

10552401

10552401
10/30/2008 03:10 PM \$106.00
Book - 9655 Pg - 3733-3769
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LOCKE AVENUES, LLC
C/O ALEX HERTZ
3500 LENOX RD STE 200
ATLANTA GA 30326-4237
BY: ELF, DEPUTY - WI 37 P.

When Recorded Mail to:

Locke Avenues, LLC
c/o Alex Hertz
3500 Lenox Rd NE, Ste 200
Atlanta, GA 30326-4237

37-24

Space Above for Recorder's Use

**DECLARATION
OF
CONDOMINIUM**

FOR

THE AVENUES CONDOMINIUMS EAST

an Expandable Utah Condominium Project

**DECLARATION
OF
CONDOMINIUM
FOR
THE AVENUES CONDOMINIUMS EAST**

This Declaration of Condominium for the Avenues Condominiums East, an expandable Utah condominium project, hereinafter referred to as the "**Declaration**", is made and executed as of October 29, 2008, by Locke Avenues, LLC, a Georgia limited liability company, hereinafter referred to as the "**Declarant**".

RECITALS

A. **Description of Land.** Declarant is the owner of the parcel of land which is located in Salt Lake City, Salt Lake County, State of Utah and described on Exhibit A attached hereto (hereinafter referred to as the "**Land**").

B. **Condominium Plat.** Declarant intends to execute, acknowledge, and record in the office of the County Recorder of Salt Lake County, State of Utah, the Plat (as defined below).

C. **Intent and Purpose.** Declarant intends by recording this Declaration and the Plat to submit the Land, the structures, and all other improvements situated in or upon the Land to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, Section 57-8-1, et seq. (hereinafter referred to as the "**Condominium Act**") as a fee simple residential condominium project.

D. **Description of Improvements.** The initial improvements will consist of four (4) freestanding three-story structures containing twenty-five (25) residential units, plus Limited Common Areas, General Common Areas, facilities and other improvements to the Land as shown on the Plat and/or described herein. The condominium buildings will be remodels of existing historic structures, constructed using wood frame construction and will have sloped roofs, with asphalt shingle roofing materials. Three of the condominium buildings (1135 East, 61 North, and 69 North) will contain a basement level in addition to the three above-ground stories. The exterior of the condominium buildings will be finished with brick and other trim finishes.

DECLARATION

NOW THEREFORE, the foregoing Recitals are incorporated herein by reference. Declarant does hereby submit the Land, the structures, and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act and to this Declaration. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a fee simple residential condominium project to be known as the AVENUES CONDOMINIUMS EAST. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon the Declarant, its successors and assigns, and to any persons acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas, as set forth on Exhibit B attached hereto.

**Article 1
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article 1.

1.1 **“Additional Land”** shall mean the real property described on Exhibit D hereto that may be added as a whole or in part to the Project as provided in Article 12.

1.2 **“Articles”** shall mean the Articles of Incorporation of The Avenues Condominiums East Association, Inc., a Utah nonprofit corporation.

1.3 **“Assessment”** shall mean that portion of the costs of maintaining, improving, repairing, operating, and managing the Project which is to be paid by the Unit Owners as determined by the Association under this Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article 6 of this Declaration.

1.4 **“Association”** shall mean The Avenues Condominiums East Association, Inc., a Utah nonprofit corporation, organized to be the Association referred to herein.

1.5 **“Board”** shall mean the governing board of directors or management committee of the Association, appointed or elected in accordance with the Declaration and in accordance with the Articles and Bylaws of the Association.

1.6 **“Bylaws”** shall mean the Bylaws of the Association, as amended from time to time. The initial Bylaws are attached hereto as Exhibit C.

1.7 **“Common Areas”** shall mean all areas and facilities in the Project, except the Units as defined below. Consequently, the Common Areas include, without limitation, the Land within the Project, which is hereby submitted to the provisions of the Condominium Act; all common areas and facilities as hereinafter described and designated as such on the Plat; all Limited Common Areas and facilities as hereinafter described and as designated as such on the Plat; all landscaped and planted areas; parking areas; all private roadways and walkways; exterior lighting and storage areas which are not part of a Unit or Limited Common Areas; all utility lines and facilities used by or useful to more than one Unit (and which lines and facilities are not the property of the entity providing the utility service); and all other parts of the Project necessary or convenient to its existence, maintenance and safety.

1.8 **“Common Expenses”** shall mean the actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Areas, maintenance of initial landscaping installed by Declarant in the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: the costs of trash collection and removal; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefiting the Common Areas and/or the Association and its members; the costs of errors and omissions, and director, officer and agent liability insurance, and other insurance covering the property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of the Owners.

1.9 **“Condominium”** shall mean a Unit and the undivided interest (expressed as a fraction of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth on Exhibit B attached hereto and by this reference made a part hereof. The terms “Condominium” and **“Condominium Unit”** shall all have the same meaning and are used interchangeably in this Declaration.

1.10 **“Condominium Act”** shall mean the Utah Condominium Ownership Act contained in Title 57, Chapter 8, Utah Code Annotated, as the same may be amended from time to time.

1.11 **“City”** shall mean Salt Lake City, State of Utah.

1.12 “**Declarant**” shall mean Locke Avenues, LLC, and its successors-in-interest and assigns with respect to the Project, but shall not include members of the public purchasing completed Units.

1.13 “**Declarant Control Period**” is defined in Section 10.3.

1.14 “**Declaration**” shall mean this Declaration of Condominium for the Avenues Condominiums East, an expandable Utah condominium project, as it may be amended from time to time.

1.15 “**Eligible First Mortgagee**” shall mean any First Mortgagee of a Unit (or any insurer or guarantor of a First Mortgage on a Unit) who has provided a written request to the Association (such request to state the name and address of such Eligible First Mortgagee and the street address of the Unit to which its First Mortgage relates), to be notified of any of the events listed in Section 11.2.

1.16 “**First Mortgage**” shall mean a first Mortgage lien on any Unit in the Project.

1.17 “**First Mortgagee**” shall mean the holder of a First Mortgage.

1.18 “**General Common Areas**” shall mean all Common Areas that are not Limited Common Areas.

1.19 “**Guest**” shall mean any family member, agent, lessee, or invitee of an Owner.

1.20 “**Land**” shall mean the land upon which the Project is situated, as more particularly described in on Exhibit A, together with any of the Additional Land hereafter submitted to this Declaration in accordance with Article 12.

1.21 “**Limited Common Areas**” shall mean any portion of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, balconies, patios, or parking areas serving a particular Unit or Units, walkways, storage units, decks, hallways, corridors and stairwells as indicated by the Declaration, the Plat or the Condominium Act to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only some Units shall be Limited Common Areas with respect to the Units which they serve. The use and occupancy of designated Limited Common Areas shall be reserved to the Units as shown on the Plat or as specified in this Declaration. Owners may not reallocate Limited Common Areas between or among Units in which they have an interest.

1.22 “**Mortgage**” shall mean any mortgage, trust deed, or other security instrument by which a Condominium or any part thereof is encumbered.

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

1.24 “**Owner**” shall mean the person or persons, including the Declarant or any entity, owning in fee simple, a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.25 “**Plat**” shall mean that certain condominium plat recorded simultaneously with this Declaration in the office of the County Recorder of Salt Lake County, Utah, entitled “The Avenues Condominiums East, an Expandable Utah Condominium Project”, executed and acknowledged by Declarant, consisting of five sheets, and prepared by Gregory R. Wolbach, a duly registered Utah land surveyor holding License Number 187788, as the same may be amended or supplemented from time to time.

1.26 **"Project"** shall mean the Land, the structures, and all improvements submitted by this Declaration and the Plat to the provisions of the Condominium Act.

1.27 **"Project Documents"** shall mean this Declaration, the Plat, and the Articles and Bylaws of the Association, as each shall be amended from time to time.

1.28 **"Total Votes of the Association"** shall mean the total number of votes appertaining to all Condominiums in the Project.

1.29 **"Unit"** shall mean and refer to a physical portion of the Project that (a) consists of one or more rooms or spaces located in one or more floors or parts of floors in a condominium building, (b) is designated for separate ownership and independent use, and (c) is designated as a Unit on Exhibit B and on the Plat. The walls, floors, and ceilings are designated as the boundaries of a Unit. The finished surfaces of the walls, floors, and ceilings, including all paneling, tiles, wallpaper, painting, and finished flooring, are part of the Unit. All other portions of the walls, floors, and ceilings are part of the Common Areas.

Article 2

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

2.1 **Organization of Association.** The Association is or shall be incorporated under the name of The Avenues Condominiums East Association, Inc., in accordance with the requirements of the Utah Revised Nonprofit Corporation Act.

2.2 **Duties and Powers.** The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws. Those duties and powers include the general and implied powers of a non-profit corporation organized under the laws of the State of Utah, to engage in those activities which are necessary or proper for the peace, health, comfort, safety and general welfare of its members. Those duties and powers are however, subject to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

2.3 **Membership.** The Owner of a Condominium shall automatically, upon becoming the Owner of that Condominium, be a member of the Association, and shall remain a member thereof until such time as such Owner's ownership ceases for any reason, at which time such Owner's membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

2.4 **Voting.** An Owner may vote by participating in a duly called meeting in person, by proxy, or by written ballot. Each Unit will be allocated the number of votes equal to its undivided interest in the Common Areas (identified on Exhibit B), regardless of the number of Owners of the Unit. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, they will lose their right to vote on the matter. If any Owner of a Unit casts a vote representing that Unit, it will be presumed for all purposes that the Owner acted on behalf of all the Owners of that Unit. However, such vote will be disqualified if any of the other Owners of the Unit objects at the meeting before the votes are counted, or, in the case of a written ballot, objects to the Board in writing, as long as the Board receives the objection by the time designated for the ballots to be counted. If more than the number of allocated votes is cast for any particular Unit, none of such votes will be counted except in determining whether a quorum exists.

2.5 **Membership Meetings.** Regular and special meetings of members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association. Regular meetings of the Association's membership shall be noticed and held at least annually at a time and place duly noticed to the membership of the Association

2.6 **Board of Directors.** The affairs of the Association shall be managed by a Board of Directors and such officers as the Board may elect or appoint in accordance with the Bylaws. The Board shall be established and shall conduct meetings according to the provisions of the Bylaws of the Association. During the Declarant

Control Period, the Board will be appointed by Declarant in its sole discretion. After the expiration of the Declarant Control Period, the Board will be elected by the Owners in accordance with the Bylaws.

2.7 **Director and Officer Liability.** No director or officer will be liable to the Owners for any negligence or mistake in judgment. However, a director or officer may be liable for his willful misconduct or bad faith actions. The Owners and the Association will indemnify and hold harmless each director and officer from and against all liability to third parties arising out of any contract made by the Board on behalf of the Association or the Owners, unless such contract was made in bad faith. The liability of an Owner in connection with the foregoing indemnification will be limited to the total liability concerned multiplied by the Owner's undivided interest in the Common Areas.

2.8 **Use of Agent.** The Board, on behalf of the Association, may contract with a professional management company or agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The term of any such contract shall comply with the restrictions set forth in the Bylaws and any such management company or agent shall be appropriately licensed, bonded and/or insured as required by applicable law.

2.9 **Contracts.** Any contract for services such as garbage collection, maintenance, lawn care, or snow removal executed on behalf of the Association during the Declarant Control Period is binding beyond the expiration of the Declarant Control Period unless the Board elects to terminate the contract after the expiration of the Declarant Control Period. However:

2.9.1 The Board may not terminate a contract executed on behalf of the Association during the Declarant Control Period if the contract is for utilities, cable services, or other similar services that require an investment of infrastructure or capital, unless the Board is otherwise entitled to terminate the contract by law or under the terms of the contract itself.

2.9.2 Any contract entered into during the Declarant Control Period on behalf of the Association or the Owners that is designed to benefit Declarant will not be binding after the expiration of the Declarant Control Period unless the contract is renewed or ratified by a majority of the Total Votes of the Association.

2.10 **Books and Records.** The Board will keep detailed, accurate records in chronological order, of receipts and expenditures affecting the Common Areas, specifying and itemizing the Common Expenses and any other expenses incurred. Upon request, the Association will allow Owners, Mortgagees insurers of a First Mortgage, and prospective purchasers of any Condominium Unit to inspect current copies of the Project Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such materials. Upon written request from any agency or corporation that has an interest or prospective interest in any Condominium Unit, the Board will prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

Article 3

NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP AND RIGHTS IN COMMON AREAS

3.1 **Ownership of Units.** Subject to the terms and provisions of this Declaration, each Owner shall have fee title to and an exclusive right to the use and occupancy of its Unit in accordance with applicable law.

3.2 **Title.** Title to a Unit within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah. This includes without limitation, joint tenancy or tenancy in common. Provided, however, title to a Unit within the Project shall not, under any circumstances, be separated into timeshare or time interval ownership.

3.3 Ownership of Common Areas. The undivided interest in Common Areas appurtenant to a Unit will be expressed as a percentage and will be equal to the ratio of the floor area of the Unit to the aggregate floor area of all Units in the Project. Except as otherwise provided in this Declaration, or in the Condominium Act, the appurtenant interest in the Common Areas attributable to each Unit (as shown on Exhibit B to this Declaration), shall have a permanent character and shall not be altered without the written consent of two-thirds of the Owners expressed in an amendment to this Declaration. Such amendment shall be duly recorded in the office of the Salt Lake County Recorder. Except as otherwise provided in this Declaration, any Owner shall be entitled to non-exclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners, and is not contrary to any rules and regulations promulgated by the Association or to applicable laws, rules or regulations of any governmental body having jurisdiction over the Project. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated on the Plat for exclusive use by such Owner.

3.4 Inseparability. Title to any part of a Condominium within the Project may not be separated from any other part thereof during the period of condominium ownership hereunder, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance, or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as set forth in Article 2.

3.5 No Subdivision. No Unit or portion thereof may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership. Under no circumstances shall interest in a Unit be divided into, leased, sold, conveyed or used as time periods or intervals or sold or conveyed to owners or holders for use on a timeshare or time interval basis.

3.6 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber its Condominium. No Owner shall attempt, or shall have the right, to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to its Condominium. Subject to the rights of Mortgagees set forth in Article 11, any Mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration. In the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

3.7 No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey its Condominium will not be subject to any right of first refusal or similar transfer restriction.

3.8 Access Rights. an Owner shall have the perpetual right to ingress and egress from such Owner's Unit, and such right shall be appurtenant to such Unit

3.9 Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel, and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or any municipality thereof, or of any quasi-governmental entity. This includes any political subdivisions, special improvement districts, special service districts, and any other taxing or assessing authorities. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

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

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

3.12 **Common Areas.** The Common Areas shall be operated and maintained by the Association for the common use and enjoyment of all Owners, subject to reasonable rules and regulations enacted according to the Bylaws. Each Unit Owner, through membership in the Association, shall have a non-exclusive right to use the Common Areas in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Unit Owners. This right includes, but is not limited to, the right to access the Project, through any portion of the Project designated as Common Areas. Declarant shall reserve and hereby reserves for itself and its successors-in-interest and assigns, an easement (and the right to grant further easements) over and onto the Common Areas for ingress to and egress from the Project for the purpose of necessary construction, maintenance, or repair work.

3.13 **Extent of Easements.** The rights and easements of use and enjoyment of the Common Areas created by this Declaration shall be subject to such rules and regulations as may be adopted by the Board according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

3.13.1 the right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Areas and to consent to or otherwise cause the alteration or removal of any existing improvements on the Common Areas for the benefit of the Owners of the Association; and

3.13.2 the right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on, or over the Common Areas, for purposes not inconsistent with the intended use of the Project as a residential condominium project.

3.14 **Damage by Owner.** Owners shall be liable to the Association for any damage to the Common Areas or other Units not fully reimbursed to the Association by insurance, if the damage is sustained because of the negligence or willful misconduct of the Owner, its Guests, or any other persons deriving their right and easement of use and enjoyment of the Common Areas from the Owner. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association. The Association further reserves the right to levy a Special Assessment against the offending Owner and that Owner's Unit equal to the cost to repair any such damage and the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or the person for whom the Owner may be liable as described above. The costs resulting from such damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against the Unit and may be enforced as provided hereby for the enforcement of any other Assessment.

Article 4 REPAIR AND MAINTENANCE

4.1 **Repair and Maintenance Rights and Duties of Association.** Subject to the provisions in this Declaration pertaining to eminent domain and destruction of improvements, and subject to each Owner's obligation to maintain the Limited Common Areas serving solely its Unit in a clean and orderly condition, the Association shall maintain, repair and replace the Common Areas and all improvements and landscaping thereon (including the initial landscaping installed by the Declarant), or shall contract for such maintenance, repair and replacement to assure maintenance of such areas in good condition. However, the Association shall not be responsible for, or obligated to perform those items of maintenance, repair or improvement that are the responsibility of the Owners as provided in Section 4.2 below. In the event an Owner fails to maintain its Unit, or fails to provide other maintenance or repair as provided herein in a manner which the Board deems necessary to

preserve the appearance and value of the Project, the Board may notify the Owner of the work required and request, in writing, that it be done, subject to reasonable constraints caused by inclement weather, within thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien the Owner's Unit for the amount thereof.

4.2 Repair and Maintenance Rights and Duties of Owners. Each Owner shall maintain, repair and replace as necessary, all doors and windows (and appurtenant hardware and accessories) to its Unit, and any separate air conditioning, water heating, or other separate utility fixture and equipment that services only its Unit. Each Owner shall have the exclusive right and discretion to paint, plaster, panel, tile, wax, paper or otherwise finish, refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding its Unit. Each Owner may install, modify or remove non-bearing partition walls within its Unit so long as it in no way lessens the structural integrity of the building in which the Unit is located and such work is completed in strict accordance with the requirements of the this Declaration, the requirements of Salt Lake City and all other applicable laws, rules, ordinances or regulations. Each Owner will keep the Limited Common Areas serving solely its Unit in a clean and orderly condition.

Article 5

ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

5.1 Personal Obligation of Assessments. Declarant, for each Unit owned within the Project hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws:

- 5.1.1 Regular Assessments;
- 5.1.2 Extraordinary Assessments; and
- 5.1.3 Special Assessments.

5.2 Assessment Lien. All Assessments, together with interest, costs, penalties, and actual attorneys' fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt itself from liability for its contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of its Unit.

5.3 Purpose of Assessment. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the Owners or occupants in the Project, for the improvement and maintenance of the Common Areas, and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Areas that must be repaired or replaced on a periodic basis.

5.4 Regular Assessments.

5.4.1 Each Unit's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter, the Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of at least seventy-five percent (75%) of the Total Votes of the Association.

5.4.2 As a standard Regular Assessment budget item, the Declarant and the Board shall include in the annual budget, a private roadway reserve account assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair and/or resurfacing of private roads, driveways and parking areas within the Project. In the event the Regular Assessment for the roadway reserve is inadequate to meet the needs of a repair and/or resurfacing, the Board may, as provided below, levy such additional Extraordinary Assessments as are needed to properly maintain the private roads and driveways in a high quality state of repair.

5.4.3 As an additional standard Regular Assessment budget item, the Board shall include in its annual budget, a separate reserve account assessment for the purpose of defraying, in whole or in part, the cost of repairing, maintaining and replacing the exterior of the Units, including, the roof, walls and foundation. The Board shall consult periodically with painting, roofing and other contractors, for the purpose of evaluating the condition and anticipated longevity of the exterior of the Units. The reserve account for the repair, maintenance and replacement of the exterior of the Units shall take into account the annualized budget assessment needed in order to meet the periodic repair, maintenance and replacement costs estimated by the painting, roofing and other contractors. In the event the Regular Assessment for the repair, maintenance and replacement of the exterior of the Units is inadequate to meet the specific needs of a repair, maintenance and/or replacement, the Board may, as provided below, levy such additional Extraordinary Assessments as are needed to properly repair, maintain and replace the exterior of the Units.

5.5 **Extraordinary Assessments.** In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including resurfacing of any private roads, driveways, parking areas or walkways in the Project, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment, and, where necessary, for taxes assessed against the Common Areas; provided, however, that, except for Extraordinary Assessments for taxes or similar municipal assessments, the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of at least seventy-five percent (75%) of the Total Votes of the Association.

5.6 **Special Assessments.** In addition to the Regular Assessments and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and its Unit into compliance with the provisions of this Declaration and the Bylaws, including actual attorneys' fees and costs, or to reimburse the Association for costs and expenses to the Association arising from the negligence or willful misconduct of a Unit Owner, including actual attorneys' fees and costs.

5.7 **Allocation of Assessments.** Regular and Special Assessments will be allocated among the Units in proportion to each Unit's undivided interest in Common Areas.

5.8 **Date of Commencement of Assessment; Due Dates.** The Regular Assessments provided for herein shall commence for each Unit in the Project on the first day of the month following closing of the sale of the Unit. The Regular Assessment for any partial month preceding such date shall be prorated and paid at closing. Due dates for Regular Assessments shall be the first day of every calendar month. No notice of such Assessment shall be required other than an annual notice setting forth the amount of the monthly Regular Assessment for the upcoming fiscal year.

5.9 **Transfer of Unit by Sale or Foreclosure.** The sale or transfer of any Unit shall not affect any Assessment lien, or relieve the Unit or its former owner from any liability therefor, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Unit pursuant to foreclosure or by deed in lieu of foreclosure of a recorded Mortgage given in good faith and for value shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to the recordation of the Mortgage). Sale or transfer pursuant to Mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Section shall be deemed to be

Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments owed to the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

5.10 Enforcement of Assessment Obligation; Priorities; Discipline. If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, the Board may, an automatic late charge of Fifty Dollars (\$50.00) shall be assessed and additional Ten Dollar (\$10.00) sums shall be assessed for each month or fraction thereof from the due date until the Assessment and all late charges are paid. Each unpaid Assessment shall constitute a lien on each respective Unit prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies, which, by law, would be superior thereto, and (b) the lien or charge of any Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized by this Declaration or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. The Association, acting on behalf of the Unit's Owner, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments and other charges, including attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorneys' fees and costs, and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws. In the event that the Unit for which the assessment is delinquent is occupied by a renter, the Association may collect the amounts owed for such delinquent assessment directly from the rent which is otherwise payable by the tenant to the Owner, which amount may in turn be offset by the tenant against rent owed to the Unit Owner to the extent permissible by law.

5.11 Payment of Taxes Assessed Against Common Areas or Personal Property of Association. In the event that any taxes are assessed against the Common Areas, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Regular Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Units in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in Section 5.5 above).

Article 6 EASEMENTS

6.1 Access, Use and Maintenance Easements.

6.1.1 Declarant will have a transferable easement over and on the Common Areas for the purpose of making improvements to the Project and for the purpose of doing all things reasonably necessary and proper in connection with the same.

6.1.2 The Board will have the right to access each Unit and all Common Areas (a) from time to time during reasonable hours and after reasonable notice to the Owner of the Unit being entered, as may be necessary for the cleaning, maintenance, repair, replacement, landscaping, or construction of any of the Common Areas; and (b) for making emergency repairs necessary to prevent damage to the Common Areas or to another Unit or Units, provided that a reasonable effort is made to provide notice to the Unit Owner before entry.

6.2 Encroachments and Utility Easements.

6.2.1 Encroachment Easement. If any part of the Common Areas encroaches or hereafter encroaches upon any Unit, an easement for such encroachment and for the maintenance of the same does and will exist. If any part of a Unit encroaches or hereafter encroaches upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same does and will exist. If any part of the Common Areas or any part of a Unit hereafter encroaches on real property now owned by Declarant outside the boundaries of the Land, an easement for such encroachment does and will exist. Such encroachments will not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the condominium buildings or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with this Declaration.

6.2.2 Utility Easement. Declarant hereby creates a general easement for the benefit of Declarant and the Association over, across, through and under the Land for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, and cable communication that service the Project or any portion thereof.

6.3 Owners' Rights and Duties With Respect to Utilities. The rights and duties of the Owners of Units within the Project with respect to utilities shall be as follows:

6.3.1 Except as provided in Section 6.3.2 below, the responsibility for maintenance and repair of that portion of sanitary sewer, water, electric, gas, telephone service lines and connections, and television receiving lines and connections located within a Unit (and where such utility service lines located within that Unit serve only that Unit) shall be the sole and exclusive responsibility of the Owner of that Unit.

6.3.2 In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusively binding on the parties.

6.4 Other Easements. The Association will have the right to grant utility easements and other easements, licenses, permits, reservations, exceptions, or exclusions under, through or over the Common Areas that are reasonably necessary to the ongoing development and operation of the Project, as long as (a) the parties benefitted by such easements, licenses, permits, reservations, exceptions, or exclusions use reasonable efforts to locate any such easement, license, permit, reservation, exception or exclusion to minimize interference with the use of the Project by the Owners to the extent practicable; and (b) if the parties benefitted by the easement, license, permit, reservation, exception, or exclusion construct or install any improvements on the Project pursuant to the same, the benefitted parties will promptly repair any damage caused to the Project thereby at their sole cost and expense.

**Article 7
RESIDENCE AND USE RESTRICTIONS**

In addition to all of the covenants contained herein, the use of the Project and each Unit therein is subject to the following:

7.1 Guests. Each Owner will be responsible for ensuring that its Guests comply with all applicable provisions of the Project Documents.

7.2 Use of Units.

7.2.1 Except as otherwise expressly permitted by this Declaration, a Unit Owner may use its Unit only as a permanent single-family residence (as "family" is defined from time to time in Salt Lake City zoning ordinances) for itself and its Guests. Subject to Section 7.2.2, no Unit Owner may conduct any business, profession, occupation or trade from its Unit, including the business of renting other Units.

7.2.2 An Owner may lease its Unit to others for residential purposes so long as the use of the Unit complies with this Declaration, the Condominium Act, and other applicable law. Any lease of a Unit must be in writing (a copy of which will be provided to the Board upon request) and will be subject to this Declaration and the Bylaws. Unless otherwise approved by the Board, No lease of a Unit may be for an initial term of less than six months. During the Declarant Control Period, Declarant may use one or more Units as sales models or sales offices.

7.3 Disclosures Regarding Rentals. Pursuant to Section 21A.56.040 of the Salt Lake City Code:

7.3.1 The Association may regulate, limit, or prohibit rentals of Units, and may require the rental of any Unit to be conducted through the Association or a designated management company. The Association may also require that all lease agreements be reviewed and approved by the Association or the management company and that any tenants be screened and approved by the Association or the management company before renting the Unit; so long as approval of the Association or the management company is not unreasonably withheld. However, the Association may only institute such regulations, limitations, prohibitions, and review and screening procedures by a vote of at least 67% of the votes allocated to all Units.

7.3.2 Before renting a Unit, the Owner and its tenant will execute a written lease agreement that will include the following provisions:

- (a) the tenant agrees to comply with the Project Documents;
- (b) the tenant agrees not to allow or commit any nuisance, waste, unlawful or illegal act upon the Project; and
- (c) the Owner and the tenant acknowledge that: (A) the Association is an intended third-party beneficiary of the lease agreement; (B) the Association has the right to enforce compliance with the Declaration and the Bylaws and to abate any nuisance, waste, unlawful or illegal activity upon the Project; and (C) the Association will be entitled to exercise all of the Owner's rights and remedies under the lease agreement to do so.

7.3.3 Before a tenant occupies a Unit, the Owner must provide to the Association the name, address, and telephone number of the tenant and a copy of the written lease agreement.

7.3.4 The Association will have the right and the obligation to enforce compliance with this Declaration and the Bylaws against any Owner or occupant of a Unit, and will have all rights and remedies available under applicable law, in addition to its rights and remedies as a third-party beneficiary under any lease agreement, to enforce such compliance.

7.4 Improvements and Alterations.

7.4.1 An Owner may make improvements or alterations to its Unit, including erecting partitions within its Unit, without the consent of the Association or any other Owner, so long as:

- (a) the improvement or alteration does not impair or damage any Common Areas or any other Unit;

(b) the improvement or alteration does not protrude beyond the boundaries of the Owner's Unit and is not visible from the outside of the Unit; and

(c) the improvement or alteration complies with applicable laws.

7.4.2 Declarant reserves the right to construct any improvements that Declarant desires to construct on the Project.

7.5 **Nuisances.** No noxious, illegal, or offensive activities shall be carried on in any Unit, or in any part of the Condominium Unit, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may unreasonably interfere with the quiet enjoyment by an Owner of its Condominium Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.6 **Signs.** No signs of any kind may be displayed on the Condominium Unit without the prior approval of the Board; provided, however, that until such time as all the Units in the Project are sold, Declarant may place in and around the Project, such marketing and advertising signs as are acceptable under the sign ordinances of Salt Lake City.

7.7 **Animals.** No animals or birds of any kind shall be raised, bred, or kept in any Unit, or on any portion of the Condominium Unit; except that no more than two (2) usual and ordinary household pets such as dogs, cats, or birds, may be kept, provided that they are not kept, bred or maintained for any commercial purposes, and that they are kept under reasonable control at all times. All dogs shall be kept on a leash at all times when the dog is in the Common Areas. Owners shall use their best efforts to prevent their pets from voiding on any portions of the Common Areas, and in the event a pet does so, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project and may designate certain areas in which animals may not be taken or kept, or may require that specific animals not be allowed on any part of the Project.

7.8 **Garbage and Refuse Disposal.** Each Unit Owner will be responsible for removing all trash from its Unit and disposing of the trash in designated Common Area trash receptacles provided by the Association. All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood-piles, or storage piles shall be kept screened and concealed from view of other Condominium Units, streets and the Common Areas. There shall be no burning of trash in the Project.

7.9 **Clothes Lines.** No exterior clothes-lines shall be erected or maintained and there shall be no outside laundering or drying of clothes in any Common Areas. Clothes lines or laundry that are visible from outside of the Unit are also prohibited.

7.10 **Power Equipment and Car Maintenance.** No power equipment, or car maintenance of any nature whatsoever (other than minor repairs requiring no more than six hours work) shall be permitted within the Project, except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, general unsightliness, and related considerations.

7.11 **Window Covers.** Curtains and drapes (with a lining, the color of which must be approved by the Board), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material. The style and color of any furnishings visible from outside the Unit will be subject to Board approval.

7.12 **No Hazardous Activities.** No activities shall be conducted within the Project which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or other dangerous weapons shall be discharged or brandished within the Project; and no open fires shall be lighted or permitted within the Project, except in a contained barbecue unit while attended and in use for cooking

purposes, or within a safe and well-designed fireplace approved in writing by the Board. Use of any form of recreational vehicles on the Common Areas is strictly prohibited.

7.13 **Parking Spaces.** All parking spaces located in the Project are General Common Areas. The use and assignment of parking spaces will be regulated by the Board.

7.14 **No Warranty of Enforceability.** While Declarant has no reason to believe that any of the restrictive covenants contained in this Article 7 or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit Owner shall assume all risks of the validity and enforceability thereof and, by acquiring the Unit agrees to hold Declarant harmless therefrom.

Article 8 INSURANCE

8.1 **General Liability Insurance.** The Board will maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Project, if any, all other areas of the Project that are under the Board's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy will be in amounts generally required by private institutional Mortgage investors for condominium projects similar to the Project in construction, location, and use. Nevertheless, such coverage will be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under such policy will include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts of the Board or the Association. Additional coverage under such policy will include protection against such other risks as are customarily covered with respect to condominium projects similar to the Project in construction, location, and use, including but not limited to, host liquor liability, contractual and all written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy will include a special endorsement to preclude an insurer's denial of any Unit Owner's claim because of negligent acts of the Association or Board or any other Unit Owner. Such policy will provide that it may not be cancelled or substantially modified, by any party, without at least ten days' prior written notice to the Association and to each First Mortgagee that is listed as a scheduled holder of a First Mortgage in such policy.

8.2 **Property Insurance.** The Board will at all times maintain in force, and pay the premiums for, property insurance meeting the following requirements:

8.2.1 A "master" or "blanket" type policy of property insurance will be maintained covering the entire Project, including: Common Areas; Units; fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Board or the Association; and fixtures, equipment, or other property comprising a part of or located within any Unit and which are of a class typically encumbered by Mortgages held by the Federal National Mortgage Association ("FNMA") or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References in this Section 8.2 to a "master" or "blanket" type policy of property insurance are intended to denote single-entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy will afford protection against: (a) loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, (b) if the Project contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount of at least \$50,000 per accident per location; and (c) all other perils that are customarily covered in condominium projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" or "extended coverage" endorsement, where such endorsement is available. Such "master" or "blanket" policy will cover at least 100% of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The maximum deductible amount for such policy will be the lesser of \$10,000 or 1% of the policy face amount.

8.2.2 If any part of the Project is or comes to be situated in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association will obtain and pay the premiums on, as a part of the Common Expenses, a "master" or "blanket" policy of flood insurance on buildings and other property covered by the required form of policy ("**Insurable Property**") in the amount of at least the lesser of (a) the maximum limit of coverage available under the NFIP for all Insurable Property within any portion of the Project located within a designated flood hazard area; or (b) 100% of the current replacement cost of all Insurable Property. Such policy will be in a form that meets the criteria set forth in the most current guidelines issued by the Federal Insurance Administrator. The maximum deductible amount for any such policy will be the lesser of \$5,000.00 or 1% of the policy face amount.

8.2.3 Each policy required to be maintained under Sections 8.2.1 and 8.2.2 will be issued in the name of the Association for the use and benefit of the individual Owners or in the name of an authorized representative of the Association, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable will be in favor of the Association (or insurance trustee), as a trustee for each Owner and each Owner's Mortgagee. Each Owner will be a beneficiary of such policy in the percentage of the Owner's undivided interest in the Common Areas. Certificates of insurance will be issued to any Owner or Mortgagee on request.

8.2.4 Each policy required to be maintained under Sections 8.2.1 and 8.2.2, will contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional Mortgage investors in the area in which the Project is located. If FNMA is a holder of one or more Mortgages on Condominium Units within the Project, such mortgage clause will name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as Mortgagee in such mortgage clause, such servicer's name will be followed by the phrase "its successors and assigns". In addition, such mortgage clause or similar appropriate provision will provide that the policy may not be cancelled or substantially modified without at least ten days' prior written notice to the Association and to each First Mortgagee that is listed as a scheduled holder of a First Mortgage in the policy. Each policy will be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent institutional Mortgage investors in the area in which the Project is located.

8.2.5 Each policy required to be maintained under Sections 8.2.1 and 8.2.2 will provide for the following: (a) recognition of any insurance trust agreement; (b) a waiver of the right of subrogation against Owners individually; (c) the insurance is not prejudiced by acts or omissions of any individual Owner that are not within the control of the Owner; and (d) the policy is primary if the Owner has other insurance covering the same loss. The requirements stated in this Section 8.2.5 are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

8.2.6 Each policy required to be maintained under Sections 8.2.1 and 8.2.2 will also contain or provide the following: (a) an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement," and (b) if required by FNMA, "Construction Code Endorsements" (such as a "Demolition Cost Endorsement", a "Contingent Liability from Operation of Building Laws Endorsement", or an "Increased Cost of Construction Endorsement"), if the Project is subject to a construction code provision that would become operative upon Partial or Substantial Destruction and require changes to undamaged portions of the condominium buildings, thereby imposing significant costs in the event of such Destruction of the Project by an insured peril; and (c) "Steam Boiler and Machinery Coverage Endorsement", if the Project includes central heating or cooling, which will provide that the insurer's minimum liability per accident equals at least the lesser of \$2,000,000.00 or the insurable value of the building containing the boiler or machinery.

8.3 Additional Requirements for Insurance Policies.

8.3.1 Any insurance policies obtained and maintained by the Association under Sections 8.1 and 8.2 will be with generally acceptable insurance carriers consistent with the specific requirements set forth in the applicable edition of the FNMA Seller's Guide.

8.3.2 No such policy will 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, an Owner, a borrower, a Mortgagee, the Board, the Association, FNMA or the designee of FNMA; (b) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (c) the policy includes any limiting clauses (other than insurance conditions) that could prevent the party entitled (including, without limitation, a borrower, the a Mortgagee, the Board, the Association, an Owner, or FNMA) from collecting insurance proceeds. The provisions of this Article will not be construed to limit the power or authority of the Board or Association to obtain and maintain insurance coverage in addition to any insurance coverage required under this Article, in such amounts and in such forms as the Board or Association may deem appropriate from time to time.

8.4 **Power-of-Attorney.** Each Owner hereby appoints the Board (or an insurance trustee or substitute insurance trustee designated by the Board) as its attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (a) the collection and appropriate disposition of the proceeds thereof; (b) the negotiation of losses and execution of releases of liability; (c) the execution of all documents; and (d) the performance of all other acts necessary to accomplish such purpose. The Board (or designated insurance trustee) will receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

8.5 **Individual Property Insurance Limited.** Each Owner may separately insure its Unit and its personal property against loss by fire or other casualty. In addition, any improvements made by an Owner within its Unit may be separately insured by the Owner, but the insurance will be limited to the type and nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and Mortgagees.

8.6 **Fidelity Bonds.** The Board will at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Board and the Association and for all other persons handling or responsible for funds of or administered by the Board or the Association. Furthermore, where the Board or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, the management agent will provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Board, for the management agent's officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Board or the Association. The total amount of fidelity bond coverage required will not be less than the estimated maximum of funds, including reserve funds, in the custody of the Board, the Association, or the management agent, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three months' aggregate Assessments on all Condominium Units. The fidelity bonds will meet the following additional requirements: (a) the bonds will name the Board and the Association as obligees; (b) the bonds will contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (c) the premiums on all bonds required under this Section 8.6 for the Board and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees, and agents) will be paid by the Association as part of the Common Expenses; and (d) the bonds will provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten days' prior written notice to the Association (or designated insurance trustee) and to each servicer of loans on behalf of FNMA.

8.7 **Compliance with Agency Requirements.** Notwithstanding anything to the contrary in this Declaration, any insurance policies obtained and maintained by the Association pursuant to this Article 8 will comply with the specific insurance requirements imposed by FNMA. Any reference to FNMA in this Article will be deemed a reference to the Federal Home Loan Mortgage Corporation, the Veterans Administration, or the Federal Housing Authority to the extent the Association seeks to have the Project listed as an approved condominium project by such agencies and must comply with the specific requirements of such agencies in order to be so listed.

Article 9
CASUALTY AND EMINENT DOMAIN

9.1 **Definitions.** The provisions of this Article 9 will apply with respect to the destruction or condemnation of the Project. As used herein, each of the following terms will have the meaning indicated:

9.1.1 **Destruction.** "Substantial Destruction" will exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is at least 25% of the estimated Restored Value of the Project. "Partial Destruction" will mean any other damage or destruction to the Project or any part thereof.

9.1.2 **Condemnation.** "Substantial Condemnation" will exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is at least 25% of the estimated Restored Value of the Project. "Partial Condemnation" will mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

9.1.3 **Restoration.** "Restoration" will mean restoration of the Project, to the extent reasonably possible, in accordance with the Declaration, the Plat, and the original plans and specifications for the Project and to a condition the same or substantially the same as the condition in which the Project existed before the damage or destruction concerned; and to the extent not so possible, "Restoration" will mean restoration of the Project to an attractive, sound, and desirable condition. Any "Restoration" not in accordance with the Declaration, the Plat, and the original plans and specifications for the Project will require the consent of Eligible First Mortgagees holding First Mortgages on Units representing at least 51% of the votes of Units subject to a First Mortgage held by an Eligible First Mortgagee.

9.1.4 **Restored Value.** "Restored Value" will mean the value of the Project after Restoration.

9.1.5 **Estimated Costs of Restoration.** "Estimated Costs of Restoration" will mean the estimated costs of Restoration.

9.1.6 **Available Funds.** "Available Funds" will mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board and Association, including amounts contained in any reserve or contingency fund. Available Funds will not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a Mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee of a Condominium Unit for the condemnation or taking of the Unit in which that party is interested.

9.2 **Determination by the Board.** Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board will make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is 25% or more of the estimated Restored Value of the Project.

9.3 **Restoration of Project.** Restoration of the Project will be undertaken by the Board promptly without a vote of the Owners in the event of Partial Destruction or Partial Condemnation, and will also be undertaken in the event of Substantial Destruction or Substantial Condemnation unless the failure to make Restoration is consented to by Owners collectively holding at least 67% of the Project's undivided ownership interest and is further consented to by Eligible First Mortgagees holding First Mortgages on Units representing at least 51% of the votes of Units subject to a First Mortgage held by an Eligible First Mortgagee. Within 30 days after the Board has determined that Substantial Destruction or Substantial Condemnation exists, it will send to each Owner and Eligible First Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, will take appropriate steps to ascertain the preferences of the Eligible First Mortgagees concerning Restoration, and will, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. If insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by

the Board or Association exceed the cost of Restoration when Restoration is undertaken, the excess will be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is subject to a Mortgage will be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, all of the Units will be assessed for the deficiency on the basis of their respective undivided interests in the Common Areas. If a Unit or any portion thereof is not the subject of Restoration (even though the Project will continue as a Project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided interest in the Common Areas will be immediately reallocated to the remaining Units in accordance with Section 3.3.

9.4 **Sale of Project.** Unless Restoration is accomplished in accordance with Section 9.3, the Project will be sold in the event of Substantial Destruction or Substantial Condemnation. In the event of such sale, condominium ownership under this Declaration and the Plat will terminate, and the proceeds of sale and any Available Funds will be distributed by the Board to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage will be made jointly to such Owner and the interested Mortgagee.

9.5 **Authority of the Board to Represent Owners.** The Board, as attorney-in-fact for each Owner, will represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas. The award in any condemnation proceeding and the proceeds of any settlement related thereto will be payable to the Association for the use and benefit of the Unit Owners and their Mortgagees as their interests may appear. The Board, as attorney-in-fact for each Owner, will have and is hereby granted full power and authority to restore or to sell the Project and each Condominium Unit therein whenever Restoration or sale, as the case may be, is undertaken as provided in this Article. Such authority will include the right and power to enter into any contracts, deeds, or other instruments that may be necessary or appropriate for Restoration or sale, as the case may be.

9.6 **Appraisal of Damage.** If the parties affected by destruction or condemnation of the Common Areas cannot agree, within 30 days after the date of the damage or condemnation, on the estimated cost of repair or the allocations referred to in this Article, the Association will appoint three independent appraisers having at least five years of full-time appraisal experience in Salt Lake County, Utah, to appraise the damage or condemnation and establish allocations among various damaged or condemned portions of the Common Areas. Within 30 days after the selection of the appraisers, a majority of the appraisers will set the estimates and allocations. If a majority of the appraisers are unable to agree within the 30-day period, the average of the three appraisals will be used. If, however, the low appraisal or the high appraisal is more than 15% lower or higher than the middle appraisal, the low appraisal or the high appraisal, as applicable, will be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals will be used. If both the low appraisal and the high appraisal are disregarded, the middle appraisal will be used. The cost of the appraisals required by this Section 9.6 will be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

Article 10 DECLARANT'S RIGHTS AND RESERVATIONS

10.1 **Rights.** Declarant may undertake the work of construction or renovation of the infrastructure improvements for the Project. Nothing in this Declaration shall be understood or construed to:

10.1.1 prevent Declarant, its contractors, or subcontractors from doing within the Project, whatever is reasonably necessary or advisable in connection with the completion of the work, including, but not limited to, using any portion of the Project as a staging area for construction; or

10.1.2 prevent Declarant or its representatives from erecting, constructing and maintaining on any portion of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Project as a condominium community and disposing of the same in Condominium Units, by sale or other disposition; or

10.1.3 prevent Declarant from maintaining such sign or signs on any portion of the Project as may be necessary for the sale or disposition thereof.

10.2 **Sale or Transfer by Declarant.** In the event Declarant shall convey all of its right, title and interest in and to the Project, to any partnership, individual or individuals, corporation or corporations, or other entity, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, or entity shall be obligated to perform all such duties and obligations of the Declarant.

10.3 **Declarant Control Period.** Notwithstanding any provision to the contrary contained in this Declaration, the Articles or the Bylaws, there is hereby established a period of Declarant control of the Association ("**Declarant Control Period**"), during which period Declarant or persons designated by it shall have the sole authority to appoint and remove the Association officers and members of the Board. The Declarant Control Period shall terminate no later than the earlier of:

10.3.1 the sixth anniversary of the recordation of this Declaration; or

10.3.2 after (a) Units to which three-fourths (3/4) of the undivided interest in the Common Areas appertain have been conveyed to Owners and (b) all Additional Land has been added to the Project.

Article 11 RIGHTS OF MORTGAGEES

11.1 **Benefit of Mortgagees.** This Article establishes certain standards and covenants that are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, the other provisions of this Declaration, but in case of a conflict, this Article will control.

11.2 **Notices of Action.** Each Eligible First Mortgagee is entitled to timely written notice of the following:

11.2.1 any proposed amendment to the Development Documents effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining to a Unit; (b) the undivided interests in the Common Areas, the liability for Common Expenses, or the number of votes appertaining to any Unit; or (c) the use to which any Unit or the Common Areas are restricted;

11.2.2 any proposed termination of the legal status of the Project as a condominium project;

11.2.3 any condemnation or casualty loss that affects either a material portion of the Project or the Unit encumbered by the Eligible First Mortgagee's Mortgage;

11.2.4 any delinquency in the payment of Assessments that remains uncured for 60 days by the Owner whose Unit is encumbered by the Eligible First Mortgagee's Mortgage;

11.2.5 any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association under Article 8; and

11.2.6 any proposed action that requires the consent of a specified percentage of Mortgagees.

11.3 **Consent Required.**

11.3.1 The consent of Eligible First Mortgagees holding First Mortgages on Units representing at least 67% of the votes of Units subject to a First Mortgage held by an Eligible First Mortgagee will be required to adopt any amendment that would terminate the legal status of the Project as a condominium Project.

11.3.2 The consent of Eligible First Mortgagees holding First Mortgages on Units representing at least 51% of the votes of Units subject to a First Mortgage held by an Eligible First Mortgagee will be required to amend any material provision of this Declaration or the Plat that establishes, provides for, governs, or regulates any of the following: (a) voting, (b) Assessments, (c) Assessment liens or subordination of Assessment liens, (d) reserves for maintenance, repair, and replacement of the Common Areas, (e) insurance or fidelity bonds, (f) rights to use of the Common Areas, (g) responsibility for maintenance and repair of the Project, (h) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project, (i) the boundaries of any Unit, (j) the undivided interests in the Common Areas, (k) convertibility of Units into Common Areas or of Common Areas into Units, (l) leasing of Units, (m) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey its Unit, or (n) establishment of self-management by the Association where professional management has been required by any agency. An amendment will not be considered material for purposes of this Section 11.3.2 if it is for the purpose of correcting technical errors or for clarification only.

11.3.3 The consent of the Veterans Administration, as per applicable regulations of the Veterans Administration, will be required to add to or amend any material provision of this Declaration or the Plat that establishes, provides for, governs, or regulates any of the following: (a) termination of the legal status of the Project as a condominium project, (b) insurance or fidelity bonds, (c) convertibility of Units into Common Areas or of Common Areas into Units, (d) leasing of Units, and (e) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey its Unit.

11.3.4 The consent requirements set forth in this Section 11.3 will not be applicable to amendments to this Declaration and the Plat or to termination of the legal status of the Project as a condominium if such amendments or such termination are made or accomplished in accordance with the provisions of Article 9 in the event of Substantial Destruction or Substantial Condemnation.

11.4 **Federal Guidelines.** In addition to the foregoing, the Declarant and the Board shall have the power and authority, without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of any generally recognized federal agency or lending institution (e.g., FNMA, GNMA, FHA or VA), so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies or lending institutions approve the Project as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

11.5 **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of such Owner's Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas.

11.6 **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Unit.

11.7 **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within sixty (60) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

11.8 **Mortgagee Rights in Event of Foreclosure.** Each First Mortgagee who comes into possession of a Unit by the virtue of a Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrued prior to the time such holder comes into possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units in the Project, including the Unit which is the subject of such mortgaged unit. In any case, however, the First Mortgagee shall not be liable for more than six (6) months of the Unit's unpaid pro rata share of assessments or charges

described in the immediately preceding sentence. If the Association's lien priority includes costs of collecting unpaid dues, the First Mortgagee holding a First Mortgage on the Unit will be liable for any fees or costs related to the collection of the unpaid dues.

Article 12 EXPANDABLE CONDOMINIUM

12.1 **Reservation of Right to Expand.** In accordance with Section 57-8-13.6 of the Condominium Act, and subject to this Article 12, Declarant expressly reserves the right to expand the Project on the Plat by adding all or any portion of the Additional Land at any time and from time to time. There are no limitations as to what portions of the Additional Land may be added to the Project.

12.2 **No Consent Required.** Declarant will not be required to obtain the consent of any Owner or of any other Person having any right or interest in the Project before adding all or any portion of the Additional Land to the Project.

12.3 **Description of Additional Land.** The Additional Land is located in Salt Lake County, Utah and is legally described on Exhibit D hereto.

12.4 **Supplemental Plat.** Before adding all or any portion of the Additional Land, Declarant will record a supplemental plat showing the location and dimensions of the vertical and horizontal boundaries of the Units, General Common Areas, or Limited Common Areas, if any, formed out of the Additional Land and showing which Limited Common Areas are appurtenant to the newly formed Units and such other information as may be required by the Condominium Act. Each supplemental plat will be certified as to its accuracy and compliance with the Condominium Act by the engineer or land surveyor who prepared or supervised the preparation of it.

12.5 **Amendment to Declaration.** Concurrently with recording the supplemental plat, Declarant will record an amendment to this Declaration that (a) contains a legal description by metes and bounds of the portion of the Additional Land added to the Project (b) assigns a Unit number to each Unit, if any, formed out of the Additional Land added to the Project, (c) describes the Limited Common Areas, if any, formed out of the Additional Land added to the Project, and (d) reallocates the undivided interests in the Common Areas among all the Units (including the existing Units and the newly created Units) in proportion to their respective floor areas as described in Section 3.3.

12.6 **Purchasers of Additional Land.** Any Person who purchases all or a portion of the Additional Land from Declarant will succeed to Declarant's rights under this Article 12, but such rights may only be exercised in accordance with the requirements of this Article 12.

12.7 **Applicability of Declaration to Additional Land.** No covenants, restrictions, limitations, or other representations or commitments in this Declaration concerning anything that is or is not to be done on the Additional Land or any portion thereof will be binding as to any portion of the Additional Land that is never added to the Project.

12.8 **Expiration of Expansion Right.** The option to expand the Project under this Article 12 will expire seven years after the recording of this Declaration, unless Owners holding at least 75% of the Total Votes of the Association vote in favor of expanding the Project after the time period has expired. However, Declarant may, at any time before the expiration of such period, terminate its option to add by recording a document terminating this option in the official records of Salt Lake County, Utah.

12.9 **Location of Improvements.** Declarant makes no assurances as to the locations of any improvements that may be made on any portions of the Additional Land added to the Project.

12.10 **Maximum Number of Units.** The maximum number of Units that may be created on the Additional Land is six. The maximum number of Units that may be created on each acre of Additional Land is 50.

12.11 **Usage Restrictions.** Any Units created out of the Additional Land will be restricted exclusively to residential purposes.

12.12 **Compatibility with Structures in Initial Project.** Declarant reserves the right to select the design and configuration of any structures erected on the Additional Land. Although Declarant intends to erect structures on the Additional Land that are compatible with structures in other portions of the Project in terms of construction quality, construction materials, and architectural style, Declarant makes no assurances that such structures will be compatible in every instance and in every respect.

12.13 **Other Improvements.** Declarant reserves the right to make such additional improvements on the Additional Land as Declarant sees fit. However, Declarant makes no assurances as to improvements that may be made on the Additional Land.

12.14 **Similarity of New Units to Initial Units.** Declarant makes no assurances that Units on the Additional Land will be substantially identical to other Units in the Project in terms of quality of construction, principal materials to be used, or architectural style.

12.15 **Limited Common Areas.** Declarant reserves the right to create Limited Common Areas within any portion of the Additional Land as Declarant sees fit. Declarant makes no assurances as to types, sizes, or maximum numbers of Limited Common Areas that may be created on the Additional Land.

12.16 **No Amendment without Declarant Consent.** The provisions of this Article 12 may not be amended without Declarant's consent.

Article 13 DURATION AND AMENDMENT

This Declaration and the Bylaws may be amended only with the consent of at least 67% of the votes allocated to the Units and, during the Declarant Control Period, the consent of Declarant. Any amendments to this Declaration, the Bylaws, or the Plat must be recorded in the official records of Salt Lake County. This Section is subject to the rights of Eligible First Mortgagees under Article 11. Notwithstanding anything in this Declaration to the contrary, Declarant will have the right to amend this Declaration to comply with the requirements of any applicable statute, ordinance, regulation, or lending requirement of the Federal Housing Administration, the Department of Veterans Affairs, the Farmers Home Administration of the United States, FNMA, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the state of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the state of Utah that insures, guarantees, or provides financing for a condominium or units in a condominium.

Article 14 ENFORCEMENT

14.1 **General.** If an Owner fails to pay any Assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with Sections 14.2 and 14.3: (a) terminate the Owner's right to receive utility services paid for as a Common Expense, and (b) terminate the Owner's right to access and use any recreational facilities in the Project.

14.2 **Notice.** Before terminating utility services or the right to access and use the Project's recreational facilities, the Board will give written notice to the Owner in accordance with the Project Documents. The notice will include:

14.2.1 a statement that utility services or the right to access and use recreational facilities will be terminated if payment of the overdue Assessment is not received within two days after receiving the notice;

14.2.2 the amount of the Assessment due, including any interest or late payment fee; and

14.2.3 notification of the Owner's right to request a hearing under Section 14.3.

14.3 **Hearing.** An Owner who is given notice under Section 14.2 may request an informal hearing to dispute the Assessment by submitting a written request to the Board within 14 days after receiving the notice. The hearing will be conducted in accordance with the standards provided in the Project Documents. If a hearing is requested, utility services or the right to access and use the Project's recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. If a hearing is requested, no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

14.4 **Reinstatement.** Upon payment of the Assessment due, including any interest or late payment fee, the Board will immediately take action to reinstate the Unit's terminated utility services.

14.5 **Rental Payments.** If an Owner is leasing its Unit and fails to pay an Assessment for a period of more than 60 days after it is due and payable, the Board, upon compliance with this Section 14.5, may demand the tenant to pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid. If the Association elects to exercise this remedy, it must do so in accordance with Section 57-8-20(6) of the Condominium Act.

14.6 **Fines.** Subject to Section 57-8-37 of the Condominium Act, the Board may assess a fine against an Owner for violation of a rule, covenant, condition, or restriction that is specifically listed in the Project Documents. A fine must be in the amount specifically provided for in the Project Documents for the specific type of violation, not to exceed the amount set forth in Section 57-8-37(3)(a)(ii) for any single violation or the cumulative amount set forth in Section 57-8-37(3)(b) in any month for a continuing violation. Any Owner assessed a fine may request an informal hearing before the Board to protest or dispute the fine within 30 days after the fine is assessed. The hearing will be conducted in accordance with the standards set forth in the Project Documents. No interest or late fees may accrue on a fine until after the hearing has been conducted and a final decision has been rendered, unless the fined Owner fails to request a hearing within the 30-day time period. A fine assessed under this Section 14.6 that remains unpaid after the 30-day appeal period has expired will become a lien against the Unit and the Owner in accordance with Section 5.2.

14.7 **Interest, Expenses, and Attorneys' Fees.** Any fine not paid to the Association when due in accordance with this Declaration will bear interest from the due date (unless a hearing is timely requested, in which case no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered) until paid at a rate three percentage points per annum above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Board, but not to exceed the lawful rate of interest under Utah law. A late charge may be levied for each delinquent fine in an amount established from time to time by the Board. If the Association files a notice of lien, the lien amount will also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee will be established from time to time by the Board. If the Association prevails in any procedure to enforce the Project Documents, the Association will be entitled to an award of its costs and reasonable attorneys' fees associated with the action.

14.8 **Other Remedies.** The Association may bring suit or pursue any other remedy available at law or in equity against the offending Owner to enforce the provisions of the Project Documents.

14.9 **Remedies Cumulative.** An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. Failure by the Association to enforce any provision of the Project Documents will not be deemed a waiver of the right to do so thereafter.

Article 15
GENERAL PROVISIONS

15.1 **Invalidity of Any Provision.** Should any provision of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

15.2 **Governing Law.** This Declaration will be governed by Utah law.

15.3 **Conflict of Project Documents.** If there is any conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Plat, Articles, Bylaws, and rules and regulations of the Association.

15.4 **Notices.** Each Unit and its Owner or Owners will register a single mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit will provide the notice address, together with a contact phone number and email address, to the secretary of the Association within ten days after taking title to the Unit. If no notice address is provided to the Association or if all of the Owners of a Unit cannot agree on a notice address, then the notice address for the Unit will be deemed to be the address of the Unit itself, and any notice will be deemed duly given if delivered to the Unit. All notices and demands to be served on Declarant or the Association must be sent to the following address or such other address or addresses as Declarant or the Association may designate from time to time by notice to the Owners:

Locke Avenues, LLC
c/o Alex Hertz
3500 Lenox Rd NE, Ste 200
Atlanta, GA 30326-4237

15.5 **Service of Process.** The name and residence or business address of the person authorized to receive service of process on behalf of the Project, in the cases provided for by the Condominium Act, is as follows:

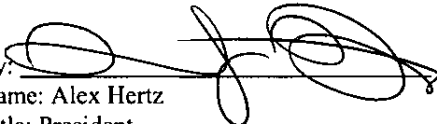
Corporate Creations Network, Inc.
2825 E Cottonwood Pkwy, Ste 500
Salt Lake City, UT 84121-7060

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first mentioned above.

Locke Avenues, LLC
a Georgia limited liability company,
by its manager:

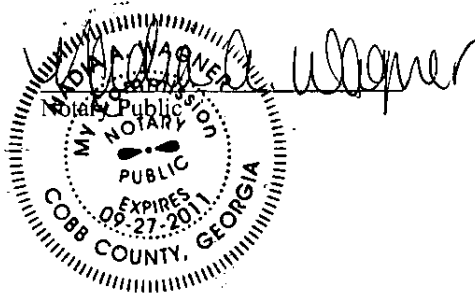
Locke Investment & Development, LLC
a Georgia limited liability company,
by its manager:

Locke Property Investments, Incorporated
a Georgia corporation

By: 
Name: Alex Hertz
Title: President

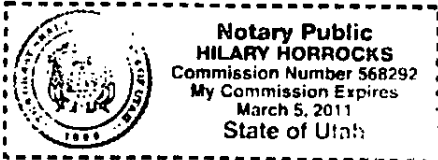
State of Georgia)
County of Cobb) ss.

The foregoing instrument was acknowledged before me on October ²⁷~~21~~, 2008, by Alex Hertz, president of Locke Property Investments, Incorporated, a manager of Locke Investment & Development, LLC, the manager of Locke Avenues, LLC.



CONSENT OF LIENHOLDER

Frontier Bank, FSB, as the holder of a lien encumbering a portion of the above-referenced Land and Improvements arising under that certain Deed of Trust recorded May 12, 2008, as Entry No. 10425661 in Book 9605 at Pages 8001-13 in the official records of Salt Lake County, Utah, consents to the submission of the Land and Improvements to the Act under the terms of this Declaration and subordinates its lien to the encumbrance created by this Declaration.



Frontier Bank, FSB

By: Don Rudy
Name: Don Rudy
Title: V.P.

State of Utah)
) ss.
County of Summit)

The foregoing instrument was acknowledged before me on October 30, 2008, by Don Rudy, Vice President of Frontier Bank, FSB.

Hilary Horrocks
Notary Public

Exhibit A

Legal Description of the Land

The "Land" referred to in the foregoing Declaration of Condominium is located in Salt Lake County, Utah, and is more particularly described as follows:

Beginning at the southeast corner of Lot 1, in Block 14 Plat "G" Salt Lake City Survey, according to the official plat thereof, as recorded in the office of the County Recorder, Salt Lake County, Utah; thence south 89°59'53" west a distance of 165.00 feet; thence north 00°00'24" west a distance of 201.00 feet; thence north 89°59'53" east a distance of 49.50 feet; thence south 00°00'24" east a distance of 3.00 feet; thence north 89°59'53" east a distance of 57.75 feet; thence north 00°00'24" west a distance of 23.00 feet; thence north 89°59'53" east a distance of 57.75 feet; thence south 00°00'24" east a distance of 221.00 feet to the point of beginning.

[For Reference Only: Tax Parcel Nos. 09-32-481-011, 09-32-481-012, and 09-32-481-018]

Exhibit B

Schedule of Units, Square Footage,
and Undivided Interest in Common Areas

Unit No.	Square Footage	Undivided Interest in Common Areas
1121-1	843	4.14%
1121-2	841	4.13%
1121-3	891	4.37%
1121-4	889	4.37%
1121-5	891	4.37%
1121-6	889	4.37%
1135-1	470	2.31%
1135-2	824	4.04%
1135-3	820	4.02%
1135-4	824	4.04%
1135-5	820	4.02%
1135-6	824	4.04%
1135-7	820	4.02%
61-1	811	3.98%
61-2	811	3.98%
61-3	811	3.98%
61-4	811	3.98%
61-5	811	3.98%
61-6	811	3.98%
69-1	811	3.98%
69-2	811	3.98%
69-3	811	3.98%
69-4	811	3.98%
69-5	811	3.98%
69-6	811	3.98%
Total	20,378	100.00%

*To ensure that the aggregate undivided interests in Common Areas equal 100.00%, Declarant has rounded off some or all of the undivided interests in Common Areas.

Exhibit C
Bylaws
of
The Avenues Condominiums East Association, Inc.
(attached)

Exhibit C to Declaration of Condominium (Avenues Condominiums East)

**BYLAWS
OF
THE AVENUES CONDOMINIUMS EAST ASSOCIATION, INC.**

**Section 1
DEFINITIONS**

1.1 **Declaration.** The Declaration of Condominium for the Avenues Condominiums East, recorded in the official records of Salt Lake County, Utah.

1.2 **Other Definitions.** Any capitalized term used but not defined in these Bylaws will have the meaning attributed to it in the Declaration.

**Section 2
MEETINGS OF OWNERS**

2.1 **Annual Meetings.** The first annual meeting of the Association will be held in 2008 at a time and in a month specified by the Board. Subsequent annual meetings will be held during the same month each year. Annual meetings will be held for the purpose of electing Directors, approving the annual budget, and transacting such other business as may come before the annual meeting.

2.2 **Special Meetings.** A special meeting of the Association may be called at any time by the Board or the president of the Association, or upon the written request of at least 30% of the votes entitled to be cast by the Owners. A special meeting may only be held for the purposes set forth in the notice for that special meeting.

2.3 **Place of Meetings.** The Board may designate any place in or out of the State of Utah as the place for any annual or special meeting of the Association. Owners may participate in meetings by any means of electronic or telephonic communication through which all Owners and other participants may simultaneously hear one another during the meeting. Owners who participate in a meeting by such means will be considered present for all purposes, including the presence of a quorum.

2.4 **Notice of Meetings.** Notice of each meeting stating the place, date, and time of the meeting and the purpose or purposes for which the meeting is called, will be delivered personally or by mail to each Owner entitled to vote at the meeting, not less than 10 nor more than 50 days before the date of the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail, postage prepaid, and addressed to the Owner at its address as it appears in the records of the Association. The Board may set a record date for determining the Owners entitled to notice. The Association will give notice at the Association's expense of any special meeting called by the Owners under Section 2.2.

Section 3
VOTING; QUORUM

3.1 **Voting.** Votes will be allocated as set forth in Section 2.4 of the Declaration.

3.2 **Quorum.** The number of Owners participating in a meeting in person, by proxy, or by written ballot will constitute a quorum.

3.3 **Voting Method.** Votes may be cast in person, by proxy, or by written ballot.

3.4 **Action by Proxy.** Every proxy must be executed in writing by the Owner or its duly authorized attorney-in-fact and filed with the secretary of the Association before or at the time of the meeting. No proxy will be valid after the expiration of one year from the date of its execution unless otherwise provided in the proxy.

3.5 **Action by Written Ballot.**

(a) Any action that may be taken at any meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on the matter. Such written ballot will set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot will be valid only when the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot. Owners submitting a written ballot will be considered to have participated in the meeting for all purposes.

(b) All solicitations for votes by written ballot will: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of Directors; (iii) specify the time by which a written ballot must be received by the Association in order to be counted; and (iv) be accompanied by written information sufficient to permit each Owner casting a written ballot to reach an informed decision on the matter.

(c) A written ballot may not be revoked.

(d) Action by written ballot will have the same effect as action taken at a meeting.

(e) The number of votes cast by written ballot will constitute a quorum for action on the matter.

(f) A written ballot may also be used in connection with any meeting of the Association, thereby allowing Owners the choice of either voting in person or by written ballot delivered by an Owner to the Association in lieu of attendance at such meeting. A valid written ballot will be counted equally with the votes of Owners in attendance at any meeting for every purpose.

3.6 **Majority Vote.** The affirmative vote of a majority of the votes entitled to be cast by the Owners participating in a meeting in person, by proxy, or by written ballot will be the act of the Owners, unless the vote of a greater number is required by law, the Declaration, the Articles, or these Bylaws.

3.7 **Greater Quorum or Voting Requirements.** An amendment to the Articles or these Bylaws that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote required to take action under the greater of the quorum and voting requirements then in effect or proposed to be adopted.

Section 4 BOARD

4.1 **Declarant Control Period.** During the Declarant Control Period, the Board will consist of three Directors, who will be appointed by Declarant in its sole discretion and will serve until replaced by Declarant or until their successors take office following the end of the Declarant Control Period, whichever occurs earlier. Declarant will have the exclusive right to appoint, remove, and replace all Directors during the Declarant Control Period. Sections 4.2 through 4.9 are subject to this Section 4.1.

4.2 **Number, Election, Term of Directors.** The Board will consist of three Directors. Directors will be elected at the annual meetings of the Association by a majority of the votes allocated to the Owners. Subject to Sections 4.3 and 4.4, each Director will hold office for a term of one year.

4.3 **Removal.** A Director may be removed before the expiration of his term only at a special meeting of the Association called in accordance with Section 2.2. The consent of 67% or more of the votes allocated to the Units will be required for the removal of a Director. A vacancy created by the removal of a Director will be filled at the same meeting at which the Director was removed. The replacement Director will hold office until the next annual meeting of the Association and until his successor is duly elected.

4.4 **Resignation or Death.** A Director may resign before the expiration of his term by giving written notice to the president or to the secretary of the Association. Such resignation will take effect on the date specified in the notice. Upon the resignation or death of a Director, the remaining Directors will appoint a replacement Director to serve until his successor is elected at the next annual meeting of the Association or at the next special meeting of the Association called for that purpose, whichever occurs first.

4.5 **Meetings.** Meetings of the Board will be held at least annually, and at any time when called by the president of the Association or by two or more Directors, upon the giving of at least five days' prior notice of the time and place of the meeting to each Director by hand-delivery, prepaid United States mail, fax, email, or telephone. Any business may be transacted at a Board meeting. No notice of a Board meeting need state the purposes for holding the meeting, and no notice of any adjourned Board meeting will be required.

4.6 **Place of Meetings.** The Board may designate any location convenient to the Directors in which to hold a Board meeting. Directors may participate in any Board meeting by means of any electronic or telephonic communication by which all participants may simultaneously hear one another during such meeting. Directors who participate in a Board meeting by such means will be considered present for all purposes, including the presence of a quorum.

4.7 **Quorum.** A majority of Directors will constitute a quorum for the transaction of business, but a lesser number may adjourn any Board meeting from time to time. When a quorum is present at any Board meeting, a majority of the Directors in attendance will decide any question brought before such meeting.

4.8 **Waiver of Notice.** Before, at, or after any Board meeting, any Director may, in writing, waive notice of such meeting and such waiver will be deemed equivalent to the giving of such notice. Attendance by a Director at a Board meeting will constitute a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business based on a claim that the meeting was not duly called or convened.

4.9 **Informal Action by Directors.** Any action required or permitted to be taken at a Board meeting may be taken without such meeting if a written consent setting forth the action so taken is signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent will have the same force and effect as a unanimous vote of the Directors.

Section 5 OFFICERS AND AGENTS

5.1 **General.** The Officers of the Association will be a president (who will be chosen from among the Directors), a vice president, a secretary, and a treasurer. The Board may appoint such other Officers, assistant Officers, committees, and agents, including assistant secretaries and assistant treasurers, as it may consider necessary or advisable, who will be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any Officer, agent, or employee are not prescribed by these Bylaws or by the Board, such Officer, agent, or employee will follow the orders and instructions of the president.

5.2 **Removal of Officers.** The Board may remove any Officer, with or without cause, and elect a successor at any Board meeting.

5.3 **Vacancies.** A vacancy in any office will be filled by the Board for the unexpired portion of the term.

5.4 **President.** The president will be the chief Officer of the Association. The president will preside at all Association meetings and Board meetings. The president will have the general and active control of the affairs and business of the Association and general supervision of its Officers, agents, and employees. The president is designated as the Officer

with the power to prepare, execute, certify, and record amendments to the Declaration and the Articles on behalf of the Association.

5.5 **Vice President.** The vice president will assist the president and will perform the duties assigned to him by the president or the Board. In the absence of the president, the vice president will have the powers and perform the duties of the president.

5.6 **Secretary.** The secretary will:

- (a) keep the minutes of the proceedings of Association meetings and Board meetings;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws and the Declaration;
- (c) maintain the records of the Association, including a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if a Unit is Mortgaged, the name and address of each Mortgagee; and
- (d) perform all other duties incident to the office of secretary and the duties assigned to him by the president or the Board.

5.7 **Treasurer.** The treasurer will be the principal financial Officer of the Association and will have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association. The treasurer will receive and give receipts and acquittances for moneys paid in on account of the Association and will pay out of the funds on hand all bills, payrolls, and other just debts of the Association upon maturity. The treasurer will perform all other duties incident to the office of treasurer and, upon request of the Board, make such reports to it as may be required at any time. The treasurer will, if required by the Board, give the Association a bond for the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property in his possession or under his control belonging to the Association. The treasurer will have such other powers and perform such other duties assigned to him by the president or the Board.

Section 6

PROOF OF OWNERSHIP; CONTACT INFORMATION; ASSOCIATION ADDRESS; MORTGAGES

6.1 **Proof of Ownership.** Each Owner will furnish to the Association a copy of the recorded instrument vesting that Owner with an ownership interest in the Unit. Such copy will remain in the records of the Association. An Owner who fails to satisfy this requirement will not be deemed an Owner in good standing and will not be entitled to vote at any Association meeting.

6.2 **Contact Information.** Each Owner is required to register a mailing address, a phone number, and an email address with the Association within ten days after becoming an Owner. The contact information of each Owner will be kept in the records of the Association. Owners must notify the Association of any change in contact information within ten days after

the change. Any notice mailed to an Owner's registered address or—if the Owner fails to register an address with the Association—to the address on file with the County Recorder will be deemed duly delivered.

6.3 **Address of the Association.** The initial principal address of the Association will be 3500 Lenox Rd NE, Ste 200, Atlanta, GA 30326-4237. The Association's address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

6.4 **Mortgages.** Any Owner who Mortgagees its Unit will give the Association written notice of the name and address of the Mortgagee and will file true, correct, and complete copies of the note and security instrument with the Association.

Section 7 SECURITY INTEREST IN MEMBERSHIP

An Owner will have the right to appoint the Mortgagee of its Unit as its true and lawful attorney-in-fact to exercise any and all rights, privileges, and powers that the Owner has as a member of the Association by filing a proxy with the secretary of the Association. A release of the Mortgage covering the Unit will operate to revoke the proxy. An Owner who appoints its Mortgagee as attorney-in-fact will not be relieved of its duties and obligations as an Owner, nor will the appointment impose upon the Mortgagee the duties or obligations of an Owner.

Section 8 AMENDMENT

These Bylaws may be amended with the consent of at least 67% of the votes allocated to the Units and, during the Declarant Control Period, the consent of Declarant. Any amendment must be recorded in the form of an amendment to Exhibit C of the Declaration.

Exhibit D

Legal Description of the Additional Land

The "Additional Land" referred to in the foregoing Declaration of Condominium is located in Salt Lake County, Utah, and is more particularly described as follows:

Beginning at the southeast corner of Lot 2 in Block 14, Plat "G", Salt Lake City Survey, according to the official plat thereof, as recorded in the office of the County Recorder, Salt Lake County, Utah; thence south 89°59'53" west a distance of 49.50 feet; thence north 00°00'24" west a distance of 123.75 feet; thence north 89°59'53" east a distance of 49.50 feet; thence south 00°00'24" east a distance of 123.75 feet to the point of beginning.

[For Reference Only: Tax Parcel No. 09-32-481-016]