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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WYNDOM SQUARE OFFICE CONDOMINIUM**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WYNDOM SQUARE OFFICE CONDOMINIUM is made as of the date hereinafter set forth by Wyndom Square, LLC, a Utah limited liability company ("Declarant").

09-428-0001,
0002, 0003

RECITALS

- A. Declarant is the fee owner of that certain real property situated in Layton City, Davis County, Utah, more particularly described on EXHIBIT "A", attached hereto and hereby incorporated by reference, together with all of the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto (collectively, the "Property");
- B. In connection with the subdivision and development of the Property, Declarant desires to submit the Property originally consisting of two (2) Units, to this Declaration (all collectively referred to herein as the "Project");
- C. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners or Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (hereinafter collectively referred to as the "Restrictions") which shall run with and be a burden upon the Property; and
- D. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any right, title or interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to, this Declaration, which is recorded in furtherance of establishing a general plan of ownership for the Property; and for establishing rules for the use, occupancy, management, and enjoyment thereof all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Project and the quality of life therein.

NOW, THEREFORE, Declarant, as owner of the Property for the purposes above set forth, declares as follows:

ARTICLE 1
DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Allocated Interest" shall mean the undivided right, title and interest (the "Interest") (expressed as a fraction or percentage in this Declaration) in the Common Areas and Facilities, the Common Expense liability, and votes in the Association allocated to each Unit.
- 1.2 "Articles" shall mean the Articles of Incorporation by which the Association is formed under the nonprofit corporation law of the State of Utah.
- 1.3 "Assessments" shall mean the charges against Owners to defray the Common Expenses as well as miscellaneous Special Assessments, Special Assessments for capital improvements, and Special Assessments for the purpose of restoring and reconstructing the Project in the event of casualty, all as provided in this Declaration.

- 1.4 “**Association**” shall refer to WYNDOM SQUARE OFFICE CONDOMINIUM OWNERS ASSOCIATION, whose membership shall include each Owner of a Unit in the Project. The Association will be incorporated as a Utah nonprofit corporation prior to the conveyance of the first Unit in the Project by Declarant.
- 1.5 “**Association Rules**” shall mean and refer to the rules and regulations adopted by the Association pursuant to this Declaration and in furtherance of the Bylaws.
- 1.6 “**Board**” shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association (also sometimes referred to herein as the “**Board of Directors**”).
- 1.7 “**Bylaws**” shall mean the Bylaws adopted by the Association for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.
- 1.8 “**Common Areas and Facilities**” shall mean the entire Project, excluding the Units, and shall include, landscape improvements; project lighting; storm water systems; culinary water systems; streets, drive areas and parking facilities; project signage; project features including a club house, park facilities, a tot-lot, common barbeque facilities, and a fenced dog park area.
- 1.9 “**Common Expenses**” shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Areas and Facilities which are maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees of the Association and of Declarant for work done on the Property or for the benefit of the Association or the Owners of the Units; (d) utilities (other than separately metered utilities for the Units), trash pickup and disposal, extermination, security, planting (of gardens, flowers, trees and shrubs), gardening and other related services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Board in its discretion; (f) the establishment of reasonable reserves as the Board shall deem appropriate in its discretion for the periodic maintenance, repair, and replacement of the Common Areas and Facilities, which shall in no event be less than two (2) months of the estimated Assessments for each Unit; and (g) other miscellaneous charges incurred by the Association or the Board pursuant to this Declaration, the Bylaws or Association Rules in furtherance of the purposes of the Association or in discharge of the duties and powers of the Association.
- 1.10 “**Declarant**” shall mean Wyndom Square, LLC, a Utah limited liability company, and the successors and assigns of Declarant's rights hereunder.
- 1.11 “**Declaration**” shall mean this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WYNDOM SQUARE OFFICE CONDOMINIUM including all exhibits attached hereto, which are hereby incorporated by reference, and any and all amendments hereto and supplements hereto.
- 1.12 “**Lender**” shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.13 “**Limited Common Area and Facility**” means a portion of the Common Areas and Facilities specifically designated as a Limited Common Area and Facility in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more but fewer than all of the Units.

- 1.14 “**Occupant**” shall mean a Person or Persons, other than an Owner, in possession of, or using a Unit, including, without limitation, family members, tenants, guests, or invitees.
- 1.15 “**Owner**” shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Davis County, Utah; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. Declarant shall be considered the record Owner of any Unit prior to its initial conveyance by Declarant.
- 1.16 “**Person**” shall mean a natural individual, corporation, estate, partnership, trustees, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.17 “**Plat**” means the record of survey map of the Property submitted with respect to this Project and showing thereon two (2) Units, each of which units is identified by a Unit Number. A copy of the Plat is included as EXHIBIT “B”, attached hereto and hereby incorporated by reference. The original Plat is recorded in Book _____, beginning at Page _____, in the records of the County Recorder of Davis, Utah. “Plat” shall also refer to any additional plat that may be recorded with any Supplemental Declaration.
- 1.18 “**Property**” shall have the meaning given in Recital Paragraph A above.
- 1.19 “**Restrictions**” shall mean Wyndom Square Office Condominium, conditions, assessments, easements, liens and restrictions set forth in this Declaration.
- 1.20 “**Supplemental Declarant Rights**” shall mean the rights, titles and interests granted to Declarant in this Declaration to do, in Declarant's sole discretion, any of the following:
- (a) Construct any improvements provided for in this Declaration;
 - (b) Maintain sales offices, models, and signs advertising the Project;
 - (c) Use and/or record easements upon the Common Areas and Facilities for the purpose of making improvements or marketing units within the Property;
 - (d) Appoint or remove any Officer or Board Member of the Association;
 - (e) Designate certain Limited Common Areas and Facilities (including, without limitation, parking and storage units) for use by designated Unit owners until changed or modified by a supermajority vote of the Owners as set forth in this Declaration;
 - (f) Add additional land and Units to expand the Project as permitted under this Declaration;
- 1.21 “**Supplemental Declaration**” shall mean a written instrument recorded in the records of the County Recorder of Davis County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.
- 1.22 “**Unit**” shall mean the two (2) Units in the Project and shall be used exclusively for commercial and retail purposes in conformity with all laws and ordinances.

- 1.23 “Unit Number” shall mean the number, symbol, or address that identifies one Unit in the Project.

ARTICLE 2
CREATION OF THE PROJECT

- 2.1 Submission. Declarant hereby submits and subjects the Property to the Condominium Ownership Act, codified at Sections 57-8-1 through 57-8-60, Utah Code Annotated (the “Act”), and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and Declarant hereby declares and agrees that the Project and all of the Units shall be held, conveyed, transferred, sold, leased, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of Declarant, the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.
- 2.2 Name and Location. The Project shall be named and known as WYNDOM SQUARE OFFICE CONDOMINIUM. The Project is located in Davis County, Utah, and the legal description of the real estate included in the Project is the Property set forth on EXHIBIT “A”. The name of the Association is WYNDOM SQUARE OFFICE CONDOMINIUM OWNERS ASSOCIATION.
- 2.3 Interpretation of Declaration and Applicability of the Act. Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) Declarant has included specific provisions in this Declaration which legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration which are contrary to the Act shall govern the Project.
- 2.4 Existing Covenants, Conditions and Restrictions. The Property is part of the Wyndom Square Shopping Center in Layton Utah (the “Shopping Center”). The Property is subject to and this Declaration is subordinate to any covenants, conditions, easements and/or restrictions recorded on the Shopping Center, including the Property (“Shopping Center Declaration”). In the event of any inconsistency between this Declaration and the Shopping Center Declaration, the Shopping Center Declaration shall control.

ARTICLE 3
DESCRIPTION OF THE UNITS, COMMON AREAS AND FACILITIES

- 3.1 Description of the Boundaries of Each Unit and Unit Number. The square footage and Unit Number of each of the Units within the Project are set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but undecorated ceiling and the top of the finished but undecorated floor of the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interiors of the finished but undecorated walls located on the perimeter lines of the respective Units as shown on the Plat. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished surfaces are part of the Unit, and all other and structural portions of the walls, floors, columns, or ceilings are part of the Common Areas and Facilities. If any pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, or sewer lines, or any other similar fixtures lie partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit shall be deemed to be a Limited Common Area and Facility allocated solely to that Unit and any portion serving more than one Unit or any portion of the Common Area and Facilities is part of the Common Areas and Facilities. Subject to the preceding sentence, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such

boundaries shall be part of the Unit. Conveyance of a Unit includes the use of the Limited Common Areas and Facilities appurtenant to said Unit.

- 3.2 Parking. No Owner shall be denied use of a parking space so long as such parking is in accordance with the Shopping Center Declaration.
- 3.3 Description of Limited Common Areas and Facilities for Patios, Balconies and Entryways. The patio, balcony (or balconies), exterior screens and shutters and entryway, if any, which are adjacent to each respective Unit as set forth and depicted on the Plat shall be exclusive Limited Common Areas and Facilities for the Unit. These Limited Common Areas and Facilities shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
- 3.4 Description of Common Areas and Facilities. The Common Areas and Facilities shall consist of the entire Project, excluding the Units and any Limited Common Areas and Facilities appurtenant thereto.
- 3.5 United Interest of Each Unit In the Common Areas and Facilities. The designation of the Allocated Interest which each Unit has in the Common Areas and Facilities is a fractional interest where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Project.
- 3.6 Allocated Interest of Each Unit In the Votes of the Association. The designation of the Allocated Interest that each Unit has in the votes of the Association is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Project.
- 3.7 Allocated Interest of Each Unit in the Common Expenses of Project. The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Project is a fraction where the numerator is the square footage of the Unit and the denominator is the sum of the square footage of all the Units in the Project.
- 3.8 Plat. The Plat is hereby incorporated into, and made an integral part of, this Declaration and all requirements and specifications set forth on the Plat are deemed included in this Declaration.
- 3.9 Property, Parking and Access Rights Reserved to the Declarant. Declarant reserves to itself, its successors and assigns, and grants a temporary, non-exclusive license to itself, its successors, assigns, licensees, the Association, the Owners, its tenants and other permissive users for ingress to, use of and egress from the parking stalls on the Property.

ARTICLE 4 **MAINTENANCE AND UTILITIES**

- 4.1 Maintenance of Units and Exclusive Limited Common Areas and Facilities. An Owner may make non-structural alterations within his Unit, but no Owner shall make any structural or exterior alterations of the Common Areas and Facilities or the Limited Common Areas and Facilities without the prior written approval of the Board. Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs, and replacements within his own Unit and within any Limited Common Area appurtenant to the Owner's Unit. Such obligation shall include, without limitation:

- (a) the maintenance of all interior and exterior doors, including thresholds and door jams, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting the finished surfaces of floors, ceilings, or interior walls (all other portions of the walls, floors, or ceilings are part of the Common Areas and Facilities);
- (b) repair and replacement of all windows, skylights, and door glass or equivalent materials and the interior and exterior cleaning of such windows and door glass within the Owner's Unit and within any Limited Common Area appurtenant to the Owner's Unit;
- (c) the maintenance of, in an open and unobstructed condition, all sewer and drainage pipes, water and other utility lines serving an Owner's respective Unit between the points at which the same enter the respective Unit and the points where the same join the utility lines serving other Units;
- (d) maintenance, replacement, repair and restoration of all of the following which service an Owner's Unit exclusively: lighting fixtures (except exterior building mounted lights and walkway lights which are not located within patios and balconies), fans, plumbing fixtures, stoves, refrigerators, washers, dryers, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install; and
- (e) the maintenance of the Unit and all exclusive Limited Common Areas and Facilities, such as patios and balconies (including all materials above or upon the support structure, and railings and posts), exterior screens, skylights, shutters, and chimney flues, that are within his exclusive control in a clean and sanitary condition, free of pests and rodents, and in good order and repair, except that the sweeping and maintenance of any parking spaces and driveways that are designated as Limited Common Areas and Facilities hereunder, shall be the responsibility of the Association.

4.2 Maintenance of Common Areas and Facilities and Non-exclusive Limited Common Areas and Facilities. The Association, or its fully delegated representative, shall:

- (a) Maintain, repair, keep clean, remove snow from and otherwise manage in a professional and first class manner the Common Areas and Facilities and non-exclusive Limited Common Area and Facilities, including, but not limited to, the landscaping, parking areas, streets and recreational facilities, if any, located thereon and maintain all parking areas and exterior building mounted lights not within patios and balconies, walkway and landscape area lights (located outside of patios and balconies), the structural support components of patios and roofs and the flashings and other materials on patios and roofs that were installed to exclusively function as a roof;
- (b) Replace injured and diseased trees or other vegetation in any Common Areas and Facilities, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil or for aesthetic purposes;
- (c) Place and maintain upon any Common Areas and Facilities, such signs, markers and lights as the Board may deem appropriate for the proper identification use and regulation thereof, subject to the approval of the Board;
- (d) Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Areas and Facilities as the same become due and payable;

(e) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Areas and Facilities and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall determine, in its sole discretion, the appropriate maintenance of the Common Areas and Facilities. If the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, licensees, lessees or invitees, the cost of such maintenance or repair shall be paid by such Owner, upon demand, to the Association, and the Association may enforce collection of such amounts as provided hereinbelow for the collection of Assessments.

- 4.3 Owner Default in Maintenance. If an Owner fails to so maintain his Unit or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, or if an Owner shall fail to observe any covenant or restriction imposed on such Owner by the terms of the Declaration, then the Board or its authorized representative shall give notice to such Owner stating with particularity the nature of the default and the collective action which the Board determines to be required and requesting that the same be carried out within a period of seven (7) days after the giving of such written notice. If such Owner fails to carry out such action within the period specified by the notice, the Board may cause such action to be taken and may levy a Special Assessment for the cost thereof on such Owner, such Special Assessment to be due and payable within thirty (30) days after the Board gives written notice thereof and to be secured by the Assessment lien created in Section 6.1 of this Declaration.
- 4.4 Utilities. All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.
- 4.5 Declarant's Non-Liability. Declarant shall not be liable for any failure on the part of the Association, Board or any Owner to comply with their maintenance and other obligations described in this Article 4.

ARTICLE 5 MANAGEMENT

- 5.1 Association. The Association will be organized no later than the date the first Unit in the Project is conveyed to an Owner other than Declarant to serve as the governing body for all Owners and shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Areas and Facilities, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Declaration and the Bylaws. The Association shall have all rights and powers granted to it under the Declaration, the Articles and Bylaws, including, without limitation, the right to assign its future income. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the Declaration, the Articles and the Bylaws.
- 5.2 Membership. Membership in the Association shall at all times consist exclusively of the Unit Owners and each Owner shall be a member of the Association so long as he shall be an Owner and such membership shall automatically terminate when he ceases to be an Owner. Upon the transfer

of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association.

- 5.3 Voting. The Association shall have one (1) class of voting membership. Members shall be all Owners (including Declarant). Members shall be entitled to vote based on their Allocated Interest.
- 5.4 Board of Directors. The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board shall consist of not less than one (1) member and not more than three (3) members. The initial Board shall consist of one member, which shall be the Declarant. Except as otherwise provided in this Declaration, the Bylaws, or Association Rules, the Board may act in all instances on behalf of the Association. The Board shall act to adopt Bylaws at the time the Association is organized, and the Board may, as it deems appropriate, adopt, amend and repeal Association Rules. Unless otherwise expressly stated herein, the Board shall act by the majority vote of its members. The Board shall have the right to initiate, prosecute and defend any and all legal actions, litigation and arbitration for and on behalf of the Association except for initiating or making a counterclaim or cross claim in any action, litigation or arbitration claiming any negligence, intentional misconduct or fault on behalf of Declarant and/or Declarant's owners, directors, officers, employees, agents, attorneys, representatives and contractors with respect to the design, materials, renovation and construction of the Project which instead shall require (i) the Board's recommendation to the members of the Association to initiate such action and (ii) the approval of at least fifty-one percent (51%) of the percentage votes at a meeting duly called and held for such purpose.
- 5.5 Qualification of Directors. Except for Board members elected or appointed by Declarant, each Director shall be an Owner or the spouse of an Owner (or if an Owner is a corporation, partnership, limited liability company, or trust, a Director may be an officer, partner, member, manager, trustee or beneficiary of such Owner). If a Director shall cease to meet such qualifications during his term, he will thereupon cease to be a Director and his place shall be filled by a replacement Director appointed by the remaining members of the Board for the remainder of that Director's term.
- 5.6 Action by Owners. Except as specifically provided herein, the Board may not act on behalf of the Association to amend or terminate this Declaration, to elect members of the Board, except in filling vacancies in its membership for the unexpired portion of any term, or to determine the qualifications, powers and duties or terms of the Board of Directors.
- 5.7 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.8 Right of Association to Enter Units. The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or in any Unit to abate any infractions, to make repairs, or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.
- 5.9 Association Rules. The Board may adopt and administer Association Rules in furtherance of the Bylaws for the regulation and operation of the Project.
- 5.10 Availability of Documents. The Association will maintain current copies of this Declaration, the Articles, By-laws, and Association Rules concerning the Project and the Association's own books, records, and financial statements available for inspection, upon request, during normal

business hours by any Owner or Lender (or any insurer or guarantor of a Lender). The inspecting Owner or Lender may pay to have copies made of this Declaration, the Articles, Bylaws and Association Rules although no copies of the Association's books, records and financial statements may be made without the prior written consent of the Board that may be given or withheld in its sole discretion.

- 5.11 Managing Agent. The Board may contract with a professional management agent to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, to impose a Special Assessment and to authorize foreclosure of an Assessment lien.

ARTICLE 6 COVENANT FOR ASSESSMENTS

- 6.1 Creation of Lien and Personal Obligation for Assessment. Each Owner, including Declarant to the extent Declarant is an Owner as defined herein, of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor.
- 6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners, the management, maintenance, care, preservation and protection of the Project, enhancing the quality of life in the Project and the value of the Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas and Facilities, or in furtherance of any other duty or power of the Association.
- 6.3 Regular Assessment. Each Unit Owner is required to pay for its share of Common Area Expenses charged and due under the Shopping Center Declaration. No regular assessments will be charged for the Association other than the foregoing obligation.
- 6.4 Capital Improvement Assessments. The Board may levy in any fiscal year a capital improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or replacement (other than due to destruction) of a described capital improvement upon the Common Areas and Facilities, including the fixtures and personal property related thereto. All amounts collected as capital improvement Assessments may only be used for capital improvements and shall be deposited by the Board in a separate bank account or the Association's account for reserve funds, to be held in trust for such purposes and said funds shall not be commingled with any other funds (other than reserve funds) of the Association.
- 6.5 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than Special Assessments) shall be an amount based on the Allocated Interest for each Unit.

- 6.6 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of regular and Special Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of his liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.
- 6.7 Certificate of Payment. The Association shall, within twenty (20) business days after written demand, furnish to any Owner liable for Assessments a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 6.8 Special Assessments. Special Assessments shall be levied by the Board against a Unit and its Owner to reimburse the Association for:
- (a) costs incurred in bringing an Owner and his Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or Association Rules;
 - (b) costs associated with the maintenance, repair or replacement of a Limited Common Area and Facility assigned to such Unit;
 - (c) any other charge designated as a Special Assessment in this Declaration, the Articles, the Bylaws or Association Rules; and
 - (d) attorneys' fees, interest and other charges relating thereto as provided in this Declaration.

In the event the Association undertakes to provide materials or services which benefit individual Units and which can be accepted or not by Individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

- 6.9 Date of Commencement of Assessments. Regular and other Assessments as to Units within the Project for which construction has been substantially completed (as defined in the Board's sole discretion) shall commence as to all such substantially completed Units on the first day of the month following the conveyance of the first Unit by Declarant to an Owner. Thereafter, regular and other Assessments shall commence as to newly completed Units on the first day of the month following the substantial completion of construction for each respective building. Until the Association makes an Assessment, Declarant shall pay all Common Expenses of the Association. No Assessments shall be payable on Units for which construction has not been substantially completed, provided, however, that Declarant shall be obligated to pay to the Association any deficiencies in monies available to pay Common Expenses due to Declarant not having paid an Assessment on uncompleted Units and which are necessary for the Association to be able to pay all Common Expenses in a timely manner. Notwithstanding the above, all Units, including

uncompleted Units, shall be allocated full Assessments no later than ninety (90) days after the first Unit is conveyed from Declarant to an Owner.

- 6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its sole discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim by an Owner or other person that the Association is not properly exercising its duties and powers as provided in this Declaration.

ARTICLE 7
EFFECT OF NON-PAYMENT OF ASSESSMENTS AND REMEDIES

- 7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment that is not paid within ten (10) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Board may at its option invoke any or all of the sanctions provided for herein.
- 7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay the collection charge then provided for in the Bylaws. The amount of such collection charge until paid shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.
- 7.3 Interest. If any Assessment is delinquent, interest at the rate set forth in the Bylaws at the time may be assessed on the amount owing from the date due until such time as it is paid.
- 7.4 Private Action. If any Assessment or other fee required hereunder to be paid by Owner to the Association is delinquent, the Association may (i) temporarily suspend or shut-off the utilities that service the delinquent Owner's Unit until such time as the delinquent Assessment is paid in full (together with any fees, charges, legal fees and costs of enforcement) and (ii) collect rent directly from any tenant of a delinquent Owner which rent shall be applied first to the payment of all late fees, charges, legal fees and costs of collection and then to the delinquent Assessment.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or foreclose the Assessment lien; provided, however, that the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any and all other remedies. The costs of preparing and filing the complaint shall be assessed against the delinquent Owner and his Unit and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and/or collection charges, if appropriate) in the event that a judgment is obtained by the Association. Each Owner vests in the Association or its assigns the right and power to bring actions at law, equity and/or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.6 Foreclosure Sale. Any foreclosure provided for in this Declaration is to be conducted in compliance with applicable provisions relating to the foreclosure of realty mortgages in the

State of Utah. The Association, upon approval by a majority of the Allocated interests in the votes of the Association, may through its duly authorized agents have and exercise the power to bid on the Unit at the foreclosure sale and to acquire, hold, lease, mortgage and convey such Unit.

- 7.7 Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

ARTICLE 8 EASEMENTS

- 8.1 General Easements to Common Areas and Facilities and Units. Subject to this Declaration and the Association Rules, non-exclusive reciprocal easements are hereby reserved and created for the purpose of support, ingress and egress to each Unit, access, use and enjoyment in favor of each Owner, upon, across, over, under and through the Common Areas and Facilities (exclusive of the Limited Common Areas and Facilities), including the use of all pipes, wires, ducts, cables, conduits, and public utility lines, which easements shall be appurtenant to each Unit. The Association, acting through the Board or its authorized agent, and public utility companies providing service to the Project, shall have non-exclusive easements with the right of access to each Unit to make inspections, to remove violations, to maintain, repair, replace or effectuate the restoration of the Common Areas and Facilities accessible from such Unit; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Board or its authorized agent, shall have the non-exclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Areas and Facilities for purposes necessary for the proper operation of the Project including, without limitation, the construction, maintenance, repair and renovation of the Common Areas and facilities, the Limited Common Areas and Facilities and the units. The Association and the Board shall exercise such rights in a reasonable manner and may, but shall not be required to, give notice before exercising such rights and commencing any work related thereto (although in no event shall any notice be required for access in an emergency situation). Each Owner shall fully cooperate with the Association and the Board in their exercise of these rights and performance in connection with the same.
- 8.2 Public Utilities. Easements and rights over the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Project are hereby reserved by Declarant and to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights shall not unreasonably interfere with the use of the Common Areas and Facilities and the Units by the Owners or Occupants. Declarant or the Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and right-of-way in, on, over or under the Common Areas and Facilities for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facility, and each Owner in accepting the deed in a Unit expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Units in the Project) as attorney in fact of such Owner to execute any and all instruments conveying or creating such easements or right-of-way. However, no such easement can be

granted if it would permanently interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

- 8.3 Easements for Encroachments. If any portion of the Common Areas and Facilities now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or the Common Areas and Facilities, or if any such encroachment shall occur hereafter as a result of the manner in which the buildings have been constructed or due to settling, shifting, alteration, replacement, repair, or restoration by Declarant or the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.
- 8.4 Development Easements for Declarant. Until all Units have been sold by Declarant, there are hereby reserved to Declarant, together with the right to grant and transfer the same to others, including Declarant's sales agents, representatives and assigns, easements and rights upon, across, over, under and through the Project for construction, display (including the use of the Units as models), maintenance, sales and exhibit purposes (including the use of signs and other advertising devices) in connection with the erection, remodeling and sale or lease of Units within the Project and any surrounding properties that may be located near the Property and developed now or in the future by Declarant, its successors and assigns; provided, however, that no such use by Declarant or its agents shall otherwise block or restrict Owners or Occupants in the reasonable access to their Units.

ARTICLE 9
USE RESTRICTIONS

- 9.1 Shopping Center Declaration. All Owners are subject to the use restrictions and other limitations set forth in the Shopping Center Declaration.
- 9.2 Nuisance. No noxious or offensive activity, including, without limitation, loud parties or loud noise, shall be carried on or in the Project, nor shall any activity which might be or become an annoyance or nuisance to Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. Nothing in this Section or in any other Section of this Declaration shall be deemed to prevent Declarant or its agents from engaging in any and all forms of construction and sales activities until all Units have been sold by Declarant and, to the extent necessary, Declarant's or its successors' and agents' work to develop, renovate, lease and sell the surrounding properties located near the Project. In addition, notwithstanding anything else contained herein, Declarant, its successors and assigns shall be permitted to place and replace any signage, flags and markers that it deems appropriate in its sole discretion for any rental and/or leasing activity Declarant conducts on the Property.
- 9.3 Leases.
- 9.13.1 The Association may regulate, limit, or prohibit rentals of Units.
- 9.13.2 The Association may require the rental of any Unit to be conducted through the Association or a designated management company, and may require that all lease agreements be reviewed and approved by the Association or the management company, that any residential tenants be screened and approved by the Association or the

management company prior to renting the Unit. The approval of the Association or management company may not be unreasonably withheld.

9.13.3 Prior to renting any Unit, the Owner and the tenant shall execute a written lease agreement which shall include the following provisions:

(a) The tenant shall agree to comply with all of the terms and conditions of this Declaration, the Bylaws and the Association Rules (current copies of which Owner shall provide to tenant and tenant shall acknowledge as having received and reviewed);

(b) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the Unit or the Project; and,

(c) The Owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with this Declaration, the Bylaws and the Association Rules and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Association shall be entitled to exercise all of the owner's rights and remedies under the lease agreement to do so.

9.13.4 Prior to the tenant's occupancy of a Unit, the Owner must provide to the Association the name, address and telephone number of the tenant and a copy of the written lease agreement.

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

9.13.6 In addition to and without varying any of the foregoing provisions, every lease shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and the Association Rules. Said lease shall further provide that any failure by the Occupant thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the Owner and Occupant by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his or her Unit for transient or hotel purposes, which shall be defined as rental for any period of less than thirty (30) days. No Owner may lease less than his or her entire Unit. Failure by an Owner to take legal action, including the institution of a forcible entry and detainer proceeding against his or her Occupant who is in violation of this Declaration, the Bylaws or the Association Rules within ten (10) days after receipt of written demand to do so from the Board, shall entitle the Association, through the Board, to take any and all such action it deems necessary including the institution of proceedings in forcible entry and detainer on behalf of such Owner against his or her Occupant. Neither the Association, the management company nor any agent retained by the Association to manage the Project shall be liable to the Owner or Occupant for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorneys' fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefore shall entitle the Board to levy a Special Assessment against such

Owner and his or her Unit for all such expenses incurred by the Association. In the event such Special Assessment is not paid within thirty (30) days of its due date, the Board may resort to all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

- 9.14 Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Unit shall sell or lease less than all of the Unit. An owner of two (2) or more adjacent Units may, however, combine those units to make a single Unit and then separate the single Unit into the original Units for purposes of selling one or more of the Units; provided however, that no such combination or subsequent separation shall be allowed until the Board has approved such combination or separation. No subdivision plat or further covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing Wyndom Square Office Condominiums, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions, and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of any plat or covenant, condition, or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenant, conditions, or restriction.
- 9.15 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration but not of limitation the following are considered exterior changes; painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work which in any way alters the exterior appearance of the Property. The Board, or committee established by the Board for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board, or any committee established by the Board for that purpose. By way of illustration but not of limitation the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.
- 9.16 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.
- 9.17 Association Rules. The Association shall have the power to make and adopt, amend and replace reasonable Association Rules with respect to activities that may be conducted on any part of the Project. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate such Association Rules shall be conclusive unless, at a regular or special meeting of the Association, Owners representing a majority of the Allocated Interests in the votes of the Association vote to the contrary.

- 9.18 VariANCES. The Board, at its option and in the face of proven, extenuating circumstances, may in its sole discretion grant variances from the Restrictions set forth in Article 9 of this Declaration if the Board determines in its sole discretion (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents and users of the Project.

ARTICLE 10
INSURANCE

- 10.1 Authority to Purchase. Commencing not later than the date a Unit is conveyed to a Person other than Declarant, the Association shall have the authority to and shall obtain and maintain, to the extent reasonably available, the insurance specified in this Article.
- 10.2 Hazard Insurance. To the extent available, the Board shall obtain a master or blanket policy of property insurance on the entire Project including the Units and the Common Areas and Facilities (excluding land and personal property) insuring the Project against loss or damage by fire, and other hazards covered by the standard extended coverage endorsement, and against loss or damage by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage not resulting from poor design or workmanship or lack of routine maintenance. Such master policy of property insurance shall be in a total amount of insurance equal to the greater of (i) 80% of the actual cash value of the insured property at the time insurance is purchased and at each renewal date or (ii) 100% of the current replacement cost, exclusive of land, excavation, foundations and other items normally excluded from such property policies. Such master policy of property insurance shall contain an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement, together with such endorsements as the Association deems appropriate to protect the Association and the Owners.
- 10.3 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, the Declarant, the agents and employees of the Association and the Declarant, the Owners and Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the use, ownership, or maintenance of the Common Areas and Facilities or membership in the Association. The limits of such Insurance shall not be less than \$2,000,000.00 (and may in subsequent years be increased by the Association to account for inflation and rising liability costs) covering all claims for death of or injury to any one person and/or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage that would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such Insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles, and liability for the property of others. Such Insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Board shall adjust the amount of the insurance carried under this Section from time to time.
- 10.4 Workmen's Compensation Insurance. The Board shall purchase and maintain in effect workman's compensation insurance for all employees of the Association to the extent that such insurance is required by law.

- 10.5 Fidelity Insurance. The Board shall obtain fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee” or similar expression.
- 10.6 Premiums. Premiums upon insurance policies purchased by the Board on behalf of the Association shall be paid by the Association as part of the Common Expenses.
- 10.7 Policy Provisions.
- 10.7.1 Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.
- 10.7.2 The named insured under any policy of insurance shall be the Association, as trustee for the owners, or its authorized representative, including any trustee with which the Association may enter into any Insurance Trust Agreement, or any successor trustee each of which shall be referred to as the “Insurance Trustee” who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of his or her interest in the Common Areas and Facilities or membership in the Association. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Article, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 10.7.3 Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with Insurance purchased by the Owners.
- 10.7.4 Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.
- 10.7.5 Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the Insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any owner to whom a certificate has been Issued.
- 10.7.6 All policies must contain a waiver of subrogation by the insurer as to any and all claims against Declarant, the Association, Owners, Occupants and their respective agents and

employees, and any defenses based on co-insurance or on invalidity arising from acts of the insured.

- 10.8 Supplemental Insurance. The Board may obtain such other policies of insurance in the name of the Association as the Board deems appropriate to protect the Association and Owners. The Board shall obtain director's and officer's liability insurance for officers and directors of the Association in accordance with the Articles. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.
- 10.9 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Article and stating whether, in the opinion of such broker or consultant, the Insurance complies with the requirements of this Article. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar Projects. The Board shall be fully protected in relying on the written report furnished pursuant to this Section provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.
- 10.10 Insurance Obtained by Owners. Notwithstanding the above an Owner or Occupant shall be permitted to insure his own Unit for his own benefit.

ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

- 11.1 Reconstruction by the Board. In the event of partial or total destruction of a building or buildings or any portion of the Common Areas and Facilities within the Project, the Board shall promptly take the following action:
- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds;
- (b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Project.
- (c) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and/or a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Project setting forth such findings and informing said Owners and Lenders that the Board intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as

indicated in such notice, the Board shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(d) If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid which it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an Insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.

(e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, Assessments may abate against the Owner thereof until the Board determines that habitability has been restored. However, if the management, maintenance and operation of the Project necessitates otherwise, it may elect to disallow such abatement.

- 11.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after same has been determined the Board shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners by a vote at such meeting or by the written consent of not less than fifty-one percent (51%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area and Facility which will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- 11.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Project, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes, or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Project, all Insurance proceeds, together with such amounts from available reserves or Special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to a bank or savings and loan association located in Davis County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or the successor to either agency, as designated by the Board, as trustee (hereinafter called the "Insurance Trustee") for all Owners and Lenders. Such proceeds shall be received, held and

- administered by the Insurance Trustee subject to the provisions of an insurance trust agreement which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two members of the Board and upon the terms and conditions provided in this Section. As soon as practicable after notification of the receipt of Insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Areas and Facilities according to the original plan and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes, or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors of a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Davis County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.
- 11.5 Determination Not to Reconstruct Without Termination. If Owners of not less than fifty-one percent (51%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area and Facility which will not be rebuilt after a casualty) vote not to rebuild and the entire Project is not repaired or replaced, and the Project is not terminated, the insurance proceeds shall be distributed and the Allocated Interests are automatically reallocated. In such event the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 11.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Areas and Facilities, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area and Facilities. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner or that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 11.8 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering his Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 12
EMINENT DOMAIN

- 12.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant which may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration. Any remnant of a Unit remaining after part of a Unit is taken becomes a Common Area and Facility.
- 12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of his Unit and Allocated Interest in the Common Areas and Facilities, regardless of whether any Common Areas and Facilities are taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Areas and Facilities shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 12.3 Taking of a Limited Common Area and Facility. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area and Facility or portion thereof, the portion of the award attributable to the Limited Common Area and Facility so taken shall be divided among the Owners of the Units to which such Limited Common Area and Facility was allocated at the time of the acquisition.
- 12.4 Taking of the Common Areas and Facilities. If the portion of Project taken by eminent domain, or sold under threat thereof, is not comprised of, or include, any Unit or Limited Common Area and Facility, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Project so taken, and the portion of the award not used for restoration shall be divided among the Owners in proportion to their Allocated Interest in the Common Areas and Facilities before the taking.
- 12.5 Taking of Entire Project. In the event the Project in its entirety is taken by eminent domain, or sold under threat thereof, the Project is terminated.
- 12.6 Priority and Power of Attorney. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering his Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Areas and Facilities, or any part thereof. In the event the taking involves all or part of any Unit or the Common Areas and Facilities or Limited Common Areas and Facilities, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their Interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13
RIGHTS OF LENDERS

- 13.1 Notices to Lenders. A Lender shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender, or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Project and setting forth the information described in Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association.
- 13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of said Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 13.3 Relationship with Assessment Liens.
- 13.3.1 The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender which was recorded prior to the date any such Assessment becomes due.
- 13.3.2 If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments which became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
- 13.3.3 Without limiting the provisions of subsection (b) of this Section, any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit which accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Project.
- 13.3.4 Nothing in this Section shall be construed as releasing any Person from his personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

13.4. Required Lender Approval. Except upon the prior written approval of a majority of all Lenders which have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Board shall be entitled by action or inaction to do any of the following:

(a) Abandon or terminate by any act or omission the legal status of the Project, except for abandonment or termination provided by this Declaration in the case of substantial destruction by fire or other casualty or in the case of a taking by eminent domain; or

(b) Except as specifically provided by or in this Declaration, amend any provisions governing the following:

(i) voting rights;

(ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;

(iii) reductions in reserves for maintenance, repair and replacement of Common Areas and Facilities;

(iv) reallocation of interests in the Common Areas and Facilities Limited Common Areas and Facilities;

(v) redefinition of any Unit boundaries;

(vi) convertibility of Units into Common Areas and Facilities or vice versa;

(vii) hazard or fidelity insurance requirements;

(viii) imposition of any restrictions on the leasing of Units;

(ix) imposition of any restrictions on an Owner's right to sell or transfer his or her Unit;

(x) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration, Articles of Incorporation or Bylaws, or

(xi) any provision that expressly benefits Lenders (including their Insurers or guarantors).

Any Lender who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

13.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Association Rules, and other books and records of the Association during normal business hours; and
 - (b) To receive an audited annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year if the Association has previously prepared such audited financial statements.
- 13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:
- (a) Any condemnation or casualty loss which affects a material portion of the Project or any Unit on which there is a first lien held by such Lender;
 - (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of a Lender, which remains uncured for a period of sixty (60) days;
 - (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (d) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 hereof.

ARTICLE 14
LIMITATIONS UPON PARTITION AND SEVERANCE

- 14.1 No Partition. The right to partition the Project is hereby suspended, except that the right to partition shall revive and the Project may be sold as a whole when the conditions for such action set forth in Article 11 dealing with Destruction of Improvements, and Article 12 dealing with Eminent Domain have been met; provided, however, nothing contained in this Section shall be construed as limiting partition by joint Owners, upon the prior written approval of an applicable Lender, of one or more Units as to individual ownership of such Units provided the Project is not terminated.
- 14.2 No Severance. The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities and Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances. Any conveyance made in contravention of this Section, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.
- 14.3 Proceeds of Partition Sale. If an action is brought for the partition of the Project by sale, whether upon the occurrence of an event of destruction and a decision not to reconstruct or the taking of all or a portion of the Project by eminent domain, Owners shall share in the proceeds of such sale in the same proportion as their Allocated Interest in the Common Areas and Facilities (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project to encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The interest of an Owner

in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE 15
AMENDMENTS

- 15.1 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking the same.
- 15.2 Amendments by Declarant After First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing Lenders) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing Lenders) to amend this Declaration, if such amendment is required solely: (i) to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or Lender, or (ii) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments. If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Lenders.
- 15.3 General Amendment Requirements. Except as permitted by Section 15.1, Section 15.2, this Declaration may be amended only by vote or agreement of Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated.
- 15.4 Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired Development Right, Special Declarant Right, or period of Declarant control unless the Declarant approves or consents to the same in writing.
- 15.5 Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Davis County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Davis County, Utah.
- 15.6 Lender Approval. Subject to the foregoing, any provision of this Declaration which expressly requires the approval of a specified percentage of the Lenders for action to be taken under said provision can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

ARTICLE 16
GENERAL PROVISIONS

- 16.1 Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association, Declarant, or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and Association Rules and any respective amendments thereto.
- 16.2 No Waiver. Failure by the Association, Declarant, or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or Association Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 16.3 Cumulative Remedies. In addition to the rights, powers and remedies expressly granted under this Declaration, the Association shall have the right to seek its monetary damages and equitable remedies (including, without limitation, specific performance) in the event of any Owner's default of its obligations or responsibilities arising as the Owner of a Unit. All rights, options and remedies of Declarant, the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and Declarant, the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief which may be provided by law, whether or not stated in this Declaration.
- 16.4 Severability. In case any one or more of the provisions set forth in this Declaration or in the Bylaws or Association Rules shall, for any reason, be held by judgment or court order to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of this Declaration, the Bylaws or the Association Rules, as applicable, which shall remain in full force and effect (to the maximum extent permitted by applicable law), and such affected provision shall be construed, narrowed or eliminated only to the extent necessary to remove any such invalidity, illegality or unenforceability with respect to the applicable law as it shall then be applied.
- 16.5 Covenants to Run with the Land: Term. The Restrictions and other provisions of this Declaration shall run with and bind the Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the Restrictions and other provisions shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed and acknowledged by Owners of not less than seventy-five (75%) of the Allocated Interests in the votes of the Association and their Lenders, has been recorded prior to the end of any such period agreeing to change or revoke the Restrictions and other provisions of this Declaration in whole or in part.
- 16.6 Allocation Upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds

generated by such a termination or liquidation shall be made payable to the Association, who will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Areas and Facilities, but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project so encumbered shall extend to each applicable Owner's Interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

- 16.7 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community, the Units, and the maintenance of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.
- 16.8 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or Association Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.
- 16.10 Attorneys' Fees. In the event any action is instituted to enforce any of the provisions contained in this Declaration, the Bylaws or Association Rules, the party prevailing in such action shall be entitled to recover from the other party thereto, as part of the judgment, reasonable attorneys' fees and costs of suit.
- 16.11 Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- 16.11.1 Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.
- 16.11.2 Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender in Davis County, Utah, or if no such office is located in Davis County, to any office of such Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

- 16.11.3 The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section, shall be deemed conclusive proof of such mailing.
- 16.11.4 Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the statutory agent of the Association or as follows:

WYNDOM SQUARE, LLC
c/o Spencer Wright
1178 Legacy Crossing Blvd., Suite 100
Centerville, Utah 84014

Any notice so deposited in the mail shall be deemed delivered upon the date of receipt.

- 16.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or Association Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 16.13 Personal Covenant. To the extent the acceptance of a conveyance of a unit creates a personal covenant between the Owner of such Unit and Declarant, other Owners or the Association, such personal covenant shall terminate and be of no further force or effect from and after the date when a Person ceases to be an Owner except to the extent this Declaration provides for personal liability with respect to the Assessments incurred during the period a Person is an Owner.
- 16.14 Nonliability of Officials. To the fullest extent permitted by law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board member or officer acted in good faith within the scope of his or their duties.
- 16.15 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for non-profit purposes of the Association in managing, maintaining, caring for and preserving the Common Areas and Facilities and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Areas and Facilities and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 16.16 Notification of Sale and Transfer Fee. Concurrently with the consummation of the sale or other transfer of any Unit, or within seven (7) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Association Rules, to cover Association documentation and processing. The Board may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly assessment. The written


notice shall set forth the name of the transferee and his transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien described in Section 6.1 hereof. Notwithstanding the other provisions hereof, this Section shall not apply to a Lender who becomes an Owner by a foreclosure proceeding or any deed or assignment in lieu of foreclosure.

- 16.17 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Areas and Facilities that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including any Limited Common Areas and Facilities, if any, except to the extent (a) that such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other person temporarily visiting such Unit.
- 16.18 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or Association Rules, this Declaration shall control.
- 16.19 WAIVER OF RIGHT TO JURY TRIAL. THE OWNERS, THE BOARD, THE ASSOCIATION AND DECLARANT, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY AND SHALL KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, HAVING HAD THE OPPORTUNITY TO CONSULT WITH COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE OBLIGATIONS OR ANY CONDUCT, ACT OR OMISSION OF ANY OF THEM, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH THE OWNERS, THE BOARD, THE ASSOCIATION OR DECLARANT, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.
- 16.21 Force Majeure. Declarant and the Association shall be excused for the period of any delay in the performance of any obligations under this Declaration when prevented from so doing by any cause or causes beyond Declarant's or the Association's reasonable control, including, without limitation, labor disputes, strikes, civil commotion, war, terrorist acts, governmental regulations or controls, earthquakes, reasonably unforeseen acts or conditions of nature or weather, or acts of God.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of this ___ day of July 2018.

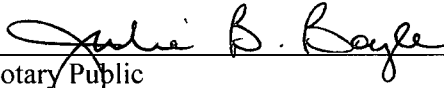
DECLARANT:

WYNDOM SQUARE, LLC,
a Utah limited liability company

By: 
Name: SPENCER H. WRIGHT
Its: MANAGER

STATE OF UTAH }
 } ss.
COUNTY OF DAVIS }

The foregoing instrument was acknowledged before me this 12th day of July 2018, by Spencer H. Wright, in his capacities as the Manager of Wyndom Square, LLC


Notary Public

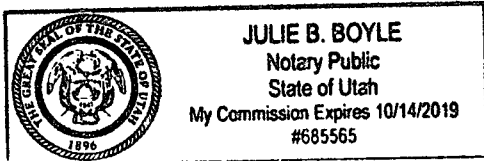


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

BEGINNING AT THE SOUTHEAST CORNER OF LOT 316, WYNDOM HIGHLANDS PHASE 3, A SUBDIVISION THAT IS PART OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, LAYTON CITY, DAVIS COUNTY, UTAH, WHICH POINT IS SOUTH 00°07'20" WEST 1500.50 FEET ALONG THE SECTION LINE AND NORTH 90°00'00" EAST 1777.71 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 10, AND RUNNING

THENCE NORTH 00°21'28" EAST 466.09 FEET ALONG THE EAST LINE OF SAID SUBDIVISION TO A POINT THAT IS SOUTH 46°09'50" EAST 55.12 FEET FROM THE MONUMENT AT THE INTERSECTION OF WYNDOM WAY AND NORTH HILLS DRIVE TO THE SOUTHWEST CORNER OF LOT 1, WYNDOM SQUARE COMMERCIAL SUBDIVISION PHASE 2 AND SOUTH 89°05'07" EAST 410.44 FEET ALONG THE SOUTH LINE OF LOT 1 AND LOT 2 OF SAID COMMERCIAL SUBDIVISION;

THENCE NORTH 00°21'28" EAST 239.68 FEET TO THE SOUTHERLY LINE OF HIGHWAY 193;

THENCE SOUTH 80°10'30" EAST 245.74 FEET ALONG SAID SOUTHERLY LINE TO A POINT OF CURVATURE OF A 5804.65-FOOT-RADIUS CURVE TO THE LEFT;

THENCE EASTERLY 96.02 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°56'52", CHORD BEARS SOUTH 80°38'56" EAST 96.02 FEET, TO THE NORTHWEST CORNER OF LOT 4, WYNDOM SQUARE COMMERCIAL SUBDIVISION PHASE 2;

THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF SAID LOT 4 THE FOLLOWING FOUR (4) COURSES:

(1) SOUTH 00°00'00" EAST 221.97 FEET;

(2) SOUTH 73°10'10" EAST 45.18 FEET;

(3) SOUTH 86°24'27" EAST 49.41 FEET;

(4) SOUTH 89°05'06" EAST 60.42 FEET TO THE WESTERLY LINE OF THE FINAL PLAT OF WYNDOM SQUARE SHOPPING CENTER;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING THREE (3) COURSES:

(1) SOUTH 00°54'38" WEST 246.95 FEET;

(2) NORTH 89°05'07" WEST 55.00 FEET;

(3) SOUTH 00°54'38" WEST 170.00 FEET TO THE NORTHERLY LINE OF WYNDOM HIGHLANDS NO. 2 SUBDIVISION;

THENCE NORTH 89°05'07" WEST 432.70 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

CONTAINS 6.518 ACRES.

EXHIBIT "B"

THE PLAT