

01-406-0001 thru 0012

FOR

THOMAS INDUSTRIAL PARK CONDOMINIUMS III PLAT II Phase A & B

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM AND COVENANTS ("CC&Rs") is made and executed this 31st day of January, 2019 by **THOMAS INDUSTRIAL PARK CONDOMINIUMS III CONDOMINIUM OWNER'S ASSOCIATION** ("Association") and by the individual condominium owners ("**Owners**") as successors in interest to the original Thomas Industrial Park Condominium III, pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

Recitals:

A. Association and Owners are the owners of the Property (defined below), upon which Association desires to establish amended THOMAS INDUSTRIAL PARK CONDOMINIUMS III CC&Rs.

B. The original developer of the Property and the Project, Tom Shultz Construction, LLC a Utah limited liability company caused to be recorded against the property that certain development plat of Thomas Industrial Park Condominiums III, recorded March 28, 2002, as entry number 1741180 (the "Map") and that certain Declaration of Covenants, Conditions and Restrictions for Thomas Industrial Park Condominiums III recorded March 28, 2002 as entry number 1741181 (the "Original Declaration") with the Davis County Recorder's office. That Declaration was amended by the 2004 First Amended CC&Rs.

C. Association wishes to amend and restate the first amended Declaration of CC&Rs and Unit Owners wish to consent to such amendment to assure that the Property is properly maintained, subject to the Act (as defined below) by the adoption of this Second Amended Declaration and the recording of any and all other documents, instruments, maps and plats as may be required by the Act and by North Salt Lake City and Davis County, as applicable.

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

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

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

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

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

"Amended and Restated" shall mean this amendment that supersedes the Original and First Amended Declaration of 2004.

"Articles" shall mean the Articles of Organization for the Limited Liability Company of the Association.

"Assessments" shall mean those Assessments described in **Section 21** to fund the Common Expenses of the property's common areas, and include Regular Assessments, Special Assessments, Reserve Fund and any other assessments levied by the Association. **"Regular Assessments"** shall mean the annual Assessments levied by the Association to pay the budgeted Common Expenses.

"Special Assessments" shall mean Assessments that the Association may levy from time to time, in addition to the Regular Assessments, for unexpected Common Expenses or other purposes as provided herein.

"Reserve Fund Assessments" will be the monthly and/or quarterly levy of funds required to meet the longer term reserve requirements needed for the projected capital improvements and to meet the statutory reserve requirements as provided by the current Utah /statutes.

"Association" shall mean Thomas Industrial Park Condominiums III Owners Association, LLC, a Utah non-profit limited liability company, organized for the purposes set forth herein.

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

"Building" shall mean the Building described in **Section 2** and any additions of property thereto.

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

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

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

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

"Cost of Living Index" shall mean the Consumer Price Index, all Urban Consumers -- U.S. City Average -- All Items (2018 = 100). Association may select any other comparable index which measures changes in the cost of living.

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

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

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

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

"Map" shall mean the Record of Survey Map of Thomas Industrial Park Condominiums III, recorded in the office of the Recorder and defined previously, as the same may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the Map may be amended to provide additional information respecting the Property or the Project, or at such time as an additional building is added onto and in the event there are material changes in the Building's boundaries or elevations as constructed. The Map may also be amended to reflect such changes to the Project as are permitted and effected under this Declaration. Such amendments to the Map are expressly authorized and may be undertaken by Association.

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

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

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

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

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

other than security purposes. For purposes of this action, owners of multiple units or areas shall be entitled to one vote per unit owned. Each unit shall be defined herein as approximately 2046 sq ft. Any unit larger than 2046 sq ft shall be treated as multiple units defined by the formula

Actual Sq. Footage of unit

Actual Square footage of Units 1-12 (2046 sq ft)

The results of that formula shall be rounded to the nearest whole number of units.

"Project" shall mean the Property comprising twelve Units, the Units, the Common Areas, Limited Common Areas and all improvements submitted by this Declaration to the provisions of the Act.

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

"Quorum" shall mean at least a simple majority of the owner-members and is required in order to vote on and approve routine matters.

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

"Reserve Fund" shall mean the sum of money assessed against each unit to be used in major maintenance or repair actions that are specifically approved, in detail, by a 60% majority of the then current members/units of the Association. Each of the units that is current in all of its assessments as of the end of the previous calendar year shall own an equitable interest in the fund, calculated by dividing the then existing fund by the number of units that are current at that same time. Those members that hold multiple, current units, shall own an equitable interest in the name of each held unit.

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

"Unit" shall mean a physical portion of the Project designed for separate ownership and occupancy as described in **Section 4** hereof and defined as 2046 square feet.

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

2. DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS. The Property is legally described on **Exhibit A** attached hereto. The initial improvements on the Property shall consist of one building comprising 12 units. The Building is principally constructed as follows: concrete footings and foundation; steel frame; concrete tilt up panels and sheetrock interiors and such other materials as allowed by current building codes. The Building is supplied with telephone, electricity, water and sewer service, with natural gas connections available to and at the expense of each unit owner. The Project also includes the Common Areas described herein.

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

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

5. DESCRIPTION AND OWNERSHIP OF COMMON AREAS

The Common Areas shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, except as otherwise provided herein, the grounds in the Project designated as part of the Common Areas on the Map, including sidewalks, landscaping within the Common Areas such as the lawns, trees and the parking lot. The Association shall have the right and obligation to design, maintain, replace and otherwise control all landscaping in the Project. The individual Owners may not repair, replace, maintain or otherwise alter in any manner the landscaping in the Common Areas without the prior written permission of the executive committee

6. DESCRIPTION OF LIMITED COMMON AREAS. Limited Common Areas shall mean a portion of the Common Areas reserved for the use of certain Owners to the exclusion of other Owners. Limited Common Areas shall serve and be appurtenant only to the Units of the Building where such Limited Common Areas are located. Limited Common Areas shall include the roof above the respective units. The Owners of a Unit shall be individually responsible to

repair, replace and maintain all Limited Common Areas appurtenant exclusively to their particular Unit. All of the Owners of Units shall be jointly and severally responsible to repair, replace and maintain all Limited Common Areas adjacent to or included within their units, to include the roof immediately above their units. The following shall also be Limited Common Areas serving only the respective Units to which they relate: installations of all central services, including power, light, hot and cold water facilities, heating, ventilation; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for the exclusive use of a unit. Each Unit shall have its own separate power, which is metered separately and shall be an expense to the Owners of each particular unit. Water for internal and external use (including landscaping needs) shall be a Common Area expense paid by the Association and assessed in proportion to each Unit owner's undivided interest in the Common Area. Water usage is predicated on the assumption that each unit uses minimal quantities per month. In the event that water usage of any Unit appears to exceed 500 gallons per month, then it will be the responsibility of the applicable Unit owner to install, at its own cost, a separate water meter for that Unit. Notwithstanding the foregoing, Association reserves the right to cause water usage to be separately metered for one or more Units within the Project if they reasonably believe that said unit is using a disproportionate amount of the water per month.

7. OPTION TO EXPAND. Pursuant to Sections 57-8-10(4) and 57-8-13.6 of the Act, Association hereby reserves the option to expand the Project (the "**Option to Expand**") upon the terms and provisions set forth in this Section without the consent of any Owner of any Unit or, any lender to a Unit Owner.

(a) The real property subject to the Option to Expand (the "**Additional Land**") is more particularly described on **Exhibit C** attached hereto

(b.) The Interests of the Owners shall be adjusted at the time Association records any Amendment and Supplemental Map reflecting Association's exercise of the Option to Expand in accordance with the provisions hereof. Such changes in Interests shall be reflected in an amended **Exhibit B** to this Declaration to be filed with the Recorder as part of the Amendment. The Association shall calculate and revise the interests of the Association to insure that the total interest in the equals 100% as required by the Act.

(c) Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit shall be deemed to have consented to all provisions of this Declaration. After the filing for record of any Amendment and Supplemental Map reflecting Association's exercise of any Option to Expand, legal and equitable title to the common areas associated with each Unit thereby created within the Additional Land, including its appurtenant Interest, shall be vested in and held by Association and none of the other Owners shall have any claim or title to or interest therein.

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

(e) All Units within the Project will share in costs to maintain all Common Areas within the Project, as expanded, whether within the currently existing Property or within the Additional Land, or both.

8. NATURE AND INCIDENTS OF OWNERSHIP

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

(b) For purposes of voting rights and assessments, each unit within the current Project, shall be deemed to contain the original 2046 square feet. Any unit containing more than 2046 square feet shall vote as and be assessed at a rate equal to a multiple defined as the unit's square footage divided by the above square footage. For example, if a unit contains twice the square footage of the original units, then that larger unit shall be entitled to 2 votes and it will be assessed at twice the amount being paid by owners of units containing the original standard square footage, per quarter. For a unit with 4,000 sq ft, the assessment would be 1.96 times the amount assessed on the original units, per quarter.

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

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

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

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

and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Map.

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

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

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

(g) The exterior surfaces of the Units shall not be altered or modified without the prior written approval of the Board. No exterior alterations, improvements, or remodeling, whether structural or cosmetic, will be made without the prior written approval of the Board.

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

9. VOTING. At any meeting of the Association, each Owner, either in person, by proxy, or by telephonic or internet communication, shall be entitled to one vote for each unit to which the owner holds a fee simple interest. For purposes of this section, the existence of a mortgage or mortgages, duly recorded by the Recorder of Davis County, UT shall not negate an owner's fee simple interest. The voting rights appurtenant to each Unit shall vest upon execution and recording of a legally enforceable deed or contract for the sale of that unit.

10. TITLE TO UNITS.

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

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

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

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

(e) No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against any Unit which is superior to the interests of this association, or against any part thereof. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto, by the Association when approved by at least 3 of the officers of the association. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

(f) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the number of the affected unit(s) and the recording date for this Declaration with the Davis County Recorder as indicated in this Declaration or as shown on the Map incorporated herewith. Such description will be construed to describe the Unit, together with the appurtenant Interest, and to incorporate all rights incident to ownership of the Unit, the obligations associated therewith and all of the limitations on such ownership as described in this Declaration.

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

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

(b) The period of Association control of any additional common and Unit areas shall terminate after all Additional Land has been added to the Project.

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

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

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

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

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

(e) No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project other than those associated with the primary purpose of the unit and located on the glass portions of the unit windows and doors

(f) Each unit owner shall be granted two reserved parking spaces. If a unit requires a special or handicapped designation on their assigned parking area, those designations must be approved in writing by the association board and all costs of the special markings or usage must be borne by the owner of the unit requiring designation(s).

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

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

(i) There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, other than Limited Common Areas appurtenant to their Units, except with the prior written consent of the Board. This includes any vehicles remaining over-night, derelict vehicles and non-registered vehicles that are located in any portion of the Common Areas. Maintenance of vehicles in the Common Areas is prohibited.

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

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

13. ASSOCIATION. Every Owner shall be a Member of the Association. One Membership shall exist for each original Unit, shall be inseparably appurtenant thereto and shall automatically transfer therewith on sale or approved lease. If title to any Unit is held by more than one Owner, the Membership related to such Unit shall be shared by all such Owners in the same proportionate interests and by the same type of tenancy in which they hold title to such Unit. No person other than a single Owner representative shall be a Member of the Association. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board, which shall be composed as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

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

(b) To engage the services of a manager, accountants, attorneys, or other employees or agents as reasonably needed and to pay to said persons a reasonable compensation, based upon their training, and professional qualifications.

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

(d) To determine and pay the reasonable Common Expenses.

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

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

(g) To open and operate bank accounts.

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

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

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

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

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

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

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

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

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

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

(r) The Board may convey or subject to a Mortgage all or portions of the Common Areas of the Association if Owners entitled to cast a 2/3 majority of the total votes of the Association so approve. However, all Owners of Units to which any Limited Common Areas are appurtenant must agree to convey, in writing, those Limited Common Areas or subject the same to any Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

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

(t) When an officer or member of the Board is sued for liability for actions undertaken in his/her role as an officer or member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven to 2/3 of the owners entitled to vote, that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

(u) Neither the Board nor the Manager shall sell any property of the Association except as permitted by the Act.

14. MAINTENANCE, ALTERATION AND IMPROVEMENT. The maintenance, replacement and repair of the Common Areas shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas or utility services shall be repaired

promptly and the cost thereof charged as a Common Expense. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owner(s) as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association. To the extent reasonably feasible under the circumstances, any officer or manager entering into a unit shall be accompanied by one owner or owner's representative. If no owner or representative is reasonably available and the circumstances require immediate access to the unit, the officer or manager entering into the unit shall be accompanied by another association officer, a police or fire department officer/agent.

15. INSURANCE. The Association shall maintain, to the extent reasonably available, insurance as follows:

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

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

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

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

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

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

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

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

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

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

proportion to their respective Interests. At such election, if Owners holding (2/3) or more of the Total Votes of the Association do not vote either in person or by proxy to make provision for reconstruction, the Board shall record with the Recorder a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (i) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his Interest; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (iii) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner

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

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

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

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

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

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

19. MORTGAGEE PROTECTION. The Board shall maintain a roster of Owners, which roster shall include the mailing and email addresses of all Owners. The Board will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Board is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee. The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

20. AMENDMENT. Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a 2/3 majority of the Total Votes of the Association. The percentage of votes necessary

to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the Association that the appropriate consent has been obtained, and shall be duly recorded with the Recorder.

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

1. Annual Assessments. The Association shall establish regular, equal monthly assessments to be paid by each Owner into the "Common Expense Fund" and the "Reserve Expense Fund". Each such Owner shall pay their percentage share in even monthly installments of one-twelfth (1/12) thereof on the first day of each month during the fiscal year. The amount of each assessment is based upon the owner(s) of each unit setting up an automatic monthly payment into the respective assessment account. Should an owner decline such automatic payment, then each such payment shall be automatically assessed an additional fee of \$5.00 and interest on the respective unit's assessments shall commence on the 1st day of each month at the rate of 1 ½% per month, or portion of a month, on the unpaid balance of each account. The Board in its discretion may specify a payment schedule other than monthly. The Board will maintain an operating account and a reserve account. The reserve account will be established as a separate account to be exclusively used for capital expenditures such as roof or asphalt replacement and will require the signature of 2 officers. Upon acquisition of record title to a Unit, each new Owner shall contribute to the capital of the Association an amount equal the portion of the reserve account that was equitably held on behalf of that unit as of December 31st of the preceding year. This amount shall be deposited by the new Owner into the purchase and sale escrow and disbursed from the escrow to the Association. Any amounts paid into this fund by a new Owner shall not be considered as advance payments of regular assessments. However, upon sale of a particular unit or units, the selling owner shall be entitled to withdraw from the reserve fund, the pro-rata share(s) of the reserve fund held equitably by such unit(s) that are being sold, again based upon the equitable share of each unit on the last day of December of the preceding year. Such withdrawal shall not be allowed until and unless the new buyer's share of the Reserve Fund is actually received by the association. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Owner be proportionately equal. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit.

(a) Except as otherwise provided in this Declaration, each Owner, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as such Owner's Interest. Annual assessments will attach on the first day of January for the year in question regardless of any monthly schedule. Obligations will run with the land and survive any sale of a Unit. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section shall be the Common Expense Fund. Assessments shall include Regular Assessments, Reserve Fund Assessments and

Special Assessments. After the Association has made an Assessment, Regular Assessments must be made at least annually, prorated to be paid monthly based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws

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

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

(d) All Assessments shall be due as determined pursuant to the Bylaws. Except as set forth in paragraph one of this Article (above), assessments and any installments thereof not paid on or before thirty (30) days after the date when due shall bear interest at the rate of 1 1/2% per month or portion of month, on the unpaid balance (approximately 18% per annum) or at such lower rate of interest as may be set by the Board, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a late fee in the amount of \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Board pursuant to the Cost of Living Index. Any payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' Interests are reallocated, assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated equity interests.

(e) There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation with the Recorder of a written notice of lien by the Board or the Manager. Such lien shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded before the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens and charges in favor of the state or any political subdivision thereof for taxes and other governmental assessments or charges past due and unpaid on the Unit. Such lien may be enforced by judicial foreclosure or by non-judicial foreclosure in the same manner in which mortgages and deeds of trust on real property may be foreclosed in the State of Utah. A lien for

unpaid Assessments shall be enforced in accordance with the provisions of this Section or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party.

(f) The Board upon written request shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit, subject to a service charge of \$20.00 per request. This statement must be furnished within twenty (20) business days after receipt of the request and payment in full of the service fee and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith. The Board shall include in the Assessments amounts representing sums to be used for the replacement of or additions to the capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account for such Unit shall be deemed transferred to the transferee of the Unit. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall require the signatures of 2 officers, constitute a debt of the Association, and shall be restored and returned to the reserve account within one year from the date of the transfer, or the date of next annual assessment whichever is earlier, provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations otherwise set forth in this Section. If the current replacement value of the major components of the Common Areas which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

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

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

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

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

For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid.

22. EASEMENTS. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Improvements, including Units, Common Areas and Limited Common Areas, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted. Association shall have a transferable easement over, across and within the Property for the purposes of (i) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (ii) connecting the Buildings to other adjoining structures or buildings, and (iii) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to his Unit(s) and to any Limited Common Areas appurtenant to his Unit(s), and shall have the right to the horizontal, vertical and lateral support of his Unit(s). The Association and the Manager shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas for use by the Owners and the Association. All conveyances of Units within the Project hereafter made, whether by Association or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

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

Thomas Industrial Park III Condominium Association
c/o Neil B. Crist, Attorney for Association
230 N. Cutler Dr. #5
North Salt Lake, UT 84054

Or, if acknowledged in writing, to neil_b_crist@yahoo.com.

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

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

except pursuant to (a) the judgment of a court, or (b) a foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

26. AGENT FOR SERVICE OF PROCESS. The agent for service of process under the Act shall be Neil B. Crist, attorney at law, whose address is 230 N. Cutler Dr. #5, North Salt Lake City, UT 84054 (Phone 801-643-0533).

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

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

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

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



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

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

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

By:


Douglas Ralph Smith,
Association President

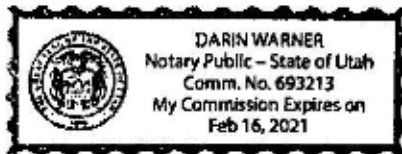

Neil B. Crist, Manager, Secretary/ Treasurer


STATE OF UTAH)

SS

COUNTY OF DAVIS)

The foregoing instrument was signed and acknowledged before me by, Douglas R. Smith, who acknowledged that he executed the same on this 21st day of February, 2020.



Darin Warner
Notary Public

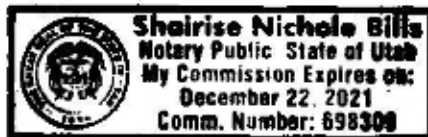
Residing at: _____

STATE OF UTAH)

SS

COUNTY OF DAVIS)

The foregoing instrument was signed and acknowledged before me by, Neil B. Crist, who acknowledged that he executed the same on this 21st day of February, 2020.



Shairise Nichole Bills
Notary Public

Residing at: DAVIS Co.

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

*Part II Phase A & B
JR*

LEGAL DESCRIPTION OF THE PROPERTY

unchanged

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

BUILDING ADDRESS	BLDG #	UNIT #	INTEREST	VOTES
230 North Cutler Street	1	1	1/12	1
230 North Cutler Street	1	2	1/12	1
230 North Cutler Street	1	3	1/12	1
230 North Cutler Street	1	4	1/12	1
230 North Cutler Street	1	5	1/12	1
230 North Cutler Street	1	6	1/12	1
230 North Cutler Street	1	7	1/12	1
230 North Cutler Street	1	8	1/12	1
230 North Cutler Street	1	9	1/12	1
230 North Cutler Street	1	10	1/12	1
230 North Cutler Street	1	11	1/12	1
230 North Cutler Street	1	12	1/12	1