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Declaration of Condominium and Bylaws

for

*Uffens Marketplace
A Utah Mixed Use Condominium Project*

Dated as of 20 ^{June} ~~January~~ 2003

NOTE TO SALT LAKE COUNTY, UTAH RECORDER:

THE LEGAL DESCRIPTION OF THE PARCEL OF REAL PROPERTY AFFECTED BY THIS INSTRUMENT IS SET FORTH IN SECTION 1.18, ON PAGE 4.

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A Utah Mixed Use Condominium Project*

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*Declaration of Condominium and Bylaws
for Uffens Marketplace, A Utah Mixed Use Condominium Project*

THIS DECLARATION (this "*Declaration*") is executed as of the 20 day of ~~January~~^{June} 2003 by UFFENS, LLC, a Utah limited liability company ("*Declarant*"), whose address is 366 South 500 East, Suite 201, Salt Lake City, Utah 84102.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, Declarant agrees as follows:

Article 1.
Definitions.

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

1.1. "*Act*" means the Utah Condominium Ownership Act, UTAH CODE ANNOTATED, Title 57, Chapter 8, as in effect on, and as amended after, the date of this Declaration, and any successor or substitute provision.

1.2. "*Agency*" means the Redevelopment Agency of Salt Lake City.

1.3. "*Arcade*" means the area on the main floor of the Building that is described as such on the Record of Survey Map. The Arcade is a Common Area and Facility and is subject to the Pedestrian Easement (over part of the Arcade), the Commercial Easements and other easements described in Article 5.

1.4. "*Association of Unit Owners*" or "*Association*" means Uffens Marketplace Unit Owners Association, a Utah non-profit corporation, which comprises all of the Unit Owners acting as a group in accordance with the Act and this Declaration.

1.5. "*Building*" means the building containing the Units and comprising a part of the Property, which has four stories above ground (denominated on the Record of Survey Map as the main, second, third and fourth floors) and one basement level floor. The Building contains 45 Residential Units and ten Commercial Units, for a total of 55 Units. The Building contains a Parking Area in the basement. The principal materials of which the Building is constructed are reinforced concrete, concrete block, brick and glass. The Building will be supplied with electricity, water, natural gas, telephone and sanitary sewer utilities.

1.6. "*Commercial Easements*" means the easements described in Sections 5.5 and 5.6.

1.7. "*Commercial Units*" means Units 101 through 110, inclusive.

1.8. "*Common Areas and Facilities*" means:

1.8.1. *Land.* The Land;

1.8.2. *Structural Elements.* The foundations, columns, girders, beams, supports, main walls (including any bearing walls, even if the bearing wall is located within the interior of a Unit, and including common walls, floors and ceilings between Units or between a Unit and a Common Area and Facility, other than the interior surfaces of such common elements, which interior surfaces form part of

the Unit), floors, ceilings, windows, exterior doors (excluding only partitions within any individual Unit and the interior surface of the walls, floors, ceilings, windows and doors forming the perimeter boundaries of each Unit), roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the Building;

1.8.3. *Landscaping and Parking Areas.* The yards, gardens, outdoor lighting, fences, landscaping and sidewalks, and Parking Area provided for the use of the Unit Owners;

1.8.4. *Janitorial Areas.* The premises, if any, for lodging of janitors or persons in charge of the Property, and areas used for storage of janitorial supplies and maintenance equipment and materials;

1.8.5. *Central Services.* Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

1.8.6. *Utility Equipment.* The elevators, tanks, pumps, motors, fans, compressors, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, Utility Equipment and, in general, all apparatus and installations existing for common use;

1.8.7. *Community Facilities.* Such community facilities as may be provided for in this Declaration;

1.8.8. *Reallocated Areas.* Those portions of the Units which become Common Areas and Facilities pursuant to Section 10.6;

1.8.9. *Sculpture.* The sculpture of a pig (the "*Sculpture*") that is located in the south area of the Arcade as of the date of this Declaration; and

1.8.10. *General.* All other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use, including all parts of the Property other than the Units and the Limited Common Areas and Facilities. Unless otherwise specifically provided in this Declaration, the Common Areas and Facilities do not include the Units or the Limited Common Areas and Facilities.

1.9. "*Common Expenses*" means:

1.9.1. *Assessments.* All sums lawfully assessed against the Unit Owners;

1.9.2. *Operating Expenses and Reserves.* Expenses of operation (including utilities and services), management, maintenance, repair or replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities;

1.9.3. *Insurance Premiums.* Premiums for the insurance obtained by the Management Committee pursuant to Article 9;

1.9.4. *Other Management Committee Expenses.* Any other cost, expense or fee properly incurred by the Management Committee in connection with the performance of its obligations under the Governing Documents;

1.9.5. *Expenses Approved by Unit Owners.* Other expenses agreed on as common expenses by a Majority of the Unit Owners;

1.9.6. *Act or Declaration Expenses.* Other expenses declared common expenses by the Act or this Declaration; and

1.9.7. *Unrecovered Expenses.* Common Expenses due but not paid to the Management Committee which are determined by the Management Committee not to be legally or practicably recoverable (after reasonable effort) from the responsible Unit Owner, together with all interest on, and costs and attorneys' fees incurred in connection with, such unpaid Common Expenses, including, without limitation, those unpaid Common Expenses described in Section 11.1; provided, however, that if such unpaid Common Expenses are later received by the Management Committee from or on behalf of the responsible Unit Owner, any amounts previously paid by any other Unit Owners pursuant to this Section 1.9.7 shall, in the discretion of the Management Committee, either be used to defray future Common Expenses or be refunded pro rata to such other Unit Owners.

1.10. "*Condemnation*," "*Available Funds*," "*Estimated Costs of Restoration*," "*Restoration*," "*Restored Value*," "*Substantial Condemnation*," "*Substantial Destruction*," "*Partial Condemnation*" and "*Partial Destruction*" shall all have meanings for the terms that are set forth in Section 10.1.

1.11. "*Condominium Unit*" means a Unit together with the Limited Common Areas and Facilities, if any, and the Undivided Interest appurtenant to such Unit.

1.12. "*Eligible Insurer or Guarantor*" means an insurer or governmental guarantor of a Mortgage that has requested notice of certain matters from the Management Committee in accordance with Section 11.1.

1.13. "*Eligible Mortgagee*" means a Mortgagee that has requested notice of certain matters from the Management Committee in accordance with Section 11.1.

1.14. "*Emergency Repairs*" means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to any Common Areas and Facilities, to any Limited Common Areas or Facilities or to another Unit or Units and in connection therewith "reasonable notice" means written notice which is hand delivered to the Unit at least 24 hours prior to the proposed entry.

1.15. "*Governing Documents*" means the Act, this Declaration, the Record of Survey Map and the Rules and Regulations, as applicable.

1.16. "*Indemnified Party*" means a party governed by this Declaration that is indemnified by an Indemnifying Party pursuant to the provisions of Section 12.4.

1.17. "*Indemnifying Party*" means a party governed by this Declaration that is obligated to indemnify other parties governed by this Declaration pursuant to the provisions of Section 12.4.

1.18. "*Land*" means certain real property that is located in Salt Lake County, Utah and that is described as follows:

BEGINNING AT southwest corner of Lot 1, Block 61, Plat "A", Salt Lake City Survey; thence east 7.5 rods; thence north 10 rods; thence west 7.5 rods; thence south 10 rods to the POINT OF BEGINNING.

[2003 Sidwell No. 15-01-182-005]

The Land includes any easements that benefit the Land from time to time, including the easements that are set forth on the Record of Survey Map.

1.19. "*Limited Common Areas and Facilities*" means those Limited Common Areas and Facilities designated in this Declaration or the Record of Survey Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units, subject to the following terms and conditions:

1.19.1. *Designation of Specific Areas.* The Limited Common Areas and Facilities include, without limitation: (a) each of the balconies projecting from Residential Units (except for Units 212, 213, 312, 313, 412 and 413)—the use of each such balcony is reserved to the Residential Unit to which such balcony is adjacent; (b) the commercial grease trap that is located in the floor within the Parking Area as shown on the Record of Survey Map, which is reserved to the use of the Commercial Units; (c) the "*Joint Storage Area*" in the basement level that is shown on the Record of Survey Map, which is reserved to the use of Units 101 and 102 (the extent of the Joint Storage Area may be changed from time to time as described in Section 1.19.3 below); (d) the rest rooms located near the elevator lobby on the main floor of the Building, which are reserved to the use of Units 101, 102 and 108 and their respective Owners, tenants, guests and invitees; (e) the Open Market Areas, which are reserved to the use of Unit 108; (f) the "*Designated Areas*" on the main floor of the Building, as shown on the Record of Survey Map, which are reserved to the use of Unit 108 subject to the terms and conditions that are set forth in Section 1.19.4 below; and (g) any shutters, awnings, window boxes, doorsteps, porches, balconies, patios or other apparatus intended to serve a single Unit, but located outside the boundaries of the Unit, which shall constitute a Limited Common Area and Facility appurtenant to that Unit exclusively.

1.19.2. *Miscellaneous.* Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas and Facilities for the exclusive use of the Owner or Owners of the Units on either side of such separations or space as provided in Section 3.7. Unless otherwise specifically provided in this Declaration, the Limited Common Areas and Facilities are not included within the Common Areas and Facilities.

1.19.3. *Joint Storage Areas.* The Joint Storage Area shall be subject to the following: (a) the Management Committee may use up to 25% (or such higher percentage that may be agreed to by both of the Owners of Units 101 and 102 from time to time) of the Joint Storage Area as a Common Area and Facility, and the remaining portion of the Joint Storage Area shall be divided into two equal areas for use by Units 101 and 102 as Limited Common Areas and Facilities (or in such other ratio that the Owners of Units 101 and 102 shall agree upon from time to time); (b) even though the entire Joint Storage Area might be labeled on the Record of Survey Map as a Limited Common Area and Facility, the portion or portions of the Joint Storage Area that are used by the Management Committee from time to time as storage shall be Common Areas and Facilities; and (c) the Owners of Units 101 and 102 shall be solely responsible for the security and safety of any items stored within the Joint Storage Area.

1.19.4. *Designated Areas.* In this section, a "*Trigger Event*" shall occur when both: (a) a Majority of the Unit Owners gives approval (in accordance with the provisions of Article 7) for a Designated Area to be used as an Open Market Area, considering the mixed-use nature of the Property as

described in Section 2.8; provided, however, that: (i) after the Two-thirds Sale Date, any such approval previously given by a Majority of the Unit Owners must be ratified by the then Majority of the Unit Owners (in accordance with the provisions of Article 7) in order to remain effective on a continuing basis; and (ii) if a ratification is not obtained within 60 days after the Two-thirds Sale Date, then the prior approval shall be deemed withdrawn at the end of the 60 day period; and (b) Salt Lake City gives its written approval for a Designated Area to be used as an Open Market Area. The Designated Areas are Limited Common Areas and Facilities appurtenant to Unit 108. However, until the occurrence of a Trigger Event for a Designated Area, the Owner of Unit 108 grants a license to the Unit Owners and the Association to use the Designated Area as a Common Area and Facility. After the occurrence of a Trigger Event for a Designated Area, the license to use the Designated Area as a Common Area and Facility shall cease, and thereafter the Designated Area shall be deemed to be an Open Market Area for all purposes under this Declaration.

1.20. "*Majority of the Unit Owners*" means the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests.

1.21. "*Management Committee*" means the Management Committee of Uffens Marketplace, a Utah Mixed Use Condominium Project, as described in Article 6. The Management Committee is the board of directors of the Association.

1.22. "*Mortgage*" means a mortgage, a deed of trust and any indenture secured by a security interest on any Condominium Unit.

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

1.24. "*Official Records*" means the official records of the Salt Lake County, Utah Recorder.

1.25. "*Open Market Areas*" mean the areas on the main floor of the Building that are identified as such on the Record of Survey Map, which are Limited Common Areas and Facilities appurtenant to Unit 108.

1.26. "*Parking Area*" means parking spaces contained in the basement of the Building, as shown on the Record of Survey Map, which comprise Common Areas and Facilities.

1.27. "*Pedestrian Easement*" means the easement described as such in Section 5.7.

1.28. "*Pedestrian Walkway*" means the pedestrian walkway that is located on the main floor of the Building, that is described specifically on the Record of Survey Map as the "Pedestrian Walkway," and that includes the steps and entrances to the Building at the access points to the Pedestrian Walkway that are shown on the Record of Survey Map, so as to facilitate Agency's objective of providing the public with a continuing avenue of foot access between Broadway Street and Pierpont Avenue.

1.29. "*Person*" means an individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

1.30. "*Property*" means the Land, the Building and all other structures and improvements constructed on the Land on or after the date of this Declaration and all easements, rights and appurtenances belonging to, and all articles of personal property (other than personal property owned by individual Unit

Owners) intended for use in connection with, the Land, the Building or any other structures or improvements on the Land. The Property is comprised of the Units, the Limited Common Areas and Facilities and the Common Areas and Facilities.

1.31. "*Record of Survey Map*" means the Record of Survey Map, recorded in the Official Records concurrently with the recordation this Declaration, entitled "Record of Survey Map of Uffens Marketplace, a Utah Mixed Use Condominium Project," as the same may be amended on or after the date of this Declaration.

1.32. "*Residential Units*" means Units 201 through 215, inclusive; Units 301 through 315, inclusive; and Units 401 through 415, inclusive.

1.33. "*Rules and Regulations*" means the rules and regulations for the Property adopted by the Management Committee from time to time in accordance with this Declaration, including, without limitation, those rules and regulations set forth on the attached exhibit B, as such rules and regulations may be amended after the date of this Declaration. For purposes of this Declaration, the rules and regulations set forth on the attached exhibit B shall be deemed to have been adopted by the Management Committee.

1.34. "*Sign Easement*" means the easement described in Section 5.4.

1.35. "*Size*" means the approximate number of square feet of floor space within each Unit as computed by reference to the Record of Survey Map and rounded off to a whole number. The Size of each Unit is set forth in the attached exhibit A.

1.36. "*Super Majority of the Unit Owners*" means the Owners of more than eighty percent (80%) in the aggregate of the Undivided Interests.

1.37. "*Two-thirds Majority of the Unit Owners*" means the Owners of two-thirds or more in the aggregate of the Undivided Interests.

1.38. "*Two-thirds Sale Date*" means the date on which Units to which 67% or more of the Undivided Interests are appurtenant have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant.

1.39. "*Undivided Interest*" means an undivided interest, expressed as a percentage, in the Common Areas and Facilities made appurtenant to each Unit by the provisions of this Declaration, as set forth in the attached exhibit A.

1.40. "*Unit*" means each separate physical part of the Property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in the Building, as depicted on the Record of Survey Map. Each Unit is comprised of an individual air space unit, consisting of enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit concerned. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Areas and Facilities: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Area and

Facility (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed. Units include both the Commercial Units and the Residential Units.

1.41. "*Unit Number*" means the number, letter or combination of numbers and letters designating the Unit in this Declaration and in the Record of Survey Map. The Unit Number of each Unit is set forth in the attached exhibit A.

1.42. "*Unit Owner*" or "*Owner*" means the person or persons owning each Condominium Unit in fee simple, as shown in the Official Records, including any purchaser of a Condominium Unit under a long term installment sales contract. Declarant shall be deemed to be the Owner of each Unit that is created by the recording of the Record of Survey Map and that has not yet been conveyed by Declarant. However, the term "*Unit Owner*" and "*Owner*" does not mean a person obligated to purchase a Unit pursuant to a so-called earnest money agreement, contract for deed or "*Real Estate Purchase Contract*" form approved by the Utah Division of Real Estate.

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

Article 2.
General Scheme.

2.1. *Purpose.* Declarant is the sole owner of the Land and the Building. Various improvements have been and will be made to the Land and the Building so as to enable its use and operation as a condominium project. The construction and alteration of all of such improvements have been or will be performed in accordance with this Declaration and the Record of Survey Map. Declarant desires, by recording this Declaration and the Record of Survey Map, to submit the Land, the Building and all other improvements constructed on the Land on or after the date of this Declaration to the provisions of the Act as a condominium project to be known as "Uffens Marketplace," which is a Utah mixed use condominium project. Declarant intends to sell and convey fee title to certain Condominium Units, subject to the provisions of the Governing Documents. The Property: (a) does not contain any convertible land as contemplated by the Act; (b) is not an expandable condominium; (c) is not a contractible condominium; (d) is not a leasehold condominium; and (e) does not contain time period units, as all of such terms are contemplated by the Act.

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

2.3. *General Provisions.* At the time of the first conveyance of each Condominium Unit, every Mortgage and other lien affecting such Condominium Unit shall have been paid and satisfied of record, or the Condominium Unit being conveyed shall have been released therefrom by a partial release duly

recorded. The right of any Owner to sell, transfer or otherwise convey its Condominium Unit shall not be subject to any right of first refusal or similar restriction in favor of Declarant or the Management Committee, unless such right is created expressly as to a Condominium Unit in a future written instrument. In interpreting the Record of Survey Map or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed or reconstructed in substantial accordance with the Record of Survey Map shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Record of Survey Map, regardless of the settling or lateral movement of the Building and regardless of any minor variance between the boundaries shown on the Record of Survey Map and those of the Building or such Unit. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure, whether the foreclosure is by private power of sale, judicial foreclosure or otherwise.

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

2.5. *Relationship to Other Recorded Documents.* The Property and this Declaration are subject to the provisions of the following documents:

2.5.1. *Deed.* A "Special Warranty Deed and Right of Reverter Agreement" that is dated 12 July 2001, that was signed by Agency, as grantor, in favor of Declarant, as grantee, and that was recorded in the Official Records on 08 August 2001 as entry no. 7969686, book 8487, page 4273. Among other things, the Deed restricts the use of the Property to residential and commercial condominium purposes for 25 years from the date of the Deed and prohibits in perpetuity any discrimination in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any part thereof.

2.5.2. *Interim Declaration.* A "Declaration of Easements, Covenants, Conditions and Restrictions" (the "*Interim Declaration*") that is dated 12 July 2001, that was signed by Declarant, that burdens the Land and that was recorded in the Official Records on 08 August 2001 as entry no. 7969688, book 8487, page 4319. Pursuant to Sections 1.1, 3.4 and 3.13 of the Interim Declaration, upon the execution and delivery of this Declaration by Agency, among others, and the recordation of this Declaration and the Record of Survey Map in the Official Records, the provisions of the Interim Declaration shall automatically be terminated and superseded in their entirety by this Declaration.

2.5.3. *Development Agreement.* A "Development Agreement" that is dated 12 July 2001, that was signed by Declarant and Agency, that burdens the Land and that was recorded in the Official Records on 08 August 2001 as entry no. 7969687, book 8487, page 4283.

2.6. *Association.* On or about the date of this Declaration, Declarant shall cause the Association to be formed. Each Unit Owner shall automatically be a member of the Association. The Management Committee shall act automatically as the board of directors of the Association, and all references in this Declaration to the Management Committee shall be deemed to be references to the Association's board of directors. The officers of the Management Committee shall act automatically as the officers of the Association, and all references in this Declaration to officers of the Management Committee shall be deemed to be references to the Association's officers. All actions taken by the Management Committee and the officers of the Management Committee shall automatically be actions taken for the Association. The Rules and Regulations are rules and regulations of the Association. From time to time, the Association may file and maintain an assumed name application with the Utah Division of Corporations and Commercial Code to reserve the name "Uffens Marketplace" for the Property.

2.7. *Bylaws.* The bylaws of the Management Committee are set forth in the following provisions of the Declaration: (a) Article 6 (Management Committee--includes Association officers and initial agent of Association);(b) Article 7 (Meetings of Unit Owners); and (c) Section 13.1 (Amendments), as it relates to amending Articles 6 or 7. The provisions of the Utah Revised Nonprofit Corporation Act, UTAH CODE ANNOTATED Title 16, Chapter 6a, as in effect on, and as amended after, the date of this Declaration, shall supplement the bylaws set forth in this Declaration to the extent that such statutory provisions are not inconsistent with this Declaration.

2.8. *Mixed Use.* The Property is intended: (a) to be a condominium project with mixed residential and commercial / retail uses; (b) to provide on the main floor of the Building a bustling, active marketplace involved in the sale of goods and services from the Commercial Units, including, without limitation, live music, art displays, artistic performances, the sale of flowers, food and drinks, street carts and day stall vendors, with such activities taking place inside of the Commercial Units, in the Arcade areas immediately outside of the Commercial Units and in the Open Market Areas appurtenant to Unit 108 (but all such uses shall be subject to the Commercial Easements); (c) to allow for cross-use of the Parking Area between commercial / retail and residential users, in order to maximize usage of the Parking Area during varying periods (*e.g.*, commercial daytime and evening usage and residential evening and night usage); (d) to provide for comfortable residential living, benefitted by a convenient marketplace; and (e) to accommodate the needs of Owners and users of the Commercial Units (including the Open Market Areas), which involve areas that are located directly under the Residential Units. These commercial needs may include: (y) construction activities to build out and remodel the Commercial Units from time to time; and (z) transmitting the effects of commercial and retail activities upstairs; provided, however, that notwithstanding the foregoing provisions to the contrary, the Commercial Units (including the Open Market Areas) shall not be used or operated in any manner that unreasonably (considering the mixed used nature of the Property) inconveniences or disturbs the quiet enjoyment of the Residential Units by their Owners.

Article 3.
Units.

3.1. *Division of Property.* The Property is hereby divided into Condominium Units, each such Condominium Unit consisting of a Unit, appurtenant Limited Common Areas and Facilities, if any, and an appurtenant Undivided Interest, as set forth on exhibit A attached to this Declaration.

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

3.3. *Nature of Undivided Interests.* Each Unit Owner shall be entitled to an Undivided Interest in the percentage expressed in the attached exhibit A, which interests are allocated proportionate to the Size of each Unit. Each Unit Owner may use the Common Areas and Facilities on a nonexclusive basis, but only in accordance with the purposes for which they were intended (as reasonably designated by the Management Committee from time to time) without hindering or encroaching on the lawful rights of the other Unit Owners, and only in a manner which is consistent with their community nature and with the use and other covenants, conditions and restrictions applicable to the Units under the Governing Documents. Except as otherwise provided in this Declaration, each Owner shall have the exclusive right to use and enjoy any Limited Common Areas and Facilities appurtenant to its Unit (except to the extent that more than one Unit enjoys the benefit of a Limited Common Area and Facility, in which case all of the benefitted Units shall enjoy the benefit among themselves). Neither the percentage of Undivided Interest nor the right of exclusive use of any Limited Common Areas and Facilities shall be separated from the Unit to which it is appurtenant. Except as otherwise expressly provided by the Act, the Undivided Interest of each Unit Owner as described in this Section 3.3 shall have a permanent character and shall not be altered without the consent of a Super Majority of the Unit Owners that is expressed in an amendment to this Declaration duly approved and then executed by the Management Committee and recorded in the Official Records. The Common Areas and Facilities and the Limited Common Areas and Facilities shall remain undivided, and no Unit Owner or other person shall bring any action for partition or division of any part of the Common Areas and Facilities or the Limited Common Areas and Facilities, unless the Property has been removed from the provisions of the Act in accordance with Section 13.2 or as otherwise provided in the Act. Subject to Article 8, the common profits, if any, of the Property shall be distributed among, the Common Expenses shall be charged to, and the voting rights shall be available to, the Unit Owners according to their respective Undivided Interests.

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

Unit _____ contained within Uffens Marketplace, a Utah mixed use condominium project, as the same is identified in the Declaration of Condominium and Bylaws recorded _____ 2003 as Entry No. _____ in Book _____ at Page _____ of the

official records of the Salt Lake County, Utah Recorder (as said Declaration may heretofore have been amended or supplemented), and in the Record of Survey Map recorded _____ 2003 as Entry No. _____ of the official records of the Salt Lake County, Utah Recorder (as said Record of Survey Map may heretofore have been amended or supplemented); TOGETHER WITH the Limited Common Areas and Facilities, if any, and a percent undivided interest in the Common Areas and Facilities appurtenant to such Unit, as more particularly described in said Declaration.

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

3.5. *Improvement of Units.* Subject to the provisions of this Section 3.5, each Unit Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Unit Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit, and the Owner of Unit 108 may make improvements to the Open Market Areas in order to accommodate an open-air market (unless the consent of a Two-thirds Majority of the Unit Owners is first obtained, these improvements shall be limited to installing overhead protection from weather, overhead lighting and radiant heating, sinks and utility connections, and other minor improvements that are reasonably necessary in order to accommodate temporary tables, vendor carts and day stalls; provided, however, no walls may be constructed between spaces within, or at the front of, the Open Market Areas); provided, however, that such walls, fixtures and improvements shall:

3.5.1. *Compliance.* Comply with all applicable laws, ordinances, codes, rules and regulations;

3.5.2. *No Interference.* Not interfere with facilities necessary for the support, use or enjoyment of any other part of the Property;

3.5.3. *Structural Integrity.* Not impair the structural integrity of the Building; and

3.5.4. *Encroachment.* Not encroach on or interfere with any Common Areas and Facilities, unless: (a) expressly permitted by the provisions of this Declaration; or (b) the Management Committee consents in writing to such encroachment.

No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value (but the proposed use of a Unit and any "Construction Activities," as defined below, in the improvement of a Unit shall not be deemed in any event to reduce the value of the Property) or impair any easement or hereditament, without in every such case the consent of a Super Majority of the Unit Owners being first obtained. Subject to the express easements that are described in Article 5 and the limited improvements to the Open Market Areas permitted by this section and Section 4.11, no Unit Owner shall do any work on or make any alterations or changes to the Common Areas and Facilities or the Limited Common Areas and Facilities without the prior written consent of the Management Committee, subject to the following terms and conditions:

3.5.5. *Bearing Walls.* In particular, no Unit Owner shall remove or alter any interior bearing walls within a Unit (as shown for the Unit on the Record of Survey Map) without first: (a)

providing structural reinforcement beams or supports for the modified bearing walls; (b) providing to the Management Committee (at the Unit Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations (and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building; and (c) obtaining the advance written consent of the Salt Lake City Building Department (to the extent required) and the Management Committee.

3.5.6. *Construction Activities within Commercial Units.* Without limiting the generality of the foregoing, Owners of Commercial Units (and the Owner of Unit 108, as to the Open Market Areas) may build out, improve, remodel and remove improvements in or from their Units and to the Open Market Areas ("*Construction Activities*") even though these Construction Activities may cause temporary inconveniences to the occupants of Residential Units that are located above the Commercial Units and the Open Market Areas; provided, however, in carrying out Construction Activities, the Commercial Unit Owners: (a) shall take commercially reasonable steps so as to minimize inconveniences to Residential Unit Owners and interference with their quiet enjoyment of the Residential Units; (b) shall abide by applicable Rules and Regulations as to permissible days and times of day; and (c) shall comply at all times with ordinances of Salt Lake City, Salt Lake County and the health departments of Salt Lake City and Salt Lake County.

3.5.7. *Approvals and Notice.* Except as is expressly set forth in this Declaration, no Unit Owner (and the Owner of Unit 108, as to the Open Market Areas) shall be required to obtain the approval of any other Unit Owner or the Management Committee for the improvement of, or the removal of improvements from, that Owner's Unit and the Open Market Areas. However, if the improvement of, or the removal of improvements from, an Owner's Unit or the Open Market Areas will require the temporary use of Common Areas or Facilities or the use of another Unit Owner's Unit under express rights granted in Article 5, then that Owner shall give the Management Committee (as to Common Areas and Facilities) or the other Unit Owner reasonable advance written notice of such pending improvements.

3.6. *Maintenance of Units.* At its expense, each Owner shall keep the interior of its Unit and any Limited Common Areas and Facilities appurtenant to its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements in good condition and repair and in a clean and sanitary condition. In addition, each Unit Owner, at its expense, shall maintain in good condition and repair the window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such window glass or door on removal, breakage or other damage. In addition to maintaining the Open Market Areas as Limited Common Areas and Facilities, as provided above, at its expense, the Owner of Unit 108 shall maintain in a safe and sanitary condition all furniture, equipment, vendor carts, day stalls, temporary tables and other personal property located from time to time within the Open Market Areas, which are Limited Common Area and Facilities appurtenant to Unit 108. If any Unit or any Limited Common Areas and Facilities appurtenant to a Unit develops an unsanitary or unclean condition or falls into a state of disrepair and the Owner of such Unit fails to correct such condition promptly following written notice from the Management Committee, or if any removed, broken or damaged window glass or door referred to in the preceding sentence is not immediately repaired or replaced by the Unit Owner obligated to do so, then the Management Committee may (but is not obligated to), at the expense of such Unit Owner and without liability to such Unit Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Management Committee pursuant to this Section 3.6, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute a lien from and after the filing of a "Notice of Lien"

with respect thereto on the Condominium Unit concerned pursuant to Section 8.4, which lien may be foreclosed by the Management Committee in accordance with such section.

3.7. *Right to Combine Units.* After obtaining the prior written consent of the Management Committee, two or more Units may be utilized by their Owner(s) as if they were one Unit. To the extent permitted and set forth in the consent given by the Management Committee, any walls, ceilings, floors or other structural separations between any such Units, or any space which would be occupied by such structural separations but for the utilization of such Units as one Unit may, for as long as such Units are utilized as one Unit, be utilized by the Owner(s) of the adjoining Units as Limited Common Areas and Facilities, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other Units, in which case the structural separations shall continue to be Common Areas and Facilities as described in Section 1.8.2. After such Units cease to be used jointly, any opening between such Units which, but for joint utilization of such Units, would have been occupied by structural separation shall be closed at the equal expense of the Owner(s) of such Units and the structural separations between such Units shall thereupon become part of the Common Areas and Facilities, as described in Section 1.9.2. Combining Units shall not in any way affect voting rights or Undivided Interests under this Declaration.

3.8. *Division of Existing Units.* Any amendment to this Declaration that divides an existing Unit into two or more Units only needs to be executed by the Management Committee, the Owner of such Unit and any Mortgagee holding a Mortgage encumbering such Unit, and shall set forth the new square footage and the new Undivided Interests appurtenant to the new Units (as an amendment to the attached exhibit A). Such square footage and Undivided Interests, in the aggregate, shall be equal, respectively, to the original square footage and Undivided Interests of the Unit being divided. The Undivided Interests of the new Units shall be allocated proportionately between or among the new Units, based on the respective square footage of the new Units. In addition, the Owner of the Unit being so divided shall, at its sole cost and expense, prior to or concurrently with the recordation of such amendment, have prepared, approved by Salt Lake City, and recorded, an amendment to the Record of Survey Map, reflecting such division. Following such division, any additional other structural separations constructed or installed between the new Units shall become Common Areas and Facilities. Dividing Units shall not, taken in the aggregate between or among the new Units created, increase or decrease the original voting rights or Undivided Interests set forth in this Declaration.

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

3.10. *Approval of Bulk Sales.* The Management Committee must first approve any sale of more than one Residential Unit to one buyer; provided, however, that notwithstanding the foregoing, no approval shall be required for the initial ownership by Declarant (or one or more of its members) of more than one Residential Unit.

Article 4.
Uses.

4.1. *Permitted Uses.* The Commercial Units (including the Open Market Areas appurtenant to Unit 108) are intended exclusively for office, retail or other commercial uses commonly found in first-class commercial developments, and such Units are restricted to such uses. Subject to Section 4.9, the Residential Units are intended exclusively for residential use, and such Units are restricted to such use; provided, however, that notwithstanding the foregoing, the Residential Units may be used for incidental office purposes so long as no customer foot traffic is allowed to the Residential Unit in connection with such office purposes and so long as relevant zoning ordinances are complied with.

4.2. *Prohibited Activities.* No Owner shall do or permit anything to be done in its Unit which may do any of the following: (a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property; (b) create a public or private nuisance, commit waste or unreasonably interfere with, annoy or disturb any other Unit Owner or occupant of the Building (the uses permitted under Section 3.5 and the easements created under Article 5 shall not be deemed to constitute such unreasonable interference, annoyance or disturbance); (c) overload the floors or otherwise damage the structure of the Building; (d) violate any present or future law, ordinance, regulation or requirement, including, without limitation, those relating to hazardous substances, hazardous wastes, pollutants or contaminants, those relating to access by disabled persons and the requirements of any board of fire underwriters or other similar body relating to the Property; (e) lower the first-class character of the Property, consistent with the mixed-use nature of the Property as described in Section 2.8; or (f) otherwise detract from the appearance or value of the Property (but uses and activities that are permitted under this Declaration shall not be deemed to detract from the appearance or value of the Property). No Owner may service or store (*i.e.*, long term storage where the vehicle is not operable, registered and being used on a regular basis) vehicles on the Property. No Owner may use the Parking Area for parking or storing boats, trailers, recreational vehicles or other similar items. The Owner of Unit 108 shall not permit the Open Market Areas to be used for the preparation of food with heating devices that emit food odors or smoke into the open air (including grills and stoves), unless a Majority of the Unit Owners first approves such use in accordance with the provisions of Article 7; provided, however, that: (y) after the Two-thirds Sale Date, any such approval previously given by a Majority of the Unit Owners must be ratified by the then Majority of the Unit Owners (in accordance with the provisions of Article 7) in order to remain effective on a continuing basis; and (z) if a ratification is not obtained within 60 days after the Two-thirds Sale Date, then the prior approval shall be deemed withdrawn at the end of the 60 day period. Equipment, including cooking, heating and environmental conditioning equipment, may not be used in Designated Areas or Open Market Areas unless the use or activity meets applicable codes and regulations as regulated by Salt Lake City Corporation.

4.3. *Prohibited Uses.* No portion of the Property shall be used for any of the following uses: (a) a bowling alley; (b) a billiard or bingo parlor; (c) a funeral home; (d) a facility for the sale of paraphernalia for use with illicit drugs; (e) a facility for the sale or display of pornographic material, such as adult theaters or adult bookstores, as determined by community standards for the area in which the Property is located; (f) an off-track betting parlor; (g) a carnival, amusement park or circus; (h) a gas station, car wash or auto repair or body shop; (i) a facility for the sale of new or used motor vehicles,

trailers or mobile homes; (j) a facility for any use which is illegal; (k) a skating rink; (l) a pinball, video game or computer game room; (m) a training or educational facility, including, without limitation, a beauty or other school, barber college, reading room or other facility catering primarily to students or trainees rather than customers; or (n) a ticket sales center of any kind (except that sales of tickets shall be permitted if they are merely incidental to the regular business carried on in the Property).

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

4.5. *Certain Compliance; Rules and Regulations.* Subject to reasonable compliance with the Governing Documents by the Management Committee, each Unit Owner shall comply strictly with the covenants, conditions and restrictions as set forth in this Declaration and in the deed to its Unit and with the Rules and Regulations, any other Governing Documents and any administrative rules and regulations drafted pursuant to any of the foregoing, as any of the same may be amended from time to time. The Rules and Regulations may cover rental and use of Units and may grant the Management Committee the right to evict, on behalf of the Unit Owner, tenants of Units if those tenants do not comply with the Rules and Regulations. Failure so to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner. The attached Rules and Regulations may be amended from time to time by the Management Committee with the approval of a Majority of the Unit Owners; provided, however, that, notwithstanding the foregoing:

4.5.1. *Commercially Reasonable.* Each Rule and Regulation must be commercially reasonable, considering the mixed-use nature of the Property as described in Section 2.8.

4.5.2. *Approval by Commercial Unit Owners.* In addition to approval of a Majority of the Unit Owners, the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests for the Commercial Units must also approve the creation or modification of any Rules and Regulations affecting: (a) the operation of Commercial Units and construction within Commercial Units; (b) the hours of operation within the Commercial Units (as to general guidelines, specific hours or otherwise); and (c) Residential Units that will impact adversely and materially the commercial enjoyment of the Commercial Units (considering the mixed-use nature of the Property as described in Section 2.8)

4.5.3. *Approval by Residential Unit Owners.* In addition to approval of a Majority of the Unit Owners, the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests for the Residential Units must also approve the creation or modification of any Rules or Regulations affecting: (a) the operation of Residential Units and construction within Residential Units; (b) the general guidelines for establishing hours of operations of the Commercial Units (but not the specific hours of operations); and (c) Commercial Units that will impact adversely and materially the quiet enjoyment of the Residential Units (considering the mixed-use nature of the Property as described in Section 2.8).

4.5.4. *No Discrimination.* The Management Committee shall not discriminate against Residential Unit Owners, as a group, or against Commercial Unit Owners, as a group, in creating, amending or enforcing the Rules and Regulations.

4.6. *Parking.* On-site parking for the Units shall be provided in the Parking Area, subject to the following terms and conditions:

4.6.1. *General.* The Parking Area is part of the Common Areas and Facilities and, as such is an appurtenance to the Units, subject to this Section 4.6. Subject to Rules and Regulations regarding parking, the Parking Area shall be available for the general use of the Unit Owners and their tenants, guests and invitees. From time to time the Management Committee may also make the Parking Area available for use by the general public or by owners of parcels of real property that are adjacent to the Land and their tenants, guests and invitees (with or without charge), but only so long as: (a) the same does not unreasonably inhibit use of the Parking Area by the Unit Owners, their guests and invitees; and (b) a Super Majority of the Unit Owners approves the same.

4.6.2. *Parking Assignments.* From time to time, the Management Committee may, if necessary or appropriate, assign a specific parking space to a specific Unit. For example, special assignments might be made to accommodate hardship needs. Once made, such assignments shall be final and binding on the Unit Owners. No such assignments need be made by the Management Committee. The assignments may be revoked by the Management Committee at any time after the assignments are made. No Unit Owner shall ever acquire a vested right in any specific parking space. Without the consent of a Majority of the Unit Owners, no more than ten parking spaces within the Parking Area, in the aggregate, may be assigned to specific Units. The Management Committee may, but is not required to, record a memorandum in the Official Records setting forth such assignments. The Management Committee shall exercise its rights under this section in a fair, reasonable and non-discriminatory manner.

4.6.3. *Regulation.* From time to time, the Management Committee may regulate the use of the Parking Area through issuing use permits, cards or hang tags; installing parking arms and/or toll booths; charging fees (for customers of Commercial Units, adjoining property owners and their customers, or others, but not for Unit Owners); placing restrictive and/or directional signage; and arranging for tow-aways. The Management Committee may limit permits to one per Unit. Any fees generated by the foregoing shall be payable to the Management Committee and shall be used to defray Common Expenses.

4.6.4. *Administration.* The Management Committee shall be the exclusive arbitrator of any disputes regarding parking, and any decision rendered by the Management Committee with respect to any parking dispute shall be final, binding and conclusive for all purposes. Notwithstanding any provisions in this Section 4.6 to the contrary, Declarant (in place of the Management Committee) shall administer the assignments and regulations for the Parking Area until the earliest of: (a) the date that is three years after the date that this Declaration is recorded in the Official Records; (b) the date on which Units to which 50% or more of the Undivided Interests appertain have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant; or (c) the date on which Declarant surrenders any right to the Management Committee in writing, which surrender may cover any one or more activities related to the Parking Area. Thereafter, the Management Committee shall administer all matters relating to the Parking Area as called for in this Section 4.6.

4.7. *Residential Use; Affordable Housing Units.* The second, third and fourth floors of the Building are limited to residential uses, as described more fully in Section 4.1. Declarant reserves all Residential Units for sale to purchasers. Declarant shall make a minimum of six Residential Units available for initial sale as affordable housing units. For purposes of this Section 4.7, "affordable housing units" means and requires that: (a) not fewer than three Residential Units shall be reserved for initial sale to households earning 80% or less than the median income for the Salt Lake City-Ogden SMSA; and (b) not

fewer than three Residential Units shall be reserved for initial sale to households earning 60% or less than the median income for the Salt Lake City-Ogden SMSA. Notwithstanding the foregoing, during periods in which Declarant owns Residential Units, Declarant may rent those Residential Units on a short term basis if: (x) Declarant cannot market the Residential Units for a commercially reasonable price despite a commercially reasonable effort to do so; (y) for financial purposes it becomes necessary for Declarant to receive interim rental income from the Residential Units; and (z) Declarant continues diligently to advertise and market the Residential Units for sale while they are being rented on a short term basis. The terms and provisions of that certain Financing Subsidy Letter Agreement dated 12 July 2001 and signed by Agency and Declarant shall remain in full force and effect.

4.8. *No Discrimination.* No Unit Owner or the Management Committee may discriminate against or segregate any person or group of persons on the basis of race, creed, color, religion, sex, marital status, age, disability, ancestry or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any part thereof.

4.9. *Sales Offices and Model Units.* Declarant and Declarant's duly authorized agents, representatives and employees may maintain up to three Units as sales offices or model units within the Building until Declarant or its members have initially conveyed each of the Units. Before using any Unit as a sales office or a model unit, Declarant shall designate the Unit or Units that will be so used by giving written notice thereof to the Management Committee. From time to time Declarant may change the designation by giving the Management Committee written notice of the change.

4.10. *Signs Displayed from Units.* No Owner of a Unit shall permit any signs, pictures, banners, flags, posters or other commercial, political, informational or directional signs, devices and objects of any kind to be displayed to the public view from the Owner's Unit or from the Limited Common Areas and Facilities appurtenant to the Owner's Unit, except for: (a) items permitted by applicable Rules and Regulations; (b) items approved by the Management Committee or its designee (the Management Committee shall exercise its rights under this section in a fair, reasonable and non-discriminatory manner); (c) signs for the purpose of selling, renting or leasing that Owner's Unit; and (d) as to Commercial Units (and the Open Market Areas), items advertising the commercial uses of that Unit (or the Open Market Areas) and other uses reasonably ancillary thereto.

4.11. *Open Market Areas.* As Limited Common Areas and Facilities appurtenant to Commercial Unit 108, the Open Market Areas may be used by the Owner of Unit 108 for any commercial purposes permitted under this Declaration, subject to the following terms and conditions: (a) the Open Market Areas shall be used only as an open-air market; (b) the Owner of Unit 108 may make improvements to the Open Market Areas pursuant to Section 3.5; (c) the Owner of Unit 108 may lease or license portions of the Open Market Areas to vendors for the purposes of selling goods and services from the Open Market Areas (from kiosks, day stalls, carts, stands and/or other structures), and to artists and other performers for performing or displaying their art or music, including live music and artistic performances; (d) the Owner of Unit 108 shall pay for all electricity and other utilities used in the Open Market Areas; (e) the use of the Open Market Areas may not interfere unreasonably with access to, and use of, the Pedestrian Easement; (f) the Owner of Unit 108 shall carry commercial general liability insurance in the limits described in Article 9 in order to provide protection from claims or liabilities arising from use of the Open Market Areas by: (i) the Owner of Unit 108; (ii) any tenants and licensees of the Owner of Unit 108 (and those parties' subtenants and sublicensees, if any); and (iii) all such parties' respective agents, employees, guests, visitors and invitees (which insurance shall list the Association as an additional insured); (g) all uses of the Open Market Areas shall be subject to the general terms and conditions of the Governing Documents; and (h) the Owner of Unit 108 shall be responsible for compliance of the Open Market Areas with the Governing

Documents, notwithstanding that the Owner has leased or licensed to third parties spaces within the Open Market Areas. Notwithstanding any provision of this Declaration to the contrary, the Open Market Areas shall not be used or operated in a manner that unreasonably inconveniences or disturbs the quiet enjoyment of the Residential Unit Owners (considering the mixed-use nature of the Property as described in Section 2.8).

4.12. *Approval of External Modifications.* Until the first intended use is made of each Commercial Unit, Agency must approve any significant modification to the exterior of the Building and the location of any ducts, vents, cables, piping and other protrusions on the exterior of the Building that are not shown on plans already approved by Agency under the "Development Agreement" described in Section 2.5.3.

Article 5.
Easements.

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

5.2. *Easements for Maintenance.* Some of the Common Areas and Facilities or the Limited Common Areas and Facilities may be located within the Units or may be conveniently accessible only through the Units. Declarant grants the Management Committee a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Areas and Facilities and Limited Common Areas and Facilities at reasonable times and under reasonable circumstances as may be necessary for: (a) the maintenance, repair, replacement and cleaning of the Common Areas and Facilities and the Limited Common Areas and Facilities; or (b) making Emergency Repairs necessary to prevent damage to Common Areas and Facilities, Limited Common Areas and Facilities or to any Unit, provided that the Management Committee shall make a reasonable effort to provide notice to the occupant of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense. Notwithstanding the foregoing, the Owners of Units benefitted by Limited Common Areas and Facilities (including the Owner of Unit 108, which is benefitted by the Open Market Areas as Limited Common Areas and Facilities) shall be responsible to maintain those Limited Common Areas and Facilities, as described more fully in Section 3.6.

5.3. *Easements for Units.* Declarant reserves for each Unit a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Areas and Facilities and the Limited Common Areas and Facilities as necessary for access to and from its Unit and to any Limited Common Areas and Facilities appurtenant to such Unit. Declarant reserves for each Commercial Unit, as the benefitted property, a non-exclusive easement over each adjoining Commercial Unit, if any, as the burdened property, for the construction and maintenance of a wall that spans the dividing line between the Commercial Unit and the adjoining Commercial Unit, which wall shall constitute a Common Area and

Facility from and after the time of its construction (except for the interior surfaces of the walls, which shall constitute part of each respective Commercial Unit, as described in Section 1.8.2). Declarant reserves for each Commercial Unit a non-exclusive easement for, and the right of, ingress and egress to the adjoining Commercial Units as reasonably necessary to construct, repair and remove walls between the benefitted Commercial Unit and the burdened Commercial Unit. Declarant reserves for the Open Market Areas a non-exclusive easement for, and the right to, overhangs for canopies, awnings, galvanized metal roofs or other protective structures, which overhangs: (a) may extend from the outside edge of the Open Market Areas up to two feet into the Arcade (but only into those portions of the Arcade that are open to the weather); and (b) may not interfere unreasonably with access to and use of the Pedestrian Easement (this easement shall not be construed to broaden the permissible improvements that the Owner of Unit 108 may make to the Open Market Areas, as those improvements are described in Section 3.5). Declarant reserves for each Unit a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements. Declarant reserves for each Unit a non-exclusive easement in common with all other Units for Utility Equipment and other Common Areas and Facilities from time to time and at any time located in any other Units and serving the benefitted Unit. Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the Utility Equipment and other Common Areas and Facilities from time to time and at any time located in such Unit and serving any other Unit. All of such Utility Equipment and other Common Areas and Facilities may be installed or moved as may be reasonably necessary for use by the benefitted Unit, so long as such movement does not unreasonably interfere with the burdened Unit and is approved in advance by the Management Committee, and so long as any construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of any such construction activities, the benefitted Unit Owner shall immediately restore any portion of the burdened Unit affected to the same condition as existed prior to the commencement of such construction activities, using the same (or better) type and quality of materials previously used.

5.4. *Sign Easement.* Declarant reserves a non-exclusive easement on the exterior surfaces of the Building and on the surfaces and other portions of the Common Areas and Facilities (but not Limited Common Areas and Facilities or the exterior window and door surfaces of Residential Units or Commercial Units that form part of the Common Areas and Facilities), as the servient estate, for the benefit of: (a) the Property as a whole, for the purposes of providing directional signs within the Property and signs identifying the name of the Property (the Management Committee, acting on behalf of all Unit Owners, shall administer the benefit of this portion of the Sign Easement); (b) each Commercial Unit for the purpose of advertising on-site uses in the Commercial Unit; and (c) the Open Market Areas (as Limited Common Areas and Facilities appurtenant to Unit 108) for the purpose of advertising on-site uses within the Open Market Areas, subject to the following restrictions and limitations, which shall be administered by the Management Committee:

5.4.1. *Location and Content.* No sign, advertisement, notice or other lettering (collectively the "Sign") shall be mounted, exhibited, inscribed, painted or fixed at any location on or within the Common Areas and Facilities, including the exterior of the Building (other than on the exterior surfaces of doors and windows to a Unit, which may be used by Owners of Commercial Units pursuant to Section 4.10), without the prior written consent of the Management Committee as to the form (subject to Section 5.4.4), location and content of the Sign. At the request of a benefitted party, the Management Committee shall affirmatively make Common Areas and Facilities available for use as contemplated by this Section 5.4. With the Management Committee's approval, Signs may be located anywhere on the exterior of the Building, including all the way to the fourth floor of the Building and Signs in the vicinity of windows to Residential Units (which may cause some light to enter into those Residential Units--see Section 5.5 for the Commercial Easement allowing this usage).

5.4.2. *Costs.* The costs of installing, operating, maintaining and removing Signs for on-site advertising of Commercial Units shall be borne by the Owner of the benefitted Commercial Unit (including the Owner of Unit 108 as to the Open Market Areas). A Commercial Unit Owner shall have the electricity for such Signs covered by that Owner's own electricity meter for the benefitted Commercial Unit (including the Owner of Unit 108 as to the Open Market Areas). Other than the electricity charges described above, no fees may be charged to a Commercial Unit Owner (or to the Owner of Unit 108 as to the Open Market Areas) for the benefit of using the Sign Easement.

5.4.3. *Removal.* Once a Sign permitted by this Section 5.4 is no longer in use or no longer accurately describes a permitted use, the benefitted party (i.e., the Commercial Unit Owner and the Owner of Unit 108 as to the Open Market Areas), at its expense, shall cause the Sign to be removed (and shall repair any damage to the Common Area and Facility caused by such removal) or to be altered appropriately.

5.4.4. *Standard.* All Sign usage must comply with applicable zoning regulations and other applicable law. In all matters pertaining to the Sign Easement, the administrator: (a) shall exercise all discretions reasonably, promptly (no later than 10 days after a request has been made or resubmitted), consistently and in good faith; and (b) shall favor the following criteria in approving the form and content of Signs (individual exceptions can be granted only in the most unusual circumstances): (i) Signs shall be consistent with the historical, warehouse feel of the Property; (ii) preference shall be given to neon Signs; and (iii) plastic box Signs, pole Signs and cabinet-type Signs shall be avoided.

5.5. *Easement for Effects of Commercial Uses.* Declarant, as the owner of the Property (including, but not limited to, each Residential Unit), hereby grants Declarant, as the Owner of each Commercial Unit (including the Owner of Unit 108 as to the Open Market Areas), a non-exclusive easement that burdens the Property (including, but not limited to, each Residential Unit), as the servient estate, and that benefits each Commercial Unit (including the Open Market Areas), as the benefitted estate, for the purpose of allowing within the Property reasonable effects (considering the mixed-use nature of the Property as described in Section 2.8) that are incidental to commercial and retail activities taking place within the Commercial Units (including the Open Market Areas), including, but not limited to any of the following effects, but only so long as the same are commercially reasonable and do not unreasonably (considering the mixed used nature of the Property as described in Section 2.8) inconvenience or disturb the quiet enjoyment of the Residential Units by their Owners: (a) sounds and noise; (b) smells, odors and fragrances, including those deriving from exhaust fans; (c) the placement of any ducts, vents, cables, piping and other protrusions on the exterior of the Building between the Commercial Units and the roof of the Building (to locations that are first approved by the Management Committee; until the first intended use is made of each Commercial Unit, Agency must also approve locations that are not shown on plans already approved by Agency under the "Development Agreement" described in Section 2.5.3) for the purposes of venting exhaust from restaurant or food uses and for other commercial uses; (d) the placement of radio and television antennae and satellite dishes behind and below the parapet on the roof of the Building (in locations that are approved by the Management Committee) for the purpose of providing television, satellite and/or radio service to the Commercial Units; and (e) light, whether emanating from the Commercial Units (including the Open Market Areas) and/or signs on the Building (including light from neon signs that might be in the proximity of windows to the Units), whether any one or more of the foregoing arise from live music or artistic performances; preparation, serving and consumption of food, including restaurants; sales; set-up and take down activities; construction and remodeling activities (including those described in Section 3.5); and/or other commercial and retail activities and whether any one or more of the foregoing occur in the evening, night or early morning hours (subject to hours restrictions that are set forth in the Rules and Regulations).

5.6. *Easement for Use of Arcade by Commercial Unit Owners.* Declarant reserves a non-exclusive easement (the "*Ancillary Easement*") over the Arcade, as the servient estate, for the benefit of each Commercial Unit (including the Open Market Areas as Limited Common Areas and Facilities appurtenant to Unit 108), as the benefitted estate, for the purpose of conducting within that portion of the Arcade that is next to or that is in the general vicinity of the Commercial Unit (or the Open Market Areas) any activities that are reasonably related to the commercial activities conducted from time to time within the Commercial Unit (or an Open Market Area) itself, including, without limitation, holding sidewalk sales, serving food (including use of the Arcade for patio dining) and displaying merchandise (collectively the "*Ancillary Uses*"), subject to the terms and conditions of this Section (all references to Unit Owners in this Section 5.6 shall include any tenants of such Owners, although the Owners shall be responsible for compliance with this section by each such tenant, and the Owner of Unit 108 as to the Open Market Areas). From time to time the Management Committee may adopt reasonable rules regulating the use of the Ancillary Easement, although the Owners of Commercial Units shall not be required to obtain the consent of the Management Committee in order to use the rights granted under the Ancillary Easement. The Ancillary Easement shall not be a dedication of the Arcade to the business public. In using the Ancillary Easement, Owners of Commercial Units: (a) must use electricity and other utilities from their own Units (or the Open Market Areas for uses in connection with such Open Market Areas) rather than utilities available in the Arcade; (b) shall cause the Arcade areas used by Owners to be maintained in a clean and sanitary condition at all times; (c) shall carry commercial general liability insurance in the limits described in Article 9 in order to provide protection from claims or liabilities arising from the Ancillary Uses (which shall list the Association as an additional insured); and (d) shall not use or operate the Arcade in a manner that unreasonably inconveniences or disturbs the quiet enjoyment of the Residential Unit Owners (considering the mixed-use nature of the Property as described in Section 2.8).

5.7. *Pedestrian Easement.* Declarant hereby grants a non-exclusive perpetual easement and right of way (the "*Pedestrian Easement*") to Agency, for the benefit of the general public, for pedestrian ingress and egress (24 hours per day; seven days per week; including pedestrian access for police, fire, emergency and safety personnel) over and through the Pedestrian Walkway so as to facilitate in part Agency's objective of providing the public with a continuing avenue of foot access between Broadway Street and Pierpont Avenue, subject to the following: (a) nothing contained in this Declaration shall obligate Declarant or its affiliates to provide any additional easements outside of the boundaries of the Property in order to accomplish Agency's objective; (b) the written consent of only Agency or its successor-in-interest shall be required in order to modify or release the Pedestrian Easement, but the foregoing shall not require Agency or its successor in interest to modify or release the Pedestrian Easement; (c) the Pedestrian Easement is not an unconditional public dedication; (d) the Pedestrian Easement may be used only for access and for no other activities, unless otherwise required by law; without limiting the generality of the foregoing, unless otherwise required by law, the grant of the Pedestrian Easement shall not permit protests, vagrancy, public indecency, unsanitary activities or commercial activities within the Pedestrian Walkway; (e) from time to time the Management Committee may make and enforce lawful and reasonable rules and regulations regarding public access under the Pedestrian Easement; (f) the Pedestrian Walkway in and through the Building may be accessed from (but only from) the access points to the Pedestrian Walkway that are shown on the Record of Survey Map as such access points may be modified with the written approval of Agency and the Management Committee; (g) the Management Committee may enforce the foregoing provisions, including evicting violating parties from the Property; (h) Agency may assign the Pedestrian Easement only to Salt Lake City or to a successor in interest of Agency's statutory obligations; and (i) in the event the Building is destroyed or for any reason is no longer situated on the Property, the Pedestrian Easement shall be relocated to a location on the Property that is reasonably acceptable to Agency and the owner of the Property and that facilitates Agency's objective of providing the public with a continuing avenue of foot access between Broadway Street and Pierpont Avenue.

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

5.9. *Arcade Area.* The Arcade is a Common Area and Facility, but it is subject to the easements that are described in this Article 5. Each party benefitted by any such easement shall cooperate with each other party so benefitted and with the Management Committee so as to permit the simultaneous, joint use of the Arcade for each of the primary purposes of the various easements. Although such joint, simultaneous uses must be accommodated, the following uses shall have priorities in descending order: (a) at all times the Pedestrian Easement must be made available for its primary purposes (recognizing that the other easement uses will be used simultaneously); (b) uses of the Commercial Easements may not restrict unreasonably pedestrian, delivery, emergency and other access through the Arcade and may not block doorways to any Commercial Units; and (c) the Management Committee may permit and sponsor live music and artistic performances within commercially reasonable areas of the Arcade on a non-profit basis (using donations deposited into the Sculpture--see Section 8.1.3--or otherwise), to the extent that the Arcade is not being used otherwise for purposes under the Commercial Easements. Notwithstanding the foregoing provisions to the contrary, the Arcade Area shall not be used or operated in any manner that unreasonably inconveniences or disturbs the quiet enjoyment of the Residential Units by their Owners (considering the mixed used nature of the Property as described in Section 2.8).

5.10. *General Provisions.* Each easement and right created by this Article 5 is an appurtenance to the real property benefitted thereby and is a burden on the real property burdened thereby. Except as is expressly provided otherwise in the section that creates the easement and right, the easement may not be transferred, assigned or encumbered except as an appurtenance to the benefitted real property. No such easement or right may be amended except with the consent of the easement holder (but as to easements benefitting more than one Unit, the consent may be given by those Owners of Units in the benefitted group that own more than 50% of the Undivided Interests related to the benefitted Units, and the consent, when so given, shall be binding upon all benefitted Units within the group). All conveyances of Condominium Units shall be deemed to be made together with and subject to the easements set forth in this Article 5. The easements created under this Article 5 shall terminate upon the termination of the Declaration. The use of any easement granted under this Declaration shall not unreasonably inconvenience or disturb the quiet enjoyment of Residential Units by their Owners (considering the mixed-use nature of the Property as described in Section 2.8).

5.11. *Administration.* Notwithstanding any provisions in this Article 5 to the contrary, Declarant (in place of the Management Committee) shall administer any approvals and restrictions for the Sign Easement and the Commercial Easements until the earliest of: (a) the date that is three years after the date that this Declaration is recorded in the Official Records; (b) the date on which Units to which 50% or more of the Undivided Interests appertain have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant; or (c) the date on which Declarant surrenders any right to the Management Committee in writing, which surrender

may cover any one or more activities related to an easement or to one or more easements in whole. Thereafter, the Management Committee shall administer the activity or easement as called for in this article.

Article 6.
Management Committee.

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

6.1.1. *Access.* To have access to each Unit from time to time during reasonable hours as may be necessary for the operation, maintenance, repair or replacement of any of the Common Areas and Facilities and the Limited Common Areas and Facilities or for making Emergency Repairs necessary to prevent damage to the Common Areas and Facilities, the Limited Common Areas and Facilities or to another Unit or Units;

6.1.2. *Hold Title.* To acquire and hold real and personal property (in the name of the Association) of all types for the use and benefit of all of the Unit Owners and to dispose of such property by sale or other method;

6.1.3. *Personnel.* To obtain and pay for the services of such personnel as are necessary or appropriate for the proper operation, management, maintenance, repair and replacement of the Property;

6.1.4. *Services.* To pay for utility and municipal services, insurance and other goods and services common to the Units;

6.1.5. *Easements.* Without the vote or consent of the Unit Owners, Mortgagees, insurers or guarantors of Mortgages or of any other person, to grant or create (and/or to relocate), on such terms as it deems advisable, reasonable permits, licenses, rights-of-way and easements over, under, across and through the Common Areas and Facilities and/or Limited Common Areas and Facilities for utilities, roads and other purposes reasonably necessary or useful for the proper operation and maintenance of the Property, including, but not limited to, granting cross-easements for parking and charging fees for making cross-uses of the Property, which fees shall be payable to the Management Committee for the purpose of defraying Common Expenses (all subject to the limitations that are set forth in Section 4.6.1), and granting easements for access and support to adjoining property owners;

6.1.6. *Declaration and Record of Survey Map.* To execute and record, on behalf of the Unit Owners, any amendment to this Declaration or the Record of Survey Map that has been approved by the vote or consent necessary to authorize such amendment;

6.1.7. *Suits.* To sue and be sued;

6.1.8. *Contracts and Property Transfers.* To enter into contracts that in any way concern the Property, to convey or transfer any interest in real property (on behalf of the Association), to purchase, acquire and accept title to any interest in real property and to add any interest in real property so obtained to the Property (in the name of the Association), so long as any vote or consent necessitated by the subject matter of the agreement has been obtained;

6.1.9. *Rules and Regulations.* To promulgate the Rules and Regulations set forth on the attached exhibit B and other reasonable Rules and Regulations (whether similar or dissimilar to those set forth on the attached exhibit B) as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interests of the Unit Owners and this Declaration;

6.1.10. *Assessments.* To levy and collect general and special assessments for the payment of Common Expenses as provided in Article 8;

6.1.11. *Use of Common Areas.* To make such use of the Common Areas and Facilities and the Limited Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that the Management Committee is obligated to perform pursuant to this Declaration, including the designation, from time to time, of portions of Common Areas and Facilities for specific purposes for the benefit of the Property; and

6.1.12. *Other.* To perform any other acts and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Unit Owners.

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

6.2. *Composition.* The Management Committee shall be composed of three natural persons and shall be subject to the following terms and conditions:

6.2.1. *Selection.* At the first regular Unit Owners' meeting, two Management Committee members shall be elected for two-year terms and one member for a one-year term. At each annual Unit Owners' meeting thereafter, any vacant seat on the Management Committee shall be filled with a member elected for a two-year term. Only Unit Owners and officers, partners, managers, members and agents of non-individual Unit Owners (or of constituent entity-owners of those non-individual Unit Owners, at one or more tiers removed from the Unit Owner itself) shall be eligible for Management Committee membership, except for members appointed by Declarant, who need not be Unit Owners. If a member of the Management Committee fails to satisfy the foregoing requirement at any time during that member's term, then that member's term of office shall immediately and automatically terminate. At each annual Unit Owners' meeting the Undivided Interests appurtenant to a Unit may be voted in favor of as many candidates for Management Committee membership as there are seats on the Management Committee to be filled. There shall be no cumulative voting for members of the Management Committee. Unless the member forfeits or otherwise loses the member's seat as provided in this Declaration, a member shall serve

on the Management Committee until the member's successor is elected and qualifies. Notwithstanding the foregoing provisions, until the first annual meeting of the Unit Owners, the members of the Management Committee shall be the following persons, and each shall also hold the office(s) indicated opposite the person's name:

<i>Name</i>	<i>Office</i>
Kenneth C. Millo	President
Jeffrey D. Brunken	Vice President
Bruce B. Allen	Secretary/Treasurer

6.2.2. *Removal; Vacancies.* Any member of the Management Committee may be removed by a vote of a Majority of the Unit Owners. On a vacancy prior to the expiration of the relevant term, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration of the term for which the member being replaced was elected.

6.2.3. *Reimbursements; Compensation.* Management Committee members shall be reimbursed for all expenses reasonably incurred in connection with Management Committee business provided that such expenses are first approved by the Management Committee. The Management Committee may fix such compensation for any member as may be reasonable in light of the Management Committee duties which that member is required to perform, subject to the approval of a Majority of the Unit Owners; provided, however, that notwithstanding the foregoing no compensation shall be paid to members of the Management Committee until the earlier of the date on which: (a) Units to which 50% or more of the Undivided Interests are appurtenant have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant; or (b) at least one person who is not affiliated with Declarant (or a member of Declarant or a person that controls, is under common control with or is controlled by Declarant) serves on the Management Committee.

6.2.4. *Actions by Declarant.* Notwithstanding the foregoing, Declarant may appoint and remove some or all of the members of the Management Committee, or exercise powers and responsibilities otherwise assigned by the Act or this Declaration to the Management Committee or the Association of Unit Owners; provided, however, that: (a) Declarant must give the Management Committee written notice of any power or responsibility so assumed; (b) no amendment to this Declaration not consented to by a Super Majority of the Unit Owners shall increase the scope of the foregoing authorization; and (c) no such authorization shall be valid after the first to occur of: (i) the date which is three years after the date that this Declaration is recorded in the Official Records; (ii) the date on which Units to which 50% or more of the Undivided Interests are appurtenant have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant; or (iii) the date on which Declarant surrenders any power or responsibility to the Management Committee in writing.

6.3. *Officers and Agents.* The Management Committee shall perform its functions through those members who are elected as officers by the Management Committee and through such agents or employees as the Management Committee may appoint or employ. Any Management Committee officer, agent or employee may at any time be removed with or without cause by the vote of a majority of the Management

Committee members. The officers of the Management Committee and their respective powers and functions shall be as follows:

6.3.1. *President.* The president shall be the chief executive officer of the Management Committee and shall exercise general supervision over the Property and the affairs of the Property. The president shall preside over all meetings of the Management Committee and of the Unit Owners, and shall execute all instruments on behalf of the Management Committee.

6.3.2. *Vice President.* The vice president shall have all of the powers of the president in the president's absence or inability to act.

6.3.3. *Secretary.* The secretary shall keep minutes of the meetings of the Management Committee and of the Unit Owners and shall keep all records which are required or made necessary by the Act, this Declaration or the Management Committee.

6.3.4. *Treasurer.* The treasurer shall have custody and control of the funds available to the Management Committee. On request of the Management Committee, the treasurer shall furnish the Management Committee with a bond, the cost of which shall be a Common Expense, in the amount specified by the Management Committee, conditioned on the faithful performance of the treasurer's duties. The offices of secretary and treasurer or of vice president and treasurer may be held by the same Management Committee member.

6.4. *Meetings.* A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual Unit Owners' meeting. Other regular meetings shall be held at periodic intervals at such time and place as the Management Committee may decide. Either oral or written notice shall be given to each Management Committee member of the time and place of each regular Management Committee meeting at least three days prior to such meeting. Special Management Committee meetings shall be held whenever called by the president or any two members of the Management Committee. Reasonable effort shall be made to give either oral or written notice of a special meeting to each Management Committee member at least three days (but on an emergency, 14 hours) before the time fixed for the meeting. Adequate notice of a special meeting shall be deemed to have been given to a member if such effort is made, even though the member concerned does not actually receive notice. The propriety of holding any meeting that is attended by all Management Committee members may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Management Committee meeting shall consist of a majority of all of the members then in office.

6.5. *Records.* The Management Committee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Areas and Facilities and the Limited Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and the Limited Common Areas and Facilities and any other expenses incurred. Such records and the vouchers authorizing the payments involved shall be available for examination by the Unit Owners at convenient hours on weekdays. The Management Committee shall maintain up-to-date records showing the following:

6.5.1. *Owners.* The name of each person who is a Unit Owner, the address of such person and the Unit that is owned by such person;

6.5.2. *Eligible Mortgagee.* The name of each person who is an Eligible Mortgagee, the address of such person and the Unit that is encumbered by the Mortgage held by such person; and

6.5.3. *Eligible Insurer or Guarantor.* The name of each person who is an Eligible Insurer or Guarantor, the address of such person and the Unit that is encumbered by the Mortgage insured or guaranteed by such person.

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

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

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

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

6.7.2. *Specific Listing.* Without limiting the generality of Section 6.7.1 and notwithstanding any provision of the Governing Documents to the contrary, neither the Management

Committee, the Association of Unit Owners nor any member of the Management Committee shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Premises or other cause beyond such person's reasonable control.

6.7.3. *Indemnity.* The Unit Owners and the Association (as the Indemnifying Party) indemnify each member of the Management Committee and each officer of the Association (as the Indemnified Party) against all claims made by third parties arising out of any contract made by the Management Committee on behalf of the Unit Owners, unless such contract was made in bad faith. The liability of any Unit Owner arising out of any contract made by the Management Committee or an officer of the Association or out of the indemnification provision set forth in the immediately preceding sentence shall be limited to the total liability concerned multiplied by such Unit Owner's Undivided Interest.

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

<i>Name</i>	<i>Address</i>
Bruce B. Allen	366 South 500 East, Suite 201 Salt Lake City, Utah 84102

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

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

Article 7.
Meetings of Unit Owners.

7.1. *Annual Meetings.* Beginning in 2003, the annual meeting of the Unit Owners shall be held at 7:00 p.m. on the third Tuesday in November of each year or at such other time and place as the Management Committee shall select for the purpose of approving the budget for the upcoming calendar year and for transacting such other Property business as may be necessary or appropriate. The place of such meeting shall be at a location in Salt Lake County, Utah. A written notice of such meeting, setting forth the time, place and general purpose of the meeting shall be given to each Unit Owner by the Management Committee in accordance with Section 15.2.

7.2. *Special Meetings.* Special meetings of the Unit Owners may be called by the president of the Association, by any two members of the Management Committee or by any ten Unit Owners. At least two but not more than 30 days before the date set for a special meeting, written notice shall be given by the Management Committee to the Unit Owners as set forth in Section 7.1.

7.3. *Notice; Quorum.* No notice of any Unit Owners' meeting shall be required if a waiver of such notice is signed by all of the Unit Owners. Whenever all of the Unit Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice. The presence of a Majority of the Unit Owners shall constitute a quorum for the transaction of business at any Unit Owners' meeting. If a quorum is not present at any Unit Owners' meeting, whether regular or special, then the meeting may be adjourned and rescheduled for a time no earlier than 48 hours, and no later than 30 days, after the time set for the original meeting. Notice of such rescheduled meeting shall be delivered as set forth in Section 7.1 at least 48 hours prior to such rescheduled meeting. Notwithstanding the foregoing provisions of this Section 7.3, however, in any case in which the Act or this Declaration requires the affirmative vote of at least a specified percentage of the Undivided Interests for authorization or approval of a matter, the presence of Unit Owners entitled to cast such percentage shall be necessary to constitute a quorum at any meeting (whether original or rescheduled) at which action on such matter is taken.

7.4. *Voting.* The vote attributable to and exercisable in connection with a Unit shall be the Undivided Interest that is then appurtenant to such Unit. If there is more than one Owner of a particular Unit, then the vote relating to such Unit shall be exercised as such Unit Owners may determine among themselves. A vote cast at any meeting by any of such Unit Owners shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. If such an objection is made, then the vote of such Unit Owners shall not be counted for any purpose other than to determine whether a quorum exists. Any Unit Owner may vote by a written proxy duly executed by such Unit Owner.

7.5. *Consent in Lieu of Vote.* In any case in which the Act or this Declaration requires the vote of a stated percentage of Undivided Interests for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of Undivided Interest, provided that: (a) all necessary consents must be obtained prior to the expiration of 90 days after the first consent is given by any Unit Owner; (b) any change in ownership of a Unit which occurs after consent has been obtained from the prior Owner of such Unit shall not be considered or taken into account for any purpose; and (c) unless the consent of all of the Unit Owners having an interest in the same Unit is secured, the consent of none of such Unit Owners shall be effective.

Article 8.

Common Areas and Facilities.

8.1. *Common Areas and Facilities.* Subject to the specific obligations of Unit Owners to maintain Limited Common Areas and Facilities appurtenant to their Units (including the Owner of Unit 108, which is benefitted by the Open Market Areas as Limited Common Areas and Facilities) and Commercial Unit Owners to maintain portions of the Arcade, as described variously in Sections 3.5, 3.6, 4.11, 5.2, 5.6 and 5.8 and elsewhere, the necessary work of operation, management, maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities and the making of any additions or improvements to the Common Areas and Facilities and the Limited Common Areas and Facilities shall be carried out only by the Management Committee, subject to the following:

8.1.1. *Operation.* The Management Committee shall provide for such operation, management, maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, safe, functional, attractive and generally in good condition and repair, and shall pay for all utility services furnished to the Common Areas and Facilities and the Limited Common Areas and Facilities; provided, however, that: (a) individual Unit Owners shall be responsible for maintaining Limited Common Areas and Facilities appurtenant to their own Units as described in Section 3.6; (b) the Owner of Unit 108 shall be responsible to pay for utility services in connection with using the Open Market Areas (as Limited Common Areas and Facilities appurtenant to Unit 108), as described in Section 4.11; and (c) the Owner of Unit 108 shall keep the Open Market Areas clean, safe, functional, attractive, generally in good condition and repair and otherwise in accordance with Section 3.6. The maintenance shall include the removal of weeds and debris on the Property and periodic cleaning, sweeping, removal of ice, snow and rubbish, re-stripping and resurfacing of the Parking Area. To the fullest extent permitted by law: (y) the Management Committee may provide common services that benefit only a portion of the Units; but (z) the Common Expenses for those services shall be allocated among the benefitted Units as set forth in Section 8.2.

8.1.2. *Improvements.* Additions or capital improvements to the Property which cost no more than \$15,000.00 may be authorized by the Management Committee alone. Additions or capital improvements to the Property the cost of which will exceed such amount must, prior to being constructed or accomplished, be authorized by a Majority of the Unit Owners. Any addition or capital improvement that would materially alter the nature of the Property must, regardless of its cost and prior to being constructed or accomplished, be authorized by a Super Majority of the Unit Owners.

8.1.3. *Costs and Revenues.* The cost of compliance with this Section 8.1 shall be part of the Common Expenses. Any cash deposited in the Sculpture shall be administered by the Management Committee, which may use all or part of the cash, from time to time, to support music and art performances in the Arcade area and/or to donate to one or more charities. Additional sources of revenue to the Management Committee include: reimbursement of previously unrecoverable expenses (Section 1.9.7); fees paid for using the Parking Area (Section 4.6.3); fees paid for cross-use of the Property (Section 6.1.5); and excess Condemnation or insurance proceeds (Sections 10.3 and 10.7).

8.2. *Common Expenses Budget.* Before November 1st of each year the Management Committee shall prepare a budget that sets forth an itemization of the anticipated Common Expenses for the next following calendar year. Such budget shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. If any Common Expenses benefit fewer than all of the Units, then to the fullest extent permitted by law the Management Committee may allocate those Common Expenses to the benefitted Units, which allocation may be among Residential Units only, among Commercial Units only, among all Units or among those scattered Units that are benefitted by the Common Expense, and the Management Committee may adjust assessments for Unit Owners accordingly. Notwithstanding the foregoing, the Management Committee shall apportion Common Expenses: (a) between Commercial Units and Residential Units in a fair and non-discriminatory manner; and (b) among Units that are similarly situated based on the proportion that their respective Undivided Interests bear to each other. Common Expenses for elevators, stairs, safety lighting of Common Areas and Facilities, Parking Areas and front sidewalks benefit all Units and therefore shall be allocated based on Undivided Interests. Alternatively and in its sole discretion, the Management Committee may apportion all Common Expenses among the Units on the basis of their respective Undivided Interests. The Management Committee shall be the exclusive arbitrator of any disputes regarding such apportionment, and any decision rendered by the Management

Committee with respect to any such dispute shall be final, binding and conclusive for all purposes. Such budget shall be subject to the approval of a Majority of the Unit Owners.

8.3. *Assessments.* Unit Owners shall pay assessments in accordance with the following terms and provisions:

8.3.1. *Regular Assessments.* Prior to 1 January of each calendar year, the Management Committee shall notify each Unit Owner of the amount of its share of the Common Expenses for that calendar year as set forth in the relevant budget. Prior to the first day of each calendar month during such calendar year, each Unit Owner shall pay to the Management Committee as its share of the Common Expenses one-twelfth of the amount apportioned to its Unit.

8.3.2. *Adjustments; Special Assessments.* The Management Committee may at any time or from time to time during any calendar year revise such budget or make a special assessment (which revision or special assessment shall be subject to the approval of a Majority of the Unit Owners) and then alter the amount of the monthly payments or mandate a special payment to be made by the Unit Owners. The foregoing method of assessing the Common Expenses to the Units shall commence when Declarant conveys the first Condominium Unit to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant, and may thereafter be altered by the Management Committee in a manner consistent with good accounting practice and requiring allocations of Common Expenses in the manner set forth above, subject to the approval of a Majority of the Unit Owners.

8.3.3. *Late Payments and Assessments.* The Management Committee may establish and assess reasonable charges for delinquent payments of such monthly or special payments. A late fee equal to 5% of the delinquent amount and interest at the rate of 18% per annum on the delinquent amount shall be deemed to be reasonable. The failure of the Management Committee to give timely notice of any assessment shall not be deemed a waiver, modification or release of the obligation of any Unit Owner to pay any assessment, but the date when payment for the assessment(s) concerned shall become due in such case shall be deferred to a date that is fifteen (15) days after notice of such assessment is given to the Unit Owner concerned; provided, however, that such deferral shall not have the effect of deferring any subsequent installment. All payments made by a Unit Owner under the Declaration shall be applied first to pay any costs of collection, next to outstanding Fines and late charges, next to interest and finally to assessments or other amounts due from the Unit Owner.

8.3.4. *No Exemption.* No Unit Owner may exempt itself from liability for its contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or Limited Common Areas and Facilities or abandonment of its Unit. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Property; from the exercise of any easements or rights under this Declaration, including the Commercial Easements and the Pedestrian Easement; or from any action taken to comply with the Governing Documents or any applicable law, ordinance, rule, regulation or order.

8.4. *Collection of Assessments.* As set forth in Section 8.3, every Unit Owner shall pay its proportionate share of the Common Expenses in the amounts and at the times determined by the Management Committee in accordance with such section. The obligation to pay assessments is subject to the following terms and conditions:

8.4.1. *Personal Obligation.* The amount of Common Expenses assessed against each Unit is a personal debt and obligation of the Unit Owner at the time the assessment is made and is collectible as such and, if not paid when due, shall (together with any applicable late charges) accrue interest at the rate of 18% per annum, both before and after judgment, until paid in full. Suit to recover a money judgment for unpaid Common Expenses is maintainable without foreclosing or waiving the lien securing it, as described in Section 8.4.4. The prevailing party in such action is entitled to recover its costs of suit and reasonable attorneys' fees.

8.4.2. *Cessation of Services.* If a Unit Owner shall be in default for the period of one month in the payment of assessments, then the Management Committee may, at its option, and for so long as such default shall continue, cease to provide any or all services to such Owner's Unit and to any Limited Common Areas or Facilities pertaining to such Unit.

8.4.3. *Collection of Rent.* If a Unit Owner shall at any time lease or rent its Unit and shall default for a period of one month in the payment of assessments, then the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Unit Owner the rent due or becoming due, and each Unit Owner hereby authorizes and consents to the payment of such rent by any tenant to the Management Committee. The payment of net rent to the Management Committee shall discharge such tenant for rent due and shall discharge the Unit Owner for such assessments to the extent of the amount so paid.

8.4.4. *Lien.* If any Unit Owner fails or refuses to make any payment of Common Expenses when due, then the amount then or thereafter due (together with any applicable late charges and interest) shall constitute a lien on such Owner's Condominium Unit, and on the recording of a notice of lien (the "*Notice of Lien*") by the Management Committee in the Official Records, shall be a lien on such Owner's Condominium Unit prior to all other liens and encumbrances, recorded or unrecorded, except for: (a) tax and special assessment liens on such Condominium Unit in favor of any assessing unit or special improvement district; and (b) encumbrances on such Condominium Unit recorded on or prior to the date such Notice of Lien is recorded which by law would be a lien prior to subsequently recorded encumbrances.

8.4.5. *Notice of Lien.* A Notice of Lien: (a) shall set forth the amount of the unpaid assessment, the date due, the name of the Unit Owner and a description of the Condominium Unit concerned; (b) shall be executed and acknowledged by the Management Committee; and (c) may be recorded in the Official Records. At the option of the Management Committee, the Management Committee may also appoint a legally qualified trustee in the Notice of Lien and set forth such additional information in the Notice of Lien that shall constitute the Notice of Lien as a notice of default under Utah Code Annotated Section 57-1-19, et seq. (Supp. 2002, as it may be amended from time to time; the "*Utah Trust Deed Act*"). Each Unit Owner is deemed to have given and granted a power of sale under the Utah Trust Deed Act to the trustee appointed by the Management Committee, who may exercise a private power of sale under and in accordance with the Utah Trust Deed Act.

8.4.6. *Enforcement of Lien.* The lien for nonpayment of Common Expenses may be enforced by sale or foreclosure of the Condominium Unit concerned by the Management Committee. Such sale or foreclosure shall be conducted in the same manner as the exercise of a private power of sale or a foreclosure under a deed of trust pursuant to the Utah Trust Deed Act, as a foreclosure of a mortgage, as the exercise of any other remedy under a Mortgage or in any other manner permitted by law. In any such sale or foreclosure, the Unit Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the Notice of Lien. In the case of foreclosure, the

Unit Owner shall pay a reasonable rental for the Unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

8.5. *Estoppel Statement.* The Management Committee shall, on the written request of any Unit Owner or any Mortgagee or prospective Mortgagee or purchaser of a Condominium Unit, and on payment of a reasonable fee not to exceed \$10.00 (or such higher amount that is selected by the Management Committee and that is permitted by the Act), issue to the requesting person or persons a written statement setting forth the unpaid Common Expenses for such Condominium Unit. Such written statement shall be conclusive on the remaining Unit Owners and on the Management Committee in favor of all persons who rely on such written statement in good faith. Unless the Management Committee complies with the request for such statement within twenty (20) days, all unpaid Common Expenses which became due prior to the date such request was made shall be subordinate to the lien held by the person requesting such statement. Any encumbrancer holding a lien on any Condominium Unit may pay any unpaid Common Expenses payable with respect to such Condominium Unit and on payment such encumbrancer shall have a lien on such Condominium Unit for the amounts paid of the same rank as the lien of its encumbrance.

8.6. *Audit.* Any Unit Owner may at any reasonable time, on appointment and at its own expense, cause an audit or inspection to be made of the books and records maintained by the Management Committee.

8.7. *Utilities.* All utilities on the Property that run to the Building must be installed underground. Any equipment installed on the roof of the Building must not be visible from the ground level within the Property.

Article 9. *Insurance.*

9.1. *Insurance.* The Management Committee shall at all times maintain in force, and pay the premiums for, insurance meeting the requirements set forth in this Article 9, the cost of which shall be part of the Common Expenses.

9.2. *Property Insurance.* A "master" or "blanket" type policy of casualty and property insurance shall be maintained covering the Property, excluding the Land, foundations and other items normally not covered by such policies. References in this Declaration to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. At 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 condominium projects similar to the Property in construction, location and use, including, without limitation, all perils normally covered by the standard "all risk" endorsement where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than 100% of the then-current replacement cost of all elements of the Property covered by such policy. The maximum deductible amount for such policy shall be the lesser of \$10,000.00 or one percent of the policy face amount. The name of the insured under such policy shall be "Uffens Marketplace Unit Owners Association, for the use and benefit of the individual Unit Owners." Said Unit Owners shall be designated by name, if required. Any loss payable shall be in favor of the Association, as trustee for each Unit Owner and its Mortgagee. Each Unit Owner and its Mortgagee shall be beneficiaries of such policy in the percentage of such Unit Owner's Undivided Interest. Evidence of insurance shall be issued to each Unit Owner and its

Mortgagee on request. Such policy shall contain the standard mortgagee clause or equivalent endorsement (without contribution), and shall include a provision that such policy shall not be canceled or materially changed without at least 30 days' prior written notice to the Management Committee and to each Mortgagee that is listed as a scheduled holder of a Mortgage in such policy. Such policy shall also provide a waiver of the right of subrogation against Unit Owners individually, that the insurance shall not be prejudiced by any act or omission of any Unit Owner that is not in the control of the Unit Owners collectively and that the policy shall be primary if any Unit Owner has other insurance covering the same loss.

9.3. *Liability Insurance.* The Management Committee shall maintain in force and pay the premium for a policy providing commercial general liability insurance coverage for all of the Common Areas and Facilities, the Limited Common Areas and Facilities and all other areas of the Property that are under the Management Committee's supervision. The name of the insured under such policy shall be "Uffens Marketplace Unit Owners Association, for itself and for individual Unit Owners." The coverage limits under such policy shall be in amounts generally required by private institutional Mortgagees for condominium projects similar to the Property in construction, location and use. Nevertheless, such coverage shall be for at least \$1,000,000.00 for property damage, bodily injury and death arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injury and death in connection with the operation, maintenance and use of the Common Areas and Facilities and the Limited Common Areas and Facilities and legal liability arising out of lawsuits related to employment contracts of the Management Committee. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to condominium projects similar to the Property in construction, location and use, including, without limitation, host liquor liability, contractual and all-written contract insurance, employers liability insurance, worker's compensation insurance and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, then the policy shall include a special endorsement to preclude an insurer's denial of any Unit Owner's claim because of negligent acts of the Management Committee or any other Unit Owner. If possible, such policy shall provide that it may not be canceled or materially changed without at least 30 days' prior written notice to the Management Committee and to each Mortgagee that is listed as a scheduled holder of a Mortgage in such policy.

9.4. *Flood Insurance.* If any part of the Property is or comes to be located in an area identified by the Federal Emergency Management Agency as having special flood hazards, a "master" or "blanket" policy of flood insurance shall be maintained covering the Building, any machinery and equipment that are not part of the Building but which are owned by the Association and any other common areas within the Property in an amount reasonably determined to be appropriate by the Management Committee.

9.5. *General Requirements.* Each insurance policy maintained pursuant to this Article 9 shall be written by an insurance carrier that is licensed to transact business in the State of Utah and that has a rating in *Best's Key Rating Guide* of A:XII or better, or which is written by Lloyd's of London even though it has no *Best's* rating. No such policy shall be maintained where: (a) under the terms of the carrier's charter, bylaws or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a borrower, a Mortgagee, the Management Committee or the Association of Unit Owners, (b) under the terms of the carrier's charter, bylaws or policy, loss payments are contingent on action by the carrier's board of directors, policyholders or members, or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association of Unit Owners or a Unit Owner) from collecting insurance proceeds. The provisions of this Article 9 shall not be construed to limit the power or authority of the Management Committee to obtain and maintain insurance coverage in addition to any insurance coverage

required under this Declaration in such amounts and in such forms as the Management Committee may deem appropriate from time to time. In addition, such provisions for insurance shall be without prejudice to the right of each Unit Owner to insure its own Unit for its benefit. The exclusive authority to adjust losses under all policies obtained by the Management Committee shall be vested in the Management Committee. In no event shall the insurance coverage obtained and maintained by the Management Committee be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees.

Article 10.

Destruction; Condemnation; Restoration.

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

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

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

10.1.3. "*Estimated Costs of Restoration*" means the estimated costs of Restoration as determined by the Management Committee in its sole discretion.

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

10.1.5. "*Restored Value*" means the value of the Property after Restoration.

10.1.6. "*Substantial Condemnation*" means the occurrence of: (a) the Condemnation of all of the Property; or (b) the Condemnation of part of the Property where the excess of the Estimated Costs of Restoration over Available Funds is 25% or more of the estimated Restored Value of the Property. "*Partial Condemnation*" means the occurrence of any Condemnation which is not a Substantial Condemnation.

10.1.7. "*Substantial Destruction*" means the occurrence of any damage or destruction of the Property where the excess of the Estimated Costs of Restoration over Available Funds is 25% or more of the estimated Restored Value of the Property. "*Partial Destruction*" means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

10.2. *Management Committee Determinations*. On the occurrence of any Condemnation of, or damage or destruction to, the Property, the Management Committee shall make a determination as to whether the excess of the Estimated Costs of Restoration over Available Funds is 25% or more of the estimated Restored Value of the Property. In making such determinations the Management Committee may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

10.3. *Restoration*. Restoration of the Property shall be undertaken by the Management Committee promptly without a vote of the Unit Owners on the occurrence of Partial Condemnation or Partial Destruction, and shall also be undertaken on the occurrence of Substantial Condemnation or Substantial Destruction unless the election not to undertake Restoration is consented to by a Two-thirds Majority of the Unit Owners and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees. Within 30 days after the Management Committee has determined that Substantial Condemnation or Substantial Destruction has occurred, it shall send to each Unit Owner and Eligible Mortgagee a written description of the Condemnation or the damage or destruction involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration and shall, with or without a meeting of the Unit Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Unit Owners regarding Restoration. If Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Management Committee exceed the cost of Restoration when Restoration is undertaken, then the excess shall be paid and distributed to the Unit Owners in proportion to their respective Undivided Interests or, in the discretion of the Management Committee, shall be held to defray future Common Expenses. Payment to any Unit Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Unit Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, then all of the Units shall be assessed for the deficiency on the basis of their respective Undivided Interests. If all or any portion of one or more Units is damaged or destroyed but is not the subject of Restoration (even through the Property will continue as a condominium project) or is taken in a Condemnation, then the Undivided Interest of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 10.6.

10.4. *Sale of Property*. Unless Restoration is accomplished pursuant to Section 10.3, the Property shall be sold following the occurrence of Substantial Condemnation or Substantial Destruction. On such sale, condominium ownership under this Declaration and the Record of Survey Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Management Committee to the Unit Owners in proportion to their respective Undivided Interests. Payment to any Unit Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Unit Owner and the interested Mortgagee.

10.5. *Authority to Represent Unit Owners*. The Management Committee, as attorney-in-fact for each Unit Owner, shall represent all of the Unit Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their Mortgagees as their respective interests may appear. The Management Committee, as attorney-in-fact for each Unit Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein

wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

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

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

Article 11.

Rights of Certain Parties.

11.1. *Mortgagee Protection.* The lien or claim against a Condominium Unit for unpaid assessments or charges levied by the Management Committee pursuant to the Act or this Declaration shall be subordinate to any Mortgage recorded on or before the date such assessments or charges become due, and shall not be affected by any sale or transfer of such Condominium Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Condominium Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments or charges which are extinguished in accordance with the immediately preceding sentence may be reallocated and assessed to all Condominium Units as Common Expenses, including the Condominium Unit that is the subject of such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Condominium Unit from liability for, nor such Condominium Unit from the lien of, any assessments or charges becoming due thereafter or reallocated pursuant to the immediately preceding sentence. The Management Committee shall make available for inspection on request during

normal business hours or under other reasonable circumstances to Unit Owners, Mortgagees and insurers and governmental guarantors of any Mortgage, current copies of this Declaration, the Record of Survey Map, the Rules and Regulations and the books, records and financial statements of the Management Committee. On written request to the Management Committee by any Mortgagee or insurer or governmental guarantor of a Mortgage (which request identifies the name and address of such Mortgagee or insurer or guarantor and the Unit Number or address of the Unit encumbered by the Mortgage concerned), such Mortgagee, insurer or guarantor shall thereafter be deemed to be an Eligible Mortgagee or Eligible Insurer or Guarantor, as the case may be, shall be included on the appropriate lists maintained by the Management Committee, and shall be entitled to timely written notice of any of the following:

11.1.1. *Condemnation or Casualty Loss.* Any Condemnation or casualty loss that affects a material portion of the Property or any Unit on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor;

11.1.2. *Delinquencies.* Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of 60 days;

11.1.3. *Insurance.* Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Management Committee; and

11.1.4. *Consent.* Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 10.3.

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

11.3. *Third Party Beneficiary Rights; Modification or Termination.* Agency is an intended third party beneficiary of those provisions of this Declaration that mention Agency or that are outlined in and/or required by the "Interim Declaration" (as defined in Section 2.5.2) (the "Agency Covenants") and may enforce any of the provisions of the Agency Covenants against Declarant, its successors and assigns. In the event of a violation or threatened violation of any Agency Covenant by Declarant or any of its successors and assigns, Agency, its successors and assigns, shall have all remedies at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation and by decree to compel specific performance of any terms, covenants or conditions of the Agency Covenant, it being agreed that the remedy at law for any breach of any such term, covenant or condition is not adequate.

Article 12. *Enforcement.*

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

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

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

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

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

12.5. *Right to Cure.* If any Unit Owner fails to perform any obligation under this Declaration, then the Management Committee may proceed to cure the default after 30 days written notice and failure of the Unit Owner to commence, and thereafter diligently to prosecute, such cure, and the Management Committee shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the rate of 18% per annum from the date such costs were paid, plus collection costs. Furthermore, the Management Committee shall have a lien on the Unit of the Unit Owner (or on the Unit Owner's interest therein, as applicable) for all such amounts in the same manner as if it were a lien for nonpayment of assessments under Section 8.4.

12.6. *Fines.* The Management Committee may assess a fine (the "*Fine*") against a Unit Owner for a violation of the Rules and Regulations after the requirements of the following subsections have been met:

12.6.1. *Notice.* Before assessing a Fine, the Management Committee shall give notice to the Unit Owner of the violation and inform the Unit Owner that a Fine will be imposed if the violation is not cured within 48 hours (or such longer period that the Management Committee identifies in the notice).

12.6.2. *Limitations.* A Fine assessed under this Section 12.6 shall: (a) be made only for a violation of a Rule or Regulation that is specifically listed in the Rules and Regulations as an offense which is subject to a Fine; (b) be in the amount specifically provided for in the Rules or Regulations for that specific type of violation, not to exceed \$500.00; and (c) accrue interest at the rate 18% both before and after judgment, until paid in full, and late fees. Cumulative Fines for a continuing violation may not exceed the amount of \$500.00 per month.

12.6.3. *Hearing.* A Unit Owner who is assessed a Fine may request an informal hearing to protest or dispute the Fine within 30 days from the date the Fine is assessed. The hearing shall be conducted in accordance with the following standards: (a) the Management Committee shall hear the protest or dispute; (b) the Unit Owner may present evidence and examine witnesses, which shall be informal and shall not be subject to formal rules of evidence; (c) any member of the Management Committee may examine evidence and ask questions of witnesses; (d) the decision of a majority of the members of the Management Committee shall be the action of the Management Committee; and (e) the Management Committee shall make a determination whether the applicable Rule or Regulation has been violated, applying a "reasonable person" standard. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

12.6.4. *Appeal.* A Unit Owner may appeal a Fine by initiating a civil action within 180 days after: (a) a hearing has been held and a final decision has been rendered by the Management Committee under Section 12.6.3; or (b) the time to request an informal hearing under Section 12.6.3 has expired without the Unit Owner making such a request.

12.6.5. *Lien.* A Fine assessed under this section which remains unpaid after the time for appeal under Section 12.6.4 has expired becomes a lien against the Unit Owner's interest in the Condominium Unit in accordance with the same standards as a lien for the nonpayment of Common Expenses under Section 8.4.

12.6.6. *Uniform Application.* This Section 12.6 and any implementing Rules and Regulations shall become effective only if Fines may be imposed uniformly against Commercial Units and Residential Units, whether by way of amendment to the Act, interpretation of the Act or otherwise.

Article 13. *Modifications.*

13.1. *Amendment.* Except as provided in this Section 13.1, the vote of a Two-Thirds Majority of the Unit Owners shall be required and shall be sufficient to amend this Declaration or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section 13.1 for amendment has

occurred and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment is subject to the following:

13.1.1. *Rights of Declarant.* No amendment to this Declaration or the Record of Survey Map which has the effect of diminishing or impairing any right, power, authority, privilege, protection or control accorded to Declarant in its capacity as Declarant shall be effective unless consented to in writing by Declarant.

13.1.2. *Rights of Eligible Mortgagees.* The consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51 % of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees shall be required to amend any material provision of this Declaration or the Record of Survey Map that provides for any of the following, unless made in accordance with Article 10: (a) voting; (b) assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities; (d) insurance; (e) rights to use the Common Areas and Facilities and the Limited Common Areas and Facilities; (f) responsibility for maintenance and repair of the Property; (g) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (h) the perimeter boundaries of any Unit; (i) the interests in the Common Areas and Facilities or Limited Common Areas and Facilities; (j) convertibility of Units into Common Areas and Facilities or of Common Areas and Facilities into Units; (k) leasing of Units; (l) imposition of any restrictions on the right of a Unit Owner to sell, transfer or otherwise convey a Unit; and (m) express benefits or rights of Mortgagees, Eligible Mortgagees or Eligible Insurers or Guarantors. An addition or amendment shall not be considered material for purposes of this Section 13.1.2 if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Record of Survey Map (or to approve a decision of the Unit Owners or the Management Committee with respect to the nature of Restoration or a decision not to undertake Restoration pursuant to Article 10) is mailed in the United States mail, postage prepaid, certified and return receipt requested, to the address for such Eligible Mortgagee shown on the list maintained by the Management Committee who has not delivered to the Management Committee a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

13.1.3. *Commercial Units.* The consent of Commercial Unit Owners holding in the aggregate at least 67% of the Undivided Interests for Commercial Units shall be required to amend any material provision of this Declaration or the Record of Survey Map that provides for any of the following: (a) the purpose of the Property that is described in Section 2.8; (b) rights related to the improvement and remodeling of Commercial Units under Section 3.5; (c) uses for Commercial Units allowed under Section 4.1; (d) rights for signage under Section 4.10; (e) rights under the Commercial Easements and the Sign Easement; and (f) any other provision of this Declaration requiring the express consent of Commercial Unit Owners.

13.1.4. *Residential Units.* The consent of Residential Unit Owners holding in the aggregate at least 67% of the Undivided Interests for Residential Units shall be required to amend any material provision of this Declaration or the Record of Survey Map that provides for any of the following: (a) the conversion of Designated Areas to Open Market Areas as described in Section 1.19.4; (b) uses for Residential Units allowed under Section 4.1; (c) restrictions on uses and activities within the Property as described in Sections 4.2 and 4.3; (d) the quiet use and enjoyment of the Residential Units for residential purposes (considering the mixed-use nature of the Property as described in Section 2.8); and (e) any other provision of this Declaration requiring the express consent of Residential Unit Owners.

13.1.5. *Agency*. The consent of Agency (or the successor-in-interest to Agency's duties) shall be required to amend any material provision of this Declaration or the Record of Survey Map that provides for any of the following: (a) the Pedestrian Easement; (b) modifications requiring the consent of the Residential Unit Owners under Section 13.1.4 (but this Section 13.1.5(b) shall no longer be effective after the date on which more than 50% of the Residential Units, as measured by their Undivided Interests, have been conveyed to a person other than Declarant, a member of Declarant or a person that controls, is under common control with or is controlled by Declarant); (c) "Agency Covenants" as defined in Section 11.3; (d) the third party beneficiary and modification provisions set forth in Section 11.3; and (e) any other provision of this Declaration requiring the express consent of Agency.

13.2. *Removal of Property from Act*. The Unit Owners may remove the Property from the provisions of the Act by an affirmative vote of all (but not less than all) of the Unit Owners, at a meeting of Unit Owners duly called for such purpose, provided that the holders of all liens affecting the Condominium Units consent or agree by instruments duly recorded that their liens may be transferred to the undivided interest of the Unit Owner concerned in the Property. On removal of the Property from the provisions of the Act, the Property shall be deemed to be owned in common by the Unit Owners. The undivided interest in the Property owned in common by each Unit Owner shall be equal to the Undivided Interest previously owned by such Unit Owner. Any removal so authorized shall be accomplished through the recordation of an instrument in the Official Records executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section 13.2 for removal has occurred. The removal provided for in this Section 13.2 shall not bar the subsequent resubmission of the Property to the provisions of the Act.

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

Article 14.
Interpretation.

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

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

Article 15.
General Provisions.


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

15.2. *Notices.* The Management Committee shall maintain records setting forth the names and mailing addresses of each Unit Owner, as set forth in Section 6.5, and it shall be the responsibility of each Owner (and not the Management Committee) to insure that such records are current as to its Unit. All notices, writings, information, documents or other communications that are required or permitted to be given hereunder: (a) shall be in writing; (b) shall be deemed to be given and received either (i) on the date of delivery, if personally delivered; (ii) on the third business day following mailing, if delivered by certified mail, return receipt requested; (iii) on the next business day, if marked for next business day delivery and delivered by guaranteed overnight express courier or delivery service, such as Federal Express, which provides for evidence of receipt at the office of the intended addressee; or (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of the date of the attempted delivery or refusal to accept delivery, the date of the postmark on the return receipt, or the date of receipt of notice of refusal or notice of nondelivery by the sending person; and (c) shall be addressed to: (i) any Unit Owner in accordance with the Management Committee's records (and/or to the address of the Unit Owner as set forth in the Official Records); and (ii) the Management Committee in accordance with Section 6.8.

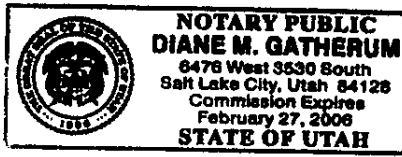
15.3. *Approvals.* Unless otherwise provided in this Declaration whenever approval or consent is required by any party hereto or the Management Committee, such approval or consent shall not be withheld or delayed unreasonably. If any party hereto or the Management Committee disapproves of some matter hereunder, then the reasons therefor shall be stated. If there is a dispute regarding the withholding of any approval or consent, then at the request of the party asking for the consent or approval, the party or the Management Committee withholding such approval or consent shall join with the requesting party in non-binding mediation proceedings in an effort to resolve the dispute; provided, however, that regardless of the outcome of the mediation, the party requesting the mediation shall pay all fees and costs of the mediator.

UFFENS, LLC,
a Utah limited liability company

By: 
BRUCE B. ALLEN
Manager

By: 
JEFFREY D. BRUNKEN
Manager

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



The foregoing instrument was acknowledged before me this 29th day of January 2003 by BRUCE B. ALLEN and JEFFREY D. BRUNKEN, as the managers of and on behalf of Uffens, LLC, a Utah limited liability company.

My Commission Expires:

2/27/06

Diane M. Gatherum
Notary Public
Residing at: Salt Lake City, Utah

Redevelopment Agency Approval

On this 10th day of June 2003, the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a body politic of the State of Utah hereby approves the foregoing Declaration of Condominium and Bylaws (the "Declaration") and thereby authorizes the termination of the "Declaration of Easements, Covenants, Conditions and Restrictions" that is described in Section 2.5.2 of the Declaration.

REDEVELOPMENT AGENCY OF SALT LAKE CITY
a public agency

By: [Signature]
ROSS C. ANDERSON
Its Chief Administrative Officer

By: [Signature]
DAVID OKA
Its Executive Director

"Agency"

Approved as to form:

JONES WALDO HOLBROOK & MCDONOUGH

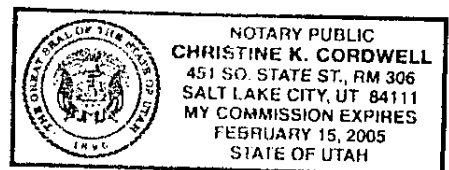
[Signature]
ELIZABETH HASLAM, Esq.

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 4th day of JUNE 2003, personally appeared before me ROSS C. ANDERSON who being by me duly sworn did say he is the Chief Administrative Officer of the REDEVELOPMENT AGENCY OF SALT LAKE CITY and that the within and foregoing instrument was signed on behalf of said Agency.

My Commission Expires:

[Signature]
Notary Public
Residing at: _____



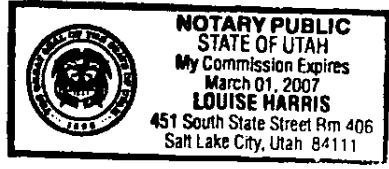
STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 28th day of May 2003, personally appeared before me DAVID OKA who being by me duly sworn did say he is the Executive Director of the REDEVELOPMENT AGENCY OF SALT LAKE CITY and that the within and foregoing instrument was signed on behalf of said Agency.

My Commission Expires:

Mar 1-07

Louise Harris
Notary Public
Residing at: Salt Lake City



*Exhibit A to
Declaration of Condominium and Bylaws
[Uffens Marketplace, a Utah Mixed Use Condominium Project]*

Division of Property

<i>Units</i>	<i>Size of Each Unit (computed by square feet of floor space)</i>	<i>Undivided Interest in Common Areas and Facilities Allocated to Each Unit</i>
101	301	0.880%
102	291	0.850%
103	892	2.609%
104	1,275	3.729%
105	1,275	3.729%
106	1,270	3.715%
107	1,270	3.715%
108	906	2.650%
109	1,496	4.376%
110	1,221	3.571%
201	553	1.618%
202	528	1.544%
203	532	1.556%
204	537	1.571%
205	539	1.577%
206	536	1.568%
207	535	1.565%
208	533	1.559%
209	532	1.556%
210	534	1.562%
211	528	1.544%
212	524	1.533%
213	521	1.524%
214	534	1.562%
215	531	1.553%

301	553	1.618%
302	528	1.544%
303	532	1.556%
304	537	1.571%
305	539	1.577%
306	536	1.568%
307	535	1.565%
308	533	1.559%
309	532	1.556%
310	534	1.562%
311	528	1.544%
312	524	1.533%
313	521	1.524%
314	534	1.562%
315	531	1.553%
401	553	1.618%
402	528	1.544%
403	532	1.556%
404	537	1.571%
405	539	1.577%
406	536	1.568%
407	535	1.565%
408	533	1.559%
409	532	1.556%
410	534	1.562%
411	528	1.544%
412	524	1.533%
413	521	1.524%
414	534	1.562%
415	531	1.553%
Totals	34,188	100.000%

*Exhibit B to
Declaration of Condominium and Bylaws
[Uffens Marketplace, a Utah Mixed Use Condominium Project]*

Rules And Regulations

The rules and regulations set forth in this exhibit are a part of the foregoing Declaration of Condominium and Bylaws (the "*Declaration*"), and constitute the initial "Rules and Regulations," as defined in the Declaration. Capitalized terms that are used in this exhibit shall have the meanings for those terms that are set forth in the Declaration.

1. *Obstruction.* Any sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other similar Common Areas and Facilities or Limited Common Areas and Facilities shall not be obstructed or used for any purpose other than: (a) ingress or egress to and from the Units; (b) commercial uses permitted by Section 4.11, as to the Open Market Areas; (c) the utilization of the Commercial Easements and the Pedestrian Easement; and (d) any other express easements or rights created under the Governing Documents. No Unit Owner shall place any item in any of such locations, whether or not such item constitutes an obstruction, without the prior written consent of the Management Committee or unless the same is permitted by the Governing Documents. Subject to the foregoing, the Management Committee may remove any obstruction or any such item without notice to any Unit Owner and at the sole cost of the Unit Owner concerned. Subject to the Pedestrian Easement, no sidewalks, entries, exits, passages, corridors, halls, lobbies, stairways, elevators or other Common Areas and Facilities or the Limited Common Areas and Facilities are for the general public, and the Management Committee shall in all cases retain the right to control and prevent access to them by all persons whose presence, in the judgment of the Management Committee, would be prejudicial to the safety, character, reputation or interests of the Property or the Unit Owners. No Unit Owner (other than Declarant) shall go onto the roof of the Building, without the express written consent of the Management Committee.

2. *Deliveries.* All deliveries and pickups of merchandise, supplies, materials, garbage and refuse to or from the Units shall be made only through such access as may be designated from time to time by the Management Committee for deliveries and only during the ordinary business hours of the Property, as described below. No Unit Owner shall obstruct or permit the obstruction of such access. Each Unit Owner shall be liable for the acts and omissions of any persons making such deliveries or pickups to or from its Unit.

3. *Moving.* Furniture and equipment shall be moved in and out of the Building only through such access as may be designated by the Management Committee from time to time for deliveries and then only during such hours and in such manner as may be prescribed by the Management Committee. If any Unit Owner's movers damage any part of the Property, then the Unit Owner concerned shall pay to the Management Committee on demand the amount required to repair such damage.

4. *Heavy Articles.* No safe or article, the weight of which may, in the reasonable opinion of the Management Committee, constitute a hazard of damage to the Building, shall be moved into the Building. Other safes and heavy articles shall be moved into, from or about the Building only during such hours and in such manner as shall be prescribed from time to time by the Management Committee, and the Management Committee may designate the location of such safes and articles.

5. *Use of Water Fixtures.* Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended. No foreign substances of any kind shall be placed

in them, and any damage resulting to the same from use on the part of any Unit Owner shall be paid for by the Unit Owner concerned.

6. *Animals; Excessive Noise.* Animals, birds, fish and pets shall be allowed in the Building only with the prior, written approval of the Management Committee; provided, however, that: (a) permission shall be given liberally and in a fair and consistent manner (among other reasons, the Management Committee may withhold approval for reasons of noise, smell, sanitation, aggressive traits or behavior and safety); (b) guide dogs for hearing or vision impaired persons shall be allowed in the Building; and (c) pet stores are permitted as a commercial use in Commercial Units. Entertainment systems (including, without limitation, tape and/or CD players, televisions, DVD players and radios) and musical instruments shall be allowed in the Building so long as they do not create unusually loud or disturbing noises (in the reasonable opinion of the Management Committee), given the time of day, but the foregoing shall not restrict uses permitted by the Declaration in Commercial Units (including the Open Market Areas) or under the easements described in Article 5, so long as such uses are commercially reasonable and comply with the other provisions of this Agreement.

7. *Bicycles; Vehicles.* Bicycles may be stored in Units (including balconies forming part of the Limited Common Areas and Facilities for Units) and, subject to regulation by the Management Committee, the Parking Area, but bicycles shall not be ridden through other Common Areas and Facilities. Within the Property, vehicles may be driven and parked only in the Parking Area and in other areas specifically designated in writing by the Management Committee.

8. *Trash.* No Unit Owner shall allow any trash or refuse to be stored on the outside of the Building, nor shall anything be thrown by any Unit Owner out of the windows or doors or down the corridors or ventilating ducts or shafts of the Building. All trash and refuse shall be placed in receptacles and in trash chutes that are provided by the Management Committee for the Building or a Unit Owner for its Unit.

9. *Exterior Areas.* Without the Management Committee's prior written consent, no exterior awnings shall be placed over the windows of any Unit. Balconies to Residential Units may be used for barbeques, patio furniture, plants, the storage of bicycles, displaying decorative or festive banners and flags and, subject to the approval of the Management Committee (which shall be applied in a fair and consistent manner), the storage or display of other personal property. Balconies to Residential Units may not be used for drying clothing or laundry. Other Limited Common Areas and Facilities (including the Open Market Areas) may be used for displaying decorative or festive banners and flags. Replacement glass on the boundary of each Unit shall identically match the original window glass of such Unit in tint and coloration and shall be of quality equal to or better than such original window glass. All doors forming or situated at an exterior boundary of a Unit or visible from any part of the Common Areas and Facilities or the Limited Common Areas and Facilities, shall be of a type, quality, style and color as determined by the Management Committee.

10. *Hazardous Operations and Items.* No Unit Owner shall install or operate any steam or gas engine or boiler, or carry on any mechanical business in the Building without the Management Committee's prior written consent. No Unit Owner shall use or keep in the Building any kerosene, gasoline or other inflammable or combustible fluid or material, except as permitted by applicable law (including the use of the same for commercial purposes within the Commercial Units and the Open Market Areas). Explosives or other articles deemed extra hazardous shall not be brought into the Building. Each Unit Owner shall comply with all federal, state and local laws and regulations dealing with hazardous wastes and substances.

11. *Repairs, Maintenance and Alteration.* Any repairs, maintenance and alterations required or permitted to be done by any Unit Owner under the Declaration shall be done only between weekday hours of 8:00 a.m. and 6:30 p.m. and on Saturdays between the hours of 9:00 a.m. and 6:00 p.m., except that: (a) on Saturdays construction activity shall not include the use of any loud or noisy machinery or equipment, such as drilling, pounding, or sawing equipment; and (b) no construction activities shall take place on Sundays or on any state or federal holiday, all unless the Management Committee shall have first consented in writing to such work being done at other times. Owners must comply with all zoning and building codes in connection with any repairs, maintenance and alterations.

12. *Hours for Commercial Uses.* The Commercial Units, the Open Market Areas and the Arcade may be used during commercially reasonable hours for comparable facilities in the Salt Lake City, Utah area and for a reasonable period before and after such hours for use in preparation and cleanup. From time to time, the Management Committee may establish specific hours by reference to and conforming with this rule, which shall be subject to the approval by Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests appertaining to the Commercial Units. Notwithstanding the foregoing: (a) the hours of operation for such commercial uses must comply at all times with ordinances of Salt Lake City, Salt Lake County and the health departments of Salt Lake City and Salt Lake County; (b) no all-night commercial activities (including clubs) shall be permitted within the Commercial Units, the Open Market Areas or the Arcade; and (c) all noises and activities between 11:00 p.m. and 7:00 a.m. shall be kept to a minimum so as to avoid interference with sleep in the Residential Units.

13. *Solicitation.* The Management Committee reserves the right to restrict, control or prohibit canvassing, soliciting and peddling within the Building; provided, however, that the foregoing shall not restrict in any way the exercise of rights under the Commercial Easements or the use of the Open Market Areas permitted by the Declaration.

14. *Directory.* Any bulletin board or directory of the Building shall be provided exclusively for the display of the name and location of each Unit Owner only or its tenant and the Management Committee reserves the right to exclude any other names. Each Unit Owner shall pay the Management Committee's reasonable charges for changing any directory listing at any Unit Owner's request.

15. *Smoking.* Each Owner shall keep its Unit free of objectionable noises and odors including, without limitation, cigar, pipe and similar smoke odors, but the foregoing shall not restrict uses permitted by the Declaration in Commercial Units (including the Open Market Areas) or under the easements described in Article 5, so long as such uses are commercially reasonable and comply with the other provisions of this Agreement. From time to time, the Management Committee may designate some or all of the Building (including each Unit) as a non-smoking area, so long as such designation is made in a fair and consistent manner. Notwithstanding the foregoing provisions of this rule to the contrary, the Commercial Units (including the Open Market Areas) shall not be used or operated in a manner creating noises and odors that unreasonably inconveniences or disturbs the quiet enjoyment of the Residential Unit Owners (considering the mixed-use nature of the Property as described in Section 2.8).

16. *Elevators.* The Management Committee may restrict elevator access to the different floors in the Building by issuing an elevator floor key only to the Owner of each Unit on that floor.

17. *Security.* The rights of access and use within the Property are subject to security checks and restrictions as designated by the Management Committee from time to time. Security personnel shall have the right to stop and question persons and to require satisfactory evidence of any such person's right to be where the person is stopped.

18. *Insurance.* Each Unit Owner shall be responsible for obtaining that Owner's own insurance covering the personal property, fixtures and improvements of the Unit Owner within that Owner's Unit.

19. *Enforcement of Rules against Tenants.* If a tenant of a Unit does not comply with the Declaration or the Rules and Regulations, then the Association shall notify the Unit Owner (and may notify the tenant) of the purported violations. If the violations are not cured within 15 days after the demand is made, then the Unit Owner irrevocably appoints the Management Committee as the Unit Owner's attorney-in-fact to take all actions necessary to enforce compliance with the Declaration and the Rules and Regulations, including, without limitation, evicting the tenant. Each Unit Owner (as an Indemnifying Party) releases and indemnifies the Management Committee (as the Indemnified Party) from any claims asserted by the tenant or the Unit Owner in connection with such enforcement actions, except for claims arising from gross negligence, willful misconduct or more culpable conduct by the Management Committee.

20. *Designation of Common Areas.* From time to time, the Management may designate specific closets, rooms or areas within the Common Areas and Facilities or within the Limited Common Areas and Facilities for use as janitorial closets, for grease traps for the Commercial Units, to store supplies, for community and/or recreation purposes, to house HVAC equipment or for other purposes benefitting the Property generally and may secure such areas by locks or other methods. The Management Committee hereby designates the Common Areas and Facilities located on the second floor of the Building to be used for occasional parties and entertainment of Owners of Residential Units and their tenants, guests and invitees, subject to: (a) reserving the area in advance with the Management Committee; (b) using the area only during reasonable residential hours; and (c) cleaning up the area immediately after its use.

21. *Fines.* Subject to Section 12.6 of the Declaration, the Management Committee may fine any Unit Owner who violates a Rule or Regulation in an amount equal to \$25.00 per day or part of a day that the violation continues (for violations of a continuing nature) or \$25.00 for each separate violation (for violations that constitute single acts or omissions). The Management Committee, in its sole and absolute discretion, may determine whether a violation is of a continuing nature or a single act or omission.