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**SECOND AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
OMNI CONDOMINIUMS**

THIS SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF OMNI CONDOMINIUMS is executed this day 07th of November, 2010, by **OMNI PROVO STUDENT LIVING, LLC**, a Utah limited liability company, holder of more than 67% of ownership interests in and to the OMNI OWNERS ASSOCIATION, INC. and pursuant to Article XIII(3) of the original Declaration of Covenants, Conditions and Restrictions of OMNI Condominiums. Such document was recorded with the office of the Utah County Recorder on July 12, 2002, as Entry No. 78196:2002. Such original Declaration was amended pursuant to an Amendment to Declaration of Covenants, Conditions and Restrictions of OMNI Condominiums recorded with the office of the Utah County Recorder on March 19, 2008, as Entry No. 32465:2008.

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. The Declarant holds legal title to a certain parcel of real property located in Utah County, Utah, and more particularly described in Article II of this Declaration. It is intended that the various Units described in this Declaration will be conveyed to Owners in fee simple and be operated, sold and maintained as Contracted Off-Campus Housing for Brigham Young University as more full set forth herein.
- C. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein conveyed and to establish thereon a condominium development in accordance with the terms hereof and the Condominium Act.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant, its successors

and assigns and all owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

ARTICLE I. DEFINITIONS

When used in this Declaration, the following terms shall have the meanings indicated.

1. "**Articles**" or "**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association which shall be filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code at or about the time this Declaration is filed for record.

2. "**Association**" shall mean and refer to OMNI Owners Association, Inc., a Utah nonprofit corporation.

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

4. "**Bylaws**" shall mean and refer to the Bylaws of the Association as amended from time to time.

5. "**Common Areas**" shall mean and refer to that part of the Property which is not included within the Units, including all roadways within the Project and all improvements other than utility lines now or hereafter constructed or located thereon. Each Owner shall own an undivided interest as tenants in common in the Common Areas.

6. "**Common Expense Fund**" shall mean and refer to the fund created or to be created pursuant to the provisions of Article V of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

7. "**Common Expenses**" shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

8. "**Condominium**" shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Unit concerned which are used in conjunction with such residence.

9. "**Condominium Act**" shall mean the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1 through 36 and all amendments thereto.

10. "**Condominium Building**" shall mean and refer to a structure containing Units constituting a portion of the Project.

11. "**Condominium Building Exteriors**" shall mean and refer to those portions of the Condominium Buildings which are open to the elements such as roofs, soffits, facie, exterior walls, exterior doors, footings, foundations, basement walls, window wells, stairs, railings, common hallways, bearing walls and structural elements.

12. "**Declaration**" shall mean and refer to this Second Amended Declaration of Covenants, Conditions and Restrictions of OMNI Condominiums, as the same may hereafter be modified, amended and supplemented.

13. "**Declarant**" shall mean and refer to **OMNI PROVO STUDENT LIVING, LLC**, a Utah limited liability company, and/or any successor thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

14. "**Eligible Mortgagee**" shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 1 of Article XI of this Declaration.

15. "**FNMA**" shall mean and refer to the Federal National Mortgage Association.

16. "**First Mortgage**" shall mean any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

17. "**First Mortgagee**" means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

18. "**Limited Common Areas**" shall mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project. Any parking areas and storage facilities that are identified on the Plat as Limited Common Areas are permanently assigned to specific Units, as an appurtenance to such Units, for the exclusive use of such Units. The Plat designates the Unit or Units to which each of the Limited Common Areas is reserved and appurtenant, if any.

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

20. "**Member**" shall mean and refer to every person who holds membership in the Association.

21. "**Mortgage**" shall mean any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

22. "**Mortgagee**" shall mean a beneficiary of a Mortgage as well as named Mortgagee.

23. "**Owner**" shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, as such ownership is shown by the records of the County Recorder of Utah County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

24. "**Plat**" shall mean and refer to the condominium map for OMNI Condominiums, recorded in the office of the County Recorder of Utah County, Utah, and all amendments thereto.

25. "**Project**" shall mean and refer to the Property and the plan of development and ownership of the Property created and governed by this Declaration, the Articles and the Bylaws.

26. "**Property**" shall mean and refer to the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Article II of this Declaration.

27. "**Unit**", "**Condominium Unit**" or "**Units**" shall mean and refer to any of the separately numbered and individually described condominium units now or hereafter shown on the Plat and shall further mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building together with its appurtenant undivided ownership interest in the Common Areas and its appurtenant right to exclusive use of the Limited Common Areas which may be associated with such Unit. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, heating apparatus, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit as shall all decorated interiors, all surfaces or interior structural walls, doors and door frames, the trim, wallpaper, paint, flooring, carpet and tile, and all other interior improvements. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members or any other property of any kind, including fixtures and appliances within any Unit, which are property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, structure or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

28. "**University**" shall mean and refer to Brigham Young University.

ARTICLE II. PROPERTY DESCRIPTION

The Property initially associated with the Project which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property situated in Utah County, State of Utah:

See **Exhibit "A"**

The actual Units located on the foregoing are described on the attached **Exhibit "B"**.

ARTICLE III. THE ASSOCIATION

1. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the Membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance or other disposition of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association. The Association shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section 1 shall mean available for inspection, upon three (3) days' prior written request, during normal business hours or under other reasonable circumstances.

2. Board of Directors. Until such time as the responsibility for electing the Board of Directors of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all such Directors. This exclusive right of the Declarant to appoint the Directors shall terminate after the first to occur of the following:

A. Two (2) years from the date on which the first Unit in the Project is conveyed; or

B. One Hundred Twenty (120) days after seventy-five percent (75%) of the Units have been conveyed by Declarant to Owners.

3. Votes. Each Member shall be entitled to the number of votes appurtenant to his or her Unit, as set forth on **Exhibit "B."** The number of votes appurtenant to each Unit has been determined by the square footages of the Units at the time this Declaration is recorded. The number of votes appurtenant to each Unit shall be permanent. In the event that there is more

than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves.

4. Maintenance of Condominium Building Exteriors. The Association shall repair and maintain all Condominium Building Exteriors as follows: paint, repair, replacement and care of roofs, soffits, facie, gutters, downspouts, foundations, window wells, sump pumps, fences, exterior building surfaces, exterior door and other exterior improvements, as well as all trees, shrubs, grass, walks stairs, railings and steps located on or around the Common Areas and each Unit. Such exterior maintenance shall not include glass surfaces and window screens, which are deemed part of the Unit to which they are a part. The Association shall have the right of entry to any Condominium to perform emergency repairs or do other work necessary for maintenance of the Condominium Building Exteriors.

In the event that the need for maintenance or repair of the Condominium Building Exteriors is caused through the willful or negligent acts of any Owner(s), or through the willful or negligent acts of the family, guests, tenants or invitees of such Owner(s), the cost of such repairs shall be added to and become a part of the assessment to which such Unit is subject.

5. Professional Management. The Association may carry out, through a Manager, those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association and shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant's control of the appointment of the Board of Directors as described in Section 2 of this Article III may be terminated by the Association without cause upon no more than 30 days' notice after termination of Declarant's control. The above term and termination provisions shall not apply to any other types of service contracts in place on the Project.

6. Amplification. The provisions of this Section may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS AND UNITS

1. Easement of Enjoyment. Each Member shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas, and the non-exclusive right to the use of all parking stalls within the Common Areas. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Member's Unit.

2. Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement or any other movement of any portion of the improvements causes any part of a Condominium built in substantial accord with the boundaries for such Condominium as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit or Condominium for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. There is also hereby created an easement for any encroachment by any roof overhang upon an adjoining Unit or any part of the Common Areas.

3. Limitation on Easement. A Member's equal, undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

A. The right of the Association to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Areas for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

B. The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

C. The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal services.

4. Party Walls. Each wall-wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Condominiums upon the Units and

placed on the dividing line (whether horizontal or vertical) between the Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article VII hereof shall apply. Notwithstanding any other provision of this Section, an Owner who by his acts or omissions (or those of its family, tenants, invitees or guests) causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

5. Form for Conveying. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

"Unit No. _____ of Condominium Building No. _____ of the OMNI Condominiums, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded in the office of the Utah County Recorder and in the Declaration of Covenants, Conditions and Restrictions of OMNI Condominiums, also recorded in the Office of Utah County Recorder, State of Utah, as Entry No. _____. TOGETHER WITH an undivided interest, right and easement of use and enjoyment in and to the Common Areas described, as provided for and in the percentage shown, in said Declaration of Covenants, Conditions and Restrictions."

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

ARTICLE V. ASSESSMENTS

1. Agreement to Pay Assessments. Each Owner of any Unit, by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. In any event, all Units shall be allocated the then applicable assessments upon conveyance of the first Unit.

A. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership.

B. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above fifteen percent (15%) only by a vote of at least sixty-seven percent (67%) of the votes determined in accordance with Section 3 of Article III of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

C. The Board may fix the annual assessment at an amount not in excess of the maximum.

2. Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Project as follows:

A. Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building Exteriors, and furnishing common utility services and other common expenses of the Project. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs of the Common Area; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance of the Common Areas and Condominium Building Exteriors; landscaping; wages of Association employees, including fees for a Manager; repairs and replacements of window well sump pumps; utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Condominium Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. The aggregate of all such items shall constitute the Common Expenses, and all funds received from assessments under this Section 2.A shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

B. Apportionment. Common Expenses shall be apportioned among and assessed to all Units and their Owners as set forth on **Exhibit "B."**

C. Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning each January 1 and ending December 31 of the same year, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated

expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

D. Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall attempt to notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. The Board of Directors shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days' prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Directors to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

E. Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Article V Section 3 below, except that the vote therein specified shall be unnecessary.

3. Special Assessments. In addition to the annual assessments authorized by this Article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses

authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with the number of votes allocated to each Unit, as set forth on **Exhibit "B"**. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of annual assessments for the aforesaid purposes.

4. Uniform Rate of Assessment. The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate based on the number of votes allocated to each Unit, as set forth on **Exhibit "B"**. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

5. Notice and Quorum for Any Action Authorized Under Sections 1 and 3. Written notice of any meeting called for the purpose of taking any action authorized under Sections 1 or 3 of this Article shall be sent to all Members no less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights but including the augmented votes, if any of the Declarant) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the preceding meeting.

6. Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Utah County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the

Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association.

7. Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

8. Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 7 of this Article V shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9. Reserves and Working Capital. In addition to its day-to-day operating funds, the Association shall establish the following funds:

A. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Condominium Building Exteriors the Association is obligated to maintain, repair or replace. The reserve fund shall be maintained out of regular assessments for Common Expenses.

B. Working Capital Fund. The Declarant may establish and maintain for the Project, a working capital fund equal to at least two (2) monthly installments of the annual assessment of each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit shall be paid by the Declarant to the Association within sixty (60) days after the date of the conveyance of the first Unit in the Project. With respect to each Unit for which the Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Unit at the time of the closing of the sale to such purchaser or by the Association upon termination of the Declarant's control of the Association as described in Section 2 of Article III hereof, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or

desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

10. Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bond fide purchaser of, or Mortgagee on, the Unit in question.

ARTICLE VI. OPERATION AND MAINTENANCE

1. Maintenance of Condominiums. Each Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Condominium or Unit. The Association shall have no obligation regarding maintenance or care of Units except as set forth in Section 2 of this Article VI or elsewhere in this Declaration.

2. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive and generally in good condition and repair. The Association shall also provide for the repair and maintenance of all Condominium Building Exteriors. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund.

3. Utilities. The Owner shall pay for all utility services furnished to its Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

4. Insurance. The Association shall at all times maintain in force insurance which is consistent with FNMA's insurance coverage requirements and which meets the following minimum requirements:

A. Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; all Condominium Buildings including all Condominiums (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association, and which are of a class typically encumbered by Mortgages held by FNMA or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance; or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The maximum deductible amount for such policy covering the Common Areas shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. However, for losses related to individual Condominiums that are covered by such a policy, the deductible related to each individual Condominium shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association's operating reserve account.

B. Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Buildings, any machinery and equipment that are not part of a Condominium Building and all Common Areas within the Project (hereinafter "**Insurable Property**") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Condominium Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(i) The name of the insured under each policy required to be maintained by the foregoing A and B shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(ii) Each policy required to be maintained by the foregoing items A and B, shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. If FNMA is a holder of one or more Mortgagees on Units within the Project, such mortgage clause shall name FNMA or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

(iii) Each policy required to be maintained by the foregoing items A and B, shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

(iv) Each policy required to be maintained by the foregoing item A shall also contain or provide the following: (1) "Inflation Guard Endorsement", if available; (2) "building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "Steam Boiler and Machinery Coverage Endorsement", if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Condominium Building containing the boiler or machinery. In lieu of

obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

C. Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Manger's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited send copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three months' aggregate assessments on all Units. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

D. Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Condominium Building Exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage

arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, and/or Condominium Building Exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in the terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

E. Insurance Trustees and General Requirements Concerning Insurance. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "**Insurance Trustee**"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

F. Owner, Tenant, Occupant's Duty To Insure. Each Owner, and each tenant or occupant of any Unit shall have the obligation to provide such renters, casualty, property and liability insurance as such Owner or other occupant deems necessary for the interior contents of the Units, including all personal property, interior improvements, appliances, cabinets, fixtures, decorations and furnishings.

ARTICLE VII. DAMAGE OR DESTRUCTION

1. Association as Attorney-in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an

appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

2. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Condominium and the Common Areas having substantially the same vertical and horizontal boundaries as before.

3. Procedure. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

A. Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Condominium subject to such First Mortgage.

B. Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

C. Sufficient Insurance. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

D. Insufficient Insurance--Less than Seventy-Five Percent (75%) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Article V Section 3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

E. Insufficient Insurance--Seventy-Five Percent (75%) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage

or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Members to carry out such repair and reconstruction but rather elect to terminate the Project and if Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Utah County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) Each Owner shall own an undivided interest in the Project equal to such Owner's Common Expense allocation percentage as set forth on **Exhibit "B"**;

(iii) 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 respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner. The division of funds shall be based on the fair market values of the Units and Condominiums immediately prior to the damage or destruction, and the Owners shall divide said funds based upon the relative value of the Units and Condominiums prior to the damage or destruction.

F. Priority. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

4. Repair or Reconstruction. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or

destruction, with each Condominium and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

5. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 3.D of this Article VII shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

6. Amendment of Article. This Article VII shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Board of Directors of the Association and recorded in accordance with the provisions of this Declaration.

ARTICLE VIII. CONDEMNATION

1. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

2. Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter "**Condemnation Award**") shall be made payable to the Association and shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

3. Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units and Condominiums immediately prior to the

condemnation. Such distribution shall be made by check payable joint to the respective Owners and their respective Mortgagees, as appropriate.

4. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

A. Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken);

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article VIII or any other provision of this Declaration, the Articles or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

B. Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate;

(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas; and

(iv) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section VIII.4.B; provided, however, that if any such determination shall have been or such action take by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

C. Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

ARTICLE IX
[Intentionally Deleted]

ARTICLE X. GENERAL USE RESTRICTIONS

1. Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

2. Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominiums. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines and similar devices approved by the Board may be made available within the Common Areas.

3. Use of Units and Condominiums. All Units are improved with Condominiums and are restricted to such use. Each Condominium shall be used only as personal residences. No Unit or Condominium shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Condominium, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

4. [Intentionally Deleted]

5. Leases. Any lease agreement between an Owner and a lessee respecting a Unit or Condominium shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

6. Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. Easements for the installation and maintenance of utilities are also reserved within each Condominium. It is contemplated that telephone, gas, electricity and other utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such utilities is reserved to the Association and to all utility suppliers.

7. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

8. Temporary and Other Structures. No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all Condominiums erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

9. Unsightly Articles. No unsightly articles shall be permitted to remain on or near a Unit so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, trailers, mobile homes, trucks other than pickups, boats, tractors, vehicles other than automobiles, campers not on a truck, snowmobiles, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an

enclosed structure or screened from view. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

10. No Further Subdividing. No Unit or Common Areas may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit or Condominium to more than one person to be held by them as tenants in common, joint tenants, or otherwise; and provided further, that nothing herein shall be deemed to prevent conversion of the Convertible Space or expansion of the Project on the Additional Land pursuant to Article XII.

11. Signs and Flags. No signs or flags of any kind shall be displayed to the public view whether placed inside or outside of the Unit without the approval of the Association, except such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit or Condominium for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted as approved by the Board. Numbers on residences shall be located in a position approved by the Board.

12. No Hazardous Activities. No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on the Property except in the one contained barbecue unit which is located in the common area and provided by the association. The barbecue must be used for cooking purposes only, and attended at all times while in use.

13. Repair of Buildings. No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof or the Association as applicable.

14. Improvements and Alterations. There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any Condominium or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association.

15. Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon

the rooftop or side of any unit or elsewhere if exposed to view from any other Unit. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Unit Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development.

16. Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board.

17. General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

ARTICLE XI. MORTGAGEE PROTECTION

1. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Condominium, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

A. Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

B. Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default 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 which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 2 below or elsewhere herein.

2. Matters Requiring Prior Eligible Mortgagee Approval. Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Units in the Association (unless pursuant to a specific

provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

A. Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

B. Add or amend any material provision of the Declaration, Articles, Bylaws or Plat, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only or as provided elsewhere in these Declarations):

- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units and Condominiums;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit or Condominium;

(xii) a decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.

(xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

(xiv) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

3. Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available upon 3 days prior written notice during normal business hours.

The Association shall make a financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within one hundred twenty (120) days of the Association's fiscal year-end, if requested in writing by any Owner.

4. Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

5. Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in paragraph A of Section 4 of Article VI lapses, is not maintained, or the

premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

6. Priority. No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas.

ARTICLE XII. UNIVERSITY HOUSING POLICY

1. Subjection of Project to University Housing Policy. It is the intention of the Declarant that the Project be developed and operated as "Contracted Off-Campus Housing" for single University students pursuant to the policies and procedures promulgated by the University, as from time to time amended. The provisions set forth in this Article XII shall apply to the Project and each Unit and shall be binding on each Owner, tenant and occupant of the Project.

2. Designation of Separate Male and Female Units. In order to comply with University housing policies, Units 101-106, 201-206, 301-306 at 675 North 500 West, Provo, Utah, shall be owned, maintained and operated as Single Male Student Housing, subject to the policies, requirements and exceptions of the University housing policy for families and married couples. Units 107-112, 207-212, 307-312 at 701 North 500 West, Provo, Utah, shall be owned, maintained and operated only as Single Female Student Housing subject to the policies, requirements and exceptions of the University policy for families and married couples.

3. Association Application for University Housing Approval. The Association shall prepare and file such applications and enter into required agreements and contracts relating to the operation of the Association, operation and maintenance of the Project and the enforcement of University off-campus housing policies currently in place and as from time to time amended by the University.

4. Owner Application for University Housing Approval. Each Owner agrees that upon taking title, such Owner will apply for and obtain approval of its Unit as contracted off-campus student housing for the type of housing set forth in Section 2. Each Owner agrees that the use and occupancy of the Unit shall be in compliance with University off-campus housing policy at all times, including the use of approved rental forms for all tenants. Each Owner acknowledges that unless a non-complying use or occupancy is expressly exempted or permitted by the University's Off-Campus Housing Office, that the entire Project could lose approval if any individual Unit in the Project loses University approval.

5. Each Owner hereby agrees that the Association and/or each other Owner shall have the right to enjoin the leasing, rental, use or occupancy of any Unit which would result in revocation of University approval of the Project as Contracted Off-Campus Housing.

6. The Association shall have the unilateral power to make any amendment to this Declaration, the Articles or the Bylaws necessary to cause or enable to Project to qualify or remain in compliance with University off-campus housing policy. Each Owner agrees that the ownership, use and occupancy of its Unit shall be subject to such amendments whether occurring prior to or after obtaining title.

7. The Association may contract with and delegate to any Manager the duties imposed upon it for operation and maintenance of the Project as Contracted University Off-Campus Housing. The costs of such Manager shall be added to the Assessments for each Unit.

8. Each Owner, tenant, occupant, guest or invitee shall, by taking ownership, tenancy or entry onto the Project or any Unit, agree to comply with these Declarations, the Articles and Bylaws and with University policies and procedures set forth in the *BYU Off-Campus Housing Handbook*, dated September 1996, as amended from time to time.

ARTICLE XIII. MISCELLANEOUS

1. Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

2. Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

3. Amendment. Except as provided in Article XII and elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Utah County Recorder of an instrument executed by the Association. In such instrument an officer or Director of the Association shall certify that the vote required by this Section for amendment has occurred.

4. Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

5. Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

6. Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to affect all of its purposes.

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

8. Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Utah County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Utah County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

9. Effective Date. This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Utah County, Utah.

OMNI PROVO STUDENT LIVING, LLC, a
Utah limited liability company

By: [Signature]
Its: Managing Member

STATE OF UTAH)
)
) :ss.
COUNTY OF SALT LAKE)

On this 5 day of ~~October~~ November, 2010, , personally appeared before me
Dana Howard, the signer of the above instrument, who duly
acknowledged to me that he executed the same in the capacity indicated.

[Signature]
NOTARY PUBLIC

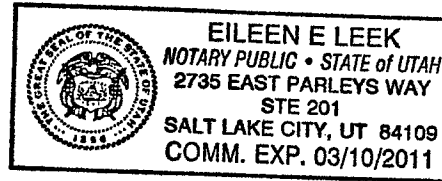


EXHIBIT "A"

Legal Description

A parcel of land in the East half of the Northwest quarter of Section 1, Township 7 South, Range 2 East, Salt Lake Base and Meridian, Utah County, Utah, being more particularly described as follows:

Commencing at the Northwest corner of said Section 1; thence North $89^{\circ}15'10''$ East along the Section line a distance of 2024.50 feet and South a distance of 1065.29 feet to a point at a fence intersection, said point being the real point of beginning; thence North $89^{\circ}58'49''$ East along said fence line a distance of 196.05 feet to a point on the Westerly right-of-way of 500 West Street; thence South $00^{\circ}22'04''$ West along said right-of-way a distance of 317.47 feet; thence North $89^{\circ}50'01''$ West along the extension of an existing fence a distance of 127.85 feet; thence South $00^{\circ}26'12''$ East along the extension of an existing fence a distance of 47.75 feet; thence North $89^{\circ}50'01''$ West along the extension of an existing fence a distance of 87.82 feet; thence North $00^{\circ}22'04''$ East along the extension of an existing fence a distance of 99.17 feet; thence North $89^{\circ}11'10''$ East along the extension of an existing fence a distance of 28.32 feet to a found $\frac{1}{2}$ " iron pin, L.S. No. 147089; thence North $00^{\circ}06'04''$ East along an existing fence a distance of 68.92 feet to a found $\frac{1}{2}$ " iron pin, L.S. No. 147089; thence North $89^{\circ}00'00''$ West a distance of 16.88 feet to a fence post; thence North $00^{\circ}35'31''$ East along an existing fence a distance of 100.07 feet to a fence post; thence along an existing boundary line agreement, recorded as Entry No. 91415-00 in the office of the Utah County Recorder, the following two courses and distances: (1) North $88^{\circ}53'03''$ East a distance of 7.92 feet; thence South $89^{\circ}10'16''$ East a distance of 1.23 feet to a point on an existing fence; thence North $00^{\circ}38'52''$ West along said fence a distance of 95.53 feet to the real point of beginning. Containing 1.55 acres.

EXHIBIT "B"

List of Units, Size, Votes and Assessment Percentages

<u>Building Address</u>	<u>Unit</u>	<u>Square Footage</u>	<u>Bedrooms</u>	<u>Votes</u>	<u>Assessment Percentages</u>
675 N. 500 West	101	1,116	4	1	2.78%
675 N. 500 West	102	1,116	4	1	2.78%
675 N. 500 West	103	1,116	4	1	2.78%
675 N. 500 West	104	1,116	4	1	2.78%
675 N. 500 West	105	1,116	4	1	2.78%
675 N. 500 West	106	1,116	4	1	2.78%
675 N. 500 West	201	1,116	4	1	2.78%
675 N. 500 West	202	1,116	4	1	2.78%
675 N. 500 West	203	1,116	4	1	2.78%
675 N. 500 West	204	1,116	4	1	2.78%
675 N. 500 West	205	1,116	4	1	2.78%
675 N. 500 West	206	1,116	4	1	2.78%
675 N. 500 West	301	1,116	4	1	2.78%
675 N. 500 West	302	1,116	4	1	2.78%
675 N. 500 West	303	1,116	4	1	2.78%
675 N. 500 West	304	1,116	4	1	2.78%
675 N. 500 West	305	1,116	4	1	2.78%
675 N. 500 West	306	1,116	4	1	2.78%
701 N. 500 West	107	1,116	4	1	2.78%
701 N. 500 West	108	1,116	4	1	2.78%
701 N. 500 West	109	1,116	4	1	2.78%
701 N. 500 West	110	1,116	4	1	2.78%
701 N. 500 West	111	1,116	4	1	2.78%
701 N. 500 West	112	1,116	4	1	2.78%

<u>Building Address</u>	<u>Unit</u>	<u>Square Footage</u>	<u>Bedrooms</u>	<u>Votes</u>	<u>Assessment Percentages</u>
701 N. 500 West	207	1,116	4	1	2.78%
701 N. 500 West	208	1,116	4	1	2.78%
701 N. 500 West	209	1,116	4	1	2.78%
701 N. 500 West	210	1,116	4	1	2.78%
701 N. 500 West	211	1,116	4	1	2.78%
701 N. 500 West	212	1,116	4	1	2.78%
701 N. 500 West	307	1,116	4	1	2.78%
701 N. 500 West	308	1,116	4	1	2.78%
701 N. 500 West	309	1,116	4	1	2.78%
701 N. 500 West	310	1,116	4	1	2.78%
701 N. 500 West	311	1,116	4	1	2.78%
701 N. 500 West	312	1,116	4	1	2.78%
TOTAL	36	40,176	144	36	100%