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**AMENDED AND RESTATED
 DECLARATION OF CONDOMINIUM**

FOR

THOMAS INDUSTRIAL PARK CONDOMINIUMS III

THIS DECLARATION OF CONDOMINIUM ("**Declaration**") is made and executed effective the 10th day of February, 2005 by BB & T Holdings, LLC ("**Declarant**") and by Pam's Vending LLC ("**Unit Owner**") as successors in interest to the Thomas Industrial Park Condominium III, pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

RECITALS:

A. Declarant and Unit Owner are the owners of the Property (defined below), upon which Declarant desires to establish a commercial condominium project (the "Project").

B. The original developer of the Property and the Project, Tom Shultz Construction, LLC a Utah limited liability company caused to be recorded against the property that certain development plat of Thomas Industrial Park Condominiums III, recorded March 28, 2002, as entry number 1741180 (the "Map") and that certain Declaration of Covenants, Conditions and Restrictions for Thomas Industrial Park Condominiums III recorded March 28, 2002 as entry number 1741181 (the "Original Declaration") with the Davis County Recorder's office.

C. Declarant wishes to amend and restate the Declaration and Unit Owner wishes to join in such amendment and restatement to assure that the Property is properly made subject to the Act (as defined below) by the adoption of this amended Declaration and the recording of any and all other documents, instruments, maps and plats as may be required by the Act and by North Salt Lake City and Davis County, as applicable.

Now therefore, Declarant and Unit Owner, as their interests appear, hereby submit the Property to the covenants, conditions, restrictions, terms and provisions hereof, which shall be enforceable equitable servitudes and shall run with the land constituting the Property.

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

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

"**Additional Land**" shall mean the land that may be added to the Project in accordance with the provisions of **Section 7**, and as shown on the Map.

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

"**Amended and Restated**" shall mean this amendment that supersedes the Original Declaration.

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

"Assessments" shall mean those Assessments described in **Section 21** to fund the Common Expenses, and include Regular Assessments, Special Assessments and any other assessments levied by the Association. **"Regular Assessments"** shall mean the annual Assessments levied by the Association to pay the budgeted Common Expenses. **"Special Assessments"** shall mean Assessments that the Association may levy from time to time, in addition to the Regular Assessments, for unexpected Common Expenses or other purposes as provided herein.

"Association" shall mean Thomas Industrial Park Condominiums III Owners Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

"Board" shall mean the Board of Trustees of the Association, appointed or elected in accordance with this Declaration and the Bylaws. The Board shall constitute the "management committee" defined under the Act.

"Building" shall mean the Building described in **Section 2**.

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time. The initial Bylaws are attached hereto as **Exhibit D**.

"Common Areas" shall mean all portions of the Project other than the Units, as described in **Section 5** hereof and as shown on the Plat, including the Limited Common Areas. **"Limited Common Areas"** shall mean any portion of the Common Areas allocated by this Declaration or the Act, or as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

"Common Expenses" shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and all other expenses denominated as Common Expenses by this Declaration or by the Act.

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

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

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

"Development Rights" shall mean the right under the Act to add real estate to the Project pursuant to **Section 7** hereof, and (3) exercise any of the rights set forth in **Section 11** hereof.

"Interest" shall mean the undivided interest in the Common Area appurtenant to each Unit, as described in **Section 4** hereof and as set forth in **Exhibit B** hereto, as such Exhibit may be amended as provided herein.

"Manager" shall mean the person, firm or company, if any, designated by the Association to manage, in whole or in part, the affairs of the Association and the Project.

"Map" shall mean the Record of Survey Map of Thomas Industrial Park Condominiums III, recorded in the office of the Recorder and defined previously, as the same may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the Map may be amended to provide additional information respecting the Property or the Project, or at such time as the Building is added onto and in the event there are material changes in the Building's boundaries or elevations as constructed. The Map may also be amended to reflect such changes to the Project as are permitted and effected under this Declaration. Such amendments to the Map are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. **"Supplemental Map"** shall mean any amendment to the Map made in accordance with this Declaration and the Act.

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

"Mortgage" shall mean any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A **"First Mortgage"** is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

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

"Owner" shall mean any person or entity, but expressly excluding Declarant, at any time owning a Unit or an interest in a Unit (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Owner" shall not refer to Declarant, and it shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

"Project" shall mean the Property comprised of ten Units, the Units, the Common Areas, Limited Common Areas and all improvements submitted by this Declaration to the provisions of the Act. The Project shall be known as Thomas Industrial Park Condominiums III.

"Property" shall mean that certain real property situated in the County of Davis, State of Utah described in **Section 2** below and in **Exhibit A** attached hereto.

"Quorum" shall mean at least 6 owner members.

"Recorder" means the Official Recorder of Davis County, Utah.

"Total Votes of the Association" shall mean the total number of votes appertaining to all Units and Buildings, as described in **Section 9** hereof.

"Unit" shall mean a physical portion of the Project designed for separate ownership and occupancy as described in **Section 4** hereof.

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

2. DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS. The Property is legally described on **Exhibit A** attached hereto. The initial improvements on the Property shall consist of one building comprising ten units. The Building is principally constructed as follows: concrete footings and foundation; steel frame; concrete tilt up panels and sheetrock interiors and such other materials as allowed by current building codes. The Building is supplied with access to telephone, electricity, water and sewer service. The Project also includes the Common Areas described herein.

3. SUBMISSION TO ACT. Declarant hereby submits the Property, the Building and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, encumbered, leased, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units. This Declaration shall be deemed to run with and benefit and burden the land and shall benefit and bind the Declarant, the Owners, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Association are each hereby granted a limited license to use the name "Thomas Industrial Park Condominiums III" in connection with the administration, sale and operation of their respective interests in the Project.

4. DESCRIPTION OF UNITS. The boundary lines of each Unit are as set forth on the Map. The Units shall include the interior and exterior of all walls, including without limitation, all perimeter walls, lowermost floor, uppermost ceiling, and the interior and exterior surfaces of windows and doors and all equipment, facilities and systems within the space encompassed within the boundary of the Unit. Each Unit shall include the portions of a Building that are Limited Common Areas designated for the exclusive or nonexclusive use of that Unit, as designated on the Map or as set forth in this Declaration, but excluding Common Areas within such boundary lines and the space so encompassed. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, bearing walls; floors, ceilings and exterior walls; and all utility outlets, fixtures or appliances, foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations within the Unit and the walls, floors, and ceiling of such Unit, including but not limited to furnaces, air conditioning units, and bathroom fixtures within the boundary of the Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the

Building roofs are not a specific part of any Unit, it being understood that the roofs shall constitute Limited Common Area serving all of the Units in the Building under said roof. The Map and **Exhibit B** hereto contain the Unit Number of each Unit in the Project.

5. DESCRIPTION AND OWNERSHIP OF COMMON AREAS. The Common Area shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit or private area, including, but not by way of limitation, except as otherwise provided herein, the portion of the Project designated as part of the Common Area and Limited Common Area on the Map, including, except as otherwise provided on the Map, all sidewalks, walkways, landscaping, parking areas, drive approach areas, asphalt areas, and drive aisles which have been designated as Common Area and Limited Common Area on the Map or any Supplemental Map; and all repairs and replacements of any of the foregoing. The Association shall have the right and obligation to design, maintain, replace and otherwise control all Common Area and Limited Common Area in the Project in accordance with this Declaration. The individual Owners may not repair, replace, or otherwise alter in any manner the Common Area.

6. DESCRIPTION OF LIMITED COMMON AREAS. Limited Common Areas shall mean a portion of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners. Limited Common Areas shall serve and be appurtenant only to the Units of the Building where such Limited Common Areas are located. The Limited Common Areas shall also be those areas designated as such on the Map, as specified in this Declaration or as provided for by the Act. Without limiting the generality of the foregoing, Limited Common Areas shall include the roof of a Building and fire escapes serving a Building. The Owners of a Unit shall be individually responsible to repair, replace and maintain all Limited Common Areas appurtenant exclusively to their particular Unit. All of the Owners of Units in the same Building shall be jointly and severally responsible to repair, replace and maintain all Limited Common Areas which serve all of the Units of the Building, as designated on the Map, and including, for example, Building roof, serving all of the Units of the Building, fire escapes serving the Building. The following shall also be Limited Common Areas serving only Units and Buildings to which they relate: installations of all central services, including power, light, hot and cold water facilities, heating, ventilation and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use of a Building; all utility pipes, lines or systems servicing the Units of a Building; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used for any Building. Each Unit shall have its own separate power, which are metered separately and shall be an expense to the Unit owners of the particular Building. Water for internal and external use (including landscaping needs) shall be a Common Area expense paid by the Association and assessed in proportion to each Unit owner's interest in the undivided interest in the Common Area. Water usage is predicated on the assumption that each unit uses minimal usage quantities per month. In the event that water usage of any Unit exceeds 500 gallons per month, then it will be the responsibility of the applicable Unit owner to install at its own cost a separate water meter for such Unit. Notwithstanding the foregoing, Declarant reserves the right to cause water usage to be separately metered for one or more Units within the Project.

7. OPTION TO EXPAND. Pursuant to Sections 57-8-10(4) and 57-8-13.6 of the Act, Declarant hereby reserves the option to expand the Project (the "**Option to Expand**") upon the

terms and provisions set forth in this Section without the consent of any Owner of any Unit, any lender or the Association. Each exercise of the Option to Expand must occur, if at all, no later than seven (7) years from the date of recording this Declaration, and may only be exercised by Declarant. There are no circumstances which will terminate the option to expand prior to the expiration of the specified 7 year time limit. The terms and conditions of the Option to Expand shall be as follows:

(a) The real property subject to the Option to Expand (the "**Additional Land**") is more particularly described on **Exhibit C** attached hereto. Subject to the provisions below, the Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by the Declarant. No assurances are made with regard to which portions of the Additional Land, if any, will be added to the Project, the order in which any such portions will be added, whether the structures or improvements, if any, erected thereon will be compatible in any regard with the structures or improvements on the land originally within the Project, whether or how other improvements will be constructed, or the extent, if any, to which Units created on the Additional Land will be substantially identical to the Units on the land originally within the Project. In the event the Option to Expand is exercised with respect to all or a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land.

(b) Declarant shall not be restricted in the location of structures or improvements on the Additional Land or in the number of Units that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations, provided that the Project when completed shall not exceed twenty (20) Units total, nor more than 10 Units per acre on any portion of the Additional Land. The Units, if any, to be located on the Additional Land shall be subject to the same use restrictions as provided herein regarding the original Units, unless otherwise allowed by applicable zoning requirements, ordinances or regulations. Declarant reserves the right to exercise all Developmental Rights with respect to any Units located on the Additional Land. Declarant reserves the right to add additional Limited Common Areas to the Additional Land without limitation; however, no assurances are made in regard thereto

(c) The Interests of the Owners shall be adjusted at the time Declarant records any Amendment and Supplemental Map reflecting Declarant's exercise of the Option to Expand in accordance with the provisions hereof. Such changes in Interests shall be reflected in an amended **Exhibit B** to this Declaration to be filed with the Recorder as part of the Amendment. It is contemplated that there may be multiple Amendments filed by Declarant and such Amendments are hereby expressly authorized. Declarant shall calculate and revise the Interests using the same method otherwise set forth herein. Declarant shall have the right to adjust the resulting Interests as may be necessary to assure that the total ownership interest equals 100% as required by the Act.

(d) Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit shall be deemed to have consented to all provisions of this Declaration, including but not limited to this Section 7. After the filing for record of any Amendment and Supplemental Map reflecting Declarant's exercise of any Option to Expand, legal and equitable title to each Unit thereby created within the Additional Land, including its appurtenant Interest, shall be vested in

and held by Declarant and none of the other Owners shall have any claim or title to or interest therein. Declarant shall not be required to obtain the consent of any Owner, the Association or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding any portion of the Additional Land. No provision of this Section shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Units in the Project or exercise the Option to Expand.

(e) As to the Additional Land, no portion of the Additional Land and none of the units created on the Additional Land may be used for residential purposes.

(f) Non-developer owners will not be assessed additional costs related to the expansion and development of additional land, provided however, that upon completion of the expansion of the Project as contemplated herein all Units within the Project will share in costs to maintain all Common Areas and Limited Common Areas within the Project as expanded, whether within the Property or within the Additional Land, or both.

8. NATURE AND INCIDENTS OF OWNERSHIP

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

(b) Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet, or otherwise decorate the surfaces of the walls, ceilings, floors and doors inside its individual Unit. Each Owner shall keep the interior of its Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, and including the Limited Common Areas designated for the exclusive use of such Unit, in a clean and sanitary condition and in a state of good repair. In the event that any Unit or Limited Common Areas accessible from a Unit should develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following notice from the Association, or in the event any Common Areas are most easily accessible from a Unit, the Association shall have the right, at the expense of the Owner if to remedy the Owner's failure in its obligation to maintain, and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

(c) With the written consent of the Board, two or more Units may be utilized by the Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Board, any walls, floors or other structural separations between any two such Units may, for as long as the two Units are utilized as one Unit, be utilized by the Owners thereof as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units that, but for joint utilization of the two Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas.

(d) Units may be subdivided or combined as set forth in the following paragraphs:

(1) No Units shall be subdivided and/or combined either by agreement or legal proceedings, except as provided in this Section. An Owner or Owners may propose subdividing or combining Units by submitting the proposal in writing to the Board, the Mortgagees of the subject Units and, if required by applicable law, Davis County, or any successor governmental authority having jurisdiction. The proposal must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Map.

(2) A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by the Board, the Mortgagees of the Units to be subdivided, and Davis County, or successor governmental entity, to the extent required by applicable law. The Board may approve the proposal as to form and legal sufficiency. Davis County, or successor governmental entity, if required, may approve the proposal as to applicable planning and zoning requirements. No proposal shall be approved unless the resulting Units provide adequate facilities and means of ingress and egress to comply with applicable zoning and condominium statutes and regulations.

(e) A proposal to subdivide Units shall provide for reallocation of the appurtenant basement Unit as well as the percentage ownership in the Common Areas among the resulting Units on the basis otherwise provided herein, so that the combined percentages of ownership of the resulting Units are identical with the percentage ownership of the subdivided Units prior to subdivision. The Owners of the Units to be subdivided or combined shall be responsible for all costs associated with the proposal and its implementation including but not limited to costs of Amendment of this Declaration and Map and recording the same to effect the proposal; review of the proposal, including reasonable attorneys' fees incurred by the Board, the Mortgagees and Davis County; and the cost of any modifications to the Project to implement the proposal.

(f) Upon approval of the proposal, the Owners making the proposal may proceed according to the proposed plans and specifications; provided that the Board may, in its discretion, require that the Board administer the work, or that provisions for the protection of other Units or Common Areas and/or reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Map, if any, and the changes in this Declaration shall be placed of record, at the requesting Owner's expense, as amendments thereto.

(g) The exterior surfaces of the Units shall not be altered or modified without the prior written approval of the Board unless such changes or modifications are consistent with any written rules or regulations for the exterior surfaces established by the Board. In the absence of such written rules or regulations, no exterior alterations, improvements, or remodeling, whether structural or cosmetic, will be made without the prior written approval of the Board.

(h) Each Unit shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the

Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

9. VOTING. At any meeting of the Association, each Owner, including Declarant, either in person or by proxy, shall be entitled to vote the number of votes held by such Unit owners. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

10. TITLE TO UNITS.

(a) Title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

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

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

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

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

(f) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the

appurtenant Interest, and to incorporate all the rights incident to ownership of the Unit and all of the limitations on such ownership as described in this Declaration.

11. ADDITIONAL DEVELOPMENT RIGHTS. The following additional Development Rights are hereby granted or reserved by Declarant:

(a) Declarant hereby reserves an easement throughout the Project and all portions thereof for a period of seven (7) years from the recording of this Declaration for the purpose of completing all improvements contemplated by this Declaration and the Map, including but not limited to improvements to Additional Land.

(b) Declarant hereby reserves the right to maintain sales offices, management offices, and signs advertising the Project, in any of the Units that it owns or on the Common Areas for a period of the later of ten (10) years from the recording of this Declaration or until all Units have been sold, or under contract of sale or leased..

(c) There is hereby established a period of Declarant control of the Association during which period Declarant or persons designated by it shall have the authority to appoint and remove Association officers and members of the Board. The period of Declarant control shall terminate the earlier of: (a) seven (7) years from and after the recording of this Declaration; or (b) after conveyance of Units to which three-fourths of the Interests appertain, or after all Additional Land has been added to the Project, whichever last occurs.

12. RESTRICTIONS ON USE. The Units, and Common Areas, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions:

(a) The Units and Unconverted Space within the Project may be used only as business offices, professional offices, and ancillary uses including restaurants, retail businesses, health and fitness facilities, as approved by the Association; provided, however, that if the particular use of any Unit increases the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, the Owner of such Unit shall be assessed for and shall pay the amount of such increase.

(b) All customers, clients, patrons, and licensees of Owners of Units shall be permitted to enter upon the Project and shall have a non-exclusive easement across the Common Areas to the extent reasonably necessary for access to such Units.

(c) No noxious, offensive or illegal activity shall be carried on in or upon any part of the Common Area, nor shall anything be done on or placed in or upon any part of the Project that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

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

(e) No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger in the Association's opinion, or except as may be used by Declarant as part of its sales program, or as

approved by the Board and Davis County and North Salt Lake (if required by law) with respect to the Units.

Each unit owner shall be granted two reserved parking spaces.

(f) Except as otherwise provided in this Declaration, no Unit or portion thereof may be combined with any other Unit or portion thereof or further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

(g) No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of any Buildings or the safety of property, impair any easement or other appurtenance to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas.

(h) There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, other than Limited Common Areas appurtenant to their Units, except with the prior written consent of the Board. No derelict vehicles and non-registered vehicles are to be stored in the Common Areas. Maintenance of vehicles in the Common Areas is prohibited.

(i) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste such as oil and grease spills caused by him or his guests, lessees, licensees, or invitees.

(j) No Owner shall violate the rules and regulations for the use of Units and Common Areas as adopted from time to time by the Association. Such rules will be made effective upon the date of enactment.

13. ASSOCIATION. Every Owner shall be a Member of the Association. One Membership shall exist for each Unit, shall be inseparably appurtenant thereto and shall automatically transfer therewith but only therewith. If title to any Unit is held by more than one Owner, the Membership related to such Unit shall be shared by all such Owners in the same proportionate interests and by the same type of tenancy in which they hold title to such Unit. No person other than an Owner shall be a Member. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board, which shall be composed as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws. Except as otherwise provided herein, the Board shall have all the powers,

duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

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

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

(c) To operate, maintain, repair, improve and replace the Common Areas.

(d) To determine and pay the Common Expenses.

(e) To assess and collect the proportionate share of Common Expenses from the Owners, as provided herein.

(f) To grant easements and licenses and enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

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

(h) To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

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

(j) To obtain insurance for the Association with respect to the Units and the Common Areas, and any other insurance it deems necessary or appropriate to protect the Owners and the Association.

(k) To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

(l) To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

(m) To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Association by Owners in accordance with the terms of the Bylaws.

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

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

(p) To grant easements and rights-of-way over the Common Areas and to approve signage for the Association and enter into contracts with other entities. Such contracts may, among other things, obligate the Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Association.

(q) Subject to the limitations of the Act, and any other applicable law, the Board may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section.

(r) The Board may convey or subject to a Mortgage all or portions of the Common Areas of the Association if Owners entitled to cast a majority of the Total Votes of the Association so approve. However, all Owners of Units to which any Limited Common Areas are appurtenant must agree to convey those Limited Common Areas or subject the same to any Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

(s) Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an 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; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

(t) When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

(u) Neither the Board nor the Manager shall sell any property of the Association except as permitted by the Act. The Board may enter into a contract with the Manager for the management of the Association.

14. MAINTENANCE, ALTERATION AND IMPROVEMENT. The maintenance, replacement and repair of the Common Areas shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas or utility services shall be repaired promptly and the cost thereof charged as a Common Expense. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

15. INSURANCE. Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, insurance as follows:

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

(b) The Association shall maintain liability insurance in an amount determined by the Board but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$2,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Units and the Common Areas.

(c) The insurance maintained under paragraph (a) of this Section shall include the Units but need not include improvements installed by Owners or the personal property of Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Owners. Where applicable, insurance policies carried by the Association shall provide the following:

(1) Each Owner, or the Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his Interest or Membership.

(2) The insurer waives its right to subrogation under the policy against any Owner or members of his household.

(3) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery under the policy by another person.

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

(5) All Owners as a class shall be named as additional insureds in any policy issued to the Association.

An insurance policy issued to the Association shall not prevent an Owner from obtaining insurance for his own benefit. Any loss covered by the property policy described above shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Association and not to the Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of **Section 16** of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, on written request, to any Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. This Section does not prohibit the Board from acquiring additional or greater amounts of coverage as it reasonably deems appropriate. The Board may require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principals under the bond may reasonably be expected to have control or access at any time.

16. DESTRUCTION OR DAMAGE. In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Board, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Project was destroyed or substantially damaged, the Board shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective Interests. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of **Section 18** hereof shall apply. If two-thirds (2/3) or more of the Project is destroyed or substantially damaged, the Board shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Association for the purpose of deciding whether or not the Project shall be repaired and restored. If Owners holding three fourths (3/4) or more of the Total Votes of the Association, in person or by proxy, vote to repair or restore the Project, the Board shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for any deficiency in proportion to their respective Interests. At such election, if Owners holding three-fourths (3/4) or more of the

Total Votes of the Association do not vote either in person or by proxy to make provision for reconstruction, the Board shall record with the Recorder a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (i) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his Interest; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (iii) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

17. TERMINATION. In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of **Section 16** above and the Owners do not vote to reconstruct the Project as provided therein, the Project shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage. The Owners by unanimous vote may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership of any Unit, its consent shall also be required to remove the Project from the provisions of the Act. After removal of the Project from the Act, the Owners shall own the Project and all assets of the Association as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be in the same proportions as their Interests. This Section cannot be amended without consent of all Owners and Mortgagees.

18. EMINENT DOMAIN. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner shall be entitled to notice thereof and the Board shall, and the Owners at their respective expense may, participate in the proceedings incident thereto. With respect to the Common Areas, including Limited Common Areas, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his Interest. This provision does not prohibit a majority of the Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas so taken on the remaining land or on other acquired land, provided that this Declaration and the Map are duly amended. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to **Section 16** above and shall be deposited with the Board as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Board as trustee. In the event an Owner refuses to so deposit his award with the Board, then at

the option of the Board, either a Special Assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner. In the event the Project is removed from the provisions of the Act pursuant to **Section 16** above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners' respective Interests. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

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

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

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

19. MORTGAGEE PROTECTION. The Board shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Board will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Board is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee. The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid Assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created

under the Act, pursuant to this Declaration or the Bylaws, upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Bylaws. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

20. AMENDMENT. Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a 2/3 majority of the Total Votes of the Association. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the Association that the appropriate consent has been obtained, and shall be duly recorded with the Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves as long as it has any interest hereunder, and the Association shall thereafter have, the right, without the consent of any other Owners, to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project. Also notwithstanding anything to the contrary contained or implied herein, as long as Declarant owns any Unit(s), Declarant shall have the unilateral right without the consent or approval of any Owner, any Lender or the Association to amend this Declaration and the Map to further divide and/or adjust the boundary lines between any Units owned by Declarant and alter the dimensions and interior elements and configuration thereof.

21. ASSESSMENTS. The Association shall make and collect Assessments from the Owners for their respective shares of Common Expenses pursuant to the Bylaws and subject to the following provisions:

Annual Assessments. The Association shall establish a regular, equal monthly assessment to be paid by each Owner (the "Common Expense Fund"). Each such Owner shall pay their percentage share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year. The Board in its discretion may specify a payment schedule other than monthly. The Board will maintain an operating account and a reserve account. The reserve account will be established for capital expenditures such as roof or asphalt replacement. Upon acquisition of record title to a Unit, each such Owner (but specifically excluding Developer with respect to any unsold Units that Declarant intends to sell) shall contribute to the capital of the Association an amount equal to one-sixth (1/6) of the amount of the projected annual assessment for the Unit. This amount shall be deposited by the new Owner into the purchase and sale escrow and disbursed from the escrow to the Association. Any amounts paid into this fund by a new Owner shall not be considered as advance payments of regular assessments. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner be equal. No Owner may waive or otherwise escape liability for the assessments provided for

herein by non-use of the Common Area or abandonment of his Unit. Notwithstanding any provision of this Declaration or applicable law to the contrary, any Unit owned by Declarant that is intended to be sold by Declarant, shall not be subject to any assessment whatsoever (Special, regular or otherwise) for the Common Expense Fund or otherwise. Notwithstanding any provision of this Declaration or applicable law to the contrary, with respect to any such unsold Unit owned by Declarant, Declarant shall have no duty or responsibility under this Declaration or under applicable law to contribute to the capital of the Association any amount of the projected annual assessment or Special Assessment or other assessment for the Unit.

(a) Except as otherwise provided in this Declaration, each Owner, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as such Owner's Interest. Annual assessments will attach on the first day of January for the year in question regardless of any monthly schedule. Obligations will run with the land and survive any sale of a Unit. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section shall be the Common Expense Fund. Assessments shall include both Regular Assessments and Special Assessments. After the Association has made an Assessment, Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Except as otherwise provided in this Declaration, regular Assessments shall be levied against each separate Unit, and shall commence as to all Units on the first day of the month following the closing of the first sale of a Unit.

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

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

(d) All Assessments shall be due as determined pursuant to the Bylaws. Assessments and any installments thereof not paid on or before thirty (30) days after the date when due shall bear interest at the rate of 1 1/2% per month or portion of month, on the unpaid balance (approximately 18% per annum) or at such lower rate of interest as may be set by the Board, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a late fee in the amount of \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Board pursuant to the Cost of Living Index. Any

payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' Interests are reallocated, Assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Interests.

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

(f) The Board upon written request shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement must be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith. The Board shall include in the Assessments amounts representing sums to be used for the replacement of or additions to the capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account for such Unit shall be deemed transferred to the transferee of the Unit. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within one year from the date of the transfer, or the date of next annual assessment whichever is earlier, provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations otherwise

set forth in this Section. If the current replacement value of the major components of the Common Areas which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

(1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

(2) Identification of the probable remaining useful life of the items identified in subparagraph a, above, as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph (a), above, during and at the end of its useful life.

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid.

22. EASEMENTS. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Improvements, including Units, Common Areas and Limited Common Areas, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.

Declarant shall have a transferable easement over, across and within the Property for the purposes of (i) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (ii) connecting the Buildings to other adjoining structures or buildings, and (iii) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to his Unit(s) and to any Limited Common Areas appurtenant to his Unit(s), and shall have the right to the horizontal, vertical and lateral support of his Unit(s). The Association and the Manager shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas for use by the Owners and the Association. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

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

BB & T Holdings
671 South Ocean Blvd.
Boca Raton, FL 33432

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

25. ENFORCEMENT. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the Bylaws and the rules and regulations of the Association and decisions issued pursuant thereto. Failure to so

comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board or its agent or designee on behalf of the Owners, or in an appropriate case, by Declarant or an aggrieved Owner; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Common Areas, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed. The Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations of the Association for the Project except pursuant to (a) the judgment of a court, or (b) a foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

26. AGENT FOR SERVICE OF PROCESS. The agent for service of process under the Act until the expiration of the Option to Expand shall be Trent Boggess, c/o BB&T Holdings, 671 South Ocean Blvd., Boca Raton, FL 33432. Thereafter, the agent for service of process shall be the Association.

27. SEVERABILITY. Invalidity of any of the provisions contained in this Declaration, or any application thereof, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or any other application thereof and the remainder of this Declaration and all otherwise valid applications of the provisions hereof shall remain in effect, and any invalid provisions hereof shall be construed, and this Declaration shall be deemed amended, as if such provisions were replaced with enforceable provisions which effectuate, as nearly as possible, the manifest intention of this Declaration.

28. TIME PERIOD. If any time period set forth herein or any rights granted to Declarant hereunder are determined by a court of competent jurisdiction to exceed those permitted by law, the same shall be modified so that they instead apply to the maximum extent legally permitted from time to time.

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

30. CONTROLLING LAW. This Declaration and the Map shall be construed and controlled by and under the laws of the State of Utah.

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

32. EFFECTIVE DATE. This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned Declarant and Unit Owner have executed this instrument the date of notarization appearing below.

DECLARANT:

BB & T Holdings, LLC
a Utah limited liability company

By: Trent Boggess
Trent Boggess, Authorized Representative

UNIT OWNER:

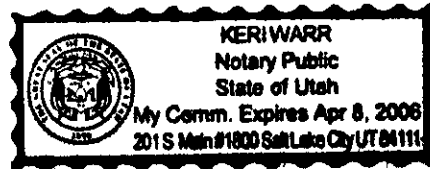
Pam's Vending LLC

By: Fred Schaffer
Fred Schaffer, Manager

STATE OF ~~FLORIDA~~ ^{UTAH})
) ss.
 COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me by Trent Boggess, the Authorized Representative of BB & T Holdings, LLC on Feb. 10, 2005, who acknowledged that he executed the same in the capacity indicated.

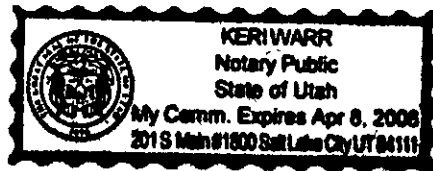
Keri Warr
 Notary Public



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

The foregoing instrument was acknowledged before me on Feb 1, 2005, by Fred Schaffer, a person known to me to be the manager of Pam's Vending LLC who acknowledged that he executed the same in the capacity indicated.

Keri Warr
 Notary Public



**EXHIBIT A
TO
DECLARATION OF CONDOMINIUM FOR
THOMAS INDUSTRIAL PARK CONDOMINIUMS III**

LEGAL DESCRIPTION OF THE PROPERTY

Commencing at a point which lies N 89°36'51" E 990.00 feet along Section line from the South One Quarter Corner of Section 3, Township 1 North Range 1 West Salt Lake Base & Meridian, and N 00°32'46" W 55.88 feet to the P.O.B. of North Wood Business Center recorded March 1997; and continuing along said Subdivision Boundary the following 4 courses, N 00°32'46" W 1266.96 feet, N 89°30'22" E 410.00 feet, N 00°40'30" W 637.95 feet, and East 638.23 feet to the Point of Commencement, located on the North Boundary Line of the North Wood Business Center, and the East Right-of-Way line of Cutler Drive; said point being the Northwest Corner of the herein described Thomas Industrial Park Condominiums III, as follows:

East 238.75 feet;
South 187.50 feet;
West 239.05 feet; to a 330 foot radius curve to the left,
North Easterly along the East Right-of-Way line of Cutler Drive 13.97 feet.
(Chord bearing N 01°12'45" E 13.97 feet);
North 173.54 feet; to the point of beginning.

Containing 44,766.61 square feet, or 1.0277 acres more or less

**EXHIBIT B
TO
DECLARATION OF CONDOMINIUM FOR
THOMAS INDUSTRIAL PARK CONDOMINIUMS III**

BUILDING ADDRESS	BLDG #	UNIT #	INTEREST	VOTES
230 North Cutler Street	1	1	1/10	1
230 North Cutler Street	1	2	1/10	1
230 North Cutler Street	1	3	1/10	1
230 North Cutler Street	1	4	1/10	1
230 North Cutler Street	1	5	1/10	1
230 North Cutler Street	1	6	1/10	1
230 North Cutler Street	1	7	1/10	1
230 North Cutler Street	1	8	1/10	1
230 North Cutler Street	1	9	1/10	1
230 North Cutler Street	1	10	1/10	1

**EXHIBIT C
TO
DECLARATION OF CONDOMINIUM FOR
THOMAS INDUSTRIAL PARK CONDOMINIUMS III**

LEGAL DESCRIPTION OF ADDITIONAL LAND

Certain real property located in Davis County, Utah and more particularly described as follows:

Lot 8 North Wood Business Center

**EXHIBIT D
TO
DECLARATION OF CONDOMINIUM FOR

BYLAWS OF
OWNERS ASSOCIATION

(attached)**

BYLAWS

THE THOMAS INDUSTRIAL PARK CONDOMINIUM III ASSOCIATION, INC.

The administration of THE THOMAS INDUSTRIAL PARK CONDOMINIUM III ASSOCIATION, INC. (the "Association") shall be governed by the Declaration, the Articles and these Bylaws. Terms that are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THOMAS INDUSTRIAL PARK CONDOMINIUM III, recorded in the Official Records of Davis County, Utah.

1. Application of Bylaws. All present and future Owners, Mortgagees, lessees and Occupants of Parcels and their employees and guests, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Parcel, or the occupancy of any Parcel, shall constitute an agreement that the provisions of the Amended Declaration, these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with.

2. Management Committee.

2.1 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Management Committee, which shall consist of three (3) natural persons. The Management Committee shall be the Association's governing board. The first Management Committee shall be appointed by the Declarant, and shall serve until the first meeting of the Association, at which time an election of all the members of the Management Committee shall be conducted.

2.2 The Declaration establishes a period of Declarant control of the Association, during which period the Declarant or persons designated by it have authority to appoint and remove the officers and members of the Management Committee. The period of Declarant control shall terminate on the earlier of: (i) six years from and after the recording of the Declaration; or (ii) after conveyance of Parcels to which three-fourths of the Interests appertain or after all Additional Land has been added.

2.3 Not later than the termination of the period of Declarant control, the Owners shall elect a Management Committee of three (3) members. The members and officers of the Management Committee shall take office upon election. Thereafter, at every annual meeting, the Association shall elect the members of the Management Committee to fill those positions becoming vacant at such meeting. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. Nominations for positions on the Management Committee may be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by three (3) or more Owners and signed by the nominee named therein indicating his or her willingness to serve as a member of the Management Committee, if elected.

2.4 Voting for the Management Committee shall be by secret written ballot. At any meeting of the Association, each Owner, either in person or by proxy, shall be entitled to the number of votes set forth in Exhibit A to the Declaration for each Parcel owned multiplied by the number of Management Committee seats to be filled. Each Owner may cumulate his or her votes with respect to the Parcels for which he or she is voting and cast all of them in favor of a single candidate, or distribute his or her votes among as many candidates as the Owner sees fit. The initial members of the Management Committee shall be the following persons and each shall hold the office indicated:

President/Member: Bart Boggess
Vice President: Jerry Boggess
Secretary: Bart Boggess
Treasurer/Member: Trent Boggess

2.5 Members of the Management Committee shall serve for terms of two (2) years beginning immediately upon their election by the Association. Thereafter, all members of the Management Committee elected shall serve for two-year terms. The members of the Management Committee shall serve until their respective successors are elected, or until their death, resignation or removal.

2.6 Any member of the Management Committee may resign at any time by giving written notice to the President of the Association or to the remaining Management Committee members. The sale of any such member's Parcel or Parcels resulting in that member no longer owning a Parcel in the Project shall constitute a resignation from the Management Committee. The Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Management Committee with or without cause, other than a member appointed by Declarant during the period of Declarant control. However, a Management Committee member elected solely by the votes of the Owners may only be removed prior to the expiration of his or her term of office by a vote of two-thirds of the voting power residing in the Owners.

2.7 If vacancies shall occur in the Management Committee by reason of the death or resignation of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election at the meeting at which such Management Committee member is removed or any subsequent regular or special meeting of the Association.

2.8 The members of the Management Committee shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the voting power residing in Owners. Any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all members of the Management Committee not including the member to be employed.

2.9 The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Declaration, these Bylaws and the rules and regulations governing the Project. The Management Committee is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective 30 days after adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Utah Nonprofit Corporation and Co-operative Association Act, the Declaration, the Articles and these Bylaws.

2.10 The meetings of the Management Committee shall be held at least twice each calendar year at such times and places within the Project, or some other reasonable and suitable location in the State of Utah, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to Management Committee members, as the Management Committee shall determine. A majority of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. The Management Committee shall annually elect all of the officers of the Association. The election of officers shall be conducted at the first meeting of the Management Committee held subsequent to the annual meeting of the Association.

2.11 Written notice of the time and place of Management Committee meetings shall be posted at a prominent place or places within the Project not less than four (4) days prior to the meeting and sent by first class mail.

2.12 Special meetings of the Management Committee may be called by written notice signed by any two members of the Management Committee. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in the State of Utah unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the members of the Management Committee. Written notice of any special meeting shall be posted in a manner prescribed for notice of regular meetings of the Management Committee and shall be sent to all members of the Management Committee not less than 72 hours prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any member signing a waiver of notice or a written consent to the holding of such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. If an agenda is prepared for a special meeting, the meeting need not be restricted to discussions of those items listed on the agenda. Teleconference is allowed for members out of state.

2.13 Notices of all regular Management Committee meetings shall be given in writing to each member of the Management Committee not less than 30 days prior to the meeting, provided that this requirement shall not apply to any member of the Management Committee who has signed a waiver of notice or a written consent to the holding of a meeting.

2.14 Regular and special meetings of the Management Committee shall be open to all Members; provided, however, that the Members who are not on the Management Committee may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Management Committee. The Management Committee may,

with the approval of a majority of a quorum of its members, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.15 Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Management Committee members, and an explanation of the action so taken is posted at a prominent place or places within the Project within three (3) days after the written consent of all Management Committee members has been obtained.

2.16 The Association's fiscal year shall be a calendar year but may be changed by the Management Committee.

2.17 Minutes of each Management Committee meeting shall be kept and held by the manager but need not be distributed or otherwise made available to all Owners but shall be available at the request of the Owners.

2.18 If a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association.

2.19 An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Parcel, a partner of a partnership that owns a Parcel, and a fiduciary of an estate that owns a Parcel may be considered an Owner for the purpose of determining eligibility for membership of the Management Committee. In all events where the person serving or offering to serve as an officer or member of the Management Committee is not the record Owner, they shall file proof of authority in the records of the Association.

2.20 The Management Committee or the officers appointed thereby may delegate to the Manager, or such other persons as it so determines, all of the duties and obligations of the Management Committee set forth herein and in the Declaration to the extent such duties and obligations are properly delegable.

3. Meetings of the Association.

3.1 There shall be an annual meeting of the Association at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, and at a reasonable time as may be designated by written notice by the Management Committee. Notice of the annual meeting shall be delivered to the Owners by first-class mail not less than ten (10) days prior to the date set for said meeting and shall specify the place, day and hour of the meeting and a brief statement of the matters on the agenda which the Management Committee intends to present or

believes others will present for action by the members. The statement shall include the name, address and a brief biographical sketch, if available, of each person who will stand for election to the Management Committee.

3.2 Special meetings of the Association shall be called by written notice signed by the Declarant, the President, a majority of the Management Committee or by Owners representing at least twenty five percent (25%) of the Total Votes of the Association, which shall be hand delivered or sent prepaid by United States mail, not less than thirty (30) nor more than ninety (90) days prior to the date fixed for said meeting, to each Owner at such Owner's address as shown in the records of the Association or to any other mailing address designated in writing by the Owner. Such notice shall specify the place, day and hour of the meeting and a brief statement of the items on the agenda, including the general nature of any proposed amendment and a draft of proposed wording to the Declaration or Bylaws, any budgetary changes and any proposal to remove an officer or member of the Management Committee. Special meetings may be held at a reasonable place in the Project or at a meeting place as close thereto as reasonably possible, to consider matters which, by the terms of the Declaration, require the approval of all or some of the Owners or for any other reasonable purpose.

3.3 The presence in person or by proxy of Owners holding 50% or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at an Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. No quorum shall be required for an adjourned meeting. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings of the Association. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners. Unless otherwise expressly provided in the Declaration and these Bylaws, any action may be taken at any meeting of the Owners at which a quorum is present upon a majority vote of the Owners who are present in person or by proxy.

3.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Declaration or these Bylaws.

3.5 Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

3.5.1 A written ballot is distributed to every Owner entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Owner to return the ballot to the Association.

3.5.2 The written ballot is signed by all of the Members who are entitled to vote on the subject matter thereof.

3.6 At each meeting of the Association, each Member entitled to vote shall be entitled to vote in person or by proxy. For any Parcel owned by more than one Owner, all of the Owners of such Parcel may sign a certificate designating one of the co-Owners as the Member authorized to cast the votes appurtenant to such Parcel. In such event the Management Committee may rely on such certificate as being sufficient evidence of the authority of the person casting the votes appurtenant to such Parcel. In the absence of such a certificate, if only one of several Owners of a Parcel is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Parcel. If more than one of the Owners of a Parcel is present, the votes allocated to that Parcel may be cast only in accordance with the agreement of a majority in interest of such Owners. Absent a certificate of authorization, there shall be deemed to be majority agreement if any one of the Owners casts the votes allocated to the Parcel owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Parcel. The right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. An Owner may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. Actual notice includes the Association's receipt of one or more proxies signed by the same Owner. In such event, the proxy with the latest date shall be accepted. A proxy is void if it is not dated or purports to be revocable without notice. Proxies received by facsimile transmission are valid if they meet all other requirements under this section.

3.7 Minutes of the annual and special meetings of the Association shall be distributed to each member within sixty (60) days after the meeting.

4. Officers.

4.1 All officers and employees of the Association shall serve at the will of the Management Committee. The officers shall be a President, Secretary and Treasurer. The offices of Secretary and Treasurer may be combined in the discretion of the Management Committee. The Management Committee may appoint Vice Presidents and such other assistant officers as the Management Committee may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee may require that officers (and other employees of the Association) be subject to fidelity bond coverage. In lieu of fidelity bond coverage, the Management Committee may elect to obtain audits performed by a Certified Public Accountant of the cash accounts and operating statements. Two signatures are required for payments made in excess of \$1000 and two signature and a resolution are required to transfer fund out of the reserve account.

4.2 The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and

contracts of material importance to its business. He shall do and perform all acts which the Management Committee may require.

4.3 The Vice President, if any, shall perform the functions of the President in his absence or inability to serve.

4.4 The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Management Committee.

4.5 The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to the Manager. If there are no Vice Presidents and the President is absent or unable to serve, then the Treasurer shall perform the functions of the President.

4.6 Any officer may prepare, execute, certify and record properly adopted amendments to the Declaration on behalf of the Association.

5. Common Area Maintenance Expenses: Maintenance Assessments.

5.1 All Common Area Maintenance Expenses shall be made in accordance with the Declaration.

5.2 No Owner shall be exempt from liability for Common Area Maintenance Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his Parcel

5.3 The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Management Committee in assessing Maintenance Assessments against the Parcels, the Treasurer shall keep an accurate record of such Maintenance Assessments and of the payments thereof by each Owner.

5.4 All Maintenance Assessments shall be a separate, distinct and personal liability of the Owners at the time each Maintenance Assessment is made. The Management Committee shall have the rights and remedies contained in the Declaration to enforce the collection of Maintenance Assessments.

5.5 Any person who shall have entered into a bonafide written agreement with the current owner to purchase a Parcel, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of any unpaid Maintenance Assessment charged against such Parcel and its Owner, and if such statement does not reveal the full amount of the unpaid Maintenance Assessment as of the date it is rendered, neither the purchaser nor the Parcel shall be liable for the payment of an amount in excess of the unpaid Maintenance Assessments shown thereon, provided that the former Owner shall remain so liable for the excess. Any such excess which cannot be promptly collected from

the former Owner shall be reassessed by the Management Committee as a Common Area Maintenance Expense to be collected from all Owners, including without limitation the purchaser of such Parcel, his successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Maintenance Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Management Committee for which the Maintenance Assessment is made relate in whole or in part to any period prior to that date. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.6 In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days' prior written request therefor, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Parcel and to any Mortgagee, on request at reasonable intervals, a current statement of unpaid Maintenance Assessments for Common Area Maintenance Expenses with respect to a Parcel. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.7 In all cases where all or part of any Maintenance Assessment cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Management Committee shall reassess the same as a Common Area Maintenance Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Maintenance Assessments.

6. Litigation.

6.1 If any action is brought by the Management Committee on behalf of the Association, the expenses of suit, including reasonable attorneys' fees and costs, shall be a Common Area Maintenance Expense. Except as otherwise provided, if any action is brought against the Owners or against the Management Committee or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees and costs, shall be a Common Area Maintenance Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Area Maintenance Expense or otherwise.

6.2 Prior to incurring any costs or fees for litigation, in excess of \$1,000, the Management Committee shall obtain the approval of the owners of at least 50% of the Units who are not in default in the payment of their assessments. This one time approval shall only be required with respect to each litigation matter, and not for each step of litigation for each matter.

6.3 Any action brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice

thereof to the Management Committee, and shall be defended by and at the sole cost and expense of such Owners.

7. Abatement and Enjoinment of Violations by Owners.

7.1 The violation of any significant rules or regulations adopted by the Management Committee, the breach of any significant provision contained herein or the breach of any significant provision of the Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

7.1.1 To enter the Parcel in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass; and/or

7.1.2 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.1.3 Notwithstanding any other provision of these Bylaws, to enter into or initiate matters which the Management Committee reasonably deems to be an emergency, or sufficiently grave to constitute a material threat to property requiring action.

These remedies are in addition to other remedies provided in the Declaration and these Bylaws, or in any other applicable laws.

8. Accounting.

8.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

8.2 A budget for each fiscal year consisting of at least the following information shall be adopted by the Management Committee and distributed to all Members not less than 30 days prior to the beginning of the fiscal year to which the budget applies:

8.2.1 Estimated revenue and expenses on an accrual basis.

8.2.2 The amount of the total cash reserves of the Association currently available for replacement or major repair of the Common Areas and Common Utility Facilities and for contingencies.

8.2.3 An itemized estimate of the current replacement costs of, and the estimated remaining life of, and the methods of funding to defray the costs of future repair, replacement or additions to the major components of the Common Areas and Common Utility Facilities

8.2.4 A general statement setting forth the procedures used by the Management Committee in the calculation and establishment of reserves to defray the costs of repair,

replacement or additions to major components of the Common Areas and Common Utility Facilities.

8.3 Unless the Association, by a majority of the Total Votes of the Association at the meeting of the Association held after distribution of the proposed budget, rejects the budget, the budget shall be deemed ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Management Committee.

8.4 Within sixty (60) days after the last day of the month closest in time to nine (9) months from the date of closing of the first Parcel sold (the "Accounting Date"), after the filing of the Amended Declaration the Management Committee shall distribute to the Owners: (i) a balance sheet as of the Accounting Date, and (ii) an operating statement for the period from the date of the first closing to the Accounting Date. This operating statement shall include a schedule of Maintenance Assessments received and receivable, identified by Parcel and the name of the person or entity assessed.

8.5 The Management Committee shall distribute to the Owners an annual report, consisting of the following, within one hundred twenty (120) days after the close of each fiscal year:

- (a) A balance sheet as of the end of the fiscal year.
- (b) An operating (income) statement for the fiscal year.
- (c) A statement of changes in financial position for the fiscal year.

(d) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a certified public accountant licensed by the State of Utah. If 50% of the Management Committee has any reason to question the accounting at any time, they could require an audit of the accounting by a certified public accountant.

- (e) Any other disclosures required by applicable state law.

8.5.1 If the annual report referred to in this Section is not prepared by an officer of the Association, then it shall be accompanied by a certificate of the person preparing the report that the statements were prepared from the books and records of the Association without independent audit or review.

8.6 The Management Committee (or the Manager, if so delegated by the Management Committee) shall do the following not less frequently than quarterly:

8.6.1 Cause a current reconciliation of the Association's operating accounts to be made and review the same.

8.6.2 Cause a current reconciliation of the Association's reserve accounts to be made and review the same.

8.6.3 Review the current year's actual reserve revenues and expenses compared to the current year's budget.

8.6.4 Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.

8.6.5 Review an income and expense statement for the Association's operating and reserve accounts.

8.7 The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project or Association maintained by the Association or Manager shall be made available for inspection and copying by any Member or his duly appointed representative at any reasonable time and for a purpose reasonably related to his interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Management Committee to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Association may, as a condition to permitting an Owner to inspect the membership register or to its furnishing information from the register, require that the Owner agree in writing not to use, or allow the use of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Management Committee shall establish reasonable rules with respect to:

8.7.1 Notice to be given to the custodian of the records by the Owner desiring to make the inspection or obtain copies;

8.7.2 hours and days of the week when such an inspection may be made,

8.7.3 payment of the cost of reproducing copies of documents requested by an Owner.

8.7.4 management shall be reasonably compensated for the time spent in gathering and submitting such documents.

8.8 Every member of the Management Committee shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Management Committee member agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and the Management Committee member's interest in such Association.

9. Special Committees. The Management Committee by resolution may designate one or more special committees, each committee to consist of two (2) or more of the members of the Management Committee, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. All special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the President. The Management Committee or the President may appoint Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

10. Rental or Lease of Parcels.

10.1 Any Owner who rents or leases his Parcel shall file with the Management Committee a copy of the rental or lease agreement. The provisions of Section 7 of these Bylaws shall apply with equal force to renters or lessees of Parcels.

10.2 Any Owner who rents or leases or otherwise permits any other person to utilize his Parcel shall be responsible for the conduct of his tenants or occupants, and upon written notice from the Management Committee or the Manager, said Owner shall be responsible for correcting violations of the Declaration, Bylaws or rules and regulations committed by such tenants or occupants.

10.3 If an Owner fails to correct violations by tenants within 30 days of such notice, the Management Committee or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as Common Area Maintenance Expenses under the Declaration.

10.4 In the event of an emergency or potential safety hazard, the Owner has 72 hours of such notice to correct violations.

10.5 The power of the Management Committee or Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting, leasing or otherwise permitting any other person to utilize his Parcel shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Manager shall include but not be limited to the right to seek eviction of the tenant through the judicial process without any liability to the Owner.

11. Amendment of Bylaws. Except as otherwise provided in the Declaration or these Bylaws, these Bylaws may be amended by the vote or written assent of Owners holding a majority of the Total Votes of the Association. Provided, however, the percentage of the voting

power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Owners, and the amendment shall be effective upon recording. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of these Bylaws to comply with all then applicable laws, rules and regulations to which the Project is legally subject.

12. Severability. The provisions hereof shall be deemed independent and severable, and the invalid or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

13. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

14. Effective Date. These Bylaws shall take effect upon adoption by the directors of the Corporation.

15. Arbitration. Any unresolved dispute, disagreement or controversy between Declarant, the Association and any owner or owners within the association may with the consent of all parties in interest be submitted to an arbitration board of at least three members with one chosen by the Association, the other by the Declarant and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association. In the event the parties agree to submit the matter to binding arbitration, (i) the decision of the majority of such arbitrators shall be binding on the Association and the Declarant; (ii) such decisions shall include the awarding of costs, including reasonable attorneys fees, as the arbitrators shall determine; and (iii) the decision of the arbitrators shall be judicially enforceable as a judgment.

Adopted this ____ day of _____, 2005

President