thereto as if they were one Unit. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas.

4.4 Title. Subject to the provisions of Article VI, title to a Condominium may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.5 Computation of Undivided Interest in Common Areas: Votes. The



percentage of undivided interest in the Common Areas which is appurtenant to each Unit initially contained in the Project is equal to the ratio between the size of such Unit and the aggregate size of all Units initially included in the Project, but with the minor adjustments described at the end of this Section. The Total Votes of the Association shall number one hundred (100). The number of votes in the Association, which is appurtenant to each Unit initially contained in the Project, is equal to one hundred (100) multiplied by the percentage of undivided interest in the Common Areas which is appurtenant to the Unit concerned (e.g., if one Unit's size is 25% of the aggregate size of all Units, then that Unit would have twenty-five (25) votes calculated as  $100 \times .25$ ). The percentage of undivided ownership interest and the number of votes in the Association, which are appurtenant to each Unit initially contained in the Project, have been computed in the aforesaid manner and through use of the minor adjustments described at the end of this Section and are set forth on Exhibit "C." In utilizing the foregoing formulas, minor adjustments may have been made in some or all of the percentage interests and the number of votes, which result from a strict application thereof for the purposes, but only for the purposes, of assuring that the total undivided ownership interest respecting the Project equals one hundred percent (100%), the Total Votes of the Association equals one hundred (100), and no vote in the Association is divided into fractional parts. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered. The sum of the undivided interest in the Common Areas allocated to all Units shall at all times equal one hundred percent (100%). Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent (100%).

4.6 Use and Maintenance of Common Areas. Except as otherwise provided in this Declaration, each Owner shall have the nonexclusive right to use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to the provisions of this Declaration and any Rules and Regulations promulgated by the Association. The Association shall have the right and obligation to maintain and repair all Common Areas.

4.7 Use and Maintenance of Limited Common Areas. Limited Common Area means those parts of the Common Areas which are limited to and reserved for the use of the Owner or Owners of one or more, but fewer than all, of the Units. Notwithstanding the undivided interest in the Limited Common Area, the Limited Common Area shall be reserved for the exclusive use, occupancy and maintenance of the Owner of the Unit to which they are appurtenant, as shown on the Plat or as specified in this Declaration. Without requiring an amendment to this Declaration, Declarant hereby reserves the right to grant exclusive control over any Limited Common Areas to the Owner of the Unit(s) which Declarant determines are appurtenant to such Unit(s). Control of the Limited Common Areas shall include the right and obligation of maintenance, upkeep, repair, refurbishment, design and appearance, and the right to establish rules for use by licensees or invitees of such Limited Common Areas. In the event an Owner is obligated to maintain the Limited Common Areas, the Association may, in its sole and absolute discretion, equitably and proportionately reduce such Owner's share of Common Expenses based on savings to the other Owners not having to contribute to maintenance expenses for such Limited Common Areas. Declarant hereby reserves the right and grants to the Association the right to reallocate Limited Common Area to the fullest extent permitted under the Act.

4.8 Divider Walls. The walls separating the Unit of one Owner from the Unit of

an adjoining Owner shall be referred to as a “Divider Wall” and the location of the plane of its centerline shall be coincident with the vertical plane which serves as the common boundary between the Units of Owners whose Units adjoin one another. A Divider Wall shall not be removed by an Owner, except that in the event a Divider Wall is no longer intended to serve to separate the Unit of one Owner from the Unit of another Owner, the Divider Wall may be removed provided such removal shall be at the sole cost and expense of the Owner performing the same and the prior written approval of the Board has been obtained. A Divider Wall may not be constructed by an Owner without the prior written approval of the Board, which shall grant its approval only upon receipt of a building permit, if any is required, and evidence satisfactory to the Board that the Divider Wall will be constructed coincident with the vertical plane which serves as the common boundary between the Units of Owners whose Units adjoin one another. Any such construction shall be at the expense of the Owners performing the same. In no event may a Divider Wall be removed or constructed if the structural soundness of the Building may in any way be affected thereby. All Divider Walls, whether constructed by the Declarant or an Owner, shall be the property of the Association and ordinary maintenance, other than painting and decorating of said Divider Walls, shall be performed by the Association and the cost thereof shall be a Common Expense of the Project; provided, however, that an Owner shall be responsible for any damage caused to a Divider Wall by its negligent or intentional acts or those of its representatives, employees or agents, and the cost of said repair shall be specially assessed to that Owner, and said sum, together with interest thereon and all costs of collection, shall be immediately due and payable and shall be secured in the same manner as the Association’s lien for payment of Common Expenses, as hereinafter described.

4.9 Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, mortgaged, hypothecated, encumbered and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth. Any purported devise, conveyance, encumbrance, or other disposition (voluntary or involuntary) of an individual interest in the Common Areas shall be void unless the Unit to which such interest is allocated is also transferred.

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

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

4.12 Separate Taxation. Each Condominium, including each appurtenant

undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in accordance with the Condominium Act. Notwithstanding anything contained herein to the contrary, all taxes, assessments and other charges of the State of Utah or of any political subdivision (e.g., the County) or of any special improvement district or of any other taxing or assessing authority relating to the Common Areas shall be prorated, allocated and assessed by such authority equally to the Units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other charges shall divest or in any way affect the title to any other Condominium.

4.13 Mechanic's Liens. No labor performed or material furnished for use in connection with any Unit with consent or at the request of an owner, its representative, employee, agent or subcontractor, shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor was performed or materials furnished.

4.14 Description of Condominium. Every contract for sale of a Condominium and every other instrument affecting title to a Condominium may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium and all of the limitations of such ownership.

4.15 Division of Utility Costs. The cost of all utility or municipal services (including, without limitation, water, sewer, garbage collection, telephone, electrical, and gas) which are separately metered to a particular Unit and billed by the suppliers concerned shall be paid by the Owners of the respective Units. The cost of all such services which are not separately metered will be billed to the Building as a whole and shall be paid by the Association from the Common Expense Fund. The Association shall be reimbursed for such costs by the respective Owners of the Units to which the service in question was provided, with the Owner of each such Unit being obligated to make reimbursement based upon its respective undivided interest in the Common Areas of the Project or its pro rata share of the cost if less than all the Units are involved. Notwithstanding anything to the contrary contained in this Section 4.15, in the event that any utility or municipal service is separately metered and billed to one or more Units and a portion of such service benefits in whole or in part any other Units or the Common Areas, the Association shall reimburse or credit the Owner(s) of the Unit(s) so billed for the cost of such portion; the determination of such portion, and the cost related thereto which shall be borne by the Association as a Common Expense, shall be made by the Association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Owners.

4.16 Subdivision of Unit. Each Owner shall be prohibited from subdividing its Unit without the consent of the Association and all other Owners, and then only with the

consent and approval of any governmental authorities having jurisdiction over such modification.

## **ARTICLE V EASEMENTS**

5.1 Easements for Encroachments. In the event the construction, reconstruction, repair or movement of any portion of the improvements causes any part of the Common Areas to encroach upon any Unit, or any part of a Unit built in substantial accord with the boundaries for such Unit encroaches or shall encroach upon the Common Areas or upon an adjoining Unit for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists.

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

5.3 Access Easement: Right to Ingress, Egress and Support. Each Owner, for the benefit of its licensees, invitees, contractors, employees and agents, shall have a non-exclusive easement for and the unrestricted right of access, ingress and egress to, over, upon and across all sidewalks, passageways, driveways, as such may exist on the Land and as necessary for access to and from such Owner's Unit to the "Common Parking Areas," as such term is hereinafter defined, in the Project, and to the public streets, and each Owner shall have an easement and the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium.

5.4 Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration including, without limitation, the right to construct and maintain in the Common Areas for use by Owners and the Association.

5.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant

and the person causing the damage shall be liable to the Association for the prompt repair of such damage. The Owners do hereby acknowledge and agree that there may be construction activities, traffic, noise, dust, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Areas appurtenant thereto, and such Owners do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Prohibited Uses.

5.6 Parking Easement. Each Owner shall have a non-exclusive easement and the right of use of all common parking areas ("Common Parking Areas") as may, from time to time exist on the Land and/or the Project including, access, ingress and egress to, over, upon and across, all such Common Parking Areas. The Board, in its reasonable discretion, shall have the right to designate the location of, and place a limitation on, the number of parking spaces each Owner is entitled to use pursuant to this Section 5.6.

5.7 Easements Deemed Created. All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## **ARTICLE VI RESTRICTIONS ON USE**

6.1 Use and Occupancy. Units shall be used and occupied only for commercial purposes and in accordance with all applicable laws, ordinances, and regulations including, without limitation, any and all covenants, conditions and restrictions that may apply to the Project as part of this Declaration. No Owner shall use or occupy, or cause or permit to be used or occupied, any Unit for a Prohibited Use, or otherwise in violation of this Declaration or any applicable laws, ordinances, rules or regulations including, without limitation, any applicable nuisance laws or ordinances. All Common Areas outside of the Building are designated solely for landscaping, parking, loading, unloading, ingress and egress.

6.2 Rules and Regulations. In addition to the restrictions set forth in Section 6.1 hereof, the use of all Units shall also be subject to such Rules and Regulations of general application as may be adopted by the Board of the Association. Such Rules and Regulations shall be binding on all members of the Association unless duly amended by the Board or by a 67% majority of the Total Votes of the Association.

6.3 Compliance. The administration of the Project shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws, and the Rules and Regulations duly adopted by the Association. Each Owner and Occupant shall comply with such Declaration, Articles, Bylaws, and the Rules and Regulations, all as amended from time to time.

6.4 Partition. No Owner nor any other person shall bring any action for partition or division of the Project or any portion thereof, and every person acquiring any interest in the Project shall acquire the same subject to this Declaration and shall be deemed to have waived any right to seek any partition until the Land and Building have been removed from the provisions of the Condominium Act as provided therein.

6.5 Structural Changes and Prohibitions. No Owner shall make structural alterations or modifications to its Unit or to any of Common Areas including, but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other material in the windows of the Unit, or other exterior attachments, without the prior written approval of the Association. The Association shall not approve any alterations, decorations or modifications that would jeopardize or impair the soundness, safety or appearance of the Project. Excepting the construction or removal of Divider Walls between Units owned by the Declarant prior to the first conveyance of such Units to a person other than the Declarant, the erection, removal, or alteration of Divider Walls for the purpose of creating or subdividing Units shall require the prior written approval of the Board subject to such conditions as they may impose including, but not limited to, minimum Unit size requirements, architectural plans, maintenance of liability insurance during construction, performance and payment bonds, or otherwise, the expense of which must be borne by the affected Owners.

6.6 Leasing. An Owner may lease its Unit, in whole or in part, for the same purposes set forth in Section 6.1 provided that such lease transaction is subject to and in accordance with the provisions of this Declaration.

6.7 Improper Uses. No immoral, improper, unlawful or offensive activity shall be carried in any Unit or upon the Common Areas nor shall anything be done which may be or become an annoyance or a nuisance, legal or otherwise, to the Unit Owners. No Owner shall do or permit anything to be done or keep or permit to be kept in its Unit or on the Common Areas anything that will increase the rate of insurance on the Project.

6.8 Signs. No signs or other advertising devices shall be displayed except in conformity with Rules and Regulations promulgated by the Board. Each Owner shall be entitled to place signage on the exterior Building where such Owner's Unit is located, provided (a) the size, color, content and location of such signs have been approved in writing by the Board, and (b) all such signage shall comply with the City regulations as they may be amended from time to time, and with any other applicable statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

6.9 Cleaning and Storage in Common Areas. The Common Areas are not to be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the discretion of the Board. Stairs, entrances, sidewalks, yards, driveways, and parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in its Unit or upon the Common Areas, which despoils or in any manner negatively affects the appearance of the Project.

6.10 Maintenance of Units. Each Owner shall maintain its Unit in a good and sanitary condition. Each Owner shall also use due care to avoid damaging any of the Common Areas or any other Unit, and each Owner shall be responsible for its negligence or misuse of any of the Common Areas or of its own facilities resulting in damage to the Common Areas or any other Unit. Notwithstanding anything to the contrary in this Declaration, if so elected by Declarant or the Association, an Owner, at its sole cost and

expense, shall have the obligation to maintain and keep in good condition and repair all Limited Common Areas appurtenant to such Owner's Unit.

6.11 Association Access to Unit. The Association or its agent shall have access to each Unit, from time to time, during reasonable working hours, upon notice to its Owner, as may be necessary for the maintenance, repair or replacement of any of the Common Areas or other Units. The Association or its agents shall also have access to each Unit at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or to another Unit. If requested by the Association, each Owner shall furnish to the Association a duplicate key to the entrance door to its Unit and shall furnish a new duplicate key upon any change of locks thereto. Said keys shall be kept by the Association in a safe and secure place and are to be used only in case of emergency or upon written authorization of the Owners.

6.12 Declarant Activities. None of the restrictions contained in this Article VI shall apply to the commercial activities, signs or billboards, if any, of the Declarant during the sales period of the Project or to the activities of the Association in furtherance of its powers and purposes set forth herein and in its Articles as the same may be amended from time to time.

## ARTICLE VII THE ASSOCIATION

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

7.2 Board of Trustees. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Board of Trustees consisting of not less than three (3) and nor more than five (5) natural persons as provided in the Bylaws. The Board of Trustees shall be elected as provided in this Declaration and in the Bylaws.

7.3 Declarant Control Period. There is hereby established a Declarant Control Period, during which period Declarant or persons designated by it shall have the authority to appoint and remove the Association officers and members of the Board of Trustees. The Declarant Control Period shall terminate no later than the earlier of:

(a) after all of the Condominiums are conveyed by deed to an Owner such that the Declarant, or any affiliate entity, no longer owns any interest in any Condominium; or

(b) Declarant provides the Association written notice of Declarant's waiver of such exclusive right.

7.4 Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit "C." The number of votes appurtenant to each Condominium shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The Declarant shall have full voting rights with respect to each Condominium that it owns.

7.5 Professional Management. The Association may carry out, through the Manager, those of its functions, which are properly the subject of delegation. The 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 Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of the Declarant Control Period may be terminated by the Association without cause at any time after transfer of such control. The above term and termination provisions shall not apply to any other types of service contracts.

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

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

8.1 The Common Areas. The Board, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs (except for the HVAC systems, which are the responsibility of each respective Owner) and fences, parking areas, landscaping, walkways and driveways. The Association shall also be responsible for maintenance, repair and replacement of Common Areas within the Building, including, without limitation, landings, stairways, utility lines, Common Facilities and all improvements and other items located within or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.



8.2 Powers of The Board. Except as otherwise provided herein, the Board of Trustees shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Condominium Act, the Utah Revised Nonprofit Corporation Act, Utah Code Annotated §§ 16-6a-101 et seq., this Declaration and the Bylaws, including but not limited to the following:

(a) To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.

(b) To engage the services of the Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.

(c) To operate, maintain, repair, improve and replace the Common Areas, and, subject to Section 6.10, the Limited Common Areas.

(d) To determine and pay the Common Expenses.

(e) To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article IX hereinafter.

(f) 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.

(g) To open bank accounts on behalf of the Association and to designate the signatories therefor.

(h) To bring, prosecute and settle litigation for itself, the Association and the Project.

(i) To obtain insurance for the Association with respect to the Units and the Common Areas, as well as worker's compensation insurance.

(j) To repair or restore the Project following damage or 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.

(k) To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. Such books and records shall include detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred.

(l) To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

(m) To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

(n) To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project.

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

8.4 Easements Over Common Areas. The Board may, on behalf of the Association, grant easements over the Common Areas from time to time for the benefit of the Building and the Common Areas.

8.5 Providing Payoff Information: Written Statement. The Board may charge a reasonable fee for providing Association payoff information needed in connection with the closing of an Owner's financing, refinancing or sale of a Condominium. Such fee shall not exceed the maximum amount (if any) set forth in the Condominium Act. The Board must provide payoff information within ten (10) business days after the closing agent for a transaction requests such information. Such request shall include all information required by the Condominium Act and be delivered in accordance with the requirements set forth in the Condominium Act. Even when not needed in connection with the closing of an Owner's financing, refinancing or sale of a Condominium, an Owner may request in writing a written statement from the Board indicating any unpaid assessments with respect to the Owner's Condominium. The Association may charge the Owner requesting the statement a fee not to exceed the maximum amount (if any) set forth in the Condominium Act.

8.6 Registration with the Department of Commerce. The Association shall register with the Utah Department of Commerce within ninety (90) days of the recordation of this Declaration. Further, within ninety (90) days after a change of any information provided in the Association's registration with the Department of Commerce, the Board shall submit an updated registration in the manner established by the Department of Commerce and the Condominium Act.

8.7 No Liability for Latent Defects. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE X, NEITHER THE ASSOCIATION NOR THE BOARD SHALL BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT

CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY WEATHER CONDITIONS OR OTHER OWNERS OR PERSONS.

## ARTICLE IX ASSESSMENTS

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

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

(a) Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a Manager; utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section 9.2(a) shall be part of the Common Expense Fund. Two separate and distinct funds may be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

(b) Apportionment. Common Expenses shall be apportioned among and assessed to all Condominiums and their Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(c) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1st and ending the following December 31st, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 31st of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year,

anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the annual assessment against its Condominium on or before December 1 of each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day, of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. An Owner may prepay its annual assessment. The Association shall have the right to charge a late fee equal to five percent (5%) of any assessment not paid within fifteen (15) days of the due date thereof. In addition, all unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. In the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

9.3 Special Assessments. In addition to the annual assessments authorized by this Article IX, the Board may, on behalf of the Association, levy, at any time and from time to time; upon the affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, held by Owners voting by either written ballot, or in person or by proxy at a meeting called for such purpose, one or more special assessments, payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall

be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.4 Lien for Assessments. All sums assessed to Owners pursuant to the provisions of this Article IX, together with late charges and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Board may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Utah County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of applicable law. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-45 to First American Title Insurance Company, Inc., with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of this Declaration. In any exercise of a power of sale remedy, the Association may appoint its attorney or any title insurance company to act as the trustee in connection with such sale and said trustee shall have all of the rights and powers necessary to convey title to the Condominium to the purchaser at any foreclosure sale. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium, which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association.

9.5 Priority of Lien. The lien of the Association has priority over each lien and encumbrance on a Condominium except: (a) a lien or encumbrance recorded before recordation of this Declaration, (b) a First Mortgage on a Unit that is recorded before a recorded notice of lien by or on behalf of the Association, and (c) assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Condominium Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Board, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith.

9.6 Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal

obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of its Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.7 Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against its Condominium as described in Section 9.6 shall not pass to successors in title unless assumed by them; provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Condominium unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9.8 Reserves and Working Capital. The Association may establish the following funds:

(a) Reserve Fund. The Association may establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas as the Association may be obligated to maintain, repair or replace as required by the Act. The reserve fund shall be maintained out of regular assessments for Common Expenses.

(b) Working Capital Fund. The Associations may establish and maintain a working capital fund equal to at least three monthly installments of annual assessment for each Condominium. Each Condominium's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Condominium. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the Working Capital Fund are not to be considered advance payments of any regular assessment. Upon transfer of a Condominium, the Owner's interest in the Working Capital Fund shall automatically be transferred to the new Owner.

9.9 Leased Units. If an Owner fails to pay Assessments and other amounts due under this Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Association is paid the Amount Owing (defined below). Notices and collection of payments shall comply with the following provisions, provided, however, that if the requirements under the Act are less restrictive, the Association need only comply with the requirements; thereunder. As used in this Section "Amount Owing" means the total of any assessment or obligation under this Declaration that is due and owing together with any applicable interest, late fee, and cost of collection. "Lease" means an arrangement under which a Tenant occupies a Unit in exchange for the Owner or Owner's agent receiving a consideration or benefit, including a fee, service, gratuity, or compensation, and "Tenant"

means a person, other than the Owner, who has regular, exclusive occupancy of an Owner's Unit, provided, however, if an Owner has contracted with a rental agent or other property manager to rent the Unit, such agent or manager shall be considered the Tenant for purposes of this Section 9.9.

(a) Landlord Notice. Before requiring a Tenant to pay Lease payments to the Association, the applicable Manager or Board shall give the Owner notice ("Notice to Landlord"), in accordance with this Declaration. The Notice to Landlord shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

(b) Tenant Notice. If an Owner fails to pay the Amount Owing within fifteen (15) days after the applicable Manager or the Board gives the Notice to Landlord, the applicable Manager or the Board may exercise the Association's rights to collect Lease payments by delivering written notice ("Notice to Tenant") to the Tenant. The Notice to Tenant shall state that: (i) due to the Owner's failure to pay an assessment within the required time, the applicable Manager or the Board has notified the Owner of the Association's intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease with the Owner. The applicable Manager or the Board shall mail a copy of the Notice to Tenant to the Owner.

(c) Lease Payments. A Tenant to whom the Notice to Tenant has been given shall pay to the Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the applicable Common Area Manager or Management Committee shall notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Association. For any Unit subject to a nightly rental contract, the amount paid to the Association shall be the amount that would otherwise be paid to the Owner.

(d) Separate Account. The Association shall deposit money paid to the Association under this Section 9.9 in a separate account and disburse that money to the Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the Act (if any) is paid. The Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

9.10 Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner or any other person, the Association within a reasonable period of time thereafter shall issue to such Owner or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 9.2 above) have been paid with respect to any specified Condominium as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Condominium in question.

## **ARTICLE X INSURANCE**

10.1 Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas, the Building, including all Units (other than the interior content thereof), fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, when such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of full replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. In the event an Owner uses, or permits any use of, its Unit in a manner that increases the rates of insurance required by this Section 10.1(a), such Owner shall be responsible to reimburse the Association for the costs of such increased rates in the same manner as if the increased costs were a part of the Association fees or assessments payable by such Owner.

(b) Fidelity Bonds. The Association may maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Association may require such Manager to provide "blanket" fidelity bonds, with coverage as required by the Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be



based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. The bonds required, if any, shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to any Insurance Trustee.

(c) Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Project, if any, other areas of the Project that are under the Association's supervision. The coverage limits under such policy shall be in a generally required by private institutional Mortgage investors for projects similar the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and legal liability arising from lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are custom covered with respect to projects similar to the Project in construction, location, and use. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least fifteen (15) days' prior written notice to the Association and to each First Mortgagee on an individual Unit in the Project. In the event an Owner uses, or permits any use of, its Unit in a manner that increases the rates of insurance required by this Section 10.1(c), such Owner shall be responsible to reimburse the Association for the costs of such increased rates in the same manner as if the increased costs were a part of the Association fees or assessments payable by such Owner.

(d) Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as its attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts

necessary to accomplish: such purpose. The Association, or any Insurance trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear. Each insurance policy maintained pursuant to the foregoing subsections (a), (b) and (c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has at least a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, or an Owner) from collecting insurance proceeds. The provisions of this subsection (d) and of the foregoing subsections (a), (b) and (c) shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

(e) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project, which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

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

10.3 Owner's Insurance. Each Owner, at its own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article X. Notwithstanding the provisions hereof, such Owner may obtain insurance at its own expense providing such other coverage upon its Condominium, its personal property, for its personal liability and covering such other risks as it may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article X. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests. An Owner may cause a tenant of Owner to obtain and pay for the insurance policy specified in this Section 10.3.

## ARTICLE XI

## DAMAGE OR DESTRUCTION

11.1 Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as its attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

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

11.3 Procedures. In the event all or any part of the Project is damaged or destroyed, and subject to the provisions of Article XIV below, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas.

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

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

(d) Insufficient Insurance: Less than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance: Seventy-Five Percent (75%) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project

and if seventy-five percent (75%) or, more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if, within ninety (90) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners do not, within ninety (90) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, but rather elect to terminate the Project and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes on Condominiums subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Utah County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

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

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

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

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

(v) Priority. In no event shall an Owner or any other party have priority over the holder of any First Mortgage on a Unit with respect to the distribution to such Unit of any insurance proceeds.

11.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, (except as otherwise expressly provided herein). The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

11.5 Disbursement of Funds for Repair and Reconstruction. If repair or

reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 11.3(d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

## **ARTICLE XII CONDEMNATION**

12.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article XII shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Eligible First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

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

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

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

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

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

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Areas;

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

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

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

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article XII or any other provisions in this Declaration, the Articles or the Bylaws shall entitle an Owner or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

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

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

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board, after duly considering any recommendations, proposals or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then, unless the interests of the Units in the Common Areas are equal, all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;

(iii) If any partial taking results in the taking of a portion of a Unit

and if there is a determination made by the Board, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.4(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

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

### **ARTICLE XIII TERMINATION AND SALE**

13.1 Required Vote. Except as otherwise provided in Article XI and Article XII, in the event the Owners desire to sell the Project, the Association may be terminated only by mutual agreement of Owners entitled to vote one hundred percent (100%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose.

13.2 Termination Agreement. An agreement to terminate pursuant to Section 13.1 shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by all Mortgagees who hold liens on Condominiums. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Utah County, Utah and is effective only on recordation.

13.3 Sale of Project. A termination agreement must provide that the entire Project shall be sold following termination. If, pursuant to the agreement, the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

13.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 13.1 and 13.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the procedure set forth in Section 13.5 below. Unless

otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Condominium in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessment and other obligations imposed on Owners by this Declaration.

13.5 Proceeds of Sale. Following termination of the Project, the proceeds of any sale of the Project shall be held by the Association as trustee for Owners and divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit "C," subject to the rights of Mortgagees with respect to such proceeds. Following termination, Mortgagees holding Mortgages on the Condominiums, which were recorded before termination may enforce those liens in the same manner as any lienholder.

#### **ARTICLE XIV MORTGAGEE PROTECTION**

14.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, which written request shall identify the name and address of such First Mortgagee, and the number and address of the Condominium, any such First Mortgagee, shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held by such First Mortgagee;

(b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Condominium is subject to a First Mortgage held by such First Mortgagee, which default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 14.2 below or elsewhere herein.

14.2 Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the Total Votes of the Association subject to First Mortgages held by Eligible First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project.



(b) Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) responsibility for maintenance and repairs;
- (iii) reallocation of interests in the Common Areas, or rights to their use;
- (iv) hazard or fidelity insurance requirements;
- (v) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (vi) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

14.3 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, its Articles and Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders of First Mortgages that are secured by Condominiums in the Project. Generally, these documents shall be available for review during normal business hours.

14.4 Subordination of Lien. To the extent permitted by the Condominium Act, the lien or claim against a Condominium for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Condominium if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Condominium shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien or claim, which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Condominium affected or previously affected by the First Mortgage concerned.

14.5 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required

hazard insurance described in Section 10.1(a) lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee who expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

14.6 Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.7 Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Areas or any portion hereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles or Bylaws or any amendment thereto shall entitle the Owner of a Unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

## **ARTICLE XV COMPLIANCE WITH DECLARATION AND BYLAWS**

15.1 Compliance. Each Owner, Occupant and other persons under Owner's control shall comply strictly with the provisions of this Declaration, the Articles, and Bylaws of the Association, rules and regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or both, maintainable by the Association, and in a proper case, by an aggrieved Owner.

15.2 Enforcement and Remedies. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration, or in any supplemental or amended Declaration, with respect to the Association or the Project shall be enforceable by the Declarant or by any Owner, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amounts due or unpaid. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amounts due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

## **ARTICLE XVI AMENDMENT**

16.1 Amendment by Owners. Except as provided elsewhere in this Declaration,

any amendment to this Declaration shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast by written ballot, or in the alternative, in person or represented by proxy entitled to be cast at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendment authorized pursuant to this Section 16.1 shall be accomplished through the recordation in the office of the Utah County Recorded, Utah, of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Condominium.

16.2 Amendment by Declarant. The Declarant alone may amend or terminate this Declaration and Plat prior to the closing of a sale of the first Condominium. Notwithstanding anything contained in this Declaration to the contrary, this Declaration and Plat may be amended unilaterally at any time and from time to time by Declarant: (a) if such Amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such Amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Condominium. The Declarant may also unilaterally amend Exhibit "C" to this Declaration to reflect the total square footages of each Unit after the Units have been constructed. Further, prior to the expiration of the Declarant Control Period, Declarant may unilaterally amend this Declaration and the Plat for any other purpose so long as any such Amendment does not materially adversely affect title to any property.

16.3 Plat Amendments. Notwithstanding anything contained in this Declaration to the contrary, because the Plat has been recorded prior to the construction of the Units, Declarant reserves the right to unilaterally amend the Plat at any time and from time to time by Declarant if such amendment is necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Plat. Additionally, Declarant may unilaterally amend the initial Plat at such time as the Building is constructed in the event there are material changes in the Building or Unit boundaries or elevations as constructed. Such amendments to the Plat are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. Additionally, no Owner shall unreasonably withhold his, her or its consent to any amendment requested by the Declarant to satisfy the purposes described above.

## **ARTICLE XVII GENERAL PROVISIONS**

17.1 Intent and Purpose. The Provisions of this Declaration, and any Amendment, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Project. Failure to enforce any provision, covenant, condition or restriction contained herein, or in any Amendment, shall not operate as a waiver of any such provision, covenant, condition or restriction, or of any other provision of this Declaration.

17.2 Construction. The provisions of this Declaration shall be in addition and supplement to the provisions of the Condominium Act and all other provisions of law.

Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The article and section headings are for convenience and reference only and are not intended to expand, limit or otherwise effect the meaning or interpretation of the provisions of this Declaration. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof, shall not effect the validity or enforceability of any other provisions of this Declaration.

17.3 Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (a) the name of each person or entity who is an Owner, the address(es) of such Owner, and the Unit that is owned by such Owner, and (b) the name of each person or entity who is an Eligible First Mortgagee, the address of such person or entity and the Unit that is encumbered by the Mortgage held by such Eligible First Mortgagee. In the event of any transfer of a fee or undivided fee interest in a Condominium, either the transferor or transferee shall furnish the board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Board may for all purposes act and rely on the information concerning Owner and Condominium ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Condominium or Condominiums which is obtained from the office of the County Recorder of Utah County, Utah. The address(es) of an Owner shall be deemed to be the address of the Condominium owned by such person unless the Board is otherwise advised.

17.4 Assignment of Declarant Rights. Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Utah County Recorder, State of Utah. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

17.5 Effective Date. This Declaration shall take effect upon recording.

17.6 Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

17.7 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or their drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any

action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

17.8 Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

17.9 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

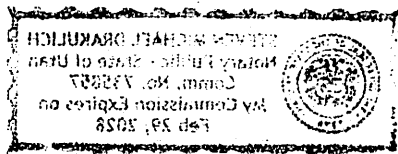
17.10 Governing Law. This Declaration and the Plat and all issues and disputes arising out of either, shall be construed and controlled by and under the procedural and substantive laws of the State of Utah.

**(Signature Page Follows)**



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**EXHIBIT "A"****LEGAL DESCRIPTION OF LAND**

That parcel of land being all of Lot 5, Plat "G", Payson Business Park Subdivision recorded January 9, 2018 as Entry No. 2933:2018 having Map #15840 in the Office of the Utah County Recorder. Said parcel is located in the Northeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base and Meridian and is described as follows:

**Beginning** at the northwesterly corner of said Lot 5, Plat "G", Payson Business Park Subdivision, which is 56.00 feet N. 89°30'12" E. along the Section line and 2.81 feet South from the North Quarter Corner of said Section 18; thence along said Lot 5 the following five (5) courses: 1) N. 89°18'27" E. 249.10 feet; 2) S. 00°43'40" W. 455.43 feet to a point of non-tangency with a 1044.45 -foot radius curve to the left, concave southeasterly (Radius point bears S. 40°05'31" E.); 3) Southwesterly 251.91 feet along the arc of said curve, through a central angle of 13°45'51" (Chord bears S. 43°01'33" W. 250.31 feet) to a point of reverse curvature with a 40.00 - foot radius curve to the right, concave northerly (Radius point bears N. 53°51'23" W.); 4) Westerly 100.42 feet along the arc of said curve, through a central angle of 143°50'14" (Chord bears N. 71°56'16" W. 76.05 feet); 5) N. 00°01'09" W. 611.79 feet to the **Point of Beginning**.

The above-described parcel of land contains 139,991 sq ft, in area or 3.214 acres, more or less.  
1 Lot.



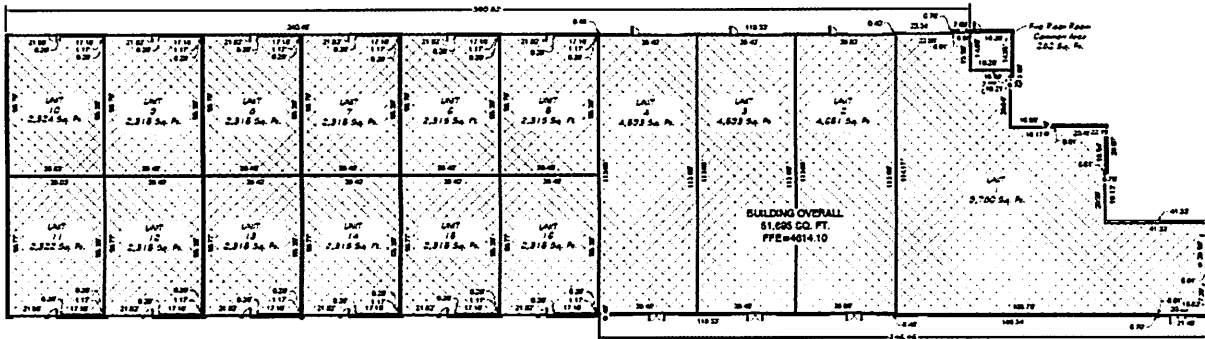
**EXHIBIT "B"**

**THE EASTON CONDOMINIUM PLAT**

(Attached)



**THE EASTON CONDOMINIUM  
 AMENDING LOT 5, PAYSON BUSINESS PARK SUBDIVISION PLAT "G"  
 -A UTAH CONDOMINIUM PROJECT-**  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION 18, TOWNSHIP 9 SOUTH, RANGE 2 EAST,  
 SALT LAKE BASE & MERIDIAN  
 PAYSON CITY, UTAH COUNTY, UTAH



**BUILDING  
 FLOOR PLAN LEVEL 1**

**LEGEND**

- Boundary Line
- Adjacent Parcel Line
- Road Right-of-Way
- Road Centerline
- Utility
- Easement Line
- Easement Line
- Area Partially Deductible in Parcel City
- Public Ownership
- Common Area & Open Space
- 1/2" Floor and Ceiling Worktop
- 1/2" Floor and Ceiling



SHEET 2 3	 <small>1474 South Mountain Lane, Suite 102, South Jordan, UT 84099          Phone: 468-2277</small>
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**THE EASTON CONDOMINIUM**  
 LOCATED IN THE NORTHEAST QUARTER OF SECTION 18,  
 TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN  
 PAYSON CITY, UTAH COUNTY, UTAH

**EXHIBIT "C"****COMMON AREA OWNERSHIP PERCENTAGES & VOTES**

<b>Condominium</b>	<b>Square Footage</b>	<b>Undivided Ownership Interests (Percentage)</b>	<b>Votes</b>
Unit 1	9,780	19.02%	19.02
Unit 2	4,651	9.05%	9.05
Unit 3	4,593	8.93%	8.93
Unit 4	4,593	8.93%	8.93
Unit 5	2,315	4.50%	4.50
Unit 6	2,315	4.50%	4.50
Unit 7	2,315	4.50%	4.50
Unit 8	2,315	4.50%	4.50
Unit 9	2,315	4.50%	4.50
Unit 10	2,324	4.52%	4.52
Unit 11	2,322	4.52%	4.52
Unit 12	2,315	4.50%	4.50
Unit 13	2,315	4.50%	4.50
Unit 14	2,315	4.50%	4.50
Unit 15	2,315	4.50%	4.50
Unit 16	2,315	4.50%	4.50
<b>TOTAL:</b>	<b>51,413</b>	<b>100.00%</b>	<b>100.00</b>

**EXHIBIT "D"**

**BYLAWS OF THE EASTON CONDOMINIUM OWNER ASSOCIATION**

(Attached)