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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
GARY SANDBURG
2200 S MAIN ST
SLC UT 84115
BY: TMM, DEPUTY - WI 27 P.

Tax Parcel No.: 08-35-376-011

**DECLARATION OF CONDOMINIUM
FOR
THE FAIRPARK COMMERCIAL CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made and executed by SANDBERG INVESTMENTS, L.L.C., a Utah limited liability company ("Declarant") this 6 day of Sept, 2013, pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended. Declarant is the owner of the Property defined below, upon which Declarant intends to create a separate commercial condominium for each unit therein. Declarant intends to retain two of the Units and sell the third Unit to EnviroTech Molded Products, Inc., the existing tenant in the Property.

Declarant hereby submits the Property to the covenants, conditions, restrictions, terms and provisions hereof, which shall be enforceable equitable servitudes and shall run with the land constituting the Property.

1. **Definitions.** The following terms shall have the meanings as used herein:

"Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code).

"Amendment" shall mean any amendment to this Declaration made in accordance with this Declaration and the Act.

"Articles" shall mean the Articles of Incorporation of the Association.

"Assessment" shall mean those Assessments described in Section 9 to fund the Common Expense and include Regular Assessments, Special Assessments, Specific Assessments and any other assessments levied by the Management Committee or the Association.

"Association" shall mean the Fairpark Commercial Condominium Owners Association that may later be organized for the purposes set forth in this Declaration. All references to the Association herein shall be applicable only in the event an Association is organized. Unless and until an Association is organized, the Property and the Owners shall be governed by the Management Committee as set forth in this Declaration. Following organization of the Association, all references to Management Committee herein shall be references to the Association or its Board, as applicable.

"Board" shall mean the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws, which shall constitute the "management committee" defined under the Act and shall replace the Management Committee hereunder.

"Building(s)" shall mean the Buildings described in Section 2.

"Bylaws" shall mean the Bylaws set forth in Section 9.

"Common Areas" shall mean the electrical substation situated on the Property and shown on the Plat and all Limited Common Areas including the Demising Wall and Shared Utility Distribution Systems, and shall not include any other element described in Utah Code Ann. §57-8-3 except as expressly shown on the Plat and described herein.

"Common Area Interest" shall have the meaning set forth in Section 5 and Exhibit B attached hereto.

"Common Expenses" shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas (other than the Limited Common Areas except as expressly provided otherwise herein) and all other expenses designated as Common Expenses by the Management Committee, this Declaration or by the Act.

"Common Expense Fund" shall mean one or more deposit or investment accounts of the Management Committee into which Assessments are deposited.

"Cost of Living Index" shall mean the Consumer Price Index, all Urban Consumers – U.S. City Average – All Items (1982-84=100). Declarant may select any other comparable index which measures changes in the cost of living.

"Declarant" shall mean the original Declarant named herein as well as any successor in interest as defined by the Act.

"Demising Wall" shall mean the demising wall between Units 2 and 3, which wall shall be Limited Common Area appurtenant to Units 2 and 3.

"Improvements" shall have the meaning set forth in Section 2 below.

"Limited Common Area" shall mean the Demising Wall, Shared Utility Distribution Systems, Shared Roof Segments and portions of the Property shown on the Plat as Limited Common Area, all of which are assigned for the exclusive use of a specific Unit or Units as indicated herein or on the Plat; provided, however, that all use of the Roadways and the truck loading and staging area as shown on the Plat shall be subject to the right of ingress and egress by all Units.

"Management Committee" shall mean a committee consisting of a representative appointed by each Unit. The powers and duties of the Management Committee are set forth herein. All references herein to Management Committee shall refer to the Association or Board, as applicable, following organization of an Association.

"Manager" shall mean any person, firm or company designated by the Management Committee to manage, in whole or in part, the affairs of the Property and the Management Committee.

"Member" shall mean and refer to each member of the Association, and "Membership" shall mean membership in the Association.

"Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A "First Mortgage" is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

"Mortgagee" shall mean any person or entity named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A "First Mortgagee" shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

"Owner" shall mean any person or entity, including Declarant, at any time owning a Unit or an interest in a Unit. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

"Plat" shall mean the Condominium Plat of The Fairpark Commercial Condominiums, recorded in the office of the Recorder, as it may be amended from time to time pursuant to this Declaration and the Act. The Plat may be amended to reflect such changes to the Property as are permitted and effected under this Declaration. Such amendments to the Plat are expressly authorized to be made by any Owner with respect to the Unit held by such Owner and may be undertaken by such Owner without the joinder or consent of any other Owners other than with respect to relocation of any Roadway within the Limited Common Area appurtenant to such Unit, which relocation must be unanimously approved by the Owners of all Units. A copy of the initial Plat is attached hereto as **Exhibit D**.

"Property" shall mean the certain real property situated in the County of Salt Lake, State of Utah, described in Section 2 below including the Units, the Common Area, the Limited Common Areas and all improvements thereon.

"Recorder" means the office of the Official Recorder of Salt Lake County, Utah.

"Regular Assessments" shall mean any periodic Assessments levied by the Management Committee to pay the budgeted Common Expenses.

"Roadway" shall mean all vehicular roadways within the Limited Common Areas starting at the two access-points from North Temple and the single access point from 1000 West, each as shown on the Plat, and continuing throughout the Limited Common Areas, all of which are subject to use for access by the Owners, customers, clients, patrons, employees, licensees, guests, representatives and agents of the Owner of each Unit. Each Owner shall provide continuous access through the Limited Common Area appurtenant to such Owner's Unit to the boundary of each adjacent Unit.

"Shared Roof Segments" shall have the meaning described in Section 4.2.

"Shared Utility Distribution System" shall mean any Utility Distribution System serving more than one Unit or portion thereof.

"Special Assessments" shall mean any Assessments that the Management Committee may levy from time to time on all Units for unexpected Common Expenses or other purposes as provided herein.

"Specific Assessments" shall mean Assessments levied against a specific Unit and the Owner thereof by the Management Committee to cover costs, including overhead and administration, for providing particular services to such Unit or enforcing any provision of this Declaration against a specific Unit, and to compensate for damages to the Property caused by the Owner or guests of a specific Unit.

"Total Votes" shall mean the total number of votes on the Management Committee or Board appertaining to all Units.

"Unit" shall mean the physical portion of the Property designed for separate ownership and occupancy as described in Section 4 hereof and the use of the Limited Common Area appurtenant thereto.

"Unit Number" shall mean the number, letter or combination of numbers and letters that identifies a Unit.

"Utility Distribution Systems" shall have the meaning set forth in Section 2.

"Utility Systems" shall have the meaning set forth in Section 2.

2. **Description of the Land and the Improvements.** The Land is legally described on **Exhibit A** attached hereto. The Improvements shall consist of two buildings, (the "North Building") and (the "South Building"), which together may be referred to herein as the "Buildings", parking lots, as depicted on the Plat within the Limited Common Areas, fences, gates and storage sheds. The Buildings are supplied with television, electricity, water and sewer service (together, the "Utility Services"). All Utility Systems and systems distributing Utility Services shall be referred to herein as "Utility Distribution Systems" and shall be included as Improvements hereunder. Unit 1 is comprised of the entirety of the North Building and Units 2 and 3 are situated in the South Building, all as described in Section 7. All of the Buildings are a single story. The Building comprising Unit 1 is constructed of white brick. The Building comprising Units 2 and 3 is constructed of cinder block with a corrugated metal wrapping along the upper portion of that Building. The Property is comprised of the Land and the Improvements.

3. **Submissions to Act.** Declarant hereby submits the Property to the provisions of the Act. All of the Property is and shall be held, conveyed, encumbered, leased, subleased, rented, used and improved as condominium space. All of the Property is and shall be subject to the covenants, conditions, restrictions, and all limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Property and in furtherance of a plan for improvements of the Property and division thereof into Units. Each and all of the provisions hereof shall be deemed to run with and benefit and burden the land and shall benefit and bind the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in a Unit, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

4. **Description of Units.** Subject to the specific provisions governing the roof, the Demising Wall and the Utility Distribution Systems as set forth below in this Section 4, the boundary lines of each Unit are as set forth on the Plat, and each Unit consists of the land, foundations, columns, girders, beams, supports, walls, interior partitions, floors, doors (interior and exterior), roofs, hallways, corridors, lobbies, stairs, stairways, fire escapes, patios, loading docks, other fixtures and improvements, basements, storage spaces, motors, fans, compressors, ducts, windows and entrances and exits of the Building within the portion of the Unit as shown on the Plat, and shall also include any finishing material applied or affixed to the Building within such Unit, all utility outlets, fixtures or appliances, ceilings, compressors, foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations found within the boundary lines of the Unit. Each Unit shall include the exclusive use, or shared use if applicable (subject to the easements set forth herein), of the Limited Common Areas appurtenant to such Unit and the space so encompassed as set forth herein, and shall also include an undivided interest in all Common Areas. Unit 1 includes all of the North Building, which is 18,957 square feet. The South Building includes Units 2 and 3, with Unit 2 including 69,879 square feet of the Building and Unit 3 including 94,823 square feet of the Building.

4.1 Demising Wall. Units 2 and 3 will be separated by the Demising Wall to be constructed in the location set forth on the Plat. The boundary of each of Units 2 and 3 along the Demising Wall is the interior surface of such wall. Costs for maintenance and repair of the Demising wall shall be shared equally by the Owners of Units 2 and 3.

4.2 Roof. The roof of the South Building is divided into segments as set forth on **Exhibit C** attached hereto. The two segments of the roof serving both Units 2 and 3 are Limited Common Area which shall be appurtenant to Units 2 and 3 (the "Shared Roof Segments"). The percentage of each of those two segments is also set forth on **Exhibit C** and the cost of all maintenance, repair and replacement of the Shared Roof Segments shall be shared in the percentage set forth on **Exhibit C**. The Owner of Unit 3 shall be responsible for determining when maintenance, repair and replacement of the roof within Segment D as shown on **Exhibit C**, and shall charge the Owner of Unit 2 a proportionate share of such costs. The Owner of Unit 3 shall be responsible for determining when maintenance, repair and replacement of the roof within Segments B and E as shown on **Exhibit C**, and shall charge the Owner of Unit 3 a proportionate share of such costs. The Owner of Unit 3 shall be solely responsible for maintenance, repair and replacement of the roof within Segment C, and the Owner of Unit 2 shall be solely responsible for the maintenance, repair and replacement of the roof within Segments A, F, G, H and I.

4.3 Utility Systems. All Utility Distribution Systems serving only a single Unit shall be included in such Unit. All Shared Utility Distribution Systems shall be Limited Common Area appurtenant to the Units served, including the electrical substation serving the Property. In the event any compressor or other mechanical system or component situated within the boundary of any Unit serves any other Unit or portion thereof, the Owners of the Units will enter into a Service Agreement with respect to the proportionate sharing of costs related to such system. All costs relating to such systems that are not included in or covered by such Service Agreement shall be Common Expenses hereunder.

5. **Description and Ownership of Common Areas.** The Common Areas, including the Limited Common Areas, shall be owned by all of the Owners, each of which shall have an undivided interest in the Common Areas based on the square footage of the portion of the Building included in such Unit as set forth herein (the "Common Area Interest"), subject to the exclusive or shared rights of the appurtenant Limited Common Area interest holder as set forth herein and on the plat. In the event of a conflict between this Declaration and the Plat, the provisions of this Declaration shall control. Each Unit will be measured from the exterior finished surface of each perimeter wall of the Unit. The Common Area Interest appurtenant to each Unit shall be determined by dividing the square footage of portion of the Building included that Unit by the total square footage of the Buildings. A table showing the percentage of Common Area Interest of each Unit is attached hereto as **Exhibit B**. Except as otherwise provided in this Declaration, the Common Area Interest appurtenant to each Unit shall have a permanent character and shall not be altered. The sum of the Common Area Interests allocated to all Units shall at all times equal one hundred percent.

5.1 **Description and Use of Limited Common Areas.** The Limited Common areas shall be used by and appurtenant to the respective Units depicted on the Plat, or as set forth in Section 4 above. All parking areas shall be appurtenant to the Unit depicted on the Plat and each such Unit shall have the exclusive right to use such parking areas, subject to the ingress and egress rights and easements in favor of the other Units as set forth herein. All shared areas shall be used and shall be appurtenant to the Unit served by such improvements.

6. Nature and Incidents of Ownership.

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

(b) Each Owner shall have the exclusive right to paint, repaint, tile, paper, or otherwise decorate the surfaces of the Demising Wall within such Owner's Unit and shall have the absolute right to make any other modifications to the interior of the portion of the Building included in such Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereof. Each Owner shall maintain its Unit and the Limited Common Areas appurtenant to such Unit in a clean and sanitary condition and in a state of good repair. In the event that any Unit or Limited Common Area should develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit or appurtenant Limited Common Area should fail to correct such condition or state of disrepair promptly following notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner, to remedy the Owner's failure, and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

(c) The exterior surfaces of the Units shall not be altered or modified without the prior written approval of the Management Committee unless such changes or modifications are consistent with any written rules or regulations for the exterior surfaces established by the Management Committee. In the absence of such written rules or regulations, no exterior alterations, improvements, or remodeling, whether structural or cosmetic, will be made without the prior written approval of the Management Committee. Notwithstanding this limitation, Unit 3 may be expanded into the Limited Common area west of the building and appurtenant to Unit 3 without further consent of the Management Committee.

(d) Each Unit constitutes a separate tax parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district of any other taxing or assessing authority. All such taxes, assessments, and other charges of each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit or the Common Areas (including the Limited Common Areas).

(e) The Owner of each Unit shall be responsible for all maintenance, repair, replacement and improvement of the Limited Common Areas (or portion thereof) appurtenant to such Owner's Unit, including without limitation the parking areas, landscaping, fences and gates. Each Owner shall be obligated to keep such areas in good condition and repair and failure to do so shall be subject to cure by the Management Committee as set forth in Section 6(b) above.

(f) The Management Committee and each Owner is hereby granted a limited license to use the name "Fairpark Commercial Condominiums" in connection with the administration, sale and operation of their respective interests in the Property.

7. Restriction on Use. Subject to Salt Lake City ordinances, the Units and Common Areas, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions;

(a) The Units may be used only as business offices, professional offices, manufacturing, warehouse and other ancillary uses, as approved by the Management Committee; provided, however, that if the particular use of any Unit increases the rate of insurance on the Property or

any part thereof over what the Management Committee or Owner, but for such activity, would pay, the Owner of such Unit shall be assessed for and shall pay the amount of such increase as a Specific Assessment.

(b) All Owners, customers, clients, patrons, employees, licensees, guests, representatives and agents of Owners of Units shall have a non-exclusive easement across the Limited Common Areas to the extent reasonably necessary for vehicular access to such Units; provided, however, that all such use shall be subject to reasonable rules and regulations set forth by the Management Committee or applicable Owner. The Owners may rent parking spaces within the Limited Common Areas appurtenant to such Owner's Unit.

(c) No noxious, offensive or illegal activity shall be carried on in or upon any part of the Property, nor shall anything be done on or placed in or upon any part of the Property that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners, including without limitation any bars, taverns (except as associated with a sit down restaurant), billiard halls, pawn shops, beer or wine-making stores, adult video or entertainment stores, off-track betting establishments, abortion, drug or alcohol rehabilitation offices or facilities, liquor stores, or tattoo or body art or piercing practitioners, except as expressly permitted by the Management Committee. Additionally, no part of the Property shall be used by any person or entity who sells, buys or dispenses marijuana, for medical use or otherwise.

(d) No activities shall be conducted or improvements constructed in or upon any part of the Property which are or may become unsafe or hazardous to any person or property.

(e) Except for directional information concerning access to the Units or the Building, no signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Property, except as may be necessary temporarily to caution or warn of danger in the opinion of the Management Committee, or except as approved by the Management Committee and appropriate governmental agencies (if required by law) with respect to the Units.

(f) No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of any Building or the safety of property, impair any easement or other appurtenance to the Property, or, except as expressly provided otherwise herein, make or permit to be made any alteration, improvement or addition to the Common Areas.

(g) There shall be no obstruction of the Roadways or truck loading and staging area by any Owner.

(h) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof that would result in the cancellation of any insurance on the Property or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Property or any part thereof over what the Management Committee or other Owner, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Management Committee and the other Owners harmless against all loss resulting from any such damage or waste caused by him\ or its guests, lessees, licensees, or invitees.

(i) No Owner shall violate the rules and regulations for the use of Units and Common Areas as adopted from time to time by the Management Committee, if any.

8. Title to Units.

(a) Subject to any limitation set forth herein, title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

(b) Title to a part of a Unit may not be separated from any other part thereof during the period of ownership, and each Unit, and the Common Area Interest (including the interest in the Limited Common Areas appurtenant to each) shall always be conveyed, devised, encumbered and otherwise effected only as a complete Unit. Every sale, gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a sale, gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration.

(c) The Common Areas (including the Limited Common Areas) shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

(d) Each Owner shall have the right to encumber its interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas or any part thereof except the usage of the Limited Common Areas appurtenant to its interest in a Unit. Any Mortgage of any Unit shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

(e) No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against any Common Area or the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Property, if authorized by the Management Committee and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove its Unit from a lien resulting from activity by the Management Committee against two or more Units or any part thereof by payment to the holder of the lien of fraction of the total sums secured by such lien which is attributable to its Unit.

(f) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by the name of the Property, the recording date for this Declaration, the county wherein the Property is located and its Unit Number as shown on the Plat or as hereafter designated by the Management Committee. Such description will be construed to describe the Unit, together with the appurtenant Common Area Interest, and to incorporate all the rights incident to ownership of the Unit and all of the limitations on such ownership as described in this Declaration.

9. Management Committee Bylaws.

9.1 Composition of Management Committee. Unless and until the Association is created, the Property shall be managed by the Management Committee composed of one member appointed by the Owner of each Unit and governed as set forth herein. The person designated to receive

service of process for the Property is W. Gary Sandberg, 2200 South Main Street, Salt Lake City, Utah. The Management Committee may change such agent as set forth in Section 9.2 below.

9.2 Meetings of Management Committee. The Management Committee shall meet on an as needed basis. Any member of the Management Committee may call a meeting by giving written notice of such meeting to the other members of the Management Committee at least five (5) days prior to the scheduled meeting, or as mutually agreed by all members of the Management Committee.

(a) Place of Meeting. The Management Committee may designate any place as the place of meeting for any meeting. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be at the Property.

(b) Notice of Meetings. Written notice stating the place, date, and hour of any meeting of Members shall be delivered to each Member entitled to vote at such meeting not less than five (5) days before the date of such meeting. In case of a special meeting or when required by statute or by these bylaws, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Management Committee, with postage thereon prepaid. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. A waiver of notice, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

(c) Informal Action by Management Committee. Any action required to be taken at a meeting of the Management Committee, or any action which may be taken at a meeting of Owners, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the members of the Management Committee or Owners entitled to vote with respect to the subject matter thereof.

(d) Voting of Management Committee. The Owner of each of Units 1 and 2 shall have one vote on the Management Committee, and the Owner of Unit 3 shall have two (2) votes. In the event of a tie in voting, the Management Committee shall appoint a neutral third party to cast a deciding vote. In the event of the resignation of any member of the Management Committee, the Owner appointing such member shall have the right and the obligation to appoint a replacement member. If such replacement member is not appointed following five (5) days written notice from any other member of the Management Committee, the Management Committee may appoint such replacement member.

9.3 Meetings of Owners. The Owners shall meet on an as needed basis.

(a) Place of Meeting. The Owners may designate any place as the place of meeting for any meeting. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be at the Property.

(b) Notice of Meeting. Written notice stating the place, date, and hour of any meeting of Owners shall be delivered to each Owner entitled to vote at such meeting not less than five (5) days before the date of such meeting. In case of a special meeting or when required by statute or by these bylaws, the purpose for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Management Committee, with postage thereon

prepaid. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. A waiver of notice, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given

(c) Informal Action by Owners. Any action required to be taken at a meeting of the Owners, or any action which may be taken at a meeting of Owners, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all Owners entitled to vote with respect to the subject matter thereof.

(d) Voting of Owners. The Owner of each of Units 1 and 2 shall have one vote and the Owner of Unit 3 shall have two (2) votes. In the event of a tie in voting, the Management Committee shall appoint a neutral third party to cast a deciding vote.

9.4 Suspension of Participation in Management Committee. The right of each Owner to participate in the Management Committee, including the right to vote and to use the Common Area, may be suspended by the Management Committee during the period while any dues, assessments, charges or other obligations remain unpaid or unperformed, whether or not such Member is personally obligated to pay such dues, assessments, charges or other obligations, or for violation of any rule or regulation of the Membership Committee. Any such suspension shall not affect such Member's obligation to pay dues, assessments, charges or other obligations coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's interest and property in favor of the Membership Committee.

9.5 Officers. The Management Committee may appoint a president and secretary, and such other officers as may be elected or appointed by the Management Committee. The Management Committee shall have the authority to appoint such officers and duties as prescribed, from time to time, by the Management Committee. Any officers so elected or appointed shall serve for the term designated by the Management Committee.

9.6 Responsibilities and Duties. The Management Committee shall be responsible to register with the Utah Department of Commerce as required by Utah Code Ann. §57-8-13.1 and thereafter shall have duties and powers as follows:

(a) The Management Committee shall operate, maintain, repair, improve and replace the Common Areas, other than the Limited Common Areas which shall be controlled solely by the Owner of the Unit to which such Limited Common Area is appurtenant except as expressly set forth herein.

(b) The Management Committee shall operate, manage, maintain, and repair other areas and facilities within the Property as the Management Committee may determine to be in the best interests of the Property and the Owners.

(c) The Management Committee shall have and continuously maintain in the State of Utah, a registered office, and a registered agent, as required by the Act, which may be changed from time to time by the Management Committee.

(d) The Management Committee may authorize any officer or officers, agent or agents of the Management Committee, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Management Committee.

(e) The Management Committee may promulgate rules and regulations affecting the Property and the Common Areas.

(f) The Management Committee shall have authority to engage the services of a Manager, accountants, attorneys, or other employees or agents to pay to said persons a reasonable compensation therefore, which costs shall be a Common Expense hereunder

(g) The Management Committee shall determine and pay the Common Expenses.

(h) The Management Committee shall assess and collect all Assessments from the Owners, as provided herein.

(i) The Management Committee may open bank accounts and designate the signatories therefor.

(j) The Management Committee may obtain insurance for the Association with respect to the Common Areas, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Property, as set forth in or limited by Section 13 below.

(k) The Management Committee shall comply with all registration requirements and other requirements of the Utah Code.

(l) The Management Committee shall be subject to the limitations of the Act, and any other applicable law, the Board may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section.

(m) The Management Committee shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of Management Committee, committees having any of the authority of the Management Committee, and any meeting of the Owners. All books and records of the Association may be inspected by any Owner, or his or her agent or attorney for any proper purpose at any reasonable time.

9.7 Assessments. Each Owner of a Unit of the Property shall be deemed to covenant and agree to pay to the Management Committee: Regular Assessments, Special Assessments and Specific Assessments, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The Regular, Special and Specific Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Property and the improvements thereon against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of such Member. In the case of co-ownership of a Property, each co-owner shall be jointly and severally liable for the entire amount of the Assessment. Should the Association employ an attorney to collect any assessment, it shall be entitled to collect, in addition thereto, all costs of collection including without limitation reasonable attorney's fees. The Management Committee shall make and collect Assessments from the Owners for their respective shares of Common Expenses subject to the following provisions:

(a) Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as such Owner's Common Area Interest. Two separate and distinct funds may be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section shall be the Common Expense Fund. Assessments deposited to the Common Expense Fund shall include both Regular Assessments and Special Assessments. Until the Management Committee makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses, and shall be reimbursed by the Common Expense Fund following Assessment, for all such costs following recording of this Declaration. After an Assessment has been made by the Management Committee, Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Management Committee in accordance with the provisions of this Declaration and the Bylaws. Regular Assessments shall be levied against each separate Unit, and shall commence as to all Units (other than Units held by Declarant) on the first day of the month following the closing of the first sale of a Unit.

(b) The Management Committee shall provide notice, by first class mail to all Owners, of any increase in the Regular Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Assessment is due.

(c) In addition to the Regular Assessments, the Management Committee may levy in any calendar year Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or a described capital improvement upon any Common Areas, including the necessary fixtures and personal property related thereto, and other costs, expenses of Operation or shortfalls in the collection of Assessments from the Owners. The portion of any Special Assessment levied against a particular Unit shall be equal to the Common Area Interest appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the Special Assessment against an Owner is a remedy utilized by the Management Committee to reimburse the Management Committee for costs incurred in bringing the Owner and/or its Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Management Committee, or any other governing instrument for the Property. The Management Committee shall provide notice by first class mail to all Owners of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

(d) In addition to Regular Assessments and Special Assessments, the Management Committee may levy Specific Assessments against a specific Unit and the Owner thereof for the purpose of reimbursing or compensating the Management Committee for expenditures, costs or damages relating to a specific Unit.

(e) All Assessments shall be due as determined pursuant to the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of twelve percent (12%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a late fee in the amount of the greater of 5% of the delinquent assessment or \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Management Committee pursuant to the Cost of Living Index. Any payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Property at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Management Committee may

assess that expense exclusively against such Owner's Unit(s) as a Specific Assessment. If the Owners' Common Area Interests are reallocated, Assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Common Area Interests.

(f) All Assessments are the responsibility of the Unit Owner and there shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation with the Recorder of a written notice of lien by the Management Committee or the Manager. Such lien shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded before the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens and charges in favor of the state or any political subdivision thereof for taxes and other governmental assessments or charges past due and unpaid on the Unit. Such lien may be enforced by judicial foreclosure or by non-judicial foreclosure in the same manner in which mortgages and deeds of trust on real property maybe foreclosed in the State of Utah. A lien for unpaid Assessments shall be enforced in accordance with the provisions of this Section or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Management Committee from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party.

(g) The Management Committee upon written request shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Management Committee, the Management Committee, the Manager and every Owner, in favor of all who rely on such statement in good faith.

(h) The Assessments levied hereunder shall be used for the purpose of paying all costs and expenses incurred by the Management Committee in connection with providing the services set forth in the Declaration, including but not limited to, the payment of taxes and insurance on the Common Area, if any, construction of improvements thereon, repairs, replacements, and additions thereto, payment of the cost of any annual audit of the books, records, and accounts of the Association, and payment of legal fees and the cost of labor, equipment, materials, management, and supervision necessary to carry out the authorized functions of the Association. First American Title Insurance Company is hereby appointed as trustee hereunder as required by Utah Code Ann. Section 57-8-10(e) and Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8-45 to First American Title Insurance Company, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of this Declaration.

9.8 Reserve Requirements. The Management Committee shall comply with all reserve requirements set forth in the Utah Code. To the extent reserves are required in connection with the Limited Common Areas, the Owner of the Unit to which such Limited Common Area is appurtenant shall maintain such reserve for the benefit of the Management Committee. Failure to do so shall result in a Specific Assessment to such Owner following reasonable notice and opportunity to cure. Neither the Management Committee nor any Owner shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas or Limited Common Areas as required by Utah statute and for which the reserve fund was established or for litigation involving such matters. The Management Committee may cause a study to be conducted of the reserve account of the Management Committee and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review and required by Utah statute.

9.9 **Amendment.** Except as otherwise provided by law, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the unanimous vote of the Owners at a regular or special meeting of the Owners. Amendment of the Declaration shall also require the unanimous vote of the Owners at a regular or special meeting.

10. **Association.** In the event an Association is organized, every Owner shall be a Member of the Association. One Membership shall exist for each Unit, shall be inseparably appurtenant thereto and shall automatically transfer therewith. If title to any Unit is held by more than one Owner, the Membership related to such Unit shall be shared by all such Owners in the same proportionate interests and by the same type of tenancy in which they hold title to such Unit. No person other than an Owner shall be a Member. The management and maintenance of the Property and the administration of the affairs of the Association shall be conducted by the Board, which shall be elected as set forth in Section 9.3(d) above and composed as provided herein and in the Bylaws, as they may be amended upon organization of the Association.

11. **Signage.** A monument sign is presently situated within the Limited Common Area appurtenant to Unit 1. Upon request of any other Owner, the Owner of Unit 1 shall enter into a lease of space on the sign at a yearly rental cost not to exceed actual expenses incurred by the Owner of Unit 1 with respect to such sign; provided, however, that each such lessee shall be responsible for providing its own sign panel and for paying a proportionate amount of the expenses related to the sign. In the event the existing sign is removed, the Owner of any other Unit is entitled to construct a sign in the location of the existing sign as shown on the Plat at such Owner's sole cost and expense, subject to all governmental requirements and ordinances.

12. **Maintenance, Alteration and Improvement.** The Management Committee shall maintain, replace and repair the Common Areas other than the Limited Common Areas shown on the Plat, including all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service which are within a Shared Utility Distribution System, with all costs thereof to be a Common Expense; provided, however that any unusual maintenance and repair required as a result of the action of one specific Owner may be charged to such Owner's Unit as a Specific Assessment as reasonably determined by the Management Committee. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas or Utility Services shall be repaired promptly and the cost thereof charged as a Common Expense. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Management Committee shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas or to any Unit. The Management Committee shall also have the irrevocable right to have access to any Unit or Limited Common Area when necessary in connection with any service for which the Management Committee is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Management Committee.

12.1 **Maintenance of Limited Common Areas.** Each Owner shall maintain, replace and repair the Limited Common Areas shown on the Plat as being appurtenant to such Owner's Unit, with all costs to be paid by such Owner; provided, however, that in the event of damage to the Limited Common Area caused by the Owner of another Unit, such Owner shall be responsible to repair such damage or reimburse the Owner of the Unit to which the Limited Common Area is appurtenant for all expenditures for such repair plus an administrative fee of 10%.

13. **Insurance.** Commencing upon conveyance of the Units to the Owners, the Management Committee and Owners shall maintain, to the extent reasonably available, insurance as follows:

(a) The Management Committee shall maintain property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any deductibles, shall not be less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) The Management Committee shall maintain liability insurance in an amount determined by the Management Committee, but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$1,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Units and the Common Areas.

(c) Each Owner shall maintain property insurance on such Owner's Unit and appurtenant Limited Common Area insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any deductibles, shall not be less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(d) Each Owner shall maintain liability insurance on such Owner's Unit and appurtenant Limited Common Area in an amount determined by the Management Committee, but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$1,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Units and the Common Areas.

(e) Each policy provided by an Owner shall require the Owner to provide to the Management Committee a certificate of insurance or other evidence of coverage upon request. In the event such evidence is not timely provided, the Management Committee may, but shall not be required to, obtain such insurance and charge to the Owner as a Specific Assessment together with a 10% administrative fee.

(f) The Management Committee may carry any other insurance it deems appropriate. Where applicable, insurance policies carried by the Owners or the Management Committee shall provide the following:

(g) Each Owner, or the Management Committee, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of its Common Area Interest or Membership.

(h) The insurer waives its right to subrogation under the policy against any Owner or the Management Committee.

(i) No act or omission by an Owner, unless acting within the scope of its authority on behalf of the Management Committee, will void the policy or operate as a condition to recovery under the policy by another person.

(j) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by a policy carried by the Management Committee, then the Owner's policy provides primary insurance.

(k) All Owners as a class shall be named as additional insureds in any policy issued to the Management Committee.

An insurance policy issued to the Management Committee shall not prevent an Owner from obtaining insurance for its own benefit. Any loss covered by the property policy described above shall be managed by the Management Committee. An insurance trustee shall hold any insurance proceeds in trust for administration by the Management Committee, Owners and Mortgagees as their interests may appear. Subject to the provisions of Section 14 of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Management Committee, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Management Committee and, on written request, to any Owner or Mortgagee. The insured issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Management Committee, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses; provided, however, that written notice shall be given to the Management Committee within ten (10) days of non-payment of premium. This Section does not prohibit the Management Committee from acquiring additional or greater amounts of coverage as it reasonably deems appropriate as a Common Expense. Following creation of an Association, the Management Committee shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principals under the bond may reasonably be expected to have control or access at any time.

14. **Destruction or Damage.** In case of fire or any other disaster that causes damage or destruction to all or part of the Property, the Management Committee, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Property was destroyed or substantially damaged, the Management Committee shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Property for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective Common Area Interests. Reconstruction of the Property shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Section 15 hereof shall apply. If two-thirds (2/3) or more of the Property is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Management Committee for the purpose of deciding whether or not the Property shall be repaired and restored. If Owners holding three-fourths (3/4) or more of the Total Votes of the Management Committee, in person or by proxy, vote to repair or restore the Property, the Management Committee shall promptly arrange for the reconstruction of the Property using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for any deficiency in proportion to their respective Common Area Interests. At such election, if Owners holding three-fourths (3/4) or more of the Total Votes of the Management Committee do not vote either in person or by proxy to make provision for reconstruction, the Management Committee shall record with the Recorder a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (i) the Property

shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Property equal to its Common Area Interest; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Property; and (iii) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Property, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Property owned by each Owner.

15. **Eminent Domain.** Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto. With respect to the Common Areas, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's Common Area Interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as its Common Area Interest. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended.

(a) If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

(b) If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner of such Unit. The remaining portion of such Unit, if any, shall become a part of the Common Areas and shall be placed in condition for use by all Owners in the manner approved by the Management Committee. The Common Area Interests appurtenant to the Units that continue as part of the Property shall be equitably adjusted to distribute the Common Area Interests among the remaining Owners.

Changes in Units, in the Common Areas, and in the ownership of the Common Areas that are affected by the taking referred to in this Section shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

16. **Termination.** In the event that such fraction or percentage of the Property is destroyed or substantially damaged and the Owners do not vote to reconstruct the Property as provided therein, the Property shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage. All of the Owners may remove the Property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Property. After removal of the Property from the Act, the Owners shall own the Property and all assets of the Management Committee as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be in the same

proportions as their Common Area Interests. This Section cannot be amended without consent of all Owners and Mortgagees, provided that the consent of any Mortgagee which fails to respond to a written request for consent within 15 days after receipt thereof shall be irrevocably deemed given.

17. **Mortgage Protection.** The Management Committee shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Management Committee will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Management Committee is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee. The Management Committee shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall not take the property free of any claims for unpaid Assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws, upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Bylaws. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

18. **Amendment.** Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the unanimous affirmative vote or written assent of the Owners of all Units; provided, however, that the percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Management Committee designated for that purpose, or in the absence of such designation, by the President of the Management Committee that the appropriate consent has been obtained, and such amendment shall be duly recorded with the Recorder.

19. **Easements.** If any part of the Common Areas or another Unit encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall 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 any improvement constructed or to be constructed within the Property, 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 Property or any part thereof, including the existence of any footing or foundation. All Roadways and the truck loading and staging area are subject to an easement for ingress and egress throughout the Property in favor of all Owners. The Owners and occupants of each Unit shall have a perpetual, non-exclusive easement for pedestrian ingress and egress to and from such Unit through all Limited Common areas. The Management Committee and the Manager

shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration. The Property is subject to and benefited by easements, rights-of-way and other encumbrances of record. All conveyances of Units within the Property hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

20. **Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Management Committee addressed to:

To Declarant:

Sandberg Investments, L.L.C.
c/o Granite Mill
2200 South Main
Salt Lake City, UT 84115
Attn: W. Gary Sandberg, President

To EnviroTech Molded Products, Inc.:

EnviroTech Molded Products, Inc.
1075 West North Temple
Salt Lake City, UT 84116-3303
Attn: Timothy G. Peel, CFO

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

22. **Enforcement.** All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the Bylaws and the rules and regulations of the Management Committee and decisions issued pursuant thereto. Failure to so comply shall be grounds for (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Management Committee to impose monetary

penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas, or other appropriate discipline so long as any such Owner has been given notice and has had an Opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed. The Management Committee shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Property on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations of the Management Committee for the Property except pursuant to (a) the judgment of a court, or (b) a foreclosure for the failure of an Owner to pay Assessments duly levied by the Management Committee.

23. **Severability.** Invalidation of any of the provisions contained in this Declaration, or any application thereof, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or any other application thereof and the remainder of this Declaration and all otherwise valid applications of the provisions hereof shall remain in effect, and any invalid provisions hereof shall be construed, and this Declaration shall be deemed amended, as if such provisions were replaced with enforceable provisions which effectuate, as nearly as possible, the manifest intention of this Declaration. Included therein, if any time period set forth herein or any rights granted to Declarant hereunder are determined by a court of competent jurisdiction to exceed those permitted by law, the same shall be modified so that they instead apply to the maximum extent legally permitted from time to time.

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

25. **Controlling Law.** This Declaration and the Plat shall be construed and controlled by and under the laws of the State of Utah.


26. **Construction.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

27. **Effective Date.** This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument the date of notarization appearing below.

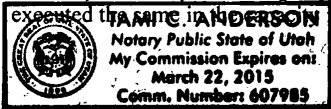
DECLARANT:

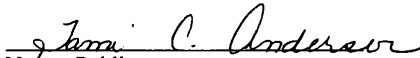
SANDBERG INVESTMENTS, L.L.C.

By: 
W. Gary Sandberg, Manager

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

The foregoing instrument was acknowledged before me on the 1st day of September, 2013, by W. Gary Sandberg, Manager of Sandberg Investments, L.L.C., who acknowledged that he executed the same in the capacity indicated.

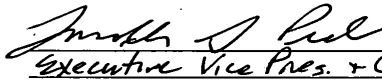



Notary Public

My Commission Expires: 3-22-15

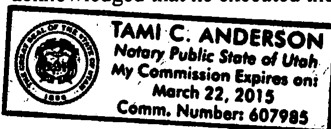
TENANT:


ENVIROTECH MOLDED PRODUCTS INC.

By: 
Its: Executive Vice Pres. & C.F.O.

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

The foregoing instrument was acknowledged before me on the 1st day of September, 2013, by Timothy Peel, Exec V-P. of EnviroTech Molded Products, Inc., who acknowledged that he executed the same in the capacity indicated.




Notary Public

My Commission Expires: 3-22-15

Exhibit A
Legal Description

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, BOTHWELL & MCCONAUGHY'S SUBDIVISION (ALSO BEING THE SOUTHEAST CORNER OF BLOCK 56, PLAT "C", SALT LAKE CITY SURVEY), AND RUNNING THENCE NORTH 132.0 FEET; THENCE WEST 136.5 FEET; THENCE NORTH 8.25 FEET; THENCE WEST 193.50 FEET; THENCE NORTH 519.75 FEET TO THE SOUTH LINE OF NORTH TEMPLE STREET; THENCE WEST 396.035 FEET; THENCE SOUTH 370.0 FEET; THENCE WEST 374.0 FEET; THENCE SOUTH 290.0 FEET; THENCE EAST 1100.035 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THAT PORTION CONVEYED TO UTAH TRANSIT AUTHORITY BY WARRANTY DEED RECORDED AUGUST 25, 2010 AS ENTRY NO. 11017906 IN BOOK 9852 AT PAGE 3136 OF OFFICAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND:IN FEE, BEING PART OF AN AENTIRE TRACT OF PROPERTY, SITUATE IN PART OF LOT 5 BLOCK 56, PLAT "C", SALT LAKE CITY SURVEY, IN THE SOUTHESET ¼ OF SOUTHWEST ¼ OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN INCIDENT TO THE CONSTRUCTION OF THE "SALT LAKE AIRPORT COMMUTER RAIL", A UTH TRANSIT AUTHORITY PROEJCT, KNOWN AS "ALRT", AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EASTERLY BOUNDARY LINE OF SAID ENTIRE TRACT AND THE SOUTHERLY RIGHT OF WAY LINE OF NORTH TEMPLE STREET, WHICH POINT IS THE NORTHEAST CORNER OF LOT 5; AND RUNNING THENCE SOUTH 00°00'55" EAST (RECORD SOUTH) 8.76 FEET ALONG THE EASTERLY BOUNDARY LINE OF SAID ENTIRE TRACT; THENCE SOUTH 89°59'23" WEST 372.88 FEET; THENCE SOUTH 87°06'10" WEST 25.15 FEET TO THE CENTERLINE OF VACATED TENTH WEST STREET (1100 WEST); THENCE NORTH 00°00'55" WEST (RECORD NORTH) 9.94 FEET ALONG SAID CENTERLINE; THENCE NORTH 89°58'38" EAST 398.00 FEET (RECORD EAST 396.03) TO THE POINT OF BEGINNING.

**Exhibit A-1
Boundary Description**

FAIRPARK COMMERCIAL CONDOMINIUMS, AMENDING LOTS 1-4 AND 15-19 OF BLOCK 1 OF THE BOTHWELL & MCCONAUGHY SUBDIVISION

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 56, PLAT C, SALT LAKE CITY SURVEY, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 1, BLOCK 1, BOTHWELL AND MCCONAUGHY'S SUBDIVISION AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER IN BOOK D OF PLATS AT PAGE 94, AND RUNNING THENCE NORTH 00°00'55" WEST ALONG THE EAST LINE OF SAID BLOCK 56 A DISTANCE OF 132.07 FEET TO THE NORTHEAST CORNER OF LOT 4 OF SAID BLOCK 1; THENCE SOUTH 89°58'39" WEST ALONG THE NORTH LINE OF SAID LOT 4 A DISTANCE OF 136.57 FEET TO THE NORTHWEST CORNER OF SAID LOT 4, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 5 OF SAID BLOCK 1; THENCE NORTH 00°00'55" WEST ALONG THE WESTERLY LINE OF SAID LOT 5 A DISTANCE OF 8.26 FEET TO A POINT ON THE NORTH LINE EXTENSION OF LOTS 15 THROUGH 19 OF SAID BLOCK 1; THENCE SOUTH 89°58'39" WEST ALONG SAID NORTH LINE AND LINE EXTENDED 193.59 FEET TO A POINT ON THE EAST LINE OF THE WEST HALF OF SAID BLOCK 56, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID LOT 15; THENCE NORTH 00°00'55" WEST ALONG SAID EAST LINE 511.23 FEET TO A POINT ON THE SOUTH LINE OF THAT CERTAIN PARCEL CONVEYED TO THE UTAH TRANSIT AUTHORITY PER WARRANTY DEED RECORDED AUGUST 25, 2010 AS ENTRY NO. 11017906 IN BOOK 9852 AT PAGE 3136 OF THE OFFICIAL RECORDS IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE WESTERLY ALONG SAID SOUTH LINE THE FOLLOWING (2) COURSES: (1) SOUTH 89°59'23" WEST 372.88 FEET, (2) SOUTH 87°06'10" WEST 23.34 FEET TO A POINT ON THE CENTER LINE OF 1100 WEST STREET (VACATED), SAID POINT BEING 1.97 FEET EASTERLY OF THE CALCULATED MONUMENT LINE OF SAID 1100 WEST STREET; THENCE SOUTH 00°00'55" EAST 1.97 FEET EASTERLY AND PARALLEL WITH SAID MONUMENT LINE 365.31 FEET TO A POINT ON THE SOUTH LINE EXTENSION OF LEARNED AVENUE (VACATED); THENCE SOUTH 89°58'35" WEST 373.49 FEET; THENCE SOUTH 00°00'55" EAST 290.16 FEET TO A POINT ON THE SOUTH LINE OF BLOCK 55 OF SAID PLAT C; THENCE NORTH 89°58'36" EAST ALONG SAID SOUTH LINE AND LINE EXTENDED 371.52 FEET TO A POINT ON THE CALCULATED MONUMENT LINE OF SAID 1100 WEST STREET; THENCE NORTH 00°00'55" WEST ALONG SAID MONUMENT LINE 5.00 FEET TO A POINT ON THE SOUTH LINE EXTENSION OF SAID BLOCK 56; THENCE NORTH 89°58'39" EAST ALONG SAID SOUTH LINE 728.32 FEET TO THE POINT OF BEGINNING.

CONTAINS 411,711 SQ. FT. OR 9.452 ACRES

COUNTY TAX ID: 08-35-376-011

Exhibit B
Square Footage Allocations, Limited Common Area and
Percentage of Common Area Interests

Unit	Square Footage	Common Area Interest
1	18,957	10.35%
2	69,879	38%
3	94,823	51.65%

Exhibit C
Roof Segments and Proportionate Interests

Roof Segment	Unit 2	Unit 3
A	9,027 square feet (100%)	
B	6,663 square feet (73.9%)	2,353 square feet (26.1%)
C		8,763 square feet (100%)
D	3,965 square feet (38.9%)	6,218 square feet (61.1%)
E	9,549 square feet (91.8%)	853 square feet (8.2%)
F	10,346 square feet (100%)	
G	10,435 square feet (100%)	
H	10,223 square feet (100%)	
I	9,875 square feet (100%)	

**Exhibit D
Plat**

See attached.

4814-3846-2991, v. 3

AMENDING LOT 4 AND 15-19 OF BLOCK 1
OF THE BARNWELL & MCCOMB SUBDIVISION
PLAT 1075 WEST NORTH TEMPLE STREET, UT 84117

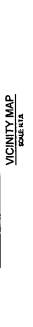
1065, 1066 AND 1075 WEST NORTH TEMPLE STREET SALT LAKE CITY, UT 84117

SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN
NORTH TEMPLE STREET (100' NORTH)

1065, 1066 AND 1075 WEST NORTH TEMPLE STREET SALT LAKE CITY, UT 84117

AMOUNT OF TAXES: \$0.00

REMARKS: SEE RECORD FOR FULL DESCRIPTION OF PROPERTY.

[illegible][illegible][illegible]

David H. Knapp

DAVID B. CRAPER
L.A. | CREDIT NO. 282-025

ON OTHER SESSIONS FOR INFORMATION OF THE PUBLIC ARE VALUES OF LANDS OWNED BY THE STATE AND THE COUNTY OF SAN FRANCISCO

THIS 2ND DAY OF July A.D. 2013

WITNESSEY MADEIRA

CORPORATE ACKNOWLEDGMENT

[illegible]

LOCATED IN THE SOUTHWEST QUARTER OF
SECTION 35, TOWNSHIP 1 NORTH, RANGE 1 WEST,
SALT LAKE BASE AND MERIDIAN

10

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25 50 75 100 150 200 250

OF 4

NOTE: MEETS MINIMUM ALLOWABLE ERROR OF 1:15000 FOR CLASS A SURVEYS

PEDESTRIAN BRIDGE FOUNDATION,
SOUTH FROM THE SOUTHWEST COR-
NER OF THE NORTH TEMPLE BRIDGE
ELEV. = 4224.42 (NGVD 29)
