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09/18/2015 11:32 AM \$156.00
Book - 10362 Pg - 6416-6483
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Declaration of Condominium and Bylaws

for

*Wilmington Gardens
A Utah Mixed Use Condominium Project*

Dated as of September ^{18th} 2015

NOTE TO SALT LAKE COUNTY, UTAH RECORDER:

THIS INSTRUMENT AFFECTS PROPERTY WITH THE FOLLOWING TAX I.D. NOS:

16-20-229-068

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for Wilmington Gardens
A Utah Mixed Use Condominium Project*

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*Declaration of Condominium and Bylaws
for Wilmington Gardens Mixed Use Condominium Project*

THIS DECLARATION (this "Declaration") is executed as of the day 18 ^{September} ~~August~~, 2015 by WILMINGTON GARDENS GROUP L.L.C., a Utah limited liability company ("Declarant"), whose address is 2733 East Parleys Way, Suite 300, Salt Lake City, Utah 84109.

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

Article 1.
Definitions

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

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

1.2 "Air Space" means the air space directly above any roof within the Project in accordance with the initial design and construction of the Building.

1.3 "Agency" means the Redevelopment Agency of Salt Lake City.

1.4 "Apartment Unit" means Unit 3 as identified on the Condominium Plat, which consists of approximately one hundred five (105) separate rental apartments.

1.5 "Article" or "Articles of Incorporation" means the Articles of Incorporation, or the chartering document of any other legal entity, if any shall be formed for the Association or the Townhouse Association.

1.6 "Assessments" shall mean any charge imposed or levied by the Association against Owners including but not limited to those related to Common Expenses as well as miscellaneous special assessments, special assessments for capital improvements, special assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.

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

1.8 "Building" means the building containing the Parking Unit, the Commercial Units, the Apartment Unit and the Townhouse Units and comprising a part of the Property, which has seven stories above ground (denominated on the Condominium Plat as the main, second, third, fourth, fifth, sixth and seventh floors) and one basement level floor, together with any structure or structures to be erected in the future on the vacant area of the Property, if any.

1.9 “*Commercial Easements*” means the easements described in Sections 5.5 and 5.6.

1.10 “*Commercial Units*” means Units 1A, 1B and 1C, as identified on the Condominium Plat, which may be divided into multiple, separately rented spaces.

1.11 “*Common Areas and Facilities*” means:

1.11.1 *Land*. The Land;

1.11.2 *Structural Elements*. The foundations, columns, girders, beams, supports, main walls (including any bearing walls, even if the bearing wall is located within the interior of a Unit, and including common walls, floors and ceilings between Units or between a Unit and a Common Area and Facility, other than the interior surfaces of such common elements, which interior surfaces form part of the Unit), floors, ceilings, windows, exterior doors (excluding only partitions within any individual Unit and the interior surface of the walls, floors, ceilings, windows and doors forming the perimeter boundaries of each Unit), roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the Building;

1.11.3 *Landscaping*. The yards, gardens, outdoor lighting, fences, landscaping and sidewalks;

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

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

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

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

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

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

1.12 “*Common Expenses*” means:

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

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

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

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

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

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

1.12.7 *Unrecovered Expenses.* Common Expenses due but not paid to the Management Committee which are determined by the Management Committee not to be legally or practicably recoverable (after reasonable effort) from the responsible Unit Owner, together with all interest on, and costs and attorneys' fees incurred in connection with, such unpaid Common Expenses, including, without limitation, those unpaid Common Expenses described in Section 11.1.

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

1.14 "Condominium Plat" means the condominium plat, recorded in the Official Records concurrently with the recordation this Declaration, entitled "Wilmington Gardens Condominiums, a Utah Condominium Project," as the same may be amended on or after the date of this Declaration.

1.15 "Condominium Unit" means a Unit together with the Undivided Interest appurtenant to such Unit.

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

1.17 "Eligible Mortgagee" means a Mortgagee that has requested notice of certain matters from the Management Committee in accordance with Section 11.1. The lender providing construction financing for the initial construction of the Project shall be deemed to be an Eligible Mortgagee.

1.18 "*Emergency Repairs*" means any repairs which if not made in a timely manner will likely result in immediate and substantial damage to any Common Areas and Facilities, to any Limited Common Areas or Facilities or to a Unit or Units.

1.19 "*Governing Documents*" means the Act, this Declaration, the Condominium Plat, the Rules and Regulations, and the Townhouse Declaration, as applicable.

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

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

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

ALL OF LOT 1, HOLLADAY SUBDIVISION AMENDED, ACCORDING TO THE OFFICIAL PLAT THEREOF BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 508.78 FEET AND WEST 397.65 FEET FROM THE NORTHEAST CORNER OF BLOCK 46, 10 ACRE PLAT "A" BIG FIELD SURVEY, AND RUNNING THENCE SOUTH 0°45'36" WEST 25.20 FEET; THENCE SOUTH 0°02'58" EAST 26.72 FEET TO THE NORTHEAST CORNER OF LOT 32, BLOCK 8, UNION HEIGHTS SUBDIVISION AS RECORDED WITH THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE SOUTH 0°20'37" WEST ALONG THE EAST LINE OF SAID LOT 32, 156.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 32, SAID POINT BEING ON THE NORTH LINE OF WILMINGTON AVENUE; THENCE NORTH 89°42'55" WEST ALONG THE NORTH LINE OF SAID WILMINGTON AVENUE 425.34 FEET TO THE SOUTHWEST CORNER OF LOT 16, OF SAID BLOCK 8, UNION HEIGHTS SUBDIVISION; THENCE NORTH 0°20'37" EAST ALONG THE WEST LINE OF SAID LOT 16, 139.81 FEET TO THE NORTHWEST CORNER OF SAID LOT 16; THENCE SOUTH 88°06'19" WEST ALONG THE NORTH LINE OF LOTS 15 AND 14 OF SAID BLOCK 8, UNION HEIGHTS SUBDIVISION 38.07 FEET TO THE SOUTHEAST CORNER OF LOT 6 OF SAID BLOCK 8, UNION HEIGHTS SUBDIVISION; THENCE NORTH 69.62 FEET; THENCE SOUTH 89°42'22" EAST 463.80 TO THE POINT OF BEGINNING.

CONTAINS: 2.091 ACRES

The Land includes any easements that benefit the Land from time to time including any easements that are set forth on the Condominium Plat.

1.23 "*Limited Common Areas and Facilities*" means those portions of the Common Areas and Facilities designated in this Declaration or the Condominium Plat as reserved for the use of a certain Unit or Units to the exclusion of the other Units. The Limited Common Areas and Facilities include, without limitation: (a) each of the balconies projecting from each apartment within the Apartment Unit – the use of each such balcony is reserved to the tenant of



such unit within the Apartment Unit to which such balcony is adjacent; (b) the elevator lobby area and the patio areas adjacent to the Townhouse Units and depicted as Unit 2 Limited Common Area on the Condominium Plat, which is reserved for the use of the Townhouse Units and their respective Owners, tenants, guests and invitees; (c) the patio areas adjacent to the Commercial Units and depicted as Unit 1 Limited Common Area on the Condominium Plat, which is reserved to the use of the Commercial Units; (d) the elevator lobbies, hallways and stairwells adjacent to the Apartment Unit and depicted as Unit 3 Limited Common Area on the Condominium Plat, which is reserved to the use of the Owner of the Apartment Unit, its tenants, guests and invitees; (e) any shutters, awnings, window boxes, doorsteps, porches, balconies, patios or other apparatus intended to serve a single Unit, but located outside the boundaries of the Unit, which shall constitute a Limited Common Area and Facility appurtenant to that Unit exclusively. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas and Facilities for the exclusive use of the Owner or Owners of the Units on either side of such separations or space as provided in Section 3.7.

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

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

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

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

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

1.29 *"Parking Unit"* means the Parking Unit or Unit 4 as identified on the Condominium Plat, together with all drive aisles and other areas of the parking garage.

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

1.31 *"Plaza Areas"* mean the areas on the main floor of the Building that are identified as the court yard area on the Condominium Plat, which are Limited Common Areas and Facilities appurtenant to the Commercial Units.

1.32 *"Project"* means the integrated retail, commercial and residential project to be developed on the Property.

1.33 *"Property"* means the Land, the Building, and all other structures and improvements constructed on the Land on or after the date of this Declaration and all easements,



rights and appurtenances belonging to, and all articles of personal property (other than personal property owned by individual Unit Owners) intended for use in connection with, the Land, the Building, the Units or any other structures or improvements on the Land. The Property is comprised of the Units, the Limited Common Areas and Facilities and the Common Areas and Facilities.

1.34 *"Reserve Analysis"* shall mean an analysis to determine (i) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Areas and Facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the Association; and (ii) the appropriate amount of any reserve fund.

1.35 *"Residential Units"* means the Apartment Unit and the Townhouse Units.

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

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

1.38 *"Size"* means the approximate number of square feet of floor space within each Unit as computed by reference to the Condominium Plat and rounded off to a whole number. The Size of each Unit is set forth in the attached Exhibit A.

1.39 *"Super Majority of the Unit Owners"* means the Owners of more than seventy-five percent (75%) in the aggregate of the Undivided Interests.

1.40 *"Telecommunications Facilities"* means satellite dishes, antenna, or other equipment and related devices; together with telecommunication, telephone, speaker, or data lines, cables, wires or conduits; associated with the transmission of data.

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

1.42 *"Townhouse Association"* means Wilmington Gardens Townhouse Unit Owners Association, a Utah non-profit corporation, which comprises all of the Townhouse Unit Owners acting as a group in accordance with the Act and this Declaration.

1.43 *"Townhouse Association Bylaws"* shall mean and refer to the Bylaws of the Townhouse Association, attached hereto as Exhibit C, as they may be amended from time to time.

1.44 *"Townhouse Association Board of Directors"* shall mean and refer to the governing board of the Townhouse Association, which shall be appointed or elected in accordance with the Articles of Incorporation, and the Bylaws of the Townhouse Association.

1.45 "*Townhouse Declaration*" shall mean that certain Declaration of Covenants, Conditions & Restrictions to be recorded by Declarant and encumber the Townhouse Units which, in addition to this Declaration, shall govern the use of the Townhouse Units.

1.46 "*Townhouse Units*" means Units 2A, 2B, 2C, 2D, 2E, 2F and 2G as identified the Condominium Plat.

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

1.48 "*Unit*" means each separate physical part of the Property intended for any type of independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in the Building, as depicted on the Condominium Plat. Each Unit comprises an individual air space unit, consisting of enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit concerned. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Areas and Facilities: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Area and Facility (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed. Units include each of the Commercial Units, the Parking Unit, the Apartment Unit, and the Townhouse Units.

1.49 "*Unit Number*" means the number, letter or combination of numbers and letters designating the Unit in this Declaration and in the Condominium Plat. The Unit Number of each Unit is set forth in the attached Exhibit A.

1.50 "*Unit Owner*" or "*Owner*" means the person or persons owning each Condominium Unit in fee simple, as shown in the Official Records, including any purchaser of a Condominium Unit under a long term installment sales contract. Declarant shall be deemed to be the Owner of each Unit that is created by the recording of the Condominium Plat and that has not yet been conveyed by Declarant. However, the term "Unit Owner" and "Owner" does not mean a person obligated to purchase a Unit pursuant to a so-called earnest money agreement, contract for deed or "Real Estate Purchase Contract" form approved by the Utah Division of Real Estate and shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

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

Article 2.
General Scheme

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

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

2.3 *General Provisions.* At the time of the first conveyance of each Condominium Unit, every Mortgage and other lien affecting such Condominium Unit shall have been paid and satisfied of record, or the Condominium Unit being conveyed shall have been released therefrom by a partial release duly recorded. The right of any Owner to sell, transfer or otherwise convey its Condominium Unit shall not be subject to any right of first refusal or similar restriction in favor of Declarant or the Management Committee, unless such right is created expressly as to a Condominium Unit in a future written instrument. In interpreting the Condominium Plat or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed or reconstructed in substantial accordance with the Condominium Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Condominium Plat, regardless of the settling or lateral movement of the Building and regardless of any minor variance between the boundaries shown on the Condominium Plat and those of the Building or such Unit. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure, whether the foreclosure is by private power of sale, judicial foreclosure or otherwise.

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

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

2.5.1 *Deed.* A "Special Warranty Deed Subject to Right of Re-Entry" that is dated May 1st 2013, that was signed by Agency, as grantor, in favor of Declarant, as grantee, and that was recorded in the Official Records on May 1st 2015 as Entry No. 11632012, Book 10134, Page 1830. Among other things, the Deed restricts _____.

2.5.2 *Development Agreement.* A "Development Agreement" that is dated May 1st 2013, that was signed by Declarant and Agency, that burdens the Land and that was recorded in the Official Records on May 1st 2013, as Entry No. 11632008, Book 10134, Page 1784 pursuant to which _____.

2.6 *Associations.*

2.6.1 *Association.* On or about the date of this Declaration, Declarant shall cause the Association to be formed. Each Unit Owner shall automatically be a member of the Association. The Management Committee shall act automatically as the board of directors of the Association, and all references in this Declaration to the Management Committee shall be deemed to be references to the Association's board of directors. The officers of the Management Committee shall act automatically as the officers of the Association, and all references in this Declaration to officers of the Management Committee shall be deemed to be references to the Association's officers. All actions taken by the Management Committee and the officers of the Management Committee shall automatically be actions taken for the Association. The Rules and Regulations are

rules and regulations of the Association. From time to time, the Association may file and maintain an assumed name application with the Utah Division of Corporations and Commercial Code to reserve the name "Wilmington Gardens Owner's Association" for the Property.

1. *Registration with the State.* In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration of any changes to (a) the name of address of the Association; (b) the name, address, telephone number, and email address of the president of the Association; (c) the name and address of each member of the Management Committee; and (d) the name, address, telephone number, and email or facsimile number of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit.

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

2.6.2 *Townhouse Association.* On or about the date of this Declaration, Declarant shall cause the Townhouse Association to be formed. Each Townhouse Unit Owner shall automatically be a member of the Townhouse Association. The governing body of the Townhouse Association shall be the Board of Directors elected pursuant to the Townhouse Association Bylaws. The Declarant shall have the exclusive right to appoint and remove all such Directors, until such time as the Declarant no longer has any ownership interest in any Townhouse Unit. The officers of the Board of Directors shall act automatically as the officers of the Townhouse Association. All actions taken by the Board of Directors and the officers of the Board of Directors shall automatically be actions taken for the Townhouse Association. From time to time, the Townhouse Association may file and maintain an assumed name application with the Utah Division of Corporations and Commercial Code to reserve the name "Wilmington Gardens Townhouse Owner's Association" for the Townhouse Units.

1. *Registration with the State.* In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1, the Townhouse Association shall be registered with the state Department of Commerce and shall update its registration of any changes to (a) the name of address of the Townhouse Association; (b) the name, address, telephone number, and email address of the president of the Townhouse Association; (c) the name and address of each member of the Board of Directors; and (d) the name, address, telephone number, and email or facsimile

number of a primary contact person who has association payoff information that a closing agent needs in connection with the closing of a Townhouse Unit Owner's financing, refinancing, or sale of the Owner's Townhouse Unit.

2. *Bylaws.* The bylaws of the Townhouse Association are attached to this Declaration as Exhibit C. The provisions of the Utah Revised Nonprofit Corporation Act, Utah Code Annotated Title 16, Chapter 6a, as in effect on, and as amended after, the date of this Declaration, shall supplement the bylaws set forth in this Declaration to the extent that such statutory provisions are not inconsistent with this Declaration.

2.7 *Mixed Use.* The Property is intended: (a) to be a condominium project with mixed residential and commercial / retail uses; (b) to provide on the main floor of the Building a bustling, noisy, active marketplace involved in the sale of goods and services from the Commercial Units, including, without limitation, live music, an open air market, art displays, artistic performances, the sale of flowers, food and drinks, street carts and day stall vendors, with such activities taking place inside of the Commercial Units and in the Plaza Areas appurtenant to Commercial Unit 1 (but all such uses shall be subject to the Commercial Easements); (c) to allow for cross-use of the Parking Unit between commercial / retail and residential users as more particularly described herein; (d) to provide for comfortable residential living, benefitted by a convenient marketplace; and (e) to accommodate the needs of Owners and users of the Commercial Units (including the Plaza Areas), which involve areas that are located directly under the Residential Units – these commercial needs will include: (i) construction activities to build out and remodel the Commercial Units from time to time; and (ii) transmitting the effects of commercial and retail activities upstairs. The Declaration shall be construed liberally to accommodate this intent.

Article 3. *Units*

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

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



otherwise encumber the Common Areas and Facilities or the Limited Common Areas and Facilities, except to the extent of the Undivided Interest appurtenant to its Unit.

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

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

Unit _____ contained within Wilmington Gardens, a Utah mixed use condominium project, as the same is identified in the Declaration of Condominium and Bylaws recorded _____ 2015 as Entry No. _____ in Book _____ at Page _____ of the official records of the Salt Lake County, Utah Recorder (as said Declaration may heretofore have been amended or supplemented), and in the Condominium Plat recorded _____ 2015 as Entry No. _____ of the official records of the Salt Lake County, Utah Recorder (as said Condominium Plat may heretofore have been amended or supplemented);



TOGETHER WITH a percent undivided interest in the Common Areas and Facilities appurtenant to such Unit, as more particularly described in said Declaration.

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

3.5 *Improvement of Units.* Subject to the provisions of this Section 3.5, each Unit Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Unit Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit, and the Owner of the Commercial Unit may make improvements to the Plaza Areas in order to accommodate an open-air market; provided, however, that such walls, fixtures and improvements shall:

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

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

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

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

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

3.5.5 *Bearing Walls.* In particular, no Unit Owner shall remove or alter any interior bearing walls within a Unit without first: (a) providing structural reinforcement beams or supports for the modified bearing walls; (b) providing to the Management Committee (at the Unit Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations (and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building; (c) obtaining the advance written

consent of the Salt Lake City Building Department (to the extent required) and the Management Committee, and (d) cause all contractors to comply with the insurance provisions of this Declaration.

3.5.6 Construction Activities within Commercial Units. Without limiting the generality of the foregoing, the Owner of Unit 1, with respect to Unit 1 and the Plaza Area, and the Owner of any other Commercial Unit, may build out, improve, remodel and remove improvements in or from its Unit and to the Plaza Areas ("*Construction Activities*") even though these Construction Activities may cause temporary inconveniences to the occupants of Residential Units that are located above the Commercial Units and the Plaza Areas; provided, however, in carrying out Construction Activities, such Owners: (a) shall take commercially reasonable steps so as to minimize inconveniences to Residential Unit Owners; (b) shall abide by applicable Rules and Regulations as to permissible days and times of day; and (c) may not impede access to the Residential Units or the Parking Unit.

3.5.7 Approvals and Notice. Except as is expressly set forth in this Declaration, no Unit Owner (and the Owner of Unit 1 as to the Plaza Areas) shall be required to obtain the approval of any other Unit Owner or the Management Committee for the improvement of, or the removal of improvements from, that Owner's Unit and the Plaza Areas. However, if the improvement of, or the removal of improvements from, an Owner's Unit or the Plaza Areas will require the temporary use of Common Areas or Facilities or the use of another Unit Owner's Unit or Limited Common Area or Facilities under express rights granted in Article 5, then that Owner shall give the Management Committee (as to Common Areas and Facilities) or the other Unit Owner reasonable advance written notice of such pending improvements.

3.6 Maintenance of Units.

3.6.1 General. Each Owner shall keep the interior of its Unit and any Limited Common Areas and Facilities appurtenant to its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements in good condition and repair and in a clean and sanitary condition. In addition, each Unit Owner shall maintain in good condition and repair the window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such window glass or door on removal, breakage or other damage.

3.6.2 Maintenance of Townhouse Units. Notwithstanding anything to the contrary in this Declaration, the Townhouse Association shall maintain, at its sole cost and expense, the Structural Elements of the Townhouse Units, including but not limited to maintaining the exterior surface and the roof of the Townhouse Units, and any Utility Equipment exclusively servicing the Townhouse Units. All expenses incurred by the Townhouse Association shall be reimbursed by the Townhouse Unit Owners as set forth in the Townhouse Association Bylaws.

3.6.3 Maintenance of Apartment Unit. Notwithstanding anything to the contrary in this Declaration, the Owner of the Apartment Unit shall maintain, at its sole cost and

expense, the Structural Elements of the Apartment Unit, including but not limited to the maintenance of the exterior surface and the roof of the Apartment Unit, and any Utility Equipment exclusively servicing the Apartment Unit.

3.6.4 *Maintenance of Commercial Units.* Notwithstanding anything to the contrary in this Declaration, the Owner of each Commercial Unit shall maintain, at its sole cost and expense, the Structural Elements of its Commercial Unit, including but not limited to maintaining the exterior surface and the roof of its Unit, and any Utility Equipment exclusively servicing such Commercial Unit.

3.6.5 *Maintenance of Parking Unit.* Notwithstanding anything to the contrary in this Declaration, the Owner of the Parking Unit shall maintain, at its sole cost and expense, the Structural Elements of the Parking Unit and any Utility Equipment exclusively servicing the Parking Unit.

3.6.6 *Failure to Maintain.* If any Owner (or the Townhouse Association with respect to the Maintenance of the Townhouse Units set forth in Section 3.6.2) fails to maintain its Unit or satisfy any requirements set forth herein, or if any Unit or any Limited Common Areas and Facilities appurtenant to a Unit develops an unsanitary or unclean condition or falls into a state of disrepair and the Owner of such Unit fails to correct such condition promptly following written notice from the Management Committee, or if any removed, broken or damaged window glass or door referred to in the preceding sentence is not immediately repaired or replaced by the Unit Owner obligated to do so, then the Management Committee may (but is not obligated to), at the expense of such Unit Owner (or the Townhouse Association if applicable) and without liability to such Unit Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Management Committee pursuant to this Section 3.6.6, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute a lien from and after the filing of a "Notice of Lien" with respect thereto on the Condominium Unit concerned pursuant to Section 8.4, which lien may be foreclosed by the Management Committee in accordance with such section.

3.7 *Division of Existing Units.* Any amendment to this Declaration that divides an existing Unit into two or more Units shall be executed by the Management Committee, the Owner of such Unit and any Mortgagee holding a Mortgage encumbering such Unit and shall not require the consent or execution by any other Unit Owner or Mortgagee, and shall set forth the new square footage and the new Undivided Interests appurtenant to the new Units (as an amendment to the attached Exhibit A). Such square footage and Undivided Interests, in the aggregate, shall be equal, respectively, to the original square footage and Undivided Interests of the Unit being divided. The Undivided Interests of the new Units shall be allocated proportionately between or among the new Units, based on the respective square footage of the new Units. In addition, the Owner of the Unit being so divided shall, at its sole cost and expense, prior to or concurrently with the recordation of such amendment, have prepared, approved by Salt Lake City, and recorded, an amendment to the Condominium Plat, reflecting

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such division. Following such division, any additional other structural separations constructed or installed between the new Units shall become Common Areas and Facilities. Dividing Units shall not, taken in the aggregate between or among the new Units created, increase or decrease the original voting rights or Undivided Interests set forth in this Declaration.

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

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

Article 4. *Uses*

4.1 *Permitted Uses.* Except as set forth in this Declaration, the Commercial Units (including the Plaza Areas appurtenant to the Commercial Units) are intended for office, retail or other commercial uses, and such Units are restricted to such uses. Subject to Section 4.9, the Residential Units are intended exclusively for residential use, and such Units are restricted to such use; provided, however, that notwithstanding the foregoing, the Residential Units may be used for incidental office purposes so long as no customer foot traffic is allowed to the Residential Unit in connection with such office purposes and so long as relevant zoning ordinances are complied with.

4.2 *Prohibited Activities.* No Owner shall do or permit anything to be done in its Unit which may do any of the following: (a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property; (b) create a public or private nuisance, commit waste or unreasonably interfere with, annoy or disturb any other Unit Owner or occupant of the Building (the uses permitted under Section 3.5 and the easements created under Article 5 shall not be deemed to constitute such unreasonable interference, annoyance or disturbance); (c) overload the floors or otherwise damage the structure of the Building; (d) violate any present or future law, ordinance, regulation or requirement, including, without limitation, those relating



to hazardous substances, hazardous wastes, pollutants or contaminants, those relating to access by disabled persons and the requirements of any board of fire underwriters or other similar body relating to the Property; (e) lower the first-class character of the Property, consistent with the mixed-use nature of the Property as described in Section 2.8; or (f) otherwise detract from the appearance or value of the Property (but uses and activities that are permitted under this Declaration shall not be deemed to detract from the appearance or value of the Property). No Owner may service or store (i.e., long term storage where the vehicle is not operable, registered and being used on a regular basis) vehicles on the Property.

4.3 *Prohibited Uses.* No portion of the Property shall be used for any of the following uses:

4.3.1 Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such use that has an unreasonable pattern of unlawful disturbances or tobacco law violations;

4.3.2 A sexually oriented business as defined in Utah Code Ann. § 17-50-331 and any other business engaged in sexually oriented entertainment or materials such as any: sexually oriented show, movie picture, exhibition, performance, demonstration, film, video, book or other depictions of sexually oriented nature; sexually oriented live entertainment or erotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service. The forgoing exclusion shall not include pay per view video/audio services, internet and other forms of telecommunication/communication systems offered or available to Salt Lake County residents;

4.3.3 Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pick up facility, convenience or food store;

4.3.4 Any business involving gambling or wagering even if otherwise permitted by law including slot machines, video games, or off-site pari-mutual wagering sites; or

4.3.5 Any business involving the sale or display of weapons, self-service laundromat for nonresidents or non-occupants of a Residential Unit, illegal activities, or sale of any illegal goods or products.

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

agent, licensee, guest or invitee of any tenant of the Indemnifying Party or any other person using or occupying the Unit owned by the Indemnifying Party.

4.5 *Certain Compliance; Rules and Regulations.* Each Unit Owner shall comply strictly with the covenants, conditions and restrictions as set forth in this Declaration and in the deed to its Unit and with the Rules and Regulations, any other Governing Documents and any administrative rules and regulations drafted pursuant to any of the foregoing, as any of the same may be amended from time to time. The Rules and Regulations may cover rental and use of Units and may grant the Management Committee the right to evict, on behalf of the Unit Owner, tenants of Units if those tenants do not comply with the Rules and Regulations. Failure so to comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner. The attached Rules and Regulations may be amended from time to time by the Management Committee; provided, however, that, notwithstanding the foregoing: (a) each Rule and Regulation must be commercially reasonable, considering the mixed-use nature of the Property as described in Section 2.8; (b) the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests for the Commercial Units must approve any Rules and Regulations: (i) affecting the hours of operation of and construction within the Commercial Units (the Residential Unit Owners shall have no vote on the same) and (ii) affecting Residential Units that will impact adversely the enjoyment of the Commercial Units (considering the mixed-use nature of the Property as described in Section 2.8); (c) the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests for the Residential Units must approve any Rules or Regulations affecting Residential Units that will impact adversely the quiet enjoyment of the Residential Units (considering the mixed-use nature of the Property as described in Section 2.8); and (d) the Management Committee shall not discriminate against Residential Unit Owners, as a group, or against Commercial Unit Owners, as a group, in amending or enforcing the Rules and Regulations.

4.6 *Parking.*

4.6.1 Except for the parking spaces assigned to the Townhouse Units from time to time as set forth below, the owner of the Parking Unit may lease or license specific parking rights of the parking spaces available to the Commercial Units and Residential Units. Nothing herein restricts the rights of the owner of the Parking Unit to license, either short or long term, the parking spaces or utilize the Parking Unit to its own advantage.

4.6.2 No vehicles may be parked in the Parking Unit except in the designated parking spaces. Unless approved by the owner of the Parking Unit, there shall be no storage or parking of snowmobiles, trailers, mobile homes, recreational vehicles, or vehicles deemed to be too large for a parking space by the owner of the Parking Unit. The owner of the Parking Unit shall have the right to install devices and signage to restrict and control access to the Parking Unit and to otherwise regulate its use. The owner of the Parking Unit shall further have the right to require users of the Parking Unit to sign a release or waiver of liability in connection with their use. The easements granted are private and nothing herein should be construed as a public dedication.

4.6.3 *Townhouse Unit Parking.* Subject to the restrictions set forth herein, each Townhouse Unit Owner shall have the exclusive right to use two (2) parking stalls in the locations determined by the Owner of the Parking Unit. The Owner of the Parking Unit shall have the right to determine the location of such parking stalls and reserves the right to relocate any parking stalls dedicated to any Townhouse Unit Owner upon twenty (20) days prior written notice.

4.6.4 *Regulation.* The owner of the Parking Unit may regulate the use of the Parking Unit through issuing use permits, cards or hang tags; installing parking arms and/or toll booths; charging fees (for customers of Commercial Units, adjoining property owners and their customers, or others, including the Apartment Unit Owner and its tenants, but not for Townhouse Unit Owners except as set forth herein); placing restrictive and/or directional signage; and arranging for tow-aways.

4.7 *Signs Displayed from Units.* Without the prior written consent of the Management Committee or its designee, no occupant of a Residential Unit shall permit any signs, pictures, banners, flags, posters or other commercial, political, informational or directional signs, devices and objects of any kind to be displayed to the public view from any Residential Unit or from the Limited Common Areas and Facilities appurtenant to the any Residential Unit, other than such signs as may be used by the Unit Owner for the purpose of selling, renting or leasing that Owner's Residential Unit. The Owner of the Commercial Units may place signs, pictures, banners, flags, posters and other commercial, informational or directional signs, devices and objects for display to the public view on the exterior window and door surfaces of the Unit, which form part of the Common Areas and Facilities, and in the Plaza Areas, for the purposes of: (a) selling, renting or leasing that Owner's Commercial Unit; or (b) advertising the commercial uses of that Unit and other uses reasonably ancillary thereto.

4.8 *Plaza Areas.* The Plaza Areas may be used by the Owner of Unit 1 for any commercial purposes permitted under this Declaration, subject to the following terms and conditions: (a) the Plaza Areas shall be used as an open-air market; (b) the Owner of Unit 1 may improve the Plaza Areas so as to accommodate an open-air market, including the construction of overhead canopies, awnings, galvanized metal roofs or other protective structures, but the improvements must comply with the provisions of Section 3.5; (c) the Owner of Unit 1 may lease or license portions of the Plaza Areas to vendors for the purposes of selling goods and services from the Plaza Areas (from kiosks, day stalls, carts, stands and/or other structures), and to artists and other performers for performing or displaying their art or music, including live music and artistic performances; (d) the Owner of Unit 1 shall pay for all electricity and other utilities used in the Plaza Areas; and (e) all uses of the Plaza Areas shall be subject to the general terms and conditions of the Governing Documents.

Article 5. *Easements.*

5.1 *Easements for Encroachments.* If on or after the date of this Declaration: (a) any part of the Common Areas and Facilities or the Limited Common Areas and Facilities encroaches on any part of a Unit; or (b) any part of a Unit encroaches on a part of the Common Areas and Facilities or the Limited Common Areas and Facilities, then a non-exclusive easement

for each such encroachment and for the maintenance of the same shall exist immediately and automatically, and Declarant reserves such easement for the benefit of each Unit and each Common Area and Facility and Limited Common Area and Facility. Such encroachments shall not be considered to be encumbrances on any Unit, the Common Areas and Facilities or the Limited Common Areas and Facilities. Such encroachments may include, without limitation, encroachments caused by error in the original construction of the Building or any other improvements constructed or to be constructed on the Land in accordance with this Declaration, error in the Condominium Plat, settling, rising or shifting of the earth or changes in position caused by repair or reconstruction of the Property.

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

5.3 *Easements for Units.* Declarant reserves for each Unit a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Areas and Facilities and the Limited Common Areas and Facilities as necessary for access to and from its Unit and to any Limited Common Areas and Facilities appurtenant to such Unit. Declarant reserves for the Commercial Unit, as the benefitted property, a non-exclusive easement over each adjoining Commercial Unit, if any, as the burdened property, for the construction and maintenance of a wall that spans the dividing line between the Commercial Unit and the adjoining Commercial Unit, which wall shall constitute a Common Area and Facility from and after the time of its construction (except for the interior surfaces of the walls, which shall constitute part of each respective Commercial Unit, as described in Section 1.8.2). Declarant reserves for each Commercial Unit a non-exclusive easement for, and the right of, ingress and egress to the adjoining Commercial Units as reasonably necessary to construct, repair and remove walls between the benefitted Commercial Unit and the burdened Commercial Unit. Declarant reserves for the Plaza Areas a non-exclusive easement for, and the right to, overhangs for canopies, awnings, galvanized metal roofs or other protective structures, which overhangs may extend from the outside edge of the Plaza Areas. Declarant reserves for each Unit a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements. Declarant reserves for each Unit a non-exclusive easement in common with all other Units for Utility Equipment and other Common Areas and Facilities from time to time and at any time located in any other Units and serving the benefitted Unit. Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the Utility Equipment and other Common Areas and Facilities from time to time and at any time located in such Unit and serving any other Unit. All of such Utility Equipment and other Common Areas and Facilities may be installed or moved as may be reasonably necessary for use by the benefitted Unit, so long

as such movement does not unreasonably interfere with the burdened Unit and is approved in advance by the Management Committee, and so long as any construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion. On completion of any such construction activities, the benefitted Unit Owner shall immediately restore any portion of the burdened Unit affected to the same condition as existed prior to the commencement of such construction activities, using the same (or better) type and quality of materials previously used.

5.4 *Sign Easement.* Declarant reserves a non-exclusive easement on the exterior surfaces of the Building and on the surfaces and other portions of the Common Areas and Facilities (but not Limited Common Areas and Facilities or the exterior window and door surfaces of Residential Units or Commercial Units that form part of the Common Areas and Facilities), as the servient estate, for the benefit of: (a) the Property as a whole, for the purposes of providing directional signs within the Property and signs identifying the name of the Property (the Management Committee, acting on behalf of all Unit Owners, shall administer the benefit of this portion of the Sign Easement); (b) each Commercial Unit for the purpose of advertising on-site uses in the Commercial Units; (c) the Plaza Areas (as Limited Common Areas and Facilities appurtenant to Unit 1) for the purpose of advertising on-site uses within the Plaza Areas, and (d) the Apartment Unit for the purpose of advertising the Apartment Unit, subject to the following restrictions and limitations, which shall be administered by the Management Committee:

5.4.1 *Location and Content.* No sign, advertisement, notice or other lettering (each a "Sign" and collectively the "Signs") shall be mounted, exhibited, inscribed, painted or fixed at any location on or within the Common Areas and Facilities, including the exterior of the Building (other than on the exterior surfaces of doors and windows to a Unit, which may be used by the Owner of Commercial Unit pursuant to Section 4.10), without the prior written consent of the Management Committee as to the form (subject to Section 5.4.4), location and content of the Sign, which consent shall not be withheld unreasonably. At the request of a benefitted party, the Management Committee shall affirmatively make Common Areas and Facilities available for use as contemplated by this Section 5.4. With the Management Committee's approval, Signs may be located anywhere on the exterior of the Building, including all the way to the seventh floor of the Building and Signs in the vicinity of windows to Residential Units (which may cause some light to enter into those Residential Units—see Section 5.6 for the Commercial Easement allowing this usage).

5.4.2 *Costs.* The costs of installing, operating, maintaining and removing Signs for on-site advertising of Commercial Units or the Apartment Unit shall be borne by the Owner of the benefitted Unit (including the Owner of Unit 1 as to the Plaza Areas). A Unit Owner shall have the electricity for such Signs covered by that Owner's own electricity meter. Other than the electricity charges described above, no fees may be charged to a Commercial Unit Owner (or to the Owner of Unit 1 as to the Plaza Areas) for the benefit of using the Sign Easement.

5.4.3 *Removal.* Once a Sign permitted by this Section 5.4 is no longer in use or no longer accurately describes a permitted use, the benefitted party, at its expense, shall

cause the Sign to be removed (and shall repair any damage to the Common Area and Facility caused by such removal) or to be altered appropriately.

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

5.5 *Parking Easement.* For valuable consideration as set forth below, the Declarant, as owner of the Property, hereby grants and conveys to unit owners of the Townhouse Units, a perpetual non-exclusive easement over and across the Parking Unit for the ingress, egress, and regress of pedestrian and vehicular traffic as well as for parking in the parking spaces designated from time to time, as limited or restricted herein, which easement shall benefit the Unit Owners of the Townhouse Units, their respective successors, grantees, mortgagees, visitors, and other licensees and invitees of any of them.

5.6 *Easement for Effects of Commercial Uses.* Declarant, as the owner of the Property (including, but not limited to, each Residential Unit), hereby grants the Owners of the Commercial Units, a non-exclusive easement that burdens the Property (including, but not limited to, each apartment within the Residential Unit and each Townhouse Unit), as the servient estate, and that benefits each Commercial Unit (including the Plaza Areas), as the benefitted estate, for the purpose of allowing within the Property effects that are reasonably incidental to commercial and retail activities taking place within the Commercial Units (including the Plaza Areas), including, but not limited to: (a) sounds and noise; (b) smells, odors and fragrances, including those deriving from exhaust fans; (c) the placement of vent pipes on the exterior of the Building from the Commercial Units to the roof of the Building (in locations that are approved by the Management Committee, which approval shall not be withheld unreasonably) for the purpose of venting smoke, vapors, heat and smells from restaurant and other commercial uses; (d) the placement of radio and television antennae and satellite dishes on the roof of the Building and ducts and wiring on the exterior of the Building from the Commercial Units to such antennae and satellite dishes (in locations that are approved by the Management Committee, which approval shall not be withheld unreasonably) for the purpose of providing television service to the Commercial Units; and (e) light, whether emanating from the Commercial Units (including the Plaza Areas) and/or signs on the Building (including light from neon signs that might be in the proximity of windows to the Units), whether any one or more of the foregoing arise from live music or artistic performances; preparation, serving and consumption of food, including restaurants; sales; set-up and take down activities; construction and remodeling activities (including those described in Section 3.5); and/or other commercial and retail activities and whether any one or more of the foregoing occur in the evening, night or early morning hours (subject to hours restrictions that are set forth in the Rules and Regulations).

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

5.8 *Easement to Use Air Space.* The Air Space is reserved and retained by Declarant. Declarant, as the Owner of the Air Space, hereby grants to the Unit Owners a non-exclusive easement within the Air Space for the placement and operation of mechanical equipment as necessary related solely for the operation of the Building (which shall not include the right to place any Telecommunications Facilities thereon – this right being reserved and retain by the Association), which easement shall be considered part of the Common Areas and Facilities. An Owner, lessee, occupant or any third party may not install any Telecommunications Facilities on any roof of the Building or any other part of the Building. If an Owner, lessee, occupant or other third party desires to install, operate or maintain and such Telecommunications Facilities within the Air Space and the Management Committee is willing to permit such installation and operation, such Owner, lessee, occupant or third party shall enter into a separate Telecommunications License Agreement with the Association.

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

5.10 *Administration.* The Management Committee shall administer the activity or easement as called for in this article.



Article 6.
Management Committee.

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

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

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

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

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

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

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

6.1.7 *Suits.* To sue and be sued;

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

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

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

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

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

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

6.2 *Composition.* The Management Committee shall be composed of three natural persons. At the first regular Unit Owners' meeting, two Management Committee members shall be elected for two-year terms and one member for a one-year term. At each annual Unit Owners' meeting thereafter, any vacant seat on the Management Committee shall be filled with a member elected for a two-year term. Only Unit Owners and officers, partners, managers, members and agents of Unit Owners who are not natural persons (or of constituent entity-owners

Owners who are not natural persons, at one or more tiers removed from the Unit Owner itself) shall be eligible for Management Committee membership, except for members appointed by Declarant, who need not be Unit Owners. If a member of the Management Committee fails to satisfy the foregoing requirement at any time during that member's term, then that member's term of office shall immediately and automatically terminate. Any member of the Management Committee may be removed by a vote of a Majority of the Unit Owners at a meeting called for that purpose. At each annual Unit Owners' meeting the Undivided Interests appurtenant to a Unit may be voted in favor of as many candidates for Management Committee membership as there are seats on the Management Committee to be filled. There shall be no cumulative voting for members of the Management Committee. Notwithstanding the foregoing provisions, until the first annual meeting of the Unit Owners, the members of the Management Committee shall be the following persons, and each shall also hold the office(s) indicated opposite the person's name:

<i>Name</i>	<i>Office</i>
Walker Kennedy III	President
Aabir Malik	Vice President
Todd Olsen	Secretary/Treasurer

On a vacancy prior to the expiration of the relevant term, the remaining Management Committee members shall elect a replacement to sit on the Management Committee until the expiration of the term for which the member being replaced was elected. Unless the member forfeits or otherwise loses the member's seat as provided in this Declaration, a member shall serve on the Management Committee until the member's successor is elected and qualifies. Management Committee members shall be reimbursed for all expenses reasonably incurred in connection with Management Committee business provided that such expenses are first approved by the Management Committee. The Management Committee may fix such compensation for any member as may be reasonable in light of the Management Committee duties which that member is required to perform, subject to the approval of a Majority of the Unit Owners. Notwithstanding the foregoing, Declarant may appoint and remove some or all of the members of the Management Committee, or exercise powers and responsibilities otherwise assigned by the Act or this Declaration to the Management Committee or the Association of Unit Owners; provided, however, that: (a) Declarant must give the Management Committee written notice of any power or responsibility so assumed; (b) no amendment to this Declaration not consented to by a Super Majority of the Unit Owners shall increase the scope of the foregoing authorization; and (c) no such authorization shall be valid after the first to occur of: (i) the date which is three years after the date that this Declaration is recorded in the Official Records; (ii) the date on which Units to which 50% or more of the Undivided Interests are appurtenant have been conveyed to a person other than Declarant or a member of Declarant; or (iii) the date on which Declarant surrenders any power or responsibility to the Management Committee in writing.

6.3 *Officers and Agents.* The Management Committee shall perform its functions through those members who are elected as officers by the Management Committee and through

such agents or employees as the Management Committee may appoint or employ. Any Management Committee officer, agent or employee may at any time be removed with or without cause by the vote of a majority of the Management Committee members. The officers of the Management Committee and their respective powers and functions shall be as follows:

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

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

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

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

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

6.5 *Records.* The Management Committee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Areas and Facilities and the Limited Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and the Limited Common Areas and Facilities and any other expenses incurred. Such records and the vouchers authorizing the

payments involved shall be available for examination by the Unit Owners at convenient hours on weekdays. The Management Committee shall maintain up-to-date records showing the following:

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

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

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

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

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

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

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

their capacity as such; and (c) shall have no personal liability arising out of the use, misuse or condition of the Property, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

6.7.2 *Specific Listing.* Without limiting the generality of Section 6.7.1 and notwithstanding any provision of the Governing Documents to the contrary, neither the Management Committee, the Association of Unit Owners nor any member of the Management Committee shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Premises or other cause beyond such person's reasonable control.

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

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

<i>Name</i>	<i>Address</i>
Walker Kennedy III	2733 East Parleys Way, Suite 300 Salt Lake City, Utah 84109

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

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

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Article 7.
Meetings of Unit Owners.

7.1 *Annual Meetings.* Beginning in 2014, the annual meeting of the Unit Owners shall be held at 7:00 p.m. on the third Tuesday in November of each year or at such other time and place as the Management Committee shall select for the purpose of approving the budget for the upcoming calendar year and for transacting such other Property business as may be necessary or appropriate. The place of such meeting shall be at a location in Salt Lake County, Utah. A written notice of such meeting, setting forth the time, place and general purpose of the meeting shall be given to each Unit Owner by the Management Committee in accordance with Section 15.2.

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

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

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

7.5 *Consent in Lieu of Vote.* In any case in which the Act or this Declaration requires the vote of a stated percentage of Undivided Interests for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of Undivided Interest, provided that: (a) all necessary consents must be obtained



prior to the expiration of 90 days after the first consent is given by any Unit Owner; (b) any change in ownership of a Unit which occurs after consent has been obtained from the prior Owner of such Unit shall not be considered or taken into account for any purpose; (c) unless the consent of all of the Unit Owners having an interest in the same Unit is secured, the consent of none of such Unit Owners shall be effective, and (d) each Unit Owner receives written notice describing such transaction for which consents are being obtained.

Article 8.

Common Areas and Facilities.

8.1 *Common Areas and Facilities.* Subject to Sections 3.5 and 4.11 (as to the Plaza Areas) and Section 5.8, the necessary work of operation, management, maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities and the making of any additions or improvements to the Common Areas and Facilities and the Limited Common Areas and Facilities shall be carried out only by the Management Committee, subject to the following:

8.1.1 *Operation.* The Management Committee shall provide for such operation, management, maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities as may be reasonably necessary to make them appropriately usable in conjunction with the Units and to keep them clean, safe, functional, attractive and generally in good condition and repair, and shall pay for all utility services furnished to the Common Areas and Facilities and the Limited Common Areas and Facilities; provided, however, that: (a) individual Unit Owners shall be responsible for maintaining Limited Common Areas and Facilities appurtenant to their own Units as described in Section 3.6; and (b) the Owner of the Commercial Unit shall be responsible to pay for utility services in connection with using the Plaza Areas (as Limited Common Areas and Facilities appurtenant to the Commercial Unit), as described in Section 4.11. The maintenance shall include the removal of weeds and debris on the Property and periodic cleaning, sweeping, removal of ice, snow and rubbish, re-striping and resurfacing of the Parking Area.

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

8.1.3 *Costs and Revenues.* The cost of compliance with this Section 8.1 shall be part of the Common Expenses. Additional sources of revenue to the Management Committee may include: reimbursement of previously unrecoverable expenses (Section 1.12.7); fees paid for cross-use of the Property (Section 6.1.5); and excess Condemnation or insurance proceeds (Sections 10.3 and 10.7).

8.2 *Common Expenses Budget.* Before November 1st of each year the Management Committee shall prepare a budget that sets forth an itemization of the anticipated Common Expenses for the next following calendar year. Such budget shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. After considering the proposed users and uses of the Common Areas and Facilities and the Limited Common Areas and Facilities, the Management Committee, in its reasonable discretion and to the fullest extent permitted by law, may determine that one or more Units are utilizing certain Common Areas and Facilities in a manner that creates greater expenses than ordinary Common Expenses and may allocate such expenses based on Units that will be benefitted by such use of the Common Area and Facilities, which allocation may be among Residential Units only, among Commercial Units only, among all Units or among those scattered Units that will use the Common Area and Facility and/or the Limited Common Area and Facility, and the Management Committee may adjust assessments for Unit Owners accordingly. Notwithstanding the foregoing, the Management Committee shall apportion Common Expenses: (a) between Commercial Units and Residential Units in a fair and non-discriminatory manner; and (b) among Units that are similarly situated based on the proportion that their respective Undivided Interests bear to each other. Alternatively and in its sole discretion, the Management Committee may apportion all Common Expenses among the Units on the basis of their respective Undivided Interests. The Management Committee shall be the exclusive arbitrator of any disputes regarding such apportionment, and any decision rendered by the Management Committee with respect to any such dispute shall be final, binding and conclusive for all purposes. Such budget shall be subject to the approval of a Majority of the Unit Owners.

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

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

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

8.3.3 *Late Payments and Assessments.* The Management Committee may establish and assess reasonable charges for delinquent payments of such monthly or special payments. A late fee equal to 5% of the delinquent amount and interest at the rate

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

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

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

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

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

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

Committee shall discharge such tenant for rent due and shall discharge the Unit Owner for such assessments to the extent of the amount so paid.

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

8.4.5 *Notice of Lien.* A Notice of Lien: (a) shall set forth the amount of the unpaid assessment, the date due, the name of the Unit Owner and a description of the Condominium Unit concerned; (b) shall be executed and acknowledged by the Management Committee; and (c) may be recorded in the Official Records.

8.4.6 *Appointment of Trustee.* The Declarant appoints Title West, having an address of 2735 East Parleys Way, Suite 201, Salt Lake City, Utah 84109, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and 57-8-45 to Title West, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of the Declaration. A Unit Owner's acceptance of interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Management Committee may appoint another qualified trustee by executing a substitution of trustee form.

8.4.7 *Enforcement of Lien.* The lien for nonpayment of Common Expenses may be enforced by sale or foreclosure of the Condominium Unit concerned by the Management Committee. Such sale or foreclosure shall be conducted in the same manner as the exercise of a private power of sale or a foreclosure under a deed of trust pursuant to the Utah Trust Deed Act, as a foreclosure of a mortgage, as the exercise of any other remedy under a Mortgage or in any other manner permitted by law. In any such sale or foreclosure, the Unit Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the Notice of Lien. In the case of foreclosure, the Unit Owner shall pay a reasonable rental for the Unit, and the plaintiff in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Management Committee may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

8.5 *Estoppel Statement.* The Management Committee shall, on the written request of any Unit Owner or any Mortgagee or prospective Mortgagee or purchaser of a Condominium Unit, and on payment of a reasonable fee not to exceed \$10.00 (or such higher amount that is

selected by the Management Committee and that is permitted by the Act), issue to the requesting person or persons a written statement setting forth the unpaid Common Expenses for such Condominium Unit. Such written statement shall be conclusive on the remaining Unit Owners and on the Management Committee in favor of all persons who rely on such written statement in good faith. Unless the Management Committee complies with the request for such statement within twenty (20) days, all unpaid Common Expenses which became due prior to the date such request was made shall be subordinate to the lien held by the person requesting such statement. Any encumbrancer holding a lien on any Condominium Unit may pay any unpaid Common Expenses payable with respect to such Condominium Unit and on payment such encumbrancer shall have a lien on such Condominium Unit for the amounts paid of the same rank as the lien of its encumbrance.

8.6 *Reserve Fund.* The Management Committee shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Areas and Facilities and Limited Common Areas and Facilities as determined by the Owners annually, as follows:

8.6.1 *Collection.* Reserve funds may be collected as part of regular or special assessments.

8.6.2 *Surplus Monies Applied to Reserves.* The Management Committee may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

8.6.3 *Segregation of Reserves.* The Management Committee shall segregate money held for reserves from regular operating and other accounts.

8.6.4 *Reserve Analysis.* The Management Committee shall cause a Reserve Analysis to be conducted no less frequently than every five (5) years. The Management Committee shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis and updates shall project a minimum of 30 years into the future.

8.6.5 *Qualifications for Person Preparing Reserve Analysis.* The Reserve Analysis report shall be prepared by a person or persons with (1) experience in current building technologies, (2) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, but subject to the discretion of the Management Committee in determining that the qualifications have otherwise been met by one person, two people shall prepare the Reserve Analysis, an architectural consultant who will perform a property condition assessment and a reserve study professional who will utilize the property condition assessment and prepare the Reserve Analysis.

8.6.6 *Disclosure and Approval at Annual Meeting.* Annually, at the annual meeting or a special meeting of Owners, the Management Committee shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in

what amount. The Management Committee shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.

8.7 *Audit.* Any Unit Owner may at any reasonable time, but not more than once per calendar year, on appointment and at its own expense, cause an audit or inspection to be made of the books and records maintained by the Management Committee.

Article 9.
Insurance.

9.1 *Insurance.* The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Not later than sixty (60) days prior to the annual meeting of the Association, the Management Committee shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the applicable law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION," and (4) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION." The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. The most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within 30 days of the meeting.

9.2 *Property Insurance.*

9.2.1 *Hazard Insurance.* The Association shall maintain a blanket policy of property insurance covering the entire Property, including the Common Areas and Facilities and Limited Common Areas and Facilities, the Building including all Units, fixtures, and building service equipment.

1. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas and Facilities or otherwise permanently part of or affixed to Common Areas and Facilities, Units, or Limited Common Areas and Facilities, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

2. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

3. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available; (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

6. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

7. An Owner that has suffered damage to any combination of a Unit or a Limited Common Area and Facility appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy.

8. If an Owner does not pay the amount required under Subsection (g) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area and Facility appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

9.2.2 *Flood Insurance.* If any part of the Property is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Property located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Areas and Facilities within the Property ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Property located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. If the Property is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

9.2.3 *Earthquake Insurance.* The Association may purchase earthquake insurance as the Management Committee deems appropriate.

9.2.4 *Association's Obligation to Segregate Property Insurance Deductible.* The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

9.2.5 *Association's Right to Not Tender Claims that are Under the Deductible.* If, in the exercise of its business judgment, the Management Committee determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

9.2.6 *Notice Requirement for Deductible.* The Association shall provide notice to each Owner of the Owner's obligation under Subsection 9.2.1.6 above for the

Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

9.3 *Comprehensive General Liability (CGL) Insurance.* The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Areas and Facilities or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

9.4 *Director's and Officer's Insurance.* The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

9.5 *Insurance Coverage for Theft and Embezzlement of Association Funds.* The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Management Committee members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, and (c) officers, directors, and employees of any manager of the Association.

9.6 *Workers' Compensation Insurance.* The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Management Committee deems appropriate.

9.7 *Certificates.* Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.



9.8 *Named Insured.* The named insured under any policy of insurance shall be the Association. The Mortgagees of the Units (excluding the Townhouse Units) and each Owner shall also be an additional insured under all property and CGL insurance policies.

9.9 *Association Shall have Right to Negotiate All Claims and Losses and Receive Proceeds.* Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

9.10 *Insurance Trustee.* In the discretion of the Management Committee or upon written request executed by Owners holding at least 50% of the Ownership Interest of the Association, the Management Committee shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Management Committee (as the case may be) shall require.

9.11 *Owner Act Cannot Void Coverage Under Any Policy.* Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

9.12 *Waiver of Subrogation against Owners and Association.* All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

9.13 *Amendments to this Section to Comply with Applicable Law.* The insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Association. Notwithstanding anything contrary in this Declaration, the Declarant or the Management Committee may unilaterally, without approval of the Unit Owners, amend this section to comply with future changes to applicable law.

Article 10.
Destruction; Condemnation; Restoration.

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

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

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

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

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

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

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

10.1.7 "*Substantial Destruction*" means the occurrence of any damage or destruction of the Property where the excess of the Estimated Costs of Restoration over Available Funds is 25% or more of the estimated Restored Value of the Property.



"Partial Destruction" means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

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

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

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

10.5 *Authority to Represent Unit Owners.* The Management Committee, as attorney-in-fact for each Unit Owner, shall represent all of the Unit Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all



or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their Mortgagees as their respective interests may appear. The Management Committee, as attorney-in-fact for each Unit Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

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

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

Article 11. *Rights of Certain Parties.*

11.1 *Mortgagee Protection.* The lien or claim against a Condominium Unit for unpaid assessments or charges levied by the Management Committee pursuant to the Act or this Declaration shall be subordinate to any Mortgage recorded on or before the date such

assessments or charges become due, and shall not be affected by any sale or transfer of such Condominium Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Condominium Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such assessments or charges which became payable prior to such sale or transfer. Nevertheless, any such unpaid assessments or charges which are extinguished in accordance with the immediately preceding sentence may be reallocated and assessed to all Condominium Units as Common Expenses, including the Condominium Unit that is the subject of such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Condominium Unit from liability for, nor such Condominium Unit from the lien of, any assessments or charges becoming due thereafter or reallocated pursuant to the immediately preceding sentence. The Management Committee shall make available for inspection on request during normal business hours or under other reasonable circumstances to Unit Owners, Mortgagees and insurers and governmental guarantors of any Mortgage, current copies of this Declaration, the Condominium Plat, the Rules and Regulations and the books, records and financial statements of the Management Committee. On written request to the Management Committee by any Mortgagee or insurer or governmental guarantor of a Mortgage (which request identifies the name and address of such Mortgagee or insurer or guarantor and the Unit Number or address of the Unit encumbered by the Mortgage concerned), such Mortgagee, insurer or guarantor shall thereafter be deemed to be an Eligible Mortgagee or Eligible Insurer or Guarantor, as the case may be, shall be included on the appropriate lists maintained by the Management Committee, and shall be entitled to timely written notice of any of the following:

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

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

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

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

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

Article 12.
Enforcement.

12.1 *Liens Against Units.* Subsequent to the recording of this Declaration in the Official Records and while the Property remains subject to the Act, no new lien or encumbrance shall thereafter arise or be created against the Property as a whole. During such period, liens or encumbrances shall arise or be created only against each Condominium Unit in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created on or against any other separate parcel of real property subject to individual ownership. No labor performed or materials furnished with the consent or at the request of a Unit Owner or its agent, contractor or subcontractor shall be the basis for the filing of a lien against the Condominium Unit of any other Owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Owner of any Unit in the case of Emergency Repairs. Labor performed or materials furnished for the Common Areas and Facilities and/or the Limited Common Areas and Facilities, if authorized by the Unit Owners or the Management Committee in accordance with the Governing Documents, shall be deemed to be performed or furnished with the express consent of each Unit Owner and shall be the basis for the filing of a lien against each of the Condominium Units. If a lien against two or more Condominium Units becomes effective, then any Owner of any Condominium Unit may remove its Condominium Unit from such lien by payment of the proportional amount attributable to such Condominium Unit. Such individual payment shall be computed by reference to the Undivided Interest comprising a part of the Condominium Unit concerned. Subsequent to any such payment, discharge or other satisfaction, the Condominium Unit shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge of the proportional amount attributable to any Condominium Unit shall not prevent the lienor from proceeding to enforce its rights against such Condominium Unit to the extent not so paid, satisfied or discharged.

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

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

12.4 *Indemnity.* Whenever an Indemnifying Party indemnifies or holds harmless an Indemnified Party from any claims, then (except as the indemnity might be specifically limited in such provision of this Declaration) the Indemnifying Party shall indemnify and hold harmless the Indemnified Party and its successors, assigns and legal representatives from and against any

and all losses, damages, claims, injuries, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorney's fees, whether they are incurred with or without the filing of a suit or on appeal or otherwise, and whether they relate to the defense of any claims made against the Indemnified Party by third parties or to the enforcement of the indemnity by the Indemnified Party against the Indemnifying Party), liabilities, judgments and liens, of whatever kind or character, that are caused by, that relate to or that arise out of the claims being indemnified against.

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

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

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

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

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



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

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

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

Article 13.
Modifications.

13.1 *Amendment.* Except as provided in this Section 13.1, the vote of a Two-Thirds Majority of the Unit Owners shall be required and shall be sufficient to amend this Declaration or the Condominium Plat. Any amendment so authorized shall be accomplished through the recordation in the Official Records of an instrument executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section 13.1 for amendment has occurred and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained. The foregoing right of amendment is subject to the following:

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

13.1.2 *Rights of Eligible Mortgagees.* The consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees shall be required to amend any material provision of this Declaration or the Condominium Plat that provides for any of the following, unless made in accordance with Article 10: (a) voting; (b) assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance, repair and replacement of the Common Areas and Facilities and the Limited Common Areas and Facilities; (d) insurance; (e) rights to use the Common Areas and Facilities and the Limited Common Areas and Facilities; (f) responsibility for maintenance and repair of the Property; (g) expansion or contraction of the Property or the addition, annexation or withdrawal of property to or from the Property; (h) the perimeter boundaries of any Unit; (i) the interests in the Common Areas and Facilities or Limited Common Areas and Facilities; (j) convertibility of Units into Common Areas and Facilities or of Common Areas and Facilities into Units; (k) leasing

of Units; (l) imposition of any restrictions on the right of a Unit Owner to sell, transfer or otherwise convey a Unit; and (m) express benefits or rights of Mortgagees, Eligible Mortgagees or Eligible Insurers or Guarantors. An addition or amendment shall not be considered material for purposes of this Section 13.1.2 if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Condominium Plat (or to approve a decision of the Unit Owners or the Management Committee with respect to the nature of Restoration or a decision not to undertake Restoration pursuant to Article 10) is mailed in the United States mail, postage prepaid, certified and return receipt requested, to the address for such Eligible Mortgagee shown on the list maintained by the Management Committee who has not delivered to the Management Committee a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

13.1.3 *Commercial Units.* The consent of a Majority of the Commercial Unit Owners shall be required to amend any material provision of this Declaration or the Condominium Plat that provides for any of the following: (a) the purpose of the Property that is described in Section 2.8; (b) rights related to the improvement and remodeling of the Commercial Units under Section 3.5; (c) uses for Commercial Units allowed under Section 4.1; (d) rights for signage under Section 4.10; (e) the approval or change of Rules and Regulations regarding hours for operations and construction and/or qualified by reference to a Commercial Easement or a Sign Easement; (f) rights under the Commercial Easements and the Sign Easement; and (g) any other provision of this Declaration requiring the express consent of the Commercial Unit Owners.

13.1.4 *Residential Units.* The consent of a Majority of the Residential Unit Owners shall be required to amend any material provision of this Declaration or the Condominium Plat that provides for any of the following: (a) the residential character and use of the Residential Units that is described in Section 4.1; (b) restrictions on uses and activities within the Property as described in Sections 4.2 and 4.3; and (c) any other provision of this Declaration requiring the express consent of Residential Unit Owners.

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

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

Article 14.

Interpretation.

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

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

Article 15.

General Provisions.

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

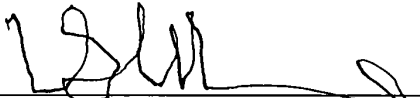
15.2 *Notices.* The Management Committee shall maintain records setting forth the names and mailing addresses of each Unit Owner, as set forth in Section 6.5, and it shall be the responsibility of each Owner (and not the Management Committee) to insure that such records are current as to its Unit. All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

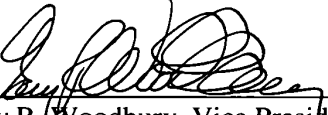
(c) shall be addressed to: (i) any Unit Owner in accordance with the Management Committee's records (and/or to the address of the Unit Owner as set forth in the Official Records); and (ii) the Management Committee in accordance with Section 6.8.



WILMINGTON GARDENS GROUP L.L.C.,
a Utah limited liability company

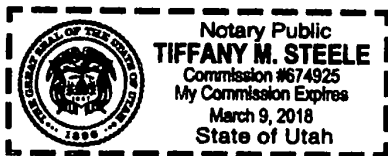
By: Woodbury Corporation,
a Utah corporation
Its Manager


By: 
Lynn S. Woodbury, Vice President

By: 
Guy R. Woodbury, Vice President

STATE OF UTAH)
: ss.
COUNTY OF Salt Lake)

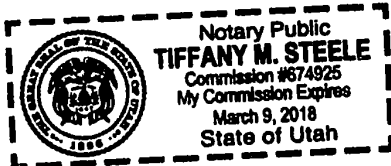
On the 15th day of Sept., 2015, personally appeared before me Lynn S. Woodbury, Vice President of Woodbury Corporation, a Utah corporation, Manager of Wilmington Gardens Group L.L.C., who duly acknowledged to me that he executed the same.




Notary Public

STATE OF UTAH)
: ss.
COUNTY OF Salt Lake)

On the 16th day of Sept., 2015, personally appeared before me Guy R. Woodbury, Vice President of Woodbury Corporation, a Utah corporation, Manager of Wilmington Gardens Group L.L.C., who duly acknowledged to me that he executed the same.





Notary Public

Exhibit A
Declaration of Condominium and Bylaws
[Wilmington Gardens Mixed Use Condominium Project]

Division of Property

<i>Units</i>	<i>Size of Each Unit (computed by square feet of floor space)</i>	<i>Undivided Interest in Common Areas and Facilities Allocate to Each Unit</i>
Parking Unit 4	58,933	22.78%
Commercial Unit 1A	4,024	1.56%
Commercial Unit 1B	6,040	2.33%
Commercial Unit 1C	73,973	28.60%
Apartment Unit 3	102,737	39.72%
Townhouse Unit 2A	1,720	0.66%
Townhouse Unit 2B	1,695	0.66%
Townhouse Unit 2C	1,694	0.65%
Townhouse Unit 2D	1,710	0.66%
Townhouse Unit 2E	2,295	0.89%
Townhouse Unit 2F	1,793	0.69%
Townhouse Unit 2G	2,076	0.80%
Total	258,690	100.00%

Q

Exhibit B
Declaration of Condominium and Bylaws
[Wilmington Gardens Mixed Use Condominium Project]

Rules And Regulations

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

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

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

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



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

5. *Use of Water Fixtures.* Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended. No foreign substances of any kind shall be placed in them, and any damage resulting to the same from use on the part of any Unit Owner shall be paid for by the Unit Owner concerned.

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

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

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

9. *Exterior Areas.* Without the Management Committee's prior written consent, no exterior awnings shall be placed over the windows of any Unit. Balconies to Units may be used for barbeques, patio furniture, the storage of bicycles and, subject to the approval of the Management Committee (which shall be applied in a fair and consistent manner), the storage or display of other personal property. Subject to the Sign Easement and the Commercial Easements, no satellite dishes, radio or television antennae or any wiring for any purpose may be installed on the exterior of the Building, without the Management Committee's prior written consent. Replacement glass on the boundary of each Unit shall identically match the original window glass of such Unit in tint and coloration and shall be of quality equal to or better than such original window glass. All doors forming or situated at an exterior boundary of a Unit or

visible from any part of the Common Areas and Facilities or the Limited Common Areas and Facilities, shall be of a type, quality, style and color as determined by the Management Committee.

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

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

12. *Hours for Commercial Uses.* The Commercial Units, the Plaza Areas and the Arcade may be used during commercially reasonable hours for comparable facilities in the Salt Lake City, Utah area and for a reasonable period before and after such hours for use in preparation and cleanup. From time to time, the Management Committee may establish specific hours by reference to and conforming with this rule, which shall be subject to the approval by Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests appertaining to the Commercial Units.

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

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

15. *Smoking.* Each Owner shall keep such its Unit free of objectionable noises and odors including, without limitation, cigar, pipe and similar smoke odors, but the foregoing shall not restrict uses permitted by the Declaration in Commercial Units (including the Plaza Areas) or under the easements described in Article 5, so long as such uses are commercially reasonable and comply with the other provisions of this Agreement. From time to time, the Management

Committee may designate some or all of the Building (including each Unit) as a non-smoking area, so long as such designation is made in a fair and consistent manner.

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

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

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

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

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

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

Exhibit C
Declaration of Condominium and Bylaws
[Wilmington Gardens Mixed Use Condominium Project]

**BYLAWS
OF
WILMINGTON GARDENS TOWNHOUSE ASSOCIATION**

These bylaws are hereby adapted and established as the Bylaws of the Wilmington Gardens Townhouse Association ("the Townhouse Association") and shall apply to the Townhouse Association and bind all present or future Townhouse Unit Owners.

**ARTICLE I
DEFINITIONS**

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Condominium and Bylaws for Wilmington Gardens, a Mixed Use Condominium Project ("the Declaration") shall have such defined meanings when used in these Bylaws.

**ARTICLE II
OWNERS**

- 2.1 Annual Meetings. Unless changed by the Board of Trustees, the annual meeting of Townhouse Unit Owners shall be held on the third Tuesday in April of each year for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the election of Trustees cannot be held on the day designated herein for the annual meeting of the Townhouse Unit Owners, or at any adjournment thereof, the Board of Trustees shall cause the election to be held either at a special meeting of the Townhouse Unit Owners to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time change the date and time for the annual meeting of the Townhouse Unit Owners.
- 2.2 Special Meetings. Special meetings of the Townhouse Unit Owners may be called by the Board of Trustees, the President, or upon the written request of Townhouse Unit Owners holding not less than twenty-five percent (25%) of the Undivided Interests of the Townhouse Association. Any written request for a special meeting shall include the original signature of each Townhouse Unit Owner affirmatively supporting such request along with a statement of the purpose of the meeting on each page containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Board of Trustees or the President, who shall then call, provide notice of, and conduct a special meeting within 30 days of receipt of the request.
- 2.3 Place of Meetings. The Board of Trustees may designate any place in Salt Lake County as the place of meeting for any annual or special meeting.



- 2.4 Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time and place, and in the case of a special meeting, the purpose or purposes, for all meetings of the Townhouse Unit Owners (whether annual or special) to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting, to each Townhouse Unit Owner of record entitled to vote at such meeting. Notices may be personally delivered, mailed, or emailed. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Townhouse Unit Owner at the Townhouse Unit Owner's registered address, with first-class postage thereon prepaid. If emailed, such notice shall be deemed to be delivered when sent. Each Townhouse Unit Owner shall register with the Townhouse Association such Townhouse Unit Owner's current mailing and email addresses for purposes of notice hereunder. Such registered addresses may be changed from time to time by notice in writing to the Townhouse Association. If no addresses are registered with the Townhouse Association, a Townhouse Unit Owner's Unit address shall be deemed to be the Townhouse Unit Owner's registered mailing address for purposes of notice in this Section.
- 2.5 Townhouse Unit Owners of Record. For the purpose of determining Townhouse Unit Owners entitled to notice of or to vote at any meeting of the Townhouse Unit Owners, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Townhouse Unit Owners entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Townhouse Association on such record date as the Townhouse Unit Owners of record of Townhouse Units in the Project shall be deemed to be the Townhouse Unit Owners of record entitled to notice of and to vote at the meeting of the Townhouse Unit Owners.
- 2.6 Quorum. At any meeting of the Townhouse Unit Owners, the presence of Townhouse Unit Owners holding, or holders of proxies entitled to cast more than twenty percent (20%) of the Undivided Interests of the Townhouse Association shall constitute a quorum for the transaction of business.
- 2.7 Proxies. At each meeting of the Townhouse Unit Owners, each Townhouse Unit Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Townhouse Unit Owner or by the Townhouse Unit Owner's attorney when duly authorized in writing. If a Townhouse Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) owner of such Townhouse Unit or the Townhouse Unit Owners' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered at the beginning of the meeting to the Secretary of the Townhouse Association or to such other officer or person who may be acting as secretary of the meeting.



- 2.8 Votes. With respect to each matter submitted to a vote of the Townhouse Unit Owners, each Townhouse Unit Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Townhouse Unit of such Townhouse Unit Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Townhouse Unit Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Townhouse Unit Owners, unless a greater proportion is required by the Articles of the Townhouse Association, these Bylaws, the Declaration, or the Act. The election of Trustees shall be by secret ballot. When more than one (1) Person owns an interest in a Townhouse Unit, any Person who is the owner may exercise the vote for such Townhouse Unit on behalf of all Co-Owners of the Townhouse Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Townhouse Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Townhouse Unit.
- 2.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Townhouse Unit Owners present, or in the decision and votes of the Board of Trustees shall be deemed waived if no written objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Trustees.

ARTICLE III BOARD OF TRUSTEES

- 3.1 General Powers. The property, affairs, and business of the Townhouse Association shall be managed by the Board of Trustees. The Board of Trustees may exercise all of the powers of the Townhouse Association, whether derived from the Act or the Declaration, except such powers that the Townhouse Association Articles, these Bylaws, the Declaration, or the Act vest solely in the Townhouse Unit Owners.
- 3.2 Number, Tenure, Qualifications, and Election. The property, business, and affairs of the Townhouse Association shall be governed and managed by a Board of Trustees composed of three (3) persons, who need not be Members of the Townhouse Association. The term of each Trustee shall be two (2) years. The terms of the Trustees shall overlap so that two Trustees shall be elected one year, one the next, two the following, and so on. At the annual meeting or any subsequent meeting at which the election is held, any Townhouse Unit Owner may submit that person's own name or the name of any other willing and otherwise qualified person to be added to the ballot for election of Trustees and such person shall be added to the names of candidates. If the name of a person is submitted who is not in attendance at the meeting, it must be submitted with a written statement from that person indicating that the person is willing to serve.
- 3.3 Regular Meetings. The Board of Trustees shall hold regular meetings at least quarterly, and more often at the discretion of the Board of Trustees. The Board of Trustees may



designate any place in Salt Lake County as the place of meeting for any regular meeting called by the Board of Trustees.

- 3.4 Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any two (2) Trustees or the President of the Townhouse Association. The person or persons authorized to call special meetings of the Board of Trustees may fix any place in Salt Lake County as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, mailed, or emailed to each Trustee at such Trustee's registered address. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. If emailed, such notice shall be deemed to be delivered when sent. Any Trustee may waive notice of a meeting.
- 3.5 Quorum and Manner of Acting. A majority of the then-authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees present at any meeting at which a quorum is present and for which proper notice was provided to the Trustees shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual members shall have no powers as such.
- 3.6 Compensation. No Trustee shall receive compensation for any services that he may render to the Townhouse Association as a Trustee; provided, however, that a Trustee may be reimbursed for expenses incurred in the performance of his duties as a Trustee to the extent such expenses are approved by the Board of Trustees.
- 3.7 Resignation and Removal. A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee who fails to attend four regular meetings of the Board of Trustees in a row may be removed by the Board of Trustees within 60 days of the last missed meeting. Any Trustee may be removed at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Undivided Interests of the Townhouse Association at a special meeting of the Townhouse Unit Owners duly called for such purpose.
- 3.8 Vacancies. If vacancies shall occur in the Board of Trustees by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Trustee, the Trustees then in office shall continue to act, and such vacancies shall be filled by a vote of the Trustees then in office, even though less than a quorum may be available. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee, such vacancies may be filled by election by the Townhouse Unit Owners at the meeting at which such Trustee is removed. Any Trustee elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.



- 3.9 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Townhouse Association shall be a President, Secretary, Treasurer, and such other officers as may from time to time be created by the Board of Trustees.
- 4.2 Election, Tenure and Qualifications. The officers of the Townhouse Association shall be chosen by the Board of Trustees annually at the first meeting of the Board of Trustees following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office. The President, Secretary, and Treasurer must be and remain Trustees of the Townhouse Association during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. Subordinate officers need not be Trustees of the Townhouse Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Trustee or to any Managing Agent. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.
- 4.6 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the Townhouse Unit Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Townhouse Unit Owner or person, and (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order." The President shall sign on behalf of the Townhouse Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board of Trustees.



- 4.7 The Secretary. The Secretary shall keep the minutes of the Townhouse Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution the Board of Trustees may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board of Trustees.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Townhouse Association, subject to the action of the Board of Trustees, and when requested by the President, shall report the state of the finances of the Townhouse Association at each meeting of the Townhouse Unit Owners and at any meeting of the Board of Trustees. The Treasurer shall perform such other duties as required by the Board of Trustees.
- 4.9 Compensation. No officer shall receive compensation for any services rendered to the Townhouse Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Trustees.

ARTICLE V COMMITTEES

- 5.1 Designation of Committees. The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Trustee. A Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Trustees in a written resolution. The Board of Trustees may terminate any committee at any time.
- 5.2 Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.
- 5.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board of Trustees.



- 5.4 Resignation and Removal. Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, with or without cause, remove any member of any committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any committee designated by the Board of Trustees due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Trustees, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

ARTICLE VI INDEMNIFICATION

- 6.1 Indemnification. No Trustee or officer shall be personally liable for any obligations of the Townhouse Association or for any duties or obligations arising out of any acts or conduct of said Trustee or officer performed for or on behalf of the Townhouse Association. The Townhouse Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Trustee or officer of the Townhouse Association, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Trustee or officer of the Townhouse Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Trustee or officer, and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Townhouse Association shall have the power to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Townhouse Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Townhouse Association, its Trustees, officers, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.
- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any Bylaw, statute, agreement, vote of disinterested Trustees, or otherwise, both as to action taken in any official capacity and as



to action taken in any other capacity while holding such office. It is the intent hereof that all Trustees and officers be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah, the Utah Revised Nonprofit Corporation Act (if the association is a nonprofit corporation), and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Trustee, officer, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

- 6.3 Settlement by Townhouse Association. The right of any person to be indemnified shall be subject always to the right of the Townhouse Association by the Board of Trustees, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Townhouse Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

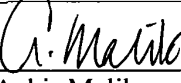
ARTICLE VII AMENDMENTS

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended only by written consent of Townhouse Unit Owners holding at least fifty-one (51%) of the percentage interest in the Townhouse Association. No meeting or vote of the Townhouse Unit Owners shall be required.
- 7.2 Execution of Amendments. Upon obtaining the required written consent, an amendment shall be signed by the President and Secretary of the Townhouse Association, who shall certify that the amendment has been properly consented to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

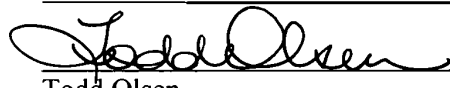
IN WITNESS WHEREOF, the undersigned, constituting all of the Trustees of the WILMINGTON GARDENS TOWNHOUSE ASSOCIATION, hereby execute these Bylaws this 15 day of September, 2015.



Walker Kennedy



Aabir Malik



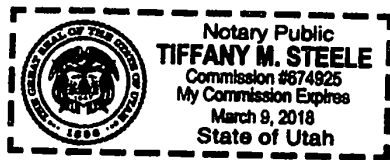
Todd Olsen



ACKNOWLEDGMENTS

STATE OF UTAH)
 : SS.
COUNTY OF Salt Lake)

On the 15th day of Sept., 2015, personally appeared before me
Walker Kennedy, Aabir Malik, and Todd Olsen the signers
of the foregoing BYLAWS OF WILMINGTON GARDENS TOWNHOUSE ASSOCIATION,
who duly acknowledged to me that they executed the same.



Tiffany M. Steele
Notary Public

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DECLARANT'S CONSENT

On this 15 day of September, 2015, the undersigned Guy R. Woodbury, being the manager of Declarant Wilmington Gardens Group, LLC, does hereby consent to and execute these Bylaws in accordance with the provisions of the Utah Condominium Ownership Act.

WILMINGTON GARDENS GROUP L.L.C.
a Utah limited liability company

By: _____

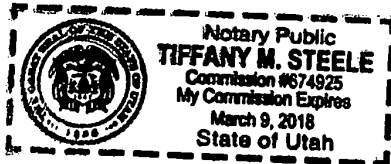
Name: Guy R. Woodbury

Title: Vice president

ACKNOWLEDGMENTS

STATE OF UTAH)
: ss.
COUNTY OF Salt Lake)

On the 15 day of September, 2015, personally appeared before me Guy R. Woodbury, the manager of Wilmington Gardens Group L.L.C., who duly acknowledged to me that he/she executed the same.



Tiffany M. Steele
Notary Public