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**DECLARATION OF CONDOMINIUM**

08-477-0001 thru 0010 OF

**FARMINGTON BAY WAREHOUSE CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM is made and entered into this 16 day of Nov., 2010, by **FARMINGTON BAY WAREHOUSE COMPLEX, LLC**, hereinafter referred to as "Declarant," for themselves, successors, grantees and assigns;

WHEREIN, Declarant has made the following declarations:

1. The purpose of this Declaration is to submit the real property owned by Declarant hereinafter described in Article II and the improvements thereon to the Condominium form of ownership and use in the manner set forth in the "Condominium Ownership Act."

2. The name by which this condominium shall be identified is **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, "A Condominium Project"**

3. The condominium project shall consists of nine (9) units, together with all improvements and appurtenances.

4. The real property owned by Declarant, together with all improvements thereon, are hereby submitted to the provisions of the Condominium Act as a condominium project known as "**FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project,**" hereinafter the "Condominium Project" or "Project."

5. It is the intent of Declarant to sell to third-party purchasers the fee simple title to the units contained in the project, together with the respective undivided ownership interests in and to the common areas and facilities appurtenant to each unit, subject to the covenants, restrictions and limitations set out in the By-Laws and this Declaration.

NOW THEREFORE, for such purposes, Declarant hereby makes the following Declarations respecting the divisions, covenants, restrictions, limitations, conditions and uses to which the property submitted to said Condominium Project shall hereinafter be subject:

ARTICLE I. DEFINITIONS

The terms used herein and in the By-Laws shall have meanings stated in the Condominium Ownership Act, unless otherwise defined.

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RICHARD J. NAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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1. Act and The Act shall mean and refer to the *Utah Condominium Ownership Act* (§§57-8-1 through 57-8-41, *Utah Code Annotated, 1953 Amended*).
2. Declaration shall mean and refer to this Declaration.
3. Record of Survey Map and Survey Map shall mean and refer to the record of Survey filed herewith, dated the 10th day of November, 2010, consisting of two (2) sheets and prepared and certified by Von R. Hill, a duly registered Utah Land Surveyor, license number 166385.
4. Management Committee and Committee shall mean and refer to the Management Committee of the **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project**.
5. Declarant shall mean those individual(s) executing this document or assigns.
6. Common Areas and Facilities shall mean and refer to and include:
  - a. The real property and interests in real property which this Declaration submits to the terms of the Act.
  - b. All Common Areas and Facilities designated as such in the Survey Map.
  - c. All installations for and all equipment connected with the furnishing of central services to the Condominium Project such as electricity, gas, water, and sewer.
  - d. All portions of the Project not specifically included within the individual Units.
  - e. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.
  - f. The yards and the grounds.
  - g. All Common Areas and Facilities so defined in the Act, whether or not expressly listed herein.
7. Unit shall mean and refer to one of the individual Units contained within the Condominium Project comprising of the respective parts of the Condominium project which is designated as such on the Record of Survey Map and which is intended to be independently

owned, encumbered and/or conveyed, including the walls and partitions which are wholly contained within a designated Unit and the inner surfaces of the perimeter walls, floors and ceilings. The paint or other finishing on the inside surfaces of perimeter walls and of the ceilings, shall be deemed to be a part of the pertinent Unit, but all other portions of said perimeter walls and ceilings shall be deemed to be common Areas and Facilities. Structural separation between Units of the space which would be occupied by such structural separations becomes Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof. The term Unit shall not, however, be deemed to include the perimeter walls, floors and ceilings surrounding such Unit, except as shown otherwise on the Record of Survey map, nor shall it be deemed to include the pipes, wires, conduits or other utility lines running through or under such Unit.

A. Interior of Units: Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of the respective Unit and the surface of all walls, ceilings, floors and doors within such boundaries. Each Owner shall also have the right to construct, partition walls, fixtures and improvements within the boundaries of the respective Unit, provided, however, that such partition walls, fixtures and improvements shall comply with all applicable laws, ordinances and building codes and shall not interfere with the facilities necessary for the support, use or enjoyment of any other part of the Project, shall not impair the structural boundaries and/or integrity of the building in which it is located and shall not encroach upon the Common Areas or any part thereof unless the Board of Trustees shall consent in writing to such encroachment.

8. Unit Number shall mean and refer to the number, letter or combination thereof which designates a Unit in the attached Exhibit "A" and in the Record of Survey Map.

9. Unit Owner or Owner shall mean and refer to the owner of the fee simple title in a Unit and the percentage of undivided interest in the Common Areas and Facilities which is appurtenant thereto. The Declarant shall be deemed the owner of all un-constructed or unsold Units. In the event a Unit is the subject of an executory contract of sale, the contract purchaser shall, unless the seller and the purchaser have otherwise agreed and have informed the committee

in writing of such agreement, be considered the Unit Owner for purposes of voting and Committee membership.

10. Common Expenses shall mean and refer to all sums which are expended on behalf of all the Unit Owners and all sums which are required by the management Committee to perform or exercise its functions, duties or rights under the Act and this Declaration for operation of the Project, if any, and such rules and regulations as the management Committee may from time to time make and adopt. The water used on or in connection with the common areas of the Project, shall be deemed a part of the common expenses for which the Unit Owners shall be liable in the proportion of their undivided interests in the Common Areas and Facilities.

11. Parcel shall mean and refer to the real property which Article II of this Declaration submits to the terms of the Act.

12. Condominium Project or Project shall mean and refer to the **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project.**

13. Exclusive Use shall mean and refer to the use of the Limited common Areas and Facilities.

14. Majority or Majority of the Unit Owners shall mean and refer to the owners of more than fifty-one percent (51%) in the aggregate in interest of the undivided ownership of the Common Areas and Facilities.

15. Common Profits shall mean and refer to the balance of all income, rents, profits and revenues received by the common areas and facilities remaining after the deduction of common expenses.

16. Manager shall mean and refer to the person, persons, corporation or institution selected by the Management Committee, if any, for the managing of the project and who shall be subject to its control. If a management agreement is entered into, said management agreement shall contain provisions which will allow (a) the management agreement to be terminated for a cause upon giving the Manager fifteen (15) days prior written notice; (b) the management agreement to be effective for a term certain with options to renew by mutual agreement between the Association and Manager.

17. Mortgage shall mean and refer to a mortgage or deed of trust.

18. Mortgagee shall mean and refer to a mortgagee or a beneficiary under a deed of trust.

19. Definition of Act. To the extent applicable to the tenure hereof and not expressly inconsistent herewith, definitions contained in the Act are incorporated herein by reference and shall have the same effect as if expressly set forth herein and made parts hereof.

ARTICLE II. SUBMISSION

Submission as Condominium Project. Declarant hereby submits to the provisions of the Act as a Condominium Project to be known as **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, a Condominium Project**, the following described tract of land situated in Davis County, State of Utah, to wit:

BEGINNING AT A POINT WHICH IS NORTH 89°27'02" WEST 112.48 FEET ALONG THE SECTION LINE AND NORTH 10°44'32" WEST 554.53 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 25, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, FARMINGTON CITY, DAVIS COUNTY, UTAH AND RUNNING THENCE NORTH 10°44'32" WEST 300.01 FEET; THENCE NORTH 78°52'34" EAST 429.82 FEET TO THE WESTERLY LINE OF 650 WEST STREET; THENCE SOUTH 11°07'26" EST 300.00 FEET ALONG SAID LINE; THENCE SOUTH 78°52'34" WEST 431.82 FEET ALONG THE NORTH LINE OF LOT 1, FARMINGTON BAY BUSINESS PARK SUBDIVISION, PLAT A, AMENDMENT #1 TO THE POINT OF BEGINNING.

THE FOREGOING SUBMISSION IS SUBJECT TO: All Patent reservations and exclusions; all instruments of record which affect the above-described Parcel or any portion thereof; all visible easements and rights-of-way; all easements and rights-of-way of record; all easements and rights-of-way shown on the Survey Map; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Parcel at such time as construction of all Project improvements is complete; and all easements necessary for ingress to egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines and similar facilities.

ARTICLE III. COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration and the foregoing submission are made upon and under the following covenants, conditions and restrictions:

1. Description of Improvements. The improvements included in the Condominium Project are now or will be located upon the Parcel described above, and all of such improvements are described in the Survey Map. The Survey Map sets forth that there are nine (9) units. Each unit will consist of warehouse space ranging from 2625 to 5355 square feet of space. The exterior will be concrete tilt up walls; roofs are constructed of steel girders.

2. Description and Legal Status of Units. The Record of Survey Map shows the Unit Number of each Unit, its location, dimensions, from which its area may be determined, those Limited Common Areas and Facilities which are reserved for the exclusive use of the Owner thereof, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed.

3. Contents of Exhibit "A". Exhibit "A" to this declaration furnishes the following information with respect to each Unit: (a) The Unit number; (b) Its approximate area; (c) The Unit's appurtenant percentage of undivided ownership interest in the Common Areas and Facilities; (d) Voting rights; (e) Basis for pro- rata share of owner's expense.

4. Common Areas and Facilities. The Common Areas and Facilities contained in the Project are described and identified in Article I of this Declaration. Neither the percentage of undivided interest in the Common Areas and Facilities nor the right of exclusive use of a Common Area and Facility shall be separated from the Unit to which it attains; and even though not specifically mentioned in the instrument of transfer, such percentage of undivided interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

5. Computation of Undivided Interest. For purposes of determining (a) the percentage of undivided interest in the Common Areas and Facilities which are appurtenant to the various units, and (b) voting rights, a figure representing the approximate floor space associated with a Unit has been used as a measure of value. The percentage of (a) undivided ownership interest in the Common Areas and Facilities appurtenant to each unit; and (b) voting rights of each unit owner is the ratio between the approximate floor space figure for that unit and the sum of the approximate floor space for all units.

6. Permissible Use of Units and Common Areas. The nine (9) units contained in the Project are intended to be used as a warehouse and for the operation of a small business. There shall be no heavy fabrication or toxic material used within the condominiums and are restricted to such use. No Unit shall be used, occupied or altered in violation of law, so as to detract from the appearance or value of any other Unit, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Unit Owner, or in a way which would result in an increase in the cost of any insurance covering the Project as a whole. The Common Areas and Facilities shall be used only in a manner consistent with their community nature and the Limited Common Areas and Facilities may only be used by the Owner of the Unit to which they appertain.

7. Condition and Maintenance of Units. Each Unit shall be maintained so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit.

8. Management Committee. The Condominium Project, Common Areas and Facilities shall be managed, operated and maintained by a Management Committee as agent of the Unit Owners in accordance with the terms, conditions and provisions of: (a) the Act; (b) this Declaration; (c) the By-Laws of the **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project** attached hereto as Exhibit "B" and by this reference made a part hereof, and any amendments thereto; and (d) Such rules and regulations pertaining to the Condominium Project as the Management Committee may from time to time duly adopt and all agreements and determinations lawfully made by the Management Committee respecting the Condominium Project which are not in contravention of the Act, this Declaration or the By-Laws.

9. Damage to Project. In the event of damage to or destruction of part or all of the improvements in the Condominium Project, the following procedures shall apply:

a. If proceeds of the insurance maintained by the Committee are alone sufficient to repair or reconstruct the damaged or destroyed improvements, such repair or reconstruction shall be carried out.

b. If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis of their respective percentages of undivided interest in the Common Areas and Facilities.

c. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Management Committee are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subparagraph (b) above.

d. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by a vote of at least 75%, elect to repair or reconstruct the affected improvements, the Management committee shall promptly record with the Davis County recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of §57-8-31, *Utah Code Annotated, 1953 Amended*, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

Any reconstruction or repair which is required to be carried out under this Paragraph 9 shall be accomplished at the instance and direction of the Management Committee. Any determination which is required to be made by this Paragraph 9 regarding the extent of damage to or destruction of Project improvements shall be made as follows: The Management Committee shall select three MAI appraisers, each appraiser shall independently arrive at a figure representing the percentage of Project improvements which have been destroyed or substantially damaged and the percentage which governs the application of the provisions of this Paragraph 9 shall be the average of the two closest appraisal figures.

10. Perpetual Right of Way and Public Utilities Easement. In order to have ingress and egress to the Units, it required a perpetual right-of-way and public utility easement,



hereinafter "easement." The Association will be required to pay the upkeep and maintenance on the easement. Each Unit Owner will be assessed a proportionate annual fee for the cost as set forth in Holder "A."

11. Amendment.

a. Except as provided in Paragraph 14(b) below, the vote of at least 75% of the undivided ownership interest in the Common Areas and Facilities shall be required to amend this Declaration, the By-Laws or the Record of Survey Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Paragraph for amendment has occurred.

b. Until Units representing 75% of the undivided ownership interest in the Project have been sold, or three (3) years have expired from recordation of the Declaration of Condominiums, Declarant shall have, and is hereby vested with the right, to amend this Declaration, the Record of Survey map and/or the By-Laws. Such right shall obtain without regard to the subject matter of amendment, so long as the amendment involved is consistent with the law.

12. Insurance. As more fully provided in Article XXVII of the By-Laws, the Management Committee shall maintain in full force and effect a policy or policies of fire insurance with extended coverage, vandalism and malicious mischief endorsements, for the full insurable replacement value of the common areas and facilities, and having firm endorsements covering the replacement value of the Units to provide for restoration thereof to tenantable condition in the event of destruction or damage. Such policy or policies shall be written in the name of, and the proceeds thereof shall be payable to the Management committee as Trustees for each of the Unit Owners in the percentage established in the Declaration, and to the respective first mortgagees of the Unit Owners, as their interests may appear. Said policy or policies shall provide for separate protection for each Unit and its attached, built-in or installed fixtures and equipment to the full insurable replacement value thereof, and with a separate loss payable endorsement in favor of the mortgagee or mortgagees of each Unit, or any Unit Owner for the recovery of any loss under said policy or policies. Such policy or policies shall not be cancelable

except after thirty (30) days' written notice to the Management Committee and first mortgagees and a copy or a duplicate of such policy or policies shall be deposited with the mortgagees with evidence of the payment of premiums and with renewal policies to be deposited with the mortgagee not later than thirty (30) days prior to the expiration of existing policies. The individual Unit Owners may carry insurance coverage of their own on such of their individual property as may be located in their Units and shall procure such further insurance coverage respecting their ownership, use or occupation of their individual Units as they may deem necessary; provided, however, that no Unit Owner shall be entitled to exercise his right to maintain insurance coverage on a Unit of which he is the Owner in such a way as to decrease the amount which the Management Committee may realize under any insurance policy which the Management Committee may have in force on the Condominium Project at any particular time.

13. Compliance by Unit Owners, Etc. Each Unit owner, tenant or occupant of any Unit shall comply with the provisions of the Act, this Declaration, the By-Laws and the rules and regulations referred to above and all agreements and determinations lawfully made and/or entered into by the Management Committee, including any amendments thereto and any failure to comply with any of the provisions of said Act, Declaration, By-Laws, rules, regulations, agreements and determinations, or any amendments thereto, shall be grounds for an action by the management Committee to recover any loss or damage resulting therefrom and/or for injunctive relief.

14. Mortgagee Protection. Notwithstanding all other provisions hereof, or any By-Laws adopted as to this Project:

a. Any liens created hereunder, or under By-Laws of the Project, shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value as to Unit, Units or the Project.

b. No amendment to this Declaration, or the adoption of any amendment to the By-Laws for this Project, or promulgation or amendment of any rules or regulations by the Management Committee, shall affect the rights of the holder of any first mortgage who does not join in the execution thereof.

15. Provisions Supplemental to Act. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act.

16. Effective Date. This Declaration shall take effect upon recording as provided by the Act.

17. Effect of Invalidity. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

18. Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. This Declaration shall be liberally construed to effect its purposes. The captions which precede the Paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed.

19. Covenants to Run with Land: Compliance. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Unit Owner and all interests therein or occupant of a Unit shall comply with and shall be subject to the terms of the Act, the terms of this Declaration, the By-Laws attached hereto and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration, the Act, the By-Laws and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration.

20. Encroachments. If any portion of the Common Areas and facilities encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Areas and facilities, as a result of settling or shifting, a valid easement for the encroachment and for the maintenance of the same so long as such building stands shall exist.

In the event any Unit or any adjoining common Areas and facilities shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or

eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Areas and facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Areas and facilities, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such building shall stand; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner if said encroachment occurred due to the willful conduct of said owner.

21. Easements. The Management Committee of owners may hereafter grant easements for utility purposes for the benefit of the Condominium property, including the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas lines, telephone and television wires and equipment, internet, and electrical conduits and wires over, under, along or on and through any portions of the Common Areas and facilities, and each owner by his acceptance of a deed to his Unit agrees from time to time to execute, acknowledge, deliver and record for and in the name of such owner, such instruments necessary to effectuate the foregoing.

An easement is granted to each owner to allow attachment of pictures, mirrors and light decorations, furnishings to the interior surface of the perimeter and interior walls and ceilings.

Each Unit shall be subject to such easement as may be necessary for installation, maintenance, repair or replacement of any Common Areas, and facilities located within the boundaries of such Unit.

A nonexclusive easement is hereby reserved to the Declarant and its successors and assigns, of ingress and egress over any and all common areas, whether street, sidewalk, grass, units, for the performance of any and all repairs and/or labor required by Declarant and its assigns. The appropriate government agency shall have an easement for ingress and egress as required to fulfill any and all services required to be rendered to either individuals and/or property.

Easements are hereby granted as set forth in the Record of Survey Map as recorded in the Office of the Davis County Recorder.

22. Assessments. Assessments against the Owner shall be made or approved by the Management Committee and paid by the Unit Owner to the Management Committee in accordance with the following provisions:

a. Share of Expense, Common Expense. Each Owner shall be liable for his share of the common expenses and any common surplus shall be owned by each Owner in a like manner. An assessment may be levied by the Management Committee and/or Board of Trustees, against the owners for the upkeep and maintenance of the Common Areas and facilities and limited Common Area.

b. Assessments Other Than Common Expenses. Any assessments, the authority to levy which is granted to the Management Committee or its Board of Trustees by the Condominium documents shall be paid by the Owners to Declarant in the proportions set forth in the provisions of the Condominium documents authorizing the assessments.

c. Assessments for Common Expenses. Assessments for common expenses shall be made for the calendar year annually in advance on or before the second Monday in December of the year preceding, for which the assessments are made, and at such other and additional times as in the judgment of the Management Committee additional common expenses, assessments are required for the proper management, maintenance and operation of the limited Common Areas and Common Areas and facilities. Such annual assessments shall be due and payable in twelve equal consecutive monthly installments on the first of each month beginning with January of the year for which the assessments are made. The total of assessments shall be in the amount of the estimated common expenses for the year, including a reasonable allowance for contingencies and reserves. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.

Other assessments shall be made in accordance with the provisions of the Condominium documents, and if the time of payment is not set forth in the Condominium documents, and if the time of payment is not set forth in the Condominium documents, the same shall be determined by the Management Committee.

d. Assessments for Emergencies. Assessments for common expenses of emergencies which cannot be paid from the common expense account shall be made only by the Management Committee.

e. Assessments for Liens. All liens of any nature, including taxes and special assessments levied by governmental authority, which are a lien upon more than one Unit or upon any portion of the common elements shall be paid by the Declarant as a common expense, and shall be assessed against the Unit in accordance with the share of the Unit concerned or charged to the common expense account, whichever in the judgment of the Management Committee is appropriate.

f. Assessment Roll. The assessments against all Owners shall be set forth upon a roll which shall be available for inspection at all reasonable times by Owners or their duly authorized representatives. Such roll shall indicate for each Unit the name and address of the Owner or Owners, the assessments for all purposes and the amounts of all assessments paid and unpaid.

g. Liability for Assessment. The owner of a Unit and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amount paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any Common Areas or facilities or by abandonment of the Unit for which the assessments are made.

h. Lien for Assessments. The unpaid portion of any assessment, whether regular or special, assessed to an Owner plus interest at the highest legal rate and costs, including reasonable attorney's fees, shall become a lien upon the Unit and all appurtenances thereto, including all tangible personal property located therein, when a notice claiming the lien has been recorded by the Declarant in the public records of Davis County as provided in Section 57-8-20, Utah Code Annotated, 1953 Amended. The Management Committee shall not, however, record such claim of lien until the assessment is unpaid for not less than twenty (20) days after it is due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim is satisfied. Said lien shall be subordinate to prior bona fide liens of record.

i. Application of Payments. Assessments and installments thereof paid on or before fourteen (14) days after the date when due shall not bear interest but all sums not paid on or before fifteen (15) days after the date when due shall bear interest at the rate of eighteen per cent (18%) per annum from the date when due until paid. All payments upon account shall be applied first to interest and then to the assessment payment first due. All interest and assessments collected shall be credited to the common expense account.

j. Suit. **FARMINGTON BAY WAREHOUSE CONDOMINIUM ASSOCIATION, INC.**, at its option, may enforce collection of delinquent assessments by suit at law, or by foreclosure of the liens securing the assessments, or by any other competent proceeding and in either event, **FARMINGTON BAY WAREHOUSE CONDOMINIUM ASSOCIATION, INC.**, shall be entitled to recover in the same action, suit or proceedings, the payments which are delinquent at the time of judgment or decree, together with interest thereon at the rate of eighteen per cent (18%) per annum, and all costs incident to the collection and the action, suit or proceedings, including, without limiting the same, to reasonable attorney's fees.

k. Compliance and Default. Each Owner shall be governed by and shall comply with the terms of the Condominium documents and By-Laws adopted pursuant thereto, and said documents as they may be amended from time to time. A default shall entitle the Declarant or other owners to the following relief:

i. Legal Proceedings. Failure to comply with any of the terms of the Condominium Project documents adopted pursuant thereto, shall be grounds for relief, which may include, without intending to limit the same, to an action to recover the sums due for damages, injunctive relief, foreclosure or lien, or any combination thereof, and which relief may be sought by the Declarant, or if appropriate, by an aggrieved Owner.

ii. Liability. All Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his guests or their guests (guest, as defined herein, shall not include those persons occupying said Unit by reason of the rental agreement with Declarant), but only to the extent that such expense is not met by the

proceeds of insurance carried by Declarant. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of any Unit or its appurtenance. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies or rights of subrogation.

iii. Costs and Attorney's Fees. In any proceeding arising because of an alleged default by the Owner, the Association shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court.

iv. No Waiver of Rights. The failure of the Association or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Declarant nor Owner to enforce such right, provision or covenant or condition in the future.

v. Cumulative Rights. All rights, remedies and privileges granted to the Association and Owners, pursuant to any terms, provisions, covenants or conditions of the Condominium documents shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Condominium documents, or at law, or in equity.

23. Condominium Statutes. In the event any provisions of the Declaration of Condominiums conflict with the Condominium Ownership Act as set forth in Chapter 8 of the *Utah Code Annotated* 1953, the Condominium Ownership Act shall prevail.

24. Deeds. Any transfer of a Unit by deed shall include all appurtenances thereto, whether or not specifically described.

25. Procedures for Expansion. Declarant hereby reserves the absolute right and option to expand the project at any time by adding to the project additional land. Notwithstanding any provision of the act or this Declaration which might be construed to the contrary, such right and option may be exercised without obtaining the vote or consent of any other person (including any owner, mortgagee, eligible mortgagee or eligible insured or



guarantor). Any such portion of land shall be deemed added to the project at such time as a supplement to this Declaration and to the Survey Map containing the information required by the Act has been recorded with respect to the portion of the additional land concerned.

Assuming the entirety of the expanded phase is added to the Project, the maximum number of Units for the entire Project shall be nine (9) Units. Each Unit created or a portion of the added land shall be subject to each and every requirement set forth in this Declaration respecting Units initially covered by this Declaration, and shall be compatible with the existing structures, including quality of construction. All land, buildings, improvements and equipment which are submitted with the expandable phase as shown on the Survey Map shall be subject to the provisions of this Agreement respecting Common Areas.

The supplements to this Declaration and the Survey Map, which addition to the Project of the expandable phase shall be executed by the Declarant shall be in recordable form, must be filed for record in the Office of the Davis County Recorder, State of Utah, on or before seven (7) years from the date this Declaration is recorded, and when taken together, shall contain the following information of the expandable phase:

- (a) Date sufficient to identify this Declaration and the Record of Survey Map;
- (b) the legal description of the portion of the expandable phase being added;
- (c) a description of the buildings located on the expandable phase, and of all other significant improvements;
- (d) the Unit number of each Unit being created;
- (e) a description of any Common Areas being created within the expandable phase;
- (f) amended Exhibit A to this Declaration setting forth the percentage of undivided ownership interest which after the addition of expandable phase shall appertain to each Unit in the Project as computed.

Upon the recordation of the supplements contemplated above, the revised schedule of undivided interest contained therein shall automatically become effective for all purposes and shall completely supersede any similar schedule. At any point in time, the

Declaration and Survey Map for the Project shall consist of this Declaration and the Survey Map initially effective hereunder as amended and expanded by all supplements theretofore recorded, pursuant to the terms thereof.

26. Payment of Common Expenses Until Building 2 is Completed. The Units known as 1A, 1B, 1C, 1D, and 1E are constructed and ready for occupancy. Units 2A, 2B, 2C, and 2D are not yet constructed. Therefore, until constructed and ready for occupancy, the owners of Units 1A, 1B, 1C, 1D and 1E shall pay one hundred percent (100%) of the common expenses in accordance with the ownership as it relates to the total square feet of Building 1.

27. Gender. Whenever the context so permits, the use of the plural shall include the singular, the plural and any gender shall be deemed to include all genders.

28. Agent for Service of Process. The person to receive service of process in the cases authorized by the Act shall be: **KENT H. WHITEHEAD, 845 North 400 West, North Salt Lake, Utah 84054.** The Management Committee shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the Office of the County Recorder of Davis County, State of Utah.

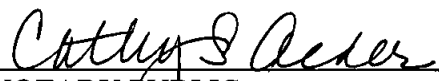
EXECUTED the day and year first above written.

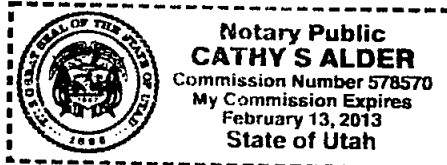
**FARMINGTON BAY WAREHOUSE  
COMPLEX, LLC**

  
By: **KENT H. WHITEHEAD**

STATE OF UTAH :  
: SS :  
COUNTY OF DAVIS :

On the 16th day of November, 2010, personally appeared before me **KENT H. WHITEHEAD** who being by me duly sworn, did say he is the Manager and Member of **FARMINGTON BAY WAREHOUSE COMPLEX, LLC**, and that said instrument was signed in behalf of said Limited Liability Company by authority of its Operations Agreement and said **KENT H. WHITEHEAD** acknowledged to me that said Limited Liability Company executed the same.

  
NOTARY PUBLIC



**EXHIBIT A**

**TO**

**ENABLING DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS OF  
FARMINGTON BAY WAREHOUSE CONDOMINIUMS**

The project will consist of nine (9) Units.

<b>UNITS</b>	<b>APPROX. NUMBER OF SQUARE. FEET</b>	<b>PERCENT OWNERSHIP IN COMMON AREAS &amp; VOTING RIGHTS</b>
1A	5355	.14
1B	2625	.07
1C	2625	.07
1D	5250	.14
1E	5355	.14
2A	4080	.11
2B	4000	.11
2C	4000	.11
2D	4080	.11
<b>TOTALS</b>	<b>37,370</b>	<b>100%</b>

\*Also determinative of voting rights and used as a general basis for pro rata share of owners' expenses.

**BY-LAWS**  
**OF**  
**FARMINGTON BAY WAREHOUSE CONDOMINIUMS**  
**A Condominium Project**

I. IDENTITY. These are the By-Laws of the **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project**, and the same are incorporated by reference into the Declaration of Condominium of FARMINGTON BAY WAREHOUSE CONDOMINIUMS Condominium Association.

II. APPLICATION. All persons who use the facilities or the property in any manner are subject to this Declaration and to the rules and regulations.

III. GOVERNING FUNCTION BY MANAGEMENT COMMITTEE. The affairs of the Association shall be governed by a Management Committee, the nature, powers and responsibilities of which are hereinafter defined.

The Declarant shall exercise the functions of the Management Committee until a Management Committee has been duly established.

IV. MEETINGS OF THE ASSOCIATION. The first annual meeting of the Owners shall be held twenty (20) days after Declarant gives notice thereof to all Owners. Declarant may give such notice at any time but Declarant shall give notice on or before one year from the date the first unit has been conveyed to an Owner.

Annual Meetings. After the first annual meeting, each subsequent annual meeting shall be held at 7:00 p.m. on the fourth Friday of January each year at such reasonable place or at such other reasonable time (not more than 60 days before or after such date) as may be designated by the Management Committee.

Special meetings shall be held whenever called by notice of the Management Committee and signed by a majority thereof; and the Management Committee shall call by notice a special meeting upon receipt of a written request from owners having one-half of the total vote, which request shall specify the matters to be considered. No matters shall be considered at a special meeting except as stated in the notice.

Notices of all meetings may be served personally or by mail at least ten (10) days but not more than twenty (20) days prior to such meeting. Any notice of meeting permitted or required shall be in writing, stating the purpose thereof and the time and place, and shall be served on each Owner of record at his residence, or at such address as the Owner shall have designated by notice in writing to the management Committee or Manager. Mailing of a notice shall be considered service of notice.

A Quorum at Association meetings shall consist of persons entitled to cast a majority of the total votes. In the event that a quorum is not present at any meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners, and at that meeting the present Owners holding in excess of twenty-five percent (25%) of the total votes shall constitute a quorum for the transaction of business; but in the event a quorum is not present at that meeting, the Owners present, though less than a quorum, may adjourn the meeting to a later date and give notice thereof to all the Owners; and, at that meeting, whatever Owners are present shall constitute a quorum.

Except where a greater percentage is required by this Declaration, the acts approved by a majority vote of the voting power present at a meeting at which a quorum is present shall be the acts of the Owners. VOTES MAY BE CAST IN PERSON ONLY.

Declarant shall be entitled to vote with respect to any completed unit owned by Declarant.

In the event that a Notice of Default is recorded by any mortgagee or beneficiary who holds a mortgage and/or Trust Deed which is a first lien on a condominium against the Owner of the condominium covered by the mortgage and/or Trust Deed, then and in that event and until the default is cured, the right of the Owner of such condominium to vote shall be deemed transferred to the mortgagee and/or Beneficiary recording the notice of default.

The order of business at all annual association meetings as far as practicable shall be:

- (a) Calling of the roll;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes;

(d) Reports of Management Committee, etc.;

(e) The presentation by the management Committee of an accounting of the income and expenses, including common expenses, itemizing receipts and disbursements for the preceding fiscal year, the allocation thereof to each owner, and the estimated common expenses for the coming calendar year (within nineteen (19) days after the annual meeting, said statement shall be delivered to the Owners not present at said meeting);

(f) Election of Management Committee members for the forthcoming years;

(g) Unfinished business; and

(h) New business

THE FISCAL YEAR shall be December 31.

Where there is more than one record Owner of a unit, all record Owners of the same unit must attend the meeting and must act unanimously in order to cast the votes to which they are entitled. However, any record Owner may designate another joint Owner of the same unit as proxy or agent in a writing signed by such record Owner and filed with the Management Committee, or Manager before the time appointed for each meeting.

V. WAIVERS OF NOTICE. Any unit owner may at any time waive any notice required to be given under these By-Laws, or by statute or otherwise. The presence of a unit owner in person at any meeting of the unit owners shall be deemed such waiver.

VI. MANAGEMENT COMMITTEE. The members of Declarant shall act as the first Management Committee until 75% of the units have been sold or three (3) years have expired from the recordation of the Declaration of Condominium of **FARMINGTON BAY WAREHOUSE CONDOMINIUMS, A Condominium Project**, whichever first occurs. The first management committee elected by the owners (when seventy-five percent (75%) of the units have been sold or expiration of three (3) years, whichever first occurs) shall consist of three (3) members. One shall serve for one year, one for two years and one for three years. Thereafter each member's term shall be for three (3) years. Any vacancy occurring prior to an election shall be filled by the remaining committee members.

Declarant shall act as the Management Committee until the first Management Committee has been selected by Declarant as set out above.

Thereafter, the Management Committee members shall be elected as set out hereinafter.

Subject to the provisions of the next preceding paragraphs, the election of members of the Management Committee shall be conducted at the annual Association meeting. The number elected shall depend upon the number of vacancies. A nominating committee of three (3) members shall be appointed by the present Management Committee not less than thirty (30) days prior to the annual members' meeting. The Committee shall nominate one person for each vacancy on the Management Committee, then serving. Additional nomination for vacancy may be made from the floor. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each person voting being entitled to cast his vote for as many nominees as there are vacancies to be filled.

Voting for management Committee shall be non-cumulative. The term of each member's service shall be for a period of three (3) years (subject to the provisions herein relating to the first Management Committee) and each member shall serve until his successor is elected, or until his death, resignation or removal; provided that if any member ceases to be an Owner, his membership on the Management Committee shall thereupon terminate.

Vacancies, Resignation and Removal.

(a) Except as to vacancies provided by the removal of members by Owners, and subject to the provisions for removal by Declarant, vacancies in the Management Committee occurring between annual meetings of the Association shall be filled by the remaining members.

(b) Any member may resign by giving written notice to the Management Committee.

(c) Any member may be removed by the Owners by concurrence of two-thirds of the voting power present at a special meeting of the Association called for that purpose. The vacancy in the Management Committee so created shall be filled by the owners at the same meeting.

A Quorum at Management Committee meetings shall consist of two (2) members. The acts approved by a majority of those present at a meeting at which a quorum is present shall be the acts of the management Committee except where approval of a greater number of members is required by this declaration.

Meetings of the Management Committee may be called, held and conducted in accordance with such regulations as the Management Committee may adopt.

Compensation. Management Committee members shall serve without compensation. Each Member of the Management Committee shall be reimbursed for all out-of-pocket expenses.

A Chairman shall be elected by the management Committee, which chairman shall preside over the Committee.

Waiver of Notice. Before any meeting of the Management Committee, any member thereof may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance of a member of the Management Committee at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

Adjournments. The Management Committee may adjourn any meeting from day to day or for such other time as may be prudent or necessary, providing that no meeting may be adjourned for longer than thirty (30) days.

VII. OFFICERS. The executive officers of the association shall be a President, who shall be a member of the Committee, a Vice President, who shall be a member of the Committee, a Secretary and a Treasurer, and all of whom shall be elected by and from the Management Committee. A person may hold two or more offices except that the President shall not also be the Secretary.

(a) The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of President of an Association, including but not limited to, the power to appoint committees from among the members from time to time, as he may in his discretion determine appropriate, to assist in the conduct of the affairs of the Association.



(b) The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the management Committee.

(c) The Secretary shall keep the minutes of all proceedings of the Management Committee. He shall attend to the giving and serving of all notices to the members and other notices required by law. He shall keep the records of the Association, except those of the Treasurer, and shall perform all other duties incident to the office of Secretary of the Association as may be required by the Directors or the President.

(d) The Treasurer shall have custody of all property of the Association, including funds, securities and evidences of indebtedness. He shall keep the books of the Association in accordance with good accounting practices, and shall perform all other duties incident to the office of Treasurer.

VIII. ACCOUNTING. The funds and expenditures of the Association shall be credited and charged to accounts of the Management Committee, which shall be established by the Committee, and kept under the direction of the Treasurer, and in accordance with a reasonable and acceptable standard of accounting procedures.

IX. REVIEW OF ACCOUNTS. At the conclusion of each accounting year, books and records of the Management Committee shall be reviewed by an individual or firm, approved by a majority of the Management Committee.

X. BOOKS. The books and records of the Management Committee shall be available at the principal office of the Management Committee, and any owner shall have the right to inspect said records and books at reasonable hours, and by providing the management Committee with reasonable notice.

XI. OPERATION AND MAINTENANCE OF CONDOMINIUM PROJECT. The Management Committee shall be responsible for the maintenance, control, operation and management of this condominium project in accordance with the provisions of the Utah Condominium Ownership Act, the Declaration under which the condominium project was established and submitted to the provisions of said act, these By-Laws and such other rules and

regulations as the Association of unit owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Owners.

XII. POWERS AND RESPONSIBILITIES OF THE MANAGEMENT

COMMITTEE. The Management Committee shall have all power and duties of the Association existing under the Condominium Act, the Declaration, the By-Laws and Articles of Incorporation which are necessary for the administration of the affairs of the Association and may do all such acts and things except as by law or by this declaration may not be delegated to or performed by the Management Committee. Said powers and duties shall be exercised exclusively by the management Committee, its agents, contractors or employees, subject only to approval by Owners when such is specifically required. Such powers and responsibilities shall include, but not be limited to the following, subject to the provisions of this Declaration:

(a) To make and collect assessments against the Owners and use the proceeds in the exercise of its powers and duties.

(b) Budget. To adopt an annual budget, determine the amount of common expenses payable by Owners and allocate and assess the charges against the Owners pursuant to the percentages set forth in the Declaration.

If said Budget proves inadequate for any reason, including nonpayment of any Owner's assessment, the Management Committee may at any time levy a further assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein.

Each Owner shall be obligated to pay assessments made pursuant to this paragraph and the declarations to the Management Committee as set forth in the Declarations under the paragraph termed "Assessments" or in such other reasonable manner as the Management Committee shall designate.

(c) Assessments against Owners pursuant to the annual budget shall be made for the calendar year annually on or before the second Monday in December preceding the year for which the assessments are made.

(d) Audits of books and records shall be made as provided in these By-Laws.

(e) All maintenance, repair, replacement, structural alterations, reconstruction and the operation of the Common Areas and facilities, whether located inside or outside of the units shall be paid as a common expense (unless necessitated by the negligence, misuse or neglect of an owner in which case such expense shall be charged to such Owner.)

Maintenance and repair of any unit should be accomplished as expeditiously as possible, if such maintenance or repair is reasonably necessary in the discretion of the Management Committee or its authorized representative to protect the property or preserve the appearance and value of the project.

However, the Management Committee shall have no authority to acquire and pay for out of the common expense fund, any capital additions and improvements having a cost in excess of \$1,000.00 except as expressly provided herein.

The acquiring of all materials, supplies, personal property, labor, services, insurance, bonds, taxes or assessments which the Management Committee is required to secure or pay for pursuant to the terms of this Declaration or By-Laws or which in its opinion shall be necessary or proper for the operation of the Common Areas and Facilities or for the enforcement of this declaration, provided that if any such are provided for a particular unit and not for the Common Areas and Facilities, the cost thereof shall be specially assessed to the Owners of such unit.

(f) To make reasonable rules and regulations respecting the use, operation and maintenance of the property.

(g) To enforce by legal means the act, Declaration, By-Laws and the reasonable rules and regulations covering the use, operation and maintenance of the Property.

XIV. LIMITATION OF MANAGEMENT COMMITTEE'S LIABILITY: INDEMNIFICATION. The Management Committee shall not be liable for any failure of the water supply or other service to be obtained and paid for by the management Committee, hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person on the property, or resulting from electricity, water, rain, dust, sand or mud which may leak or flow from outside or from any parts of the buildings, or from any of its pipes,

drains, conduits, appliances or equipment, or from any other place unless caused by gross negligence of the Management Committee.

No diminution or abatement of common expense or assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Areas and Facilities or from any action taken to comply with any law, ordinance or orders of a governmental authority.

Each member of the Management Committee shall be indemnified by the Owners against all expenses and liabilities including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Management Committee, or any settlement thereof, whether or not he is a member of the management Committee at the time such expenses are incurred, except in such cases wherein the members of the Management Committee is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Management Committee approves such settlement and reimbursement as being for the best interest of the Management Committee.

XV: OWNER OBLIGATIONS AND DEFAULTS. Each Owner shall be obligated for annual and special assessments levied by the Management Committee for the common expenses, payable in such reasonable manner as outlined in the Declaration of Condominium in the paragraph term "Assessments."

If an annual assessment is not made as required, an assessment shall be presumed to have been made in the amount of the last prior annual assessment.

(a) Separate Defaults. Each monthly or other periodic installment of any assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed at the time the assessment is made and shall be collectible as such together with any reasonable late charges which have been provided for by the Management Committee and reasonable attorney's fees.

(b) Lien for Nonpayment. The amount of any assessment, whether regular or special, assessed to an Owner plus interest at the highest legal rate and costs, including

reasonable attorney's fees, shall become a lien upon such condominium upon recordation of a notice of assessment as provided in §57-8-20 of the *Act*.

XVI. PROHIBITION AGAINST STRUCTURAL CHANGES BY OWNER.

The Owner shall not, without first obtaining written consent of the Management Committee, or its duly authorized representative, make or permit to be made any structural alteration, improvement or addition in or to his unit or the Limited Common Areas, Common Areas and Facilities. The Owner shall do no act nor any work that will impair the structural soundness or integrity of the buildings or safety of the property or impair any easement or hereditament without the written consent of all owners. The Owner shall not paint or decorate any portion of the exterior of the buildings or other Common Areas and Facilities.

XVII. LIMITATION ON USE OF UNITS AND COMMON AREAS. Nothing shall be done or kept in any unit or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Management Committee. No Owner shall permit anything to be done or kept in his unit or in the Common Areas and Facilities which will result in the cancellation of insurance on any unit or any part of the Common Areas and Facilities or which would be in violation of any law. No waste will be committed in the Common Areas and Facilities.

XVIII. RIGHTS OF ACCESS. The Management Committee and its agents shall have right of access to any unit for the purpose of making inspections or performing maintenance or other work pertinent to lawful duties of the Management Committee or for the purpose of correcting any conditions originating in a unit and threatening another unit or the Common Areas and Facilities, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergency, such right or entry shall be immediate, whether the owner is present or not.

XIX. NO PARTITION. There shall be no judicial partition of the project or any part thereof, nor shall Declarant or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Section 57-8-31 of the Act in the case of damage or destruction, or unless the property has been removed from the provisions of the Act as provided in Section 57-8-22 thereof; provided, however, that if

any condominium shall be owned by two or more co-tenants as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants. But such partition shall not affect any other condominium.

XX. ALTERATIONS, ADDITIONS AND IMPROVEMENTS OF COMMON AREAS AND FACILITIES. There shall be no structural alterations, capital additions to, or capital improvements of the common Areas and Facilities requiring an expenditure in excess of \$4,000.00 without the prior approval of Owners holding fifty-one percent (51%) of the total votes.

XXI. MORTGAGE PROTECTION. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to the paragraph entitled "Lien for Nonpayment" hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

(c) By subordination agreement executed by a majority of the Management Committee, the benefits of the next preceding paragraphs above may be extended to mortgages not otherwise entitled thereto.

XXII. FAILURE OF MANAGEMENT COMMITTEE TO INSIST ON STRICT PERFORMANCE NO WAIVER. The failure of the Management Committee to insist, in any one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, these By-Laws or the rules and regulations, or 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 by the management Committee of any assessment from an Owner, with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

XXIII. ENFORCEMENT. In any action of enforcement pursuant to §57-8-8 of the *Act*, the Plaintiff shall be entitled to recover reasonable attorney's fees.

XXIV. AUDIT. Any Owner may at any time at his own expense cause an audit to be made of the books and records of the Management Committee. The Management Committee, at the expense of the common expenses, shall have the books and records pertaining to the project reviewed annually and furnish copies thereof to the Owners.

XXV. INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

XXVI. AMENDMENT. These By-Laws may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting in which a proposed amendment is considered.

(b) A resolution adopting the proposed amendment may be proposed by either the Management Committee, or by the members of the Association. Members of the Management Committee not present in person or by proxy at the meetings considering the amendments may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, such approval must be by at least sixty-six and two-thirds percent (66 2/3%) of the votes of the entire membership of the Association.

No amendment shall discriminate against any owner or against any unit or class or group of units unless the owner so affected shall consent. No amendment shall change any unit nor the share in the common areas and facilities appurtenant to it, nor increase the owner's share of the common expenses nor change the voting rights of members, unless the record owner of the unit concerned and all record owners of liens thereon shall join in the execution of the amendment.

XXVII. INSURANCE. The Management Committee shall obtain and maintain adequate insurance coverage at all times. Such coverage shall be for the type and kind as provided herein and include insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other properties similar to the property in construction, design and use. The Management Committee shall make every reasonable effort to obtain insurance with the following provisions or endorsements:

- (a) Exclusive authority to adjust losses shall be vested in the Management Committee as insurance trustee.
- (b) The insurance coverage shall not be brought into contribution with insurance purchased by individual unit owners or their respective mortgagees;
- (c) Each unit owner may obtain additional insurance coverage on his real property interest at his own expense;
- (d) The insurer waived its right of subrogation as to any claims against each unit owners;
- (e) The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual unit owners or their respective lessees, employees, agents, contractors and guests;
- (f) The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the association or Management Committee or their employees, agents or contractors, without prior demand in writing that the Management Committee cure the defect and then only if the defect is not cured within thirty (30) days.
- (g) The Management Committee, for the benefit of the property and the unit owners, shall maintain a policy or policies of casualty and multi-risk, "all peril" insurance on



the property, with the provisions and endorsements as set forth in paragraph "f" above, if obtainable, also with extended coverage endorsements, for the full insurable replacement value of the units, common areas and facilities, items of common personal property and fixtures, payable to the Management Committee as insurance trustee to be disbursed in accordance with the terms of the Declaration of Condominium. The limits and coverage of said insurance shall be reviewed at least annually by the Management committee and shall include an appraisal of the property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any, of each unit.

(h) The Management Committee shall obtain a policy or policies of insurance insuring the Management Committee and its employees, including the manager, the unit owners and their respective lessees, servants, agents or guests against any liability to the public or to the owners of units, members of the households of unit owners and their respective invitees or tenants, incident to the ownership and/or use of the property. Limits of liability under such insurance shall not be less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for any one person injured, ONE MILLION DOLLARS (\$1,000,000.00) for all persons injured in any one occurrence. The limits in coverage of said liability policy or policies shall be reviewed at least annually by the Management Committee and increased at its discretion. Said policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insureds against any one or more or group of insureds, without prejudice to the right of a named insured under the policies to maintain an action against another named insured.

(i) Each unit owner shall be required to notify the Management Committee of, and shall be liable for any increased insurance premium for insurance maintained by the Management Committee occasioned by, all improvements made by the unit owner to his unit, the value of which is in excess of TWO THOUSAND DOLLARS (\$2,000.00). Each unit owner shall bear the risk of loss for all improvements made to his unit that were not the subject of notice to the Management Committee.


(j) Any unit owner who obtains individual insurance coverage covering any portion of the property, other than personal property belonging to such unit owner, shall be

required to file a copy of such individual policy or policies with the Management Committee within thirty (30) days after obtaining such insurance coverage.

(k) No unit owners shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Management Committee, on behalf of all unit owners, may realize under any insurance policy that the Management Committee may have in force covering the property or any part thereof at any time.

IN WITNESS WHEREOF, this documents is executed this 16 day of Nov., 2010

**FARMINGTON BAY WAREHOUSE  
COMPLEX, LLC**

  
By: **KENT H. WHITEHEAD**

**STATE OF UTAH** :  
: **SS** :  
**COUNTY OF DAVIS** :

On the 16<sup>th</sup> day of November, 2010, personally appeared before me **KENT H. WHITEHEAD** who being by me duly sworn, did say he is the Manager and Member of **FARMINGTON BAY WAREHOUSE COMPLEX, LLC**, and that said instrument was signed in behalf of said Limited Liability Company by authority of its Operations Agreement and said **KENT H. WHITEHEAD** acknowledged to me that said Limited Liability Company executed the same.

  
NOTARY PUBLIC

C:\Shaffer Law Office\OFFICE\FarmingtonBay.ByLaws.wpd

