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**David L. Lansky, Esq.
Mariscal, Weeks, McIntyre & Friedlander, P.A.
2901 North Central Avenue, Suite 200
Phoenix, Arizona 85012**

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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT RED MOUNTAIN,
A Condominium Development**

TABLE OF CONTENTS
Amended and Restated Declaration of Condominium For
The Villas at Red Mountain,
A Condominium Development

	PAGE
ARTICLE 1 INTRODUCTION	2
1.1 Description of Property	2
1.2 Purpose of Declaration	2
ARTICLE 2 DEFINITIONS	2
ARTICLE 3 DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS	5
3.1 Description of Property	5
3.2 Description of Improvements	5
ARTICLE 4 SUBMISSION TO ACT	6
ARTICLE 5 DESCRIPTION OF UNITS	6
ARTICLE 6 DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES	6
6.1 Description of Common Elements	6
6.2 Allocation of Undivided Interest	7
ARTICLE 7 DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES	7
ARTICLE 8 OPTION TO EXPAND	7
8.1 Reservation of Option	8
ARTICLE 9 NATURE AND INCIDENTS OF UNIT OWNERSHIP	9
9.1 Separate Parcels	9
9.2 Right to Use Common Area and Facilities	9
9.3 Alteration and Maintenance	9
9.4 Right of Entry	10
9.5 Lease of Units	10
9.6 Membership in Condominium Association	10
ARTICLE 10 VOTING	10
ARTICLE 11 TITLE TO UNITS	10
11.1 Permitted Owners	10
11.2 Appurtenant Rights	10
11.3 Ownership of Common Elements	11
11.4 Mortgages	11
11.5 Liens for Labor, Materials or Services	11
11.6 Description of Unit	11
ARTICLE 12 ADDITIONAL DEVELOPMENTAL RIGHTS	11
12.1 Completion of Improvements	11
12.2 Sales or Leasing Activities	11
12.3 Appointment of Management Committee	12
ARTICLE 13 RESTRICTIONS ON USE	12
13.1 Residential Use	12
13.2 Nuisances	12

13.3 Signs 13

13.4 Animals 13

13.5 Window Coverings 13

13.6 Combination or Subdivision of Units 13

13.7 Obstruction of Common Areas and Facilities 13

13.8 Impairment of Insurance 13

13.9 Rules and Regulations 14

13.10 Antennas 14

13.11 Improvements or Alterations 14

13.12 Refuse Removal 16

13.13 Pest Control 16

13.14 Parking 16

13.15 Offensive Activities 16

13.16 Balconies 17

13.17 Patios 17

13.18 Time Shares Prohibited 17

13.19 Hazardous Materials 17

13.20 Noise Reduction 17

13.21 Approval of Declaration 17

ARTICLE 14 CONDOMINIUM ASSOCIATION AND MANAGEMENT COMMITTEE 18

14.1 Number and Selection 18

14.2 Powers 18

14.3 Conveyance of Association Property 20

14.4 Contract with Manager 20

ARTICLE 15 MAINTENANCE, ALTERATION AND IMPROVEMENT 20

15.1 Duties of Condominium Association 20

15.2 Right of Access for Maintenance 20

ARTICLE 16 INSURANCE 21

16.1 Scope of Coverage 21

16.2 Insurance By Owners 22

16.3 Adjustment of Loss 22

16.4 Certificate of Insurance 22

16.5 Additional Insurance 22

16.6 Fidelity Bond 22

ARTICLE 17 DESTRUCTION OR DAMAGE 22

17.1 Automatic Restoration 23

17.2 Determination Not to Restore or Reconstruct 23

ARTICLE 18 TERMINATION 23

18.1 Following Damage or Destruction 23

18.2 By Owners 24

18.3 Owners as Tenants In Common 24

18.4 Amendment 24

ARTICLE 19 EMINENT DOMAIN 24

19.1 Notice to Owners 24

19.2 Determination of Award.....24

19.3 Deposit of Award.....24

19.4 Removal of Project.....25

19.5 Project Not Removed.....25

19.6 Amendment to Declaration.....25

ARTICLE 20 MORTGAGEE PROTECTION.....25

20.1 Roster of Owners and First Mortgagees.....25

20.2 Notice to First Mortgagees.....26

20.3 Lien Priority.....26

20.4 Validity of Prior First Mortgages.....26

ARTICLE 21 AMENDMENT.....26

ARTICLE 22 ASSESSMENT OF UNITS BY THE CONDOMINIUM ASSOCIATION..27

22.1 Making and Collection of Assessments.....27

22.2 Reserves.....29

22.3 Assignment of Rents.....30

22.4 No Exemption from Assessment Obligation.....30

22.5 Initial Working Capital.....30

22.6 Reserve Contribution.....30

22.7 Transfer Fee.....31

ARTICLE 23 EASEMENTS.....31

23.1 Encroachments.....31

23.2 Subsequent Phases.....31

23.3 Declarant's Easements.....31

23.4 Access and Support.....31

23.5 Easement of Condominium Association.....32

23.6 Conveyances Subject to Easements.....32

23.7 Access to Additional Land.....32

ARTICLE 24 DISPUTE RESOLUTION.....32

24.1 Agreement to Resolve Certain Disputes Without Litigation.....32

24.2 Notice of Claim.....32

24.3 Mediation.....33

24.4 Binding Arbitration.....33

24.5 Right to Enter.....35

24.6 Use of Funds.....36

24.7 Member Approval Required.....36

24.8 Statute of Limitations.....36

24.9 Conflicts.....36

ARTICLE 25 NOTICES.....36

ARTICLE 26 NO WAIVER.....37

ARTICLE 27 ENFORCEMENT.....37

27.1 Right to Enforce.....37

27.2 Forfeiture of Interest.....37

ARTICLE 28 AGENT FOR SERVICE OF PROCESS.....38

ARTICLE 29 SEVERABILITY.....38

ARTICLE 30 CAPTIONS.....38

ARTICLE 31 LAW CONTROLLING38
ARTICLE 32 CONSTRUCTION.....38
ARTICLE 33 EFFECTIVE DATE39
ARTICLE 34 CERTIFICATION.....39
ARTICLE 35 ORIGINAL DECLARATION SUPERSEDED39

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT RED MOUNTAIN
A CONDOMINIUM DEVELOPMENT**

[A Utah Expandable Condominium Project]

Washington County, Utah

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR VILLAS AT RED MOUNTAIN, A CONDOMINIUM DEVELOPMENT is made and executed by Pivotal Mark II, L.L.C., an Arizona limited liability company (hereinafter referred to as "Declarant") and by The Villas at Red Mountain Owner Association, Inc. a Utah non-profit corporation, (the "Condominium Association") pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

RECITALS

A. A Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, was recorded on January 2, 2003, in Book 1512, Pages 1911 through 1956, in the official records of Washington County, Utah (the "Original Declaration") submitting the real property described on Exhibit A attached to the Original Declaration to a condominium pursuant to the Utah Condominium Ownership Act.

B. Article 21 of the Original Declaration provides that the Original Declaration may be amended only by the affirmative vote or written assent of at least a bare majority of the Total Votes of the Condominium Association. Pivotal Mark II, L.L.C., an Arizona limited liability company, which is the Declarant under the Original Declaration, owns all of the Units, and therefore, holds all of the Total Votes of the Condominium Association. Article 21 further provides that any amendment to the Original Declaration shall be evidenced by an instrument containing a certification from an officer of the Condominium Association designated for that purpose, or in the absence of such designation, by the President of the Condominium Association that the appropriate consent has been obtained.

C. This Amended and Restated Declaration of Condominium for Villas at Red Mountain, a condominium development, is intended to supersede and replace the Original Declaration in its entirety. Upon the recording of this Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a condominium development, in the official records of Washington County, Utah, the Original Declaration shall be of no further force and effect.

NOW, THEREFORE, the Original Declaration is hereby amended and restated as follows:

**ARTICLE 1
INTRODUCTION**

1.1 Description of Property. Declarant is the owner of certain real property located in Washington County, Utah and more particularly described in Exhibit A attached hereto (the "Property").

1.2 Purpose of Declaration. Declarant proposes to create an expandable Condominium Project to be known as The Villas at Red Mountain, A Condominium Development. The purpose of this Declaration is to submit The Villas at Red Mountain to the condominium form of ownership and use in the manner provided by the Utah Condominium Ownership Act.

**ARTICLE 2
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article 2.

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

2.2 "Additional Land" shall mean the land described on Exhibit B attached hereto that may be added to the Project in accordance with the provisions of Article 8.

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

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

2.5 "Balcony" means a portion of the Common Areas and Facilities designated as a balcony on the Map.

2.6 "Buildings" shall mean the buildings constructed as part of the Project, as described in Section 3.2.

2.7 "Bylaws" shall mean the Bylaws of the Condominium Association, a copy of which is attached hereto as Exhibit C, as amended from time to time.

2.8 "Common Areas and Facilities" shall mean all portions of the Project other than the Units, as described in Section 6.1, including the Limited Common Areas and Facilities.

2.9 "Common Assessments" shall mean those Assessments described in Article 22 to fund the Common Expenses, and include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Condominium Association.

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

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

2.12 "Condominium Association" shall mean The Villas at Red Mountain Owner Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

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

2.14 "Declarant" shall mean Pivotal Mark II, L.L.C., an Arizona limited liability company, or any successor in interest as defined by the Act and any person or persons who might acquire title from it to all or substantially all unsold Units in a bulk sale or through foreclosure or deed in lieu of foreclosure.

2.15 "Declaration" shall mean this Declaration of Condominium, and all amendments, modifications and supplements hereto.

2.16 "Developmental Rights" shall mean the right under the Act to (a) convert a portion of the Project into one or more Units, Common Areas and Facilities, or Limited Common Areas and Facilities, (b) add real estate to the Project pursuant to Article 8, and (c) exercise any of the rights granted to or reserved by the Declarant in this Declaration or by the Act.

2.17 "Furnishings" shall mean all furniture, furnishings, utensils, equipment, facilities and personal property within Units.

2.18 "Invitee" means any person whose presence within the Project is approved by or is at the request of a particular Owner or Occupant, including, without limitation, family members, guests, employees and contractors.

2.19 "Limited Common Areas and Facilities" shall mean a portion of the Common Areas and Facilities allocated by this Declaration or the Act, and as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

2.20 "Management Committee" shall mean the Board of Directors of the Condominium Association, appointed or elected in accordance with this Declaration and the Bylaws.

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

2.22 "Map" shall mean the Record of Survey Map of the Property, recorded in the office of the County Recorder for Washington County, State of Utah, a reduced copy of which is attached hereto as Exhibit D, as it may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the initial Map may be amended at such time as the Buildings are constructed in the event there are material changes in the Building's boundaries or elevations as constructed. Such an amendment to the Map is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners.

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

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

2.25 "Occupant" means a person, other than an Owner, in possession of a Unit at the request of or with the consent of the Owner.

2.26 "Owner" shall mean any person or entity including Declarant, at any time owning a Unit or an interest in a Unit within the Project. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.27 "Patio" shall mean a portion of the Common Areas designated as a patio on the Map.

2.28 "Parking Space" shall mean a portion of the Common Areas and Facilities intended for the parking of a single motor vehicle designated on the Map as a parking space.

2.29 "Period of Declarant Control" shall mean the period established by Section 12.3 during which the Declarant or persons designated by it have the right to appoint and remove the Condominium Association's officers and members of the Management Committee.

2.30 "Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

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

2.32 "Property" shall mean that certain real property situated in the County of Washington, State of Utah, more particularly described in Article 3, on which the Units and other improvements are located.

2.33 "Regular Common Assessments" shall mean the annual assessments levied by the Condominium Association to pay the budgeted Common Expenses.

2.34 "Rules and Regulations" means the rules and regulations governing the use of the Common Areas and Facilities adopted by the Management Committee.

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

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

2.37 "Total Votes of the Condominium Association" shall mean the total number of votes appertaining to all Units, as described in Article 10.

2.38 "Unit" shall mean a physical portion of the Project designed for separate ownership and residential occupancy as described in Article 5.

2.39 "Unit Number" shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

ARTICLE 3

DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS

3.1 Description of Property. The Property on which the Units and improvements are located is situated in Washington County, Utah and more particularly described on Exhibit A attached hereto.

3.2 Description of Improvements. The initial improvements will consist of 1 wood frame and stucco building (the "Building") containing 4 units. The Building will be supplied with telephone, television (via common satellite dish), electricity, water, and sewer service. Electrical service to the Units will be separately metered, and all charges for electrical service to a Unit shall be paid by the Unit Owner. The Project also includes the Common Areas and Facilities described herein.

ARTICLE 4 SUBMISSION TO ACT

Declarant hereby submits the Property, the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in this Declaration, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units; further, each and all of the provisions of this Declaration shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Condominium Association are each hereby granted a limited license to use the name "Villas at Red Mountain" in connection with the administration, sale and operation of their respective interests in the Project.

ARTICLE 5 DESCRIPTION OF UNITS

The boundary lines of each Unit are as set forth on the Map and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls; floors, ceilings and roofs (except the interior finished surfaces thereof); foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Map contains the Unit Number of each Unit in the Project.

ARTICLE 6 DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

6.1 Description of Common Elements. The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, the foundation, columns, girders,

beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes and entrances and exits of the buildings; the grounds, recreational facilities, if any, and parking areas in the Project, designated as part of the Common Areas and Facilities on the Map; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map or any amended Map; and all repairs and replacements of any of the foregoing. All Patios and Balconies shown on the Plat are part of the Common Areas and Facilities. In the event of a conflict between this Declaration and the Map, the provisions of this Declaration shall control.

6.2 Allocation of Undivided Interest. Each Unit is allocated an equal undivided interest in the Common Areas and Facilities. The undivided interest of each Unit in the Common Areas and Facilities shall be appurtenant to the Unit and the undivided interest may not be separately conveyed. Except as otherwise provided in this Declaration or the Act, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered, provided, however, Declarant reserves the right to adjust the undivided interest of each Unit in the Common Areas and Facilities following any addition of Units to the Project, in accordance as provided in Article 8.

ARTICLE 7 DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, Balconies, Patios, certain hallways and corridors, as indicated by this Declaration or the Act to be for the exclusive use of one or more but fewer than all of the Units. Each Unit is allocated as a Limited Common Area and Facilities the porch and the Patio or Balcony adjoining the Unit as shown on the Plat. Mechanical systems serving only a portion of the Units shall be Limited Common Areas and Facilities with respect to the Units they serve. Similarly, hallways and other common walkways serving only a portion of the Units shall be limited Common Areas and Facilities with respect to the Units they serve. The Limited Common Areas and Facilities shall be those areas designated as such on the Map, in this Declaration or as provided for by the Act. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Map or as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

ARTICLE 8 OPTION TO EXPAND

8.1 Reservation of Option. Declarant hereby reserves, pursuant to Section 57-8-13.6 of the Act, the option to expand the Project (the "Option to Expand") by annexing and adding the Additional Land upon the terms and provisions set forth in this Section without the prior consent of the Owners or the Condominium Association. Each Option to Expand must be exercised no later than seven (7) years from the date of recording this Declaration. The exercise by the Declarant of the Option to Expand shall be accomplished by the recording of a survey map under Subsection 57-8-13(2) of the Act together with an Amendment containing the legal description of the land added to the Project and such other provisions as are required by Section 57-8-13.6 of the Act. The terms and conditions of the Option to Expand shall be as follows:

8.1.1 Subject to the provisions of Section 8.1.2, the Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by the Declarant. The Declarant is not obligated to exercise its Option to Expand with respect to any portion of the Additional Land. No assurance is made with regard to which portions of the Additional Land, if any, will be added to the Project or the order in which such portions will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land.

8.1.2 Declarant shall not be restricted in the location of improvements on the Additional Land that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations. The maximum number of Units that may be created is fifty-three (53). If not all of the Units that may be created on the Additional Land are annexed and subjected to this Declaration, the Common Assessments may be higher than they would have been if all of the Additional Land had been annexed.

8.1.3 The Units to be located on the Additional Land shall be subject to the same uses as provided in Articles 9 and 10, as applicable. Declarant reserves the right to exercise all Developmental Rights with respect to any Units located on the Additional Land.

8.1.4 The Units to be built on the Additional Land shall be substantially similar to the Units depicted on the Map. Structures other than buildings containing Units may be erected on the Additional Land. Further improvements may include recreational facilities, parking areas, walkways and landscaping of the Common Areas and Facilities contained therein. Declarant reserves the right to add additional Limited Common Areas and Facilities to the Additional Land without limitation.

8.1.5 The undivided interest in the Common Areas and Facilities for all Units in the Project shall be reallocated at the time Declarant records an Amendment and Supplemental Map reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in Section 8.1.6 so that each Unit has an equal undivided interest. It is contemplated that there may be multiple Amendments filed by Declarant and such Amendments are hereby expressly authorized.

8.1.6 Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Section, including the procedure for adjustment of Unit ownership interests pursuant to Section 8.1.6. After the filing for record of any Amendment to this Declaration and the Supplemental Map reflecting Declarant's exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Additional Land including its appurtenant ownership interest in the Common Areas and Facilities shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Unit or its appurtenant ownership interest in the Common Areas and Facilities.

8.1.7 Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Land.

8.1.9 No provision of this Article 8 shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Units in the Project.

ARTICLE 9 NATURE AND INCIDENTS OF UNIT OWNERSHIP

9.1 Separate Parcels. Each Unit is and shall hereafter be a parcel of real property that may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration. Each Unit shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

9.2 Right to Use Common Area and Facilities. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use his Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners.

9.3 Alteration and Maintenance. No Owner shall make or cause to be made any alterations, improvements, replacements or repairs in or to any Unit except with the prior written consent of the Management Committee. Each Owner shall keep the interior of his Unit, including without limitation, appliances, interior paint, wall coverings, floor coverings, interior walls, ceilings, Furnishings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. Each Owner shall maintain, repair and replace the doors and windows in the perimeter walls of the Unit even though such windows and doors are part of the Common Areas and Facilities. In the event that any such Unit or the windows and doors in the perimeter walls of the Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state

of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. No Owner may subdivide his Unit.

9.4 Right of Entry. The Management Committee shall have the right to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity. Each Owner shall provide the Management Committee with a key to the Owner's Unit so that the Management Committee will have access to the Unit for the purposes set forth in this Section.

9.5 Lease of Units. Nothing in this Declaration shall limit the rights of Declarant to operate the Units owned by it for lease or rental purposes. Each Owner shall pay his full pro rata share of Common Assessments regardless of whether or not such Owner has entered into any lease or rental agreement for a Unit.

9.6 Membership in Condominium Association. The persons or entities who are at the time of reference Owners shall, together with all other Owners, be members of the Condominium Association, the characteristics and nature of which are determined by the Act, this Declaration, the Bylaws, the Articles and other applicable Utah law.

ARTICLE 10 VOTING

At any meeting of the Condominium Association, each Owner of a Unit, including Declarant, either in person or by proxy, shall be entitled to one (1) vote. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

ARTICLE 11 TITLE TO UNITS

11.1 Permitted Owners. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

11.2 Appurtenant Rights. Title to a part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this

Declaration, including appurtenant membership in the Condominium Association as herein set forth.

11.3 Ownership of Common Elements. The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

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

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

11.6 Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

**ARTICLE 12
DEVELOPER RIGHTS**

12.1 Completion of Improvements. Declarant hereby reserves an easement throughout the Project for the purpose of completing all improvements contemplated by this Declaration and the Map, including but not limited to improvements to the Additional Land, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

12.2 Sales or Leasing Activities. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any of the Units that it owns or is under contract to purchase or on the Common Areas and Facilities of the Project.

Declarant shall be entitled to utilize one or more Units which it owns or is under contract to purchase and some or all of the Common Areas and Facilities as sales or leasing offices, management offices, and models anywhere in the Project. Declarant may relocate sales or leasing offices, management offices, and models to other Units or Common Areas and Facilities at any time.

12.3 Appointment of Management Committee. There is hereby established a period of Declarant control of the Condominium Association during which period Declarant or persons designated by it shall have the authority to appoint and remove the Condominium Association officers and members of the Management Committee. The Period of Declarant Control shall terminate on the earlier of: (a) six (6) years from and after the recording of this Declaration; or (b) after conveyance of Units to which seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities appertain or after all Additional Land has been added to the Project, whichever last occurs. After termination of the Period of Declarant Control, the Management Committee shall be elected as provided in the Bylaws, but the owner of the destination resort and spa known as Red Mountain Spa which is located adjacent to the Project shall have the perpetual right to appoint one person to be an ex officio member of the Management Committee. Such ex officio member will not have a vote but will be entitled to notice of and shall have the right to attend and participate in all meetings of the Management Committee.

12.4 Declarant Approval of Amendments. Notwithstanding any other provision of this Declaration to the contrary, no amendment to this Article 12 shall be effective unless approved in writing by the Declarant.

ARTICLE 13 RESTRICTIONS ON USE

13.1 Residential Use. The Units shall be used exclusively for residential purposes and no Unit shall be used for commercial purposes; provided, however, that nothing in this Section shall prevent (a) Declarant or an affiliated corporation or a duly authorized agent from using any Unit owned by Declarant as sales or leasing offices and model Units or a property management office as provided in Section 12.2, or (b) any Owner makes available a Unit for nightly or periodic occupancy in connection with the operation of the Red Mountain Spa, or (c) any Owner or his duly authorized agent from renting or assigning use rights to his Unit from time to time; provided, that such rentals or assignments of rights not including the permitted activities described in (b) above in the case of Owners, other than Declarant or an affiliated corporation, do not result in a pattern of rental activity or assignment of use rights that either the Manager or the Management Committee determines, in its reasonable judgment, constitutes a commercial use.

13.2 Nuisances. No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done on or placed in or upon any part of the Project that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners. No activities shall be conducted or improvements constructed in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

13.3 Signs. No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger or except as may be used by Declarant as part of its marketing and sales program. Notwithstanding the foregoing provisions of this Section, an Owner shall have the right to display the American flag in his Unit or on the exterior of the Building in which such Owner's Unit is located, subject to such reasonable rules governing the size, location and manner of display of the flag as may be adopted by the Management Committee.

13.4 Animals. No animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Project.

13.5 Window Coverings. The draperies, shades and other interior window coverings in Units shall present a uniform appearance and color from the outside of the Units, and shall be made or constructed from materials approved by the Management Committee or with the prior inspection and written approval of the Management Committee. No Owner shall remove, replace or alter the window coverings initially installed in the Unit by the Declarant without the prior written approval of the Management Committee. The Management Committee shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of the Buildings. Owners shall not erect or display any window coverings in violation of the foregoing requirement or any signs, banners or similar items on, from or in their Units without the prior written consent of the Management Committee.

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

13.7 Obstruction of Common Areas and Facilities. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Units, except with the prior written consent of the Management Committee.

13.8 Impairment of Insurance. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over what the Condominium Association, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner, Occupant or Invitee, and each Owner shall indemnify and hold the Condominium Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his Invitees.

13.9 Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Condominium Association.

13.10 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or to receive or transmit internet or other fixed wireless signals shall be installed, used or maintained on any portion of the Project whether attached to the Building or otherwise without the prior written approval of the Management Committee, unless applicable law prohibits the Management Committee from requiring such prior approval. Even if applicable law prohibits the Management Committee from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Management Committee may adopt.

13.11 Improvements or Alterations. Improvements or alterations to Units or Common Areas or Facilities shall be subject to the following provisions:

13.11.1 Except as expressly provided in this Declaration, no Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

13.11.2 Any Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Management Committee, but the Owner of the Unit shall be responsible for any damage to other Units and to the Common Areas and Facilities which results from any such alterations, additions or improvements. No Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner receives the prior written approval of the Management Committee and an architect or engineer, licensed in Utah, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Project.

13.11.3 Notwithstanding Section 13.11.1, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Management Committee, which approval shall only be granted if the Management Committee affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Areas and Facilities without the prior written approval of the Management Committee. Except as expressly permitted by this Section 13.11, no wall, partition, fixture or other improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Management Committee.

13.11.4 No Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Management Committee, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Management Committee, acting in accord with the direction of the Management Committee. No Owner shall overload the floors of any Unit. Water-beds and other furnishings which may cause floor overloads shall not be placed, kept or used in any Unit, except with advance written approval of the Management Committee.

13.11.5 The Management Committee may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Areas and Facilities in any manner, including without limitation: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Managing Committee in an account controlled by the Management Committee; (d) requiring the provision to the Management Committee of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Utah; and (e) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Management Committee. The Owner shall be obligated to designate Declarant, the Condominium Association, the Management Committee and any other Person designated by the Management Committee as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Management Committee in connection with the Management Committee's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Management Committee to assist in their review.

13.11.6 Proposed additions, alterations and improvements to a Unit or the Common Areas or Facilities shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Management Committee with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Condominium Association, the Declarant and all other Owners or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Condominium Association.

13.11.7 The Condominium Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 13.11 or any rules of the Condominium Association governing additions, alterations or improvements to the Units or the Common Areas and Facilities. The Condominium Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the

Association. Neither Declarant, the Condominium Association nor any of the officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Condominium Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Condominium Association and their respective directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Management Committee of plans submitted by the Owner or Occupant of the Owner's Unit.

13.12 Refuse Removal. No rubbish, trash or garbage shall be placed or kept on the Common Areas or Facilities except in covered containers of a type, size and style which are approved by the Management Committee. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules and Regulations may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

13.13 Pest Control. No Owner or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Condominium Association, each Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

13.14 Parking. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Project, and no inoperable vehicle may be stored or parked on any portion of the Project. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Project, except in the Parking Spaces. If a Parking Space is assigned to a Unit as a Limited Common Element, then no Owner or Occupant may park any automobile, motorcycle, motor bike or other motor vehicle owned or leased by such Owner or Occupant in any Parking Spaces other than the Parking Space assigned to the Unit as a Limited Common Element.

13.15 Offensive Activities. No activity shall be conducted upon the Project which is offensive or detrimental to any portion of the Project or any Owner or Occupant or which interferes with quiet enjoyment of a Unit by the Owner or Occupant thereof. No exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Project without the prior written approval of the Management Committee.

13.16 Balconies. Furniture, furnishings, umbrellas and plants kept and maintained on any Balcony shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Management Committee unless expressly permitted by the Rules and Regulations. No astro turf, carpet or other floor covering shall be installed in any Balcony without the prior written approval of the Management Committee. No Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Balcony, such as the use of a Balcony to store bicycles or exercise equipment. No linens, blankets, rugs, swimsuits or similar articles may be hung from any Balcony. No jacuzzis, barbeques and related accessories and equipment may be used on Balconies, except as expressly provided in the Rules and Regulations.

13.17 Patios. Furniture, furnishings, umbrellas and plants may be kept and maintained in a Patio so long as they do not extend above the top of the fence or wall enclosing the Patio. No furniture, furnishings, umbrellas, plants or other items which would extend above the top of the fence or wall enclosing the Patio shall be installed, kept or maintained in any Patio without the prior written approval of the Management Committee unless expressly permitted by the Rules and Regulations. No jacuzzis, barbecues and related accessories and equipment may be used in Patios.

13.18 Time Shares Prohibited. No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

13.19 Hazardous Materials. No Owner or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning or landscaping work.

13.20 Noise Reduction. No loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules and Regulations. All Owners and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the Rules and Regulations.

13.21 Approval of Declaration. After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

ARTICLE 14

CONDOMINIUM ASSOCIATION AND MANAGEMENT COMMITTEE

14.1 Number and Selection. The management and maintenance of the Project and the administration of the affairs of the Condominium Association shall be conducted by a Management Committee consisting of not less than three (3) nor more than five (5) natural persons as provided in the Bylaws. The Management Committee shall be elected as provided in this Declaration and in the Bylaws. As provided in Section 12, after the termination of the Period of Declarant Control, the owner of Red Mountain Spa shall have the right to appoint one (1) ex officio member of the Management Committee.

14.2 Powers. Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Condominium Bylaws, including but not limited to the following:

14.2.1 To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.

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

14.2.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities.

14.2.4 To determine and pay the Common Expenses.

14.2.5 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article 22.

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

14.2.7 To open bank accounts and borrow money on behalf of the Condominium Association and to designate the signatories therefor.

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

14.2.9 To bring, prosecute and settle litigation for itself, the Condominium Association and the Project.

14.2.10 To obtain insurance for the Condominium Association with respect to the Units and the Common Areas and Facilities, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Condominium Association.

14.2.11 To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or

deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

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

14.2.13 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

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

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

14.2.16 To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project and enter into contracts with the Red Mountain Spa and other entities. Such contracts may, among other things, obligate the Condominium Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Condominium Association. In addition, it may grant the Red Mountain Spa lien rights with respect to the Condominium Association's properties for non payment of assessments and other costs.

14.2.17 Subject to the limitations of the Act, and any other applicable law, the Management Committee may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section 14.2.

14.2.18 The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Condominium Association. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey those Limited Common Areas or Facilities or subject the same to the Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

14.2.19 Members of the Management Committee, the officers and any assistant officers, agents and employees of the Condominium Association (a) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (b) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Condominium Association in their capacity as such; (c) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad

faith, nor for acts performed for them in their capacity as such, and (d) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

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

14.3 Conveyance of Association Property. Neither the Management Committee nor the Manager shall sell any property of the Association except as permitted by the Act.

14.4 Contract with Manager. The Management Committee may enter into a contract with the Manager for the management of the Project.

ARTICLE 15 MAINTENANCE, ALTERATION AND IMPROVEMENT

15.1 Duties of Condominium Association. The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Condominium Association, and the cost thereof shall be a Common Expense. The Condominium Association shall also maintain, replace and repair all private roads, common porches, and decks and all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. The Condominium Association shall also maintain, repair and replace all air conditioning and heating units and hot water heaters serving the Units. The Management Committee may enter into maintenance agreements with reputable third parties for the performance of the responsibilities of the Condominium Association set forth herein; provided, however, that all amounts that become due and owing under such contracts shall be included as a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

15.2 Right of Access for Maintenance. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Condominium Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Condominium Association shall also have the irrevocable right to

have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Condominium Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Condominium Association.

**ARTICLE 16
INSURANCE**

16.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Condominium Association shall maintain, to the extent reasonably available, insurance as follows and in accordance with any additional provisions of the Bylaws not inconsistent with the following:

16.1.1 The Condominium Association shall maintain property insurance on the Common Areas and Facilities and all Buildings (including any improvement which is a permanent part of a Building) against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any deductibles, shall be not less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land and other items normally excluded from property policies.

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

16.1.3 The insurance maintained under Section 16.1 shall include the Units but need not include improvements and betterments installed by Owners or the Furnishings or other personal property of Owners. The Condominium Association may carry any other insurance it deems appropriate to protect the Condominium Association or the Owners.

16.1.4 Where applicable, insurance policies carried by the Condominium Association shall provide the following:

(a) Each Owner, or the Condominium Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his interest in the Common Areas and Facilities or membership in the Condominium Association.

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

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

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

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

16.2 Insurance By Owners. An insurance policy issued to the Condominium Association shall not prevent an Owner from obtaining insurance for his own benefit.

16.3 Adjustment of Loss. Any loss covered by the property policy under Section 16.1.1 shall be adjusted with the Condominium Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Condominium Association and not to the Condominium Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Condominium Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of Article 17, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Condominium Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated.

16.4 Certificate of Insurance. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Condominium Association and, on written request, to any Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Condominium Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

16.5 Additional Insurance. This Article does not prohibit the Management Committee from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

16.6 Fidelity Bond. The Management Committee shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Condominium Association having control of, or access to, the funds of the Condominium Association with loss coverage ordinarily not less than the maximum amount of funds of the Condominium Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

ARTICLE 17 DESTRUCTION OR DAMAGE

17.1 Automatic Restoration. In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Management Committee, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. Except as otherwise provided in Section 17.2, the Management Committee shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective ownership interests in the Common Areas and Facilities. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas and Facilities having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Article 19 hereof shall apply.

17.2 Determination Not to Restore or Reconstruct. If all or substantially all of the Project is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Condominium Association for the purpose of deciding whether or not the Project shall be repaired and restored. Unless Owners holding one hundred percent (100%) of the Total Votes of the Condominium Association in the Project, in person or by proxy, vote not to repair or restore the Project, the Management Committee shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective ownership interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of Article 19 shall apply. At such election, if Owners holding one hundred percent (100%) of the Total Votes of the Condominium Association vote either in person or by proxy not to make provision for reconstruction, the Management Committee shall record with the Recorder of Washington County a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (a) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities; (b) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (c) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

ARTICLE 18 TERMINATION

18.1 Following Damage or Destruction. In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of Section 17.2 and the Owners do not vote to reconstruct the Project as provided therein, the Project

shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage.

18.2 By Owners. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership or contractual rights to purchase Units in the Project, its consent shall also be required to remove the Project from the provisions of the Act.

18.3 Owners as Tenants In Common. After removal of the Project from the Act, the Owners shall own the Project and all assets of the Condominium Association as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be the same as the ownership interest in the Common Areas and Facilities appurtenant to the Units prior to removal from the Act.

18.4 Amendment. This Article 18 cannot be amended without consent of all Owners and all record owners of Mortgages on Units.

**ARTICLE 19
EMINENT DOMAIN**

19.1 Notice to Owners. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

19.2 Determination of Award. With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his ownership interest in the Common Areas and Facilities. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Map are duly amended.

19.3 Deposit of Award. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to Article 17 and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more

Owners, the Owners shall deposit the damaged or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his award with the Management Committee, then at the option of the Management Committee, either a special assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

19.4 Removal of Project. In the event the Project is removed from the provisions of the Act pursuant to Article 18, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities and the Owners of the affected Units shall have the rights provided in Article 18.2.

19.5 Project Not Removed. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

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

19.5.2 If the taking destroys or so reduces the size of a Unit that it cannot be made tenable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owners. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Management Committee. The ownership interest in the Common Areas and Facilities appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Owners.

19.6 Amendment to Declaration. Changes in Units, in the Common Areas and Facilities, and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Article 19 shall be evidenced by an amendment to this Declaration and the Map, which need not be approved by the Owners.

ARTICLE 20 MORTGAGEE PROTECTION

20.1 Roster of Owners and First Mortgagees. The Management Committee shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Management Committee will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Management Committee is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded

release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

20.2 Notice to First Mortgagees. The Management Committee shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days.

20.3 Lien Priority. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Condominium Bylaws.

20.4 Validity of Prior First Mortgages. No amendment to this Section shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

**ARTICLE 21
AMENDMENT**

Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a bare majority of the Total Votes of the Condominium Association. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Condominium Association designated for that purpose, or in the absence of such designation, by the President of the Condominium Association that the appropriate consent has been obtained, and shall be duly recorded in the Office of the Washington County Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project.

ARTICLE 22
ASSESSMENT OF UNITS BY THE CONDOMINIUM ASSOCIATION

22.1 Making and Collection of Assessments. The making and collection of assessments by the Condominium Association from Owners of Units for their share of Common Expenses shall be pursuant to the Condominium Bylaws and subject to the following provisions:

22.1.1 Each Owner, including Declarant, for each Unit for which a certificate of occupancy has been issued for the initial improvements comprising such Unit owned by such Owner, or Declarant, as the case may be, shall be liable for an equal share of the Common Expenses. Two separate and distinct funds shall be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section 22 shall be the Common Expense Fund. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Until the Condominium Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an assessment has been made by the Condominium Association, Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Condominium Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit, and shall commence as to all Units of the Project on the first day of the month following the closing of the first sale of a Unit.

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

22.1.3 In addition to the Regular Common Assessments, the Association may levy in any calendar year Special Common Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners. Each Owner shall be liable for an equal share of any Special Common Assessment. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment against an Owner is a remedy utilized by the Committee to reimburse the Condominium Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, Rules and Regulations or any other governing instrument for the Project. Assessments to bring an Owner or his Unit into compliance with the governing instruments or otherwise assessed as a disciplinary measure may not be secured by the lien for unpaid assessments described in Section 22.1.5. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

22.1.4 All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such greater rate of interest as may be set by the Management Committee not to exceed the maximum lawful rate, if any, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a late fee in the amount of five percent (5%) of the delinquent amount, or such other reasonable late charge as may be established by the Management Committee from time to time, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorney's fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the Management Committee may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable. The Management Committee shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorney's fees, by an action brought against such Unit Owner or by foreclosure of the lien upon the Unit granted by the Act. Any payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Condominium Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Condominium Association may assess that expense exclusively against such Owner's Unit(s). If the Owner's percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

22.1.5 There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Common Assessments and related charges shall be effective upon recordation in the Office of the Washington County Recorder of a written notice of lien by the Management Committee or the Manager. Such lien shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 20.3 and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. A lien for unpaid assessments shall be enforced in accordance with the provisions of this Article 22 or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Condominium Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party. The Management Committee upon written request shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Condominium Association, the Management Committee, the Manager and every Owner, in favor of all who rely on such statement in good faith.

22.2 Reserves. The Management Committee shall establish reserves for the periodic repair, restoration or maintenance of the major components of the Common Areas and Facilities. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Condominium Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Condominium Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Condominium Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Condominium Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 22.1.3. If the current replacement value of the major components of the Common Areas and Facilities which the Condominium Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Management Committee shall cause a study to be conducted of the reserve account of the Condominium Association and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

- (a) Identification of the major components which the Condominium Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.
- (b) Identification of the probable remaining useful life of the items identified in subparagraph a, above, as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph (a), above, during and at the end of its useful life.
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "Reserve Account Requirements" means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Condominium Association is obligated to maintain.

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

22.4 No Exemption from Assessment Obligation. No Owner may exempt himself from liability for payment of assessments, monetary penalties and other fees and charges levied pursuant to this Declaration by waiver and nonuse of any of the Common Areas and Facilities or by the abandonment of his Unit. All assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Condominium Association is not properly exercising its duties and powers as provided in this Declaration or the Act.

22.5 Initial Working Capital. To provide the Condominium Association with initial operating funds, each purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two monthly installments of the Regular Common Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Condominium Association pursuant to this Declaration.

22.6 Reserve Contribution.

22.6.1 Except as otherwise provided in this Section 22.6.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Condominium Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 22.2. The amount of the Reserve Contribution shall be \$150 per month, but the amount of the Reserve Contribution may be changed from time to time by the Board of Directors as provided in this Section. The amount of the Reserve Contribution may be changed by the Management Committee from time to time after January 1, 2004; provided, however, that any increase must be approved by Members holding more than fifty percent (50%) of the Total Votes of the Condominium Association.

22.6.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Management Committee determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for

the conveyance of real property. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of assessments.

22.7 Transfer Fee. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Management Committee to compensate the Association for the administrative cost resulting from the transfer of a Unit.

ARTICLE 23 EASEMENTS

23.1 Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

23.2 Subsequent Phases. Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project if any, may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.

23.3 Declarant's Easements. Declarant shall have a transferable easement over, across and within the Property for the purposes of (a) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (b) connecting the Buildings to other adjoining structures or buildings, and (c) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. It is contemplated that Declarant or another party may construct additional buildings, as subsequent phases of the Project, which may encroach upon portions of the Common Areas and Facilities, and Declarant shall also have an easement over, across and within the Common Areas and Facilities for such purposes.

23.4 Access and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he is

occupying and to any Limited Common Areas and Facilities appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit.

23.5 Easement of Condominium Association. The Condominium Association shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Owners and the Condominium Association.

23.6 Conveyances Subject to Easements. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

23.7 Access to Additional Land. The Declarant hereby reserves and grants a perpetual non-exclusive easement over, upon and across the private streets within the Property for ingress and egress to and from Snow Canyon Parkway and the Additional Land for the benefit of the owners and occupants of the Additional Land and their successors, assigns, contractors, agents, guests and invitees. The easement reserved and granted by the Declarant in this Section 23.7 shall be appurtenant to and run with the Additional Land.

ARTICLE 24 DISPUTE RESOLUTION

24.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this Article 24, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas and Facilities, the Units or any other part of the Project, including, without limitation, any claim or cause of action that the Common Areas and Facilities or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Condominium Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Condominium Association, the Declarant, all Unit Owners, Occupants and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Section 24 (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Section 24 shall apply to all Claims.

24.2 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including date, time, location, Persons involved, and Respondent's role in the Claim; (b) the

factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in Section 24.5), the Condominium Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Utah that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Management Committee (if any); (f) a description of the fee arrangement between such attorney and the Condominium Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members.

24.3 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

24.4 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 24.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The parties shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceedings. A Respondent shall be entitled to join as a party to the arbitration any Person who is obligated to indemnify the Respondent with respect to the Claim or who may otherwise be liable to the Respondent with respect to the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section 24.4, the arbitration shall be conducted in accordance with the following rules:

(a) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

(b) The arbitration shall be conducted in accordance with the AAA Rules and applicable Utah law. In the event of a conflict between the AAA Rules and this Section 24.4, the provisions of this Section 24.4 shall govern.

(c) The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 24.4 as the "Arbitrator".

(d) The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 24.4.(c).

(f) The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

24.5 Right to Enter. Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Areas and Facilities or any Unit (the "Alleged Defect"), the Bound Party and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Areas and Facilities and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 24.5 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in

which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

24.6 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

24.7 Member Approval Required. The Condominium Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses, including without limitation, attorneys' fees, in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Condominium Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Condominium Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Condominium Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Condominium Association in accordance with Section 24.2.

24.8 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 24.4. If the arbitration proceedings are not initiated within the time period provided by Utah law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

24.9 Conflicts. In the event of any conflict between this Section 24 and any other provision of this Declaration, this Section 24 shall control.

ARTICLE 25 NOTICES

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

and postage prepaid. Such address may be changed from time to time by notice in writing to the Management Committee addressed to:

Management Committee
 Villas at Red Mountain Owners Association, Inc.
 c/o Pivotal Group
 The Esplanade
 2555 East Camelback Road
 Suite 700
 Phoenix, Arizona 85016

ARTICLE 26 NO WAIVER

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

ARTICLE 27 ENFORCEMENT

27.1 Right to Enforce. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (a) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (b) the Management Committee to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

27.2 Forfeiture of Interest. The Condominium Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the

Owner's failure to comply with the provisions of this Declaration or the rules and regulations for the Project except pursuant to: (a) the judgment of a court; or (b) a foreclosure for the failure of an Owner to pay assessments duly levied by the Condominium Association.

ARTICLE 28 AGENT FOR SERVICE OF PROCESS

The agent for service of process under the Act until the expiration of the Option to Expand under Article 8 shall be Thomas A. Ellison, Esq. whose address is c/o Stoel Rives LLP, 201 South Main Street, Suite 1100, Salt Lake City, Utah 84111. Thereafter, the agent for service of process shall be the Manager. Any changes in the agent for service of process shall be designated in a written notice recorded with reference to this Declaration.

ARTICLE 29 SEVERABILITY

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

ARTICLE 30 CAPTIONS

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof. Unless otherwise specified, all references to a Section or Sections refer to Sections of this Declaration.

ARTICLE 31 LAW CONTROLLING

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

ARTICLE 32 CONSTRUCTION

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

**ARTICLE 33
EFFECTIVE DATE**

This Declaration shall take effect when recorded.

**ARTICLE 34
CERTIFICATION**

The President of the Condominium Association, by executing this Declaration, certifies that the appropriate consent to this Declaration has been obtained.

**ARTICLE 35
ORIGINAL DECLARATION SUPERSEDED**

This Declaration supersedes the Original Declaration in its entirety.

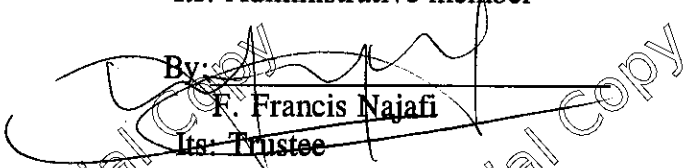
IN WITNESS WHEREOF, the undersigned have executed this instrument this 6th day of February, 2003.

PIVOTAL MARK II, L.L.C.,
an Arizona limited liability company

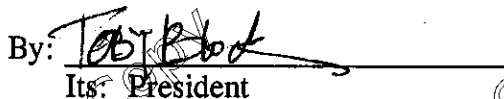
By: Pivotal Spa I, L.L.C., an Arizona limited liability company
Its: Manager

By: Pivotal Group X, L.L.C., an Arizona limited liability company
Its: Managing Member

By: F. Francis Najafi, Trustee of the F. Francis Najafi Family Trust dated
May 16, 1990
Its: Administrative member

By: 
F. Francis Najafi
Its: Trustee

THE VILLAS AT RED MOUNTAIN OWNERS ASSOCIATION, INC.,
a Utah non-profit corporation

By: 
Its: President

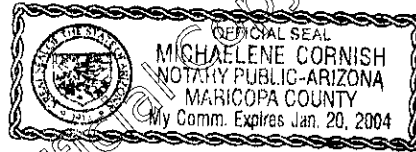
STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 6th day of February, 2003, by F. Francis Najafi, Trustee of the F. Francis Najafi Family Trust dated May 16, 1990, the Administrative Member of Pivotal Group X, L.L.C., an Arizona limited liability company, the Managing Member of Pivotal Spa I, L.L.C., an Arizona limited liability company, the Manager of Pivotal Mark II, L.L.C., an Arizona limited liability company.

Michaelene Cornish
Notary Public
Residing at: Scottsdale

My Commission Expires:

1-20-04



STATE OF)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this 6th day of February, 2003, by Toby Block, President of The Villas at Red Mountain Owners Association, Inc., a Utah non-profit corporation.

Michaelene Cornish
Notary Public
Residing at: Scottsdale

My Commission Expires:

1-20-04



EXHIBIT A
DESCRIPTION OF PROPERTY

Beginning at a point on the section line, said point lies South 88°43'01" East 654.58 feet from the north quarter corner of Section 4, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 00°00'00" East 110.60 feet to a point on the easterly right-of-way line of Snow Canyon Parkway, an 80.00 foot wide dedicated public street, said point being on the arc of a 540.00 foot radius non tangent curve concave southwesterly, the radius point of which bears South 44°56'26" West; thence northwesterly 246.49 feet along the arc of said curve through a central angle of 26°09'11" to the point of curvature of a 44.72 foot radius non tangent curve concave northwesterly, the radius point of which bears North 08°39'44" West; thence northeasterly 44.59 feet along the arc of said curve through a central angle of 57°08'10" to the point of tangency; thence North 24°12'06" East 20.39 feet to the point of curvature of a 428.17 foot radius curve concave westerly; thence northerly 95.62 feet along the arc of said curve through a central angle of 12°47'45" to the point of compound curvature of a 122.61 foot radius curve concave westerly; thence northerly 13.85 feet along the arc of said curve through a central angle of 06°28'22" to the point of tangency; thence North 04°55'59" East 55.16 feet to the point on the arc of a 30.40 foot radius non tangent curve concave northwesterly, the radius point of which bears North 32°03'39" West; thence northeasterly 32.62 feet along the arc of said curve through a central angle of 61°28'34" to the point of compound curvature of a 341.45 foot radius curve concave westerly; thence northerly 90.42 feet along the arc of said curve through a central angle of 15°10'22" to the point of tangency; thence North 18°42'35" West 8.36 feet; thence North 71°17'25" East 30.00 feet; thence North 75°36'44" East 106.14 feet; thence South 14°23'16" East 97.83 feet; thence South 01°09'20" East 136.34 feet; thence North 88°47'01" West 23.19 feet; thence South 00°00'00" East 151.82 feet to a point on said section and township line and the point of beginning.

Contains 1.448 acres.

EXHIBIT B**DESCRIPTION OF ADDITIONAL LAND**

BEGINNING at a point which lies South 88°43'01" East 654.58 feet along the section and township line from the north quarter corner of Section 4, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 00°00'00" East 110.60 feet to a point on the easterly right-of-way line of Snow Canyon Parkway, an 80.00 foot wide dedicated public roadway, said point being on the arc of 540.00 foot radius non tangent curve concave southwesterly, the radius point of which bears South 44°56'26" West; thence northwesterly 246.49 feet along the arc of said curve through a central angle of 26°09'11" to the point of curvature of a 44.72 foot radius non tangent curve concave northwesterly, the radius point of which bears North 08°39'44" West; thence northeasterly 44.59 feet along the arc of said curve through a central angle of 57°08'10" to the point of tangency; thence North 24°12'06" East 20.39 feet to the point of curvature of a 428.17 foot radius curve concave westerly; thence northerly 95.62 feet along the arc of said curve through a central angle of 12°47'45" to the point of compound curvature of a 122.61 foot radius curve concave westerly; thence northerly 13.85 feet along the arc of said curve through a central angle of 06°28'22" to the point of tangency; thence North 04°55'59" East 55.16 feet to the point on the arc of a 30.40 foot radius non tangent curve concave northwesterly, the radius point of which bears North 32°03'39" West; thence northeasterly 32.62 feet along the arc of said curve concave westerly; thence northerly 90.42 feet along the arc of said curve through a central angle of 15°10'22" to the point of tangency; thence North 18°42'35" West 12.70 feet to the point of curvature of a 1,414.00 foot radius curve concave westerly; thence northerly 67.24 feet along the arc of said curve through a central angle of 02°43'28" to the point of reverse curvature of a 402.24 foot radius curve concave easterly; thence northerly 195.86 feet along the arc of said curve through a central angle of 27°53'53" to a point on a radial line; thence along said radial line South 83°32'09" East 135.73 feet; thence North 77°28'56" East 141.13 feet; thence North 43°53'57" East 134.43 feet; thence South 88°47'01" East 294.62 feet; thence South 40°0'00" East 499.38 feet; thence South 01°13'10" West 194.35 feet; thence North 88°47'01" West 792.63 feet; thence South 00°00'00" East 151.82 feet to a point on said section and township line and the point of beginning.

CONTAINS 10.995 ACRES.

EXCEPT FOR THE REAL PROPERTY LEGALLY DESCRIBED ON EXHIBIT A ATTACHED TO THIS DECLARATION.

Unofficial Copy

BYLAWS
OF
THE VILLAS AT RED MOUNTAIN
OWNER ASSOCIATION, INC.
A CONDOMINIUM DEVELOPMENT

Dated: _____, 2002

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. PLAN OF CONDOMINIUM OWNERSHIP	1
1.1 <u>Name and Location</u>	1
1.2 <u>Principal Office</u>	1
1.3 <u>Purposes</u>	1
1.4 <u>Applicability of Bylaws and Rules</u>	1
1.5 <u>Composition of Association</u>	1
1.6 <u>Incorporation</u>	1
1.7 <u>Definitions</u>	2
ARTICLE 2. MEETINGS OF ASSOCIATION	2
2.1 <u>Place of Meetings</u>	2
2.2 <u>Turnover Meeting</u>	2
2.3 <u>Annual Meetings</u>	2
2.4 <u>Special Meetings</u>	2
2.5 <u>Notice of Meetings</u>	2
2.6 <u>Voting</u>	3
2.7 <u>Proxies</u>	3
2.8 <u>Fiduciaries and Joint Owners</u>	3
2.9 <u>Landlords and Contract Vendors</u>	3
2.10 <u>Quorum of Unit Owners</u>	3
2.11 <u>Majority Vote</u>	4
2.12 <u>Order of Business</u>	4
2.13 <u>Written Consent in Lieu of Meetings</u>	4
ARTICLE 3. BOARD OF DIRECTORS	5
3.1 <u>Number and Qualification</u>	5
3.2 <u>Interim Directors</u>	5
3.3 <u>Election and Term of Office</u>	5
3.4 <u>Vacancies</u>	5
3.5 <u>Removal of Directors</u>	5
3.6 <u>Powers and Duties</u>	6
3.7 <u>Managing Agent or Manager</u>	7
3.8 <u>Contracts Entered into by Declarant or Interim Board</u>	7
3.9 <u>Organizational Meeting</u>	7
3.10 <u>Regular and Special Meetings</u>	7
3.11 <u>Waiver of Notice</u>	8
3.12 <u>Quorum of Board of Directors</u>	8
3.13 <u>Compensation</u>	8

3.14	<u>Liability and Indemnification of Directors, Officers, Manager or Managing Agent</u>	8
3.15	<u>Insurance</u>	8
ARTICLE 4. OFFICERS		9
4.1	<u>Designation</u>	9
4.2	<u>Election of Officers</u>	9
4.3	<u>Removal of Officers</u>	9
4.4	<u>President</u>	9
4.5	<u>Secretary</u>	9
4.6	<u>Treasurer</u>	9
4.7	<u>Execution of Instruments</u>	10
4.8	<u>Compensation of Officers</u>	10
ARTICLE 5. BUDGET, EXPENSES AND ASSESSMENTS		10
5.1	<u>Budget</u>	10
5.2	<u>Determination of Common Expenses</u>	10
5.3	<u>Obligation to Pay Common Expenses</u>	11
5.4	<u>Initial Working Capital Fund</u>	11
5.5	<u>Commencement of Regular Expense Assessments</u>	11
5.6	<u>Commencement of Assessment for Replacement Reserves</u>	11
5.7	<u>Special Assessments for Capital Improvements</u>	12
5.8	<u>Other Special or Extraordinary Assessments</u>	12
5.9	<u>Replacement Reserves</u>	12
5.10	<u>Default in Payment of Assessments</u>	12
5.11	<u>Foreclosure of Liens for Unpaid Assessments</u>	13
5.12	<u>Statement of Assessments</u>	13
5.13	<u>Priority of Lien First Mortgages</u>	13
5.14	<u>Voluntary Conveyance</u>	13
ARTICLE 6. RECORDS AND AUDITS		14
6.1	<u>General Records</u>	14
6.2	<u>Financial Records</u>	14
6.3	<u>Assessment Roll</u>	14
6.4	<u>Payment of Invoices</u>	14
6.5	<u>Reports and Audits</u>	15
6.6	<u>Notice of Sale, Mortgage, Rental or Lease</u>	15
6.7	<u>Availability of Records</u>	15
ARTICLE 7. MAINTENANCE AND USE OF CONDOMINIUM PROPERTY		15
7.1	<u>Maintenance and Repair</u>	15
	(a)	15
	(b)	16
	(c)	16

7.2 Additions, Alterations or Improvements..... 16

7.3 Damage or Destruction by Casualty of the Condominium Project..... 16

7.4 Condemnation..... 17

7.5 Restrictions and Requirements Respecting Use of Condominium Project Property... 17

 (a) Professional Office Use..... 17

 (b) Use of Common Areas..... 17

 (c) Rules..... 17

7.6 Abatement and Enjoining of Violations..... 19

ARTICLE 8. INSURANCE..... 19

8.1 Types of Insurance..... 19

8.2 Property Damage Insurance..... 19

8.3 Liability Insurance..... 19

8.4 Workers Compensation Insurance..... 20

8.5 Fidelity Insurance..... 20

8.6 Directors and Officers Liability Insurance..... 20

8.8 Other Insurance Requirements..... 20

8.9 Optional Provisions..... 22

ARTICLE 9. AMENDMENTS TO BYLAWS..... 22

9.1 How Proposed..... 22

9.2 Adoption..... 22

9.3 Execution and Recording..... 23

ARTICLE 10. MISCELLANEOUS..... 23

10.1 Notices..... 23

10.2 Waiver..... 23

10.3 Action Without a Meeting..... 23

10.4 Invalidity; Number; Captions..... 23

10.5 Conflicts..... 23

**BYLAWS OF
THE VILLAS AT RED MOUNTAIN
OWNER ASSOCIATION, INC.**

A CONDOMINIUM DEVELOPMENT

ARTICLE 1.

PLAN OF CONDOMINIUM OWNERSHIP

1.1 Name and Location. These are the Bylaws of THE VILLAS AT RED MOUNTAIN OWNER ASSOCIATION, INC. (the "Association"). The Villas at Red Mountain (the "Condominium Project") is located in Washington County, Utah, and has been submitted to the Utah Condominium Ownership Act by a declaration recorded simultaneously with these Bylaws (the "Declaration"). The location of the Condominium Project is more specifically described in the Declaration.

1.2 Principal Office. The principal office of the Association shall be located at 2555 E. Camelback Road, Suite 700, Phoenix, AZ 85016, or such other address as may be designated by the Board of Directors from time to time.

1.3 Purposes. The Association is formed under the provisions of the Utah Condominium Ownership Act (the "Act") to serve as the means through which the Unit Owners may take action with regard to the administration, management and operation of the Condominium Project.

1.4 Applicability of Bylaws and Rules. The Association, all Unit Owners, and all persons using the condominium property shall be subject to these Bylaws and to the Rules.

1.5 Composition of Association. The Association shall be composed of all the Unit Owners of the Condominium Project, including PIVOTAL MARK II, L.L.C., an Arizona limited liability company and its successors and assigns (the "Declarant"), and the Association, itself, to the extent any of these own any Unit or Units of the Condominium Project.

1.6 Incorporation. The Association shall be incorporated under the Utah Non-Profit Corporation and Co-operative Association Act. The Articles of Incorporation of the Association shall be consistent with the Declaration and these Bylaws, and these Bylaws shall constitute the Bylaws of the incorporated association. The Bylaws and Declaration shall be construed as consistent with each other where possible. In the event of any inconsistency between the Declaration and these Bylaws, the Declaration shall be controlling.

1.7 **Definitions.** The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

ARTICLE 2.

MEETINGS OF ASSOCIATION

2.1 **Place of Meetings.** The Association shall hold meetings at such suitable place convenient to the Unit Owners as may be designated by the Board of Directors from time to time.

2.2 **Turnover Meeting.** For the Period of Declarant Control as that term is defined in the Declaration, the Board of Directors shall consist of the interim directors appointed by the Declarant. Within thirty (30) days following the expiration of such period, the Declarant shall call a meeting of the Unit Owners to elect directors in accordance with Section 3.3. Notice of such meeting shall be given to all Owners as provided in Section 2.5. If Declarant fails to call the meeting, the meeting may be called and notice given by any Unit Owner or Mortgagee of a Unit. The expense of giving notice shall be paid or reimbursed by the Association. At the meeting, Declarant shall deliver to the Association such information and documents as may be required by the Act. Nothing in this section shall be construed as preventing the Declarant from calling the turnover meeting prior to such date, or from calling informal, informational meetings of the Unit Owners.

2.3 **Annual Meetings.** The annual meetings of the Association shall be held in the month of January or February at such hour and on such date as the president may designate, or if the president should fail to designate such date by the first day of February, then on the last Tuesday in February at 4:00 p.m. (Mountain Time). The annual meetings shall be for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting.

2.4 **Special Meetings.** Special meetings of the Association may be called by the president or secretary or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from at least fifty percent (50%) of the Unit Owners stating the purpose of the meeting. Business transacted at a special meeting shall be confined to the purposes stated in the notice.

2.5 **Notice of Meetings.** Notice of all meetings of the Association stating the time and place and the objects for which the meeting is being called shall be given by the president or secretary. Such notice shall be in writing and mailed to each Unit Owner at his address as it appears on the books of the Association and to any first Mortgagee requesting such notice not less than ten (10) days nor more than fifty (50) days prior to the date of the meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Notice of meeting may be waived by any Unit Owner before or after meetings. When a meeting is adjourned for less than 30 days, no notice

of the adjourned meeting need be given other than by announcement at the meeting at which such adjournment takes place.

2.6 Voting. Each Unit Owner shall have one vote for each Unit of the Condominium Project owned by such Unit Owner. The Declarant shall be entitled to vote as the Unit Owner of any then existing Units retained by the Declarant, and the Board of Directors shall be entitled to vote on behalf of any Unit which has been acquired by or on behalf of the Association; provided, however, that the Board of Directors shall not be entitled to vote such Units in any election of directors. For purposes of this Section 2.6 and the voting rights of Unit Owners set forth in the Bylaws, the Units shall include all of the Units covered by the Declaration including Units which have not been constructed or completed.

2.7 Proxies. A vote may be cast in person or by proxy. A proxy given by a Unit Owner to any person who represents such Owner at meetings of the Association shall be in writing and signed by such Owner, and shall be filed with the secretary, at any time prior to the meeting. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy, and every proxy shall automatically cease upon sale of the Unit by its Owner. A Unit Owner may pledge or assign such Owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the Unit Owner is entitled under these Bylaws and to exercise the Unit Owner's voting rights from and after the time that the Mortgagee shall give written notice of such pledge or assignment to the Board of Directors. Any first Mortgagee may designate a representative to attend meetings of the Association.

2.8 Fiduciaries and Joint Owners. An executor, administrator, guardian or trustee may vote, in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that such person shall satisfy the secretary that he or she is the executor, administrator, guardian or trustee, holding such Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote or proxy of such Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-Owner. In the event of such protest, no one co-Owner shall be entitled to vote without the approval of all co-Owners. In the event of disagreement among the co-Owners, the vote of such Unit shall be disregarded completely in determining the proportion of votes given with respect to such matter.

2.9 Landlords and Contract Vendors. Unless otherwise expressly stated in the rental agreement or lease, all voting rights allocated to a Unit shall be exercised by the Owner. Unless otherwise stated in the contract, all voting rights allocated to a Unit shall be exercised by the vendee of any recorded land sale contract on the Unit.

2.10 Quorum of Unit Owners. At any meeting of the Association, members holding fifty percent (50%) of the voting rights, present in person or by proxy, shall constitute a quorum. The subsequent joinder of a Unit Owner in the action taken at a meeting by signing and concurring in the

minutes of the meeting shall constitute the presence of such person for the purpose of determining a quorum. When a quorum is once present to organize a meeting, it cannot be broken by the subsequent withdrawal of a Unit Owner or Owners. If any meeting of members cannot be organized because of a lack of quorum, the members who are present, either in person or by proxy, may adjourn the meeting from time to time until a quorum is present.

2.11 Majority Vote. The vote of the holders of more than fifty percent (50%) of the voting rights, present in person or by proxy at a meeting at which a quorum is constituted, shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required by law, by the Declaration or by these Bylaws.

2.12 Order of Business. The order of business at annual meetings of the Association shall be:

- (a) Calling of the roll and certifying of proxies;
- (b) Proof of notice of meeting or waiver of notice;
- (c) Reading of minutes of preceding meeting;
- (d) Reports of officers;
- (e) Reports of committees, if any;
- (f) Election of directors;
- (g) Unfinished business;
- (h) New business; and
- (i) Adjournment.

2.13 Written Consent in Lieu of Meetings. At the discretion of the Board of Directors, any matter which might come before the Association at a meeting, including election of directors, may be determined by written consent, rather than at a formal gathering. Forms for obtaining written consent shall be sent to all Unit Owners in the same manner as notice of meetings, with a specified deadline for return thereof. Written consents must be properly executed and returned in sufficient quantity to constitute a quorum, and determination of the matter presented shall be based upon the required percentage being returned, unless approval of a specified percentage of all voting rights is required by law, the Declaration or these Bylaws. The results of a vote by written consent shall be determined by the Board of Directors within 48 hours after the deadline for return of written

consents. Within 10 days after the written consents have been counted, each Unit Owner shall be notified of the results thereof.

ARTICLE 3.

BOARD OF DIRECTORS

3.1 Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of three (3) to five (5) persons, as provided in Sections 3.2 and 3.3 of this Article. All directors, other than interim directors appointed by Declarant, shall be Owners or co-Owners of Units of the Condominium Project. For purposes of this section, the officers of any corporation, the managers of any limited liability company, and the partners of any partnership shall be considered co-Owners of any Units owned by such corporation, limited liability company or partnership.

3.2 Interim Directors. The interim board of three (3) directors designated in the Articles of Incorporation of the Association ("Interim Directors") shall serve until replaced by Declarant or their successors have been elected by the Unit Owners as provided below.

3.3 Election and Term of Office. At the turnover meeting called by Declarant pursuant to Section 2.2 of these Bylaws, the Interim Directors shall resign and three (3) successors shall be elected, one to serve until the next annual meeting, one to serve until the second annual meeting after the election, and one to serve until the third annual meeting after the election. Thereafter, at the expiration of the initial term of office of each respective director, his or her successor shall be elected to serve for a term of three years. Directors shall hold office until their respective successors have been elected by the Unit Owners. Election shall be by plurality. Upon a majority vote of the membership present in person or by proxy at a meeting called for such purpose, the number of directors may be increased to five (5) directors. Upon such increase, two additional directors shall be elected, one to serve until the next annual meeting and the other to serve until the second annual meeting after their election. Thereafter, each successor shall be elected to serve for a three-year term.

3.4 Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a director by a vote of the Association shall be filled by vote of the majority of the remaining directors, even though they may constitute less than a quorum, or by a sole remaining director. Each person so elected shall be a director until a successor is elected to fill the unexpired term at the next annual meeting of the Association or the next special meeting of the Association called for that purpose. Vacancies in Interim Directors shall be filled by Declarant.

3.5 Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the directors, other than Interim Directors, may be removed with or without cause by a majority vote (in person or by proxy) of the Unit Owners, and a successor shall be elected at that meeting to fill the vacancy thus created. The notice of any such meeting shall state

that such removal is to be considered, and any director whose removal has been proposed shall be given an opportunity to be heard at that meeting.

3.6 Powers and Duties. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by the Declaration or by these Bylaws may not be delegated to the Board of Directors by the Unit Owners. The powers and duties to be exercised by the Board of Directors shall include all duties set forth in the Declaration and, without limitation, the following:

- (a) Operation, care, upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas.
- (b) Determination of the amounts required for operation, maintenance and other affairs of the Association, and the making of such expenditures.
- (c) Adoption of a budget for the Association, and assessment and collection of the Common Expenses.
- (d) Employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep and repair of the Common Areas and Limited Common Areas.
- (e) Employment of legal, accounting or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- (g) Preparing or causing to be prepared and filed any required income tax returns or forms for the Association.
- (h) Purchasing Units of the Condominium Project at foreclosure or other judicial sales in the name of the Association, or its designee, on behalf of all the Unit Owners as provided in these Bylaws.
- (i) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of directors), or otherwise dealing with Units of the Condominium Project acquired by the Association or its designee on behalf of all the Unit Owners.
- (j) Obtaining insurance or bonds pursuant to the provisions of these Bylaws or the Declaration.

(k) Making additions and improvements to, or alterations of, the Common Areas or Limited Common Areas.

(l) Designating one or more committees which, to the extent provided in the resolution designating the committee, shall have the powers of the Board of Directors in the management of the affairs of the Association. At least one member of each committee shall be a member of the Board of Directors.

(m) Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws and the Rules.

(n) The filing of an Annual Report and any amendment in accordance with Utah law.

3.7 Managing Agent or Manager. On behalf of the Association, the Board of Directors may employ or contract for a managing agent or a manager at a compensation to be established by the Board of Directors. Any such management agreement shall be terminable by the Association upon not more than 90 days written notice thereof. The Board of Directors may delegate to the managing agent or manager such duties and powers as the Board of Directors may authorize. In the absence of such appointment, the Board of Directors shall act as manager.

3.8 Contracts Entered into by Declarant or Interim Board. Notwithstanding any other provision of these Bylaws, any leases or contracts (including management contracts, service contracts and employment contracts) entered into by the Declarant or the interim board on behalf of the Association shall have a term not in excess of three years. In addition, any such lease or contract shall provide that it may be terminated without cause or penalty by the Association or Board of Directors upon not less than 30 days notice to the other party given at any time after election of the permanent board at the organizational and turnover meeting described in Section 2.2 of these Bylaws.

3.9 Organizational Meeting. Within fourteen (14) days following the annual meeting of the Association or following any meeting at which an election of directors has been held, the Board of Directors shall hold an organizational meeting at such place and time as shall have been fixed by the directors at the meeting at which the election was held.

3.10 Regular and Special Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Special meetings of the Board of Directors may be called by the president and must be called by the secretary at the written request of at least two directors. Notice of any special meeting shall be given to each director, personally or by mail, telephone, telefax or telegraph at least seven (7) days prior to the day named for such meeting, and shall state the time, place and purpose of such meeting.

3.11 Waiver of Notice. Any director may, at any time, waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall constitute a waiver of notice by such director, except where the director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all of the directors are present at any meeting of the Board, no notice to directors shall be required and any business may be transacted at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If at any meeting of the Board of Directors less than a quorum should be present, a majority of those present may adjourn the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice to directors.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such.

3.14 Liability and Indemnification of Directors, Officers, Manager or Managing Agent. A member of the Board of Directors or an officer of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional misconduct. In the event any member of the Board of Directors or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

3.15 Insurance. The Board of Directors shall obtain the insurance and fidelity bonds required by the Declaration and in Article 8 of these Bylaws. In addition, the Board of Directors, in its discretion, may obtain such other insurance as it deems necessary to protect the interests of the Association or Unit Owners. The Board of Directors shall conduct an annual insurance review which, if appropriate, shall include an appraisal of all improvements contained in the Condominium Project.

ARTICLE 4.

OFFICERS

4.1 **Designation.** The principal officers of the Association shall be the president, the secretary and the treasurer, all of whom shall be elected by the Board of Directors. The directors may appoint a vice president, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary. The president shall be a member of the Board of Directors, but the other officers need not be directors or Unit Owners.

4.2 **Election of Officers.** The officers of the Association shall be elected annually, by the Board of Directors at the organization meeting of each new board and shall hold office at the pleasure of the board. If any office shall become vacant, the Board of Directors shall elect a successor to fill the unexpired term at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4.3 **Removal of Officers.** Upon the affirmative vote of a majority of the directors, any officer may be removed either with or without cause, and a successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

4.4 **President.** The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Board of Directors. The president shall have all of the general powers and duties which are usually vested in the chief executive officer of an association, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the president may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

4.5 **Secretary.** The secretary shall keep the minutes of all proceedings of the Board of Directors and the minutes of all meetings of the Association. He or she shall attend to the giving and serving of all notices to the Unit Owners and directors and other notices required by law. The secretary shall keep the records of the Association, except for those of the treasurer, and shall perform all other duties incident to the office of secretary of an association and as may be required by the directors or the president. In addition, the secretary shall act as vice president, taking the place of the president and performing the president's duties whenever the president is absent or unable to act, unless the directors have appointed another vice president.

4.6 **Treasurer.** The treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of required financial statements. He or she shall be responsible for the deposit of all moneys and other valuable effects in such depositories as may from time to time be designated by the Board of Directors, and shall

disburse funds of the Association upon properly authorized vouchers. The treasurer shall perform all other duties incident to the office of treasurer of an association and such other duties as may be assigned to him or her by the Board of Directors.

4.7 Execution of Instruments. All agreements, contracts, deeds, leases and other instruments of the Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the Board of Directors and, in the absence of any general or special resolution applicable to any such instrument, then such instrument shall be signed by the president. All checks shall be signed by the treasurer, or in the absence or disability of the treasurer, by the president or any duly elected assistant treasurer.

4.8 Compensation of Officers. No officer who is a member of the Board of Directors shall receive any compensation from the Association for acting as an officer. The Board of Directors may fix any compensation to be paid to any officers who are not also directors.

ARTICLE 5.

BUDGET, EXPENSES AND ASSESSMENTS

5.1 Budget. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, estimate the Common Expenses expected to be incurred, less any previous over-assessment, and assess the Common Expenses to each Unit Owner in the proportion set forth in the Declaration. The budget shall provide for an adequate reserve fund for maintenance, repairs and replacement of those Common Areas and Limited Common Areas which must be replaced on a periodic basis.

5.2 Determination of Common Expenses. Common Expenses shall include:

- (a) Expenses of administration.
- (b) Expenses of maintenance, repair or replacement of Common Areas and Limited Common Areas or any other portions of the Condominium Project required to be maintained by the Association pursuant to the Declaration or these Bylaws.
- (c) Cost of insurance or bonds obtained in accordance with these Bylaws.
- (d) A general operating reserve, including an amount sufficient to cover the deductible under the property damage insurance policy.
- (e) Reserve for replacements and deferred maintenance and replacement of Furnishings as provided in the Declaration.

- (f) Any deficit in Common Expenses for any prior period.
- (g) Utilities for the Common Areas and other utilities with a common meter or commonly billed, such as trash collection.
- (h) Any other items properly chargeable as an expense of the Association.

5.3 Obligation to Pay Assessments. All Owners of constructed and completed Units shall be obligated to pay assessments established by the Board of Directors on behalf of the Association pursuant to these Bylaws and the Declaration, including without limitation assessments to pay Common Expenses. Assessments may not be waived due to limited or nonuse of the Common Areas or Limited Common Areas, and no Unit Owner may offset amounts owing or claimed to be owing by the Association or Declarant to the Unit Owner against such Unit Owner's obligation to pay assessments. Subject to Section 5.4 below, Declarant shall be assessed as the Unit Owner of any constructed and completed, but unsold Unit, but such assessments shall be prorated to the date of sale of the Unit. The Board of Directors, on behalf of the Association shall make assessments against the Owners of constructed and completed Units from time to time, and at least annually, and shall take prompt action to collect from a Unit Owner any assessments due which remains unpaid for more than thirty (30) days from the due date for its payment. The Board may elect to round assessments to the nearest dollar.

5.4 Initial Working Capital Fund. At the time of closing of the initial sale of each Unit, the purchaser shall make an initial contribution to the working capital of the Association equal to two months regular Association assessments for the Unit. Such initial contribution shall be in addition to the regular monthly Common Expense assessment and shall not be considered as an advance payment of regular assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund at the time of the organizational and turnover meeting. Declarant may not use the working capital fund to defray any of Declarant's expenses, reserve contributions, or construction costs or to make up any budget deficits while Declarant is in control of the Association.

5.5 Commencement of Regular Expense Assessments. Regular monthly Common Assessments shall commence within 60 days after closing of the first sale of a Unit in the Condominium Project.

5.6 Commencement of Assessment for Reserves. Regular monthly assessments for reserves as described in the Declaration and Section 5.9 shall commence upon the closing of the sale of the first Unit in the Condominium Project, except that Declarant may elect to defer payment of such assessments to the Association for each constructed and completed Unit owned by Declarant until the closing of the sale of such Unit. In addition, a reserve contribution shall be made as described in Section 22.6 of the Declaration.

5.7 Special Assessments for Capital Improvements. In the case of any duly authorized capital improvement to the Common Areas or Limited Common Areas, the Board of Directors may by resolution establish separate assessments for the same, which may be treated as capital contributions by the Owners of constructed and completed Units, and the proceeds of which shall be used only for the specific capital improvements described in the resolution. The Association shall not assess Units owned by the Declarant for additional capital improvements to the Condominium Project without the written consent of Declarant as long as Declarant owns more than two Units.

5.8 Other Special or Extraordinary Assessments. In the event the Board of Directors determines that the assessments established upon adoption of the budget as provided in Section 5.1 above will be insufficient to pay the Common Expenses, or the Board of Directors determines that additional funds will be needed to meet unexpected or unbudgeted Common Expenses, the Board may levy an additional special or extraordinary assessment. Such assessment shall be allocated to each constructed and completed Unit in the same proportion set forth in the Declaration, and may be payable in installments over a specified period, in a lump sum, or in a lump sum with option to pay in installments with interest, as determined by the Board of Directors.

5.9 Reserves. The Declarant shall establish a reserve account for replacement of those Common Areas and Limited Common Areas and Furnishings all or a part of which will normally require replacement in more than three and less than 30 years. Such reserve account shall be funded by assessments against the individual Unit assessed for maintenance of the items for which the reserve account is being established, which sums shall be included in the regular monthly assessment for the Unit, except as otherwise provided in Section 5.4. The amount assessed shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items. The reserve account shall be established in the name of the Association and shall be adjusted at regular intervals to recognize changes in current replacement costs over time. The reserve account shall be used only for replacement of Common Areas and Limited Common Areas and shall be kept separate from assessments for maintenance and operating expenses. After the organizational and turnover meeting described in Section 2.2, however, the Board of Directors may borrow funds from the reserve account to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from special assessments or maintenance fees. Nothing in this section shall prohibit prudent investment of the reserve account. Following the second year after the organizational and turnover meeting, future assessments for the reserve account may be reduced, eliminated or increased by an affirmative vote of not less than 50 percent of all voting rights in the Condominium Project. Assessments paid into the reserve account are the property of the Association and are not refundable to sellers of Units. Sellers of the Units, however, may treat their outstanding share of the reserve account as a separate item in any sales agreement. The provisions of this section shall be operable only to the extent and so long as required by the Act.

5.10 Default in Payment of Assessments. In the event of default by any Unit Owner in paying any assessments to the Association, including assessed Common Expenses and any other

charge imposed or levied by the Association pursuant to the provisions of the Declaration, these Bylaws or the Act, such Unit Owner shall be obligated to pay interest at the rate of eighteen percent (18%) per annum on such assessment from the due date thereof, or at such greater rate as may be established by the Board of Directors from time to time, not to exceed the maximum lawful rate, if any. In addition, the defaulting Unit Owner shall pay a late charge for any assessment not paid within ten (10) days of its due date in the amount of five percent (5%) of the delinquent payment, or such other reasonable late charge as may be established by the Board of Directors from time to time, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the Board of Directors may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable. The Board of Directors shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorneys' fees, by an action brought against such Unit Owner or by foreclosure of the lien upon the Unit granted by the Act.

5.11 Foreclosure of Liens for Unpaid Assessments. In any suit brought by the Association to foreclose a lien on a Unit because of unpaid assessments, the Unit Owner shall be required to pay a reasonable rental for the use of the Unit during the pendency of the suit, and the plaintiff in such foreclosure suit shall be entitled to the appointment of a receiver to collect such rental. The Board of Directors, acting on behalf of the Association, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey, or otherwise deal with the Unit. A suit or action to recover a money judgment for unpaid assessments shall be maintainable without foreclosing the liens securing the same.

5.12 Statement of Assessments. The Board of Directors shall advise each Unit Owner in writing of the amount of assessments payable by such Owner, and furnish copies of each budget on which such assessments are based to all Unit Owners. The Board of Directors shall promptly provide any Unit Owner who makes a request in writing with a written statement of the Owner's unpaid assessments.

5.13 Priority of Lien; First Mortgages. Any lien of the Association against a Unit for assessments shall be subordinate to tax and assessment liens and any prior Mortgage of record as provided in Article 20 of the Declaration. Any unpaid share of assessments arising by reason of Mortgagee Protection provisions of the Declaration shall be a Common Expense and reallocated on a pro rata basis for all Units, including the mortgaged unit. The purchaser or Mortgagee shall not be relieved of the obligation to pay further assessments.

5.14 Voluntary Conveyance. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor of the Unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request of a prospective purchaser

the Board of Directors shall make and deliver a statement of the unpaid assessments against the prospective grantor or the Unit, and the grantee in that case shall not be liable for, nor shall the Unit when conveyed be subject to, a lien filed thereafter for any unpaid assessments against the grantor in excess of the amount set forth in the statement.

5.15 Transfer Fee. The Board of Directors shall calculate and impose a transfer fee as contemplated by Section 22.7 of the Declaration.

ARTICLE 6.

RECORDS AND AUDITS

6.1 General Records. The Board of Directors and the managing agent or manager, if any, shall keep detailed records of the actions of the Board of Directors and the managing agent or manager, minutes of the meetings of the Board of Directors and minutes of the meetings of the Association. The Board of Directors shall maintain copies of the rules, regulations and policies adopted by the Association, Board of Directors and the manager. The Board of Directors shall maintain a list of Owners entitled to vote at meetings of the Association and a list of all Mortgagees of Units.

6.2 Financial Records. The Board of Directors or its designee shall keep financial records sufficient for proper accounting purposes.

6.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such account shall designate the name and address of the Owner or Owners, the amount of each assessment against the Owners, the dates and amounts in which the assessment comes due, the amounts paid upon the account and the balance due on the assessments.

6.4 Payment of Invoices. The treasurer shall pay all invoices and similar bills or statements for all budgeted items and for any nonbudgeted items up to \$1,000 signed by the president, managing agent, manager or other person authorized by the Board of Directors. Any invoices and similar bills or statements for nonbudgeted items in excess of \$1,000 shall require the authorization of the Board of Directors.

6.5 **Reports and Audits.** An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the Board of Directors to all Unit Owners and to all Mortgagees of Units who have requested the same within 90 days after the end of each fiscal year. From time to time the Board of Directors, at the expense of the Association, may obtain an audit or review of the books and records pertaining to the Association and furnish copies thereof to the Owners and such Mortgagees. Upon written request, any holder, insurer or guarantor of a first Mortgage shall be entitled to an audited financial statement for the immediately preceding fiscal year at the expense of the requesting party, if one is not otherwise available.

6.6 **Notice of Sale, Mortgage, Rental or Lease.** Immediately upon the sale, mortgage, rental or lease of any Unit, the Unit Owner shall promptly inform the secretary or manager of the name and address of said vendee, Mortgagee, lessee, or tenant.

6.7 **Availability of Records.** During normal business hours or under other reasonable circumstances, the Association shall make available to Unit Owners and Mortgagees, for inspection, current copies of the Declaration, Bylaws, other rules concerning the Condominium Project, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Association may charge a reasonable fee for furnishing copies of such documents, information or records.

ARTICLE 7.

MAINTENANCE AND USE OF CONDOMINIUM PROPERTY

7.1 **Maintenance and Repair.** Except as otherwise provided in Section 7.3 for damage or destruction caused by casualty:

(a) **Units.** All maintenance of and repairs to any Unit shall be made by the Owner of such Unit, who shall keep the same in good order, condition and repair and shall do all redecorating, painting and staining which at any time may be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for the maintenance, repair, or replacement of windows and doors and the forced air furnace, any plumbing, heating or air conditioning fixtures, telephones, water heaters, fans, lighting fixtures and lamps, fireplaces, refrigerators, dishwashers, ranges, or other appliances and accessories that may be in or connected with such Owner's Unit. The Association, however, may repair or replace, at the Association's expense, portions of Units to the extent reasonably necessary for the preservation of the Common Areas and Limited Common Areas in good condition and working order.

(b) **Common Areas.** All maintenance, repairs and replacements to the Common Areas shall be made by the Association and shall be charged to all the Owners of constructed and completed Units as a Common Expense.

(c) **Limited Common Areas.** All maintenance, repairs and replacements to the Limited Common Areas shall be made by the Association and shall be charged to all Owners of constructed and completed Units as a common expense.

7.2 Additions, Alterations or Improvements.

A Unit Owner may make only those improvements or alterations to such Owner's Unit that are permitted under the Declaration.

7.3 Damage or Destruction by Casualty of the Condominium Project. The following provisions supplement the provisions of Article 17 of the Declaration. In the case of damage or destruction which affects a material portion of the Condominium Project, timely written notice shall be given to the Unit Owners and their Mortgagees and any eligible Mortgage insurer or guarantor and the following provisions shall apply in addition to Article 17 of the Declaration:

(a) The Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the Common Areas and Limited Common Areas and, to the extent of the Association's insurance coverage and any deductible under such policies, all such damage or destruction to the Units. Each Unit Owner shall be responsible for such repairing, reconstructing or rebuilding of his Unit as is not so covered by the Association's insurance.

(b) If, due to the act or neglect of a Unit Owner, or of a member of such Owner's tenant, invitee, guest or other authorized occupant or visitor of such Unit Owner, damage shall be caused to the Common Areas or Limited Common Areas or to a Unit owned by others, or maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements as may be determined by the Association, to the extent not fully covered by the Association's insurance.

(c) In the event any portion of the insurance proceeds paid to the Association is not used to repair, reconstruct or rebuild the damaged or destroyed property, the Association shall distribute the proceeds among the Unit Owners and their Mortgagees (as their interests may appear) in the same proportion as Common Expenses are shared, unless the property is removed from the Condominium Project. If the property is removed from the Condominium Project, the insurance proceeds, together with the proceeds from the sale of the property, shall be distributed to the Unit Owners and their Mortgagees (as their interests may appear) in the manner described in the Act.

7.4 Condemnation. The following provisions supplement the provisions of Article 19 of the Declaration. If any portion of the Condominium Project is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, notice of the proceeding or proposed acquisition shall promptly be given to each Unit Owner and to each Mortgagee. The Association shall represent the Unit Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of any portion of the Common Areas or Limited Common Areas, and each Unit Owner appoints the Association to act as his attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking shall be payable to the Association and allocated and distributed as provided in the Declaration.

7.5 Restrictions and Requirements Respecting Use of Condominium Project Property. The following restrictions and requirements are in addition to all other restrictions and requirements contained in the Declaration and these Bylaws:

(a) **Professional Office Use.** The Units shall be used solely for residential purposes. No Unit may be used for commercial activities of any kind; provided, however, that Declarant shall be entitled to utilize no more than three (3) of the Units for the purposes of marketing and selling the Units for a period no more than five (5) years from and after the date of these Bylaws.

(b) **Use of Common Areas.** The Common Areas shall be used for the furnishing of access, services and facilities for which the same are reasonably intended, for the enjoyment of the Units. The use, operation and maintenance of the Common Areas shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner.

(c) **Rules.** The Board of Directors may adopt Rules governing the conduct of persons on and the operation and use of the Units and Common Areas and Limited Common Areas. The Rules, which shall not be inconsistent with the Declaration or these Bylaws, may be amended or modified from time to time by the Board of Directors, as it may deem necessary or appropriate in order to assure the continued peaceful and orderly use and enjoyment of the Condominium Project; provided, that after the turnover meeting referred to in Section 2.2 above, any such modification or amendment of the Rules by the Board of Directors must be approved by vote of not less than sixty-seven percent (67%) of the voting rights held by Unit Owners present, in person or by proxy, at any meeting of Unit Owners, the notice of which shall have stated that such modification or revocation of Rules will be under consideration. A copy of each amendment, modification or revocation of the Rules shall be delivered by the secretary promptly to each Unit Owner and shall be binding upon all Unit Owners and occupants of all Units from the date of delivery.

7.6 Abatement and Enjoining of Violations. The violation of any provision of the Declaration or these Bylaws, of any rule or regulation adopted pursuant to these Bylaws, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws, to do any or all of the following after giving notice and an opportunity to be heard:

- (a) to enter the Unit in which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided, however, that judicial proceedings shall be instituted before any items of construction may be altered or demolished;
- (b) to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings;
- (c) to levy reasonable fines; or
- (d) to terminate the right to receive utility services paid for out of assessments or the right of access to and use of facilities of the Condominium Project until the correction of the violation has occurred.

The offending Unit Owner shall be liable to the Association for all costs and attorneys' fees incurred by the Association, whether or not legal proceedings are instituted and including attorneys' fees on appeal or petition for review, together with any expense incurred by the Association in remedying the default, damage incurred by the Association or Unit Owners, or fines so levied. Such sums shall be assessed against the offending Unit as an assessment and enforced as provided in Article 5. In addition, any aggrieved Unit Owner may bring an action against such other Unit Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

ARTICLE 8.

INSURANCE

8.1 Types of Insurance. For the benefit of the Association and the Unit Owners, the Board of Directors shall obtain and maintain at all times, and shall pay for out of the Common Expense funds, the insurance provided for in the Declaration as supplemented by this Article 8.

8.2 Property Damage Insurance.

(a) The Association shall maintain a policy or policies of insurance covering loss or damage from fire, with standard extended coverage and "all risk" endorsements, and such other coverages as the Board of Directors may deem desirable.

(b) The amount of the coverage shall be for not less than one hundred percent (100%) of the current replacement cost of the Units and Common Areas and Limited Common Areas (exclusive of land, foundation, excavation and other items normally excluded from coverage), subject to a maximum deductible of the lesser of \$10,000 or one percent (1%) of the policy amount.

(c) The policy or policies shall include all fixtures and building service equipment to the extent that they are part of the Common Areas and all personal property and supplies belonging to the Association, together with all fixtures, improvements and alterations comprising a part of each Unit.

(d) Such policy or policies shall name the Association as insured, and shall provide for loss payable in favor of the Association, as a trustee for each Unit Owner and each such Unit Owner's Mortgagee, as their interests may appear. The policies shall contain the standard mortgage clause, or equivalent endorsement (without contribution) which is commonly accepted by institutional mortgage investors in Utah.

8.3 Liability Insurance.

(a) The Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Association, the Board of Directors, the Unit Owners and the managing agent, against liability to the public or to the Owners of Units and of Common Areas and Limited Common Areas, and their invitees or tenants, incident to the operation, maintenance, ownership or use of the Condominium Project, including legal liability arising out of lawsuits related to employment contracts of the Association. There may be excluded from such policy or policies coverage of a Unit Owner (other than as a member of the Association or Board of Directors) for liability arising out of acts or omission of such Unit Owner and liability incident to the Ownership and/or use of the part of the property as to which such Unit Owner has the exclusive use or occupancy.

(b) Limits of liability under such insurance shall not be less than Two Million Dollars (\$2,000,000) on a combined single limit basis.

(c) Such policy or policies shall be issued on a comprehensive liability basis and shall provide a cross liability endorsement wherein the rights of named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured.

8.4 Workers Compensation Insurance. The Association shall maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

8.5 Fidelity Insurance.

(a) The Association shall maintain fidelity insurance for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. In the event the Association has retained a management agent, such agent shall maintain fidelity insurance for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

(b) The total amount of fidelity insurance coverage required shall be determined by the Board of Directors. In no event, however, may the aggregate amount of such insurance be less than the sum equal to three months' aggregate assessments on all Units plus reserve funds.

(c) Such fidelity insurance shall name the Association as obligee and shall contain waivers by the issuers of the insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The insurance shall provide that it may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 10 days' prior written notice to the Association.

8.6 Directors' and Officers' Liability Insurance. The Association may maintain, if available at a reasonable cost, a policy of directors' and officers' liability insurance with coverage in the amount of not less than One Million Dollars (\$1,000,000), subject to a reasonable deductible.

8.7 Insurance by Unit Owners. Each Unit Owner shall be responsible for obtaining, at such Owner's expense, insurance covering his or her property not insured under Section 8.2 above and against his or her liability not covered under Section 8.3 above, unless the Association agrees otherwise.

8.8 Other Insurance Requirements. Insurance obtained by the Association shall be governed by the following requirements:

(a) All policies shall be written with a company licensed to do business in the State of Utah which has a Best's rating of A or better and a financial size category of Class IX or higher, as designated in Best's Key Rating Guide.

(b) Notwithstanding the provisions of 8.1 above, 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. Such insurance trustee shall have exclusive authority to negotiate losses under any property or liability insurance policy. Each Unit Owner appoints the Association, or any insurance trustee or substitute trustee designated by the Association, as 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 purchase. The Association or insurance trustee shall receive, hold or otherwise properly dispose of any proceeds of insurance in trust for Unit Owners and their first Mortgage holders, as their interests may appear.

(c) All property insurance policies shall contain a "Special Condominium Endorsement" or its equivalent providing for the following: recognition of any Insurance Trust Agreement, a waiver of the right of subrogation against Unit Owners individually, that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively, and that the policy is primary in the event the Unit Owner has other insurance covering the same loss.

(d) For purposes of this article, insurance policies are unacceptable where (i) under the terms of the insurance carrier's charter, Bylaws or policy, contributions or assessments may be made against the Association or Unit Owners, or (ii) by the terms of the carrier's charter, Bylaws or policy, loss payments are contingent upon action by the carrier's Board of Directors, policy holders or members, or (iii) policy includes any limiting clauses (other than insurance conditions) which could prevent the Owners from collecting insurance proceeds.

(e) All policies required by this article shall provide that they may not be canceled or substantially modified without at least 30 days' prior written notice to the Association and to each holder of a first Mortgage which is listed as a scheduled holder of a first Mortgage in the insurance policy. Evidence of insurance shall be issued to each Unit Owner and Mortgagee upon request.

(f) Each Unit Owner shall be required to notify the Board of Directors of all improvements made by the Owner to his or her Unit, the value of which is in excess of One Thousand Dollars (\$1,000). Nothing in this paragraph shall permit an Owner to make improvements without first obtaining the approval of the Board of Directors pursuant to Section 7.2.

(g) Any Unit Owner who obtains individual insurance policies covering any portion of the property other than such Owner's personal property and fixtures shall file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance.

8.9 Optional Provisions. The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(a) To the extent appropriate and available at reasonable cost, the Association shall maintain additional coverages against such other risks as are customarily covered with respect to projects similar in construction, location and use, including but not limited to, contractual and all-written contract insurance, employer's liability insurance, comprehensive automobile liability insurance, and an endorsement patterned after "use and occupancy" insurance providing relief from monthly assessments while a Unit is uninhabitable due to a covered loss.

(b) If reasonably available, the insurance policies shall include Inflation Guard Endorsement, and Construction Code Endorsements (such as a Demolition Cost Endorsement, a Contingent Liability from Operation of Building Laws Endorsement, and an Increased Cost of Construction Endorsement).

(c) Flood Insurance, if the Condominium Project is in a Special Flood Hazard Area.

(d) If reasonably available, the insurance policies shall include earthquake coverage.

ARTICLE 9.

AMENDMENTS TO BYLAWS

9.1 How Proposed. Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Unit Owners holding fifty percent (50%) of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for consent to the amendment.

9.2 Adoption. A resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Unit Owners and may be approved by the Unit Owners at a meeting called for this purpose or by ballot vote. Any resolution must be approved by Unit Owners holding a majority of the voting rights and by Mortgagees to the extent required by the Declaration, except that any amendment relating to the use or leasing of Units or signage in the Condominium Project must be approved by Unit Owners holding sixty-seven percent (67%) of the voting rights. Declarant's consent shall also be required until the turnover meeting referred to in Section 2.2 above and/or so long as Declarant owns ten percent (10%) or more of the Units in the Condominium Project. Such consent shall not be required after three years from the date of conveyance of the first

Unit to a person other than Declarant. Any amendment which would limit or diminish any special Declarant rights established in these Bylaws shall require the written consent of Declarant.

9.3 Execution and Recording. An amendment shall not be effective until certified by the president and secretary of the Association as being adopted in accordance with these Bylaws and the provisions of the Act and recorded as required by the Act.

ARTICLE 10.

MISCELLANEOUS

10.1 Notices. All notices to the Association or to the Board of Directors shall be sent care of the address listed in Article 25 of the Declaration, which address may be changed from time to time by the Board of Directors, effective upon recordation as required by the Act. All notices to any Unit Owner shall be sent to such address as may have been designated by him from time to time, in writing, to the Board of Directors, or, if no address has been designated, then to the Owner's Unit.

10.2 Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.3 Action Without a Meeting. Any action which the Act, the Declaration or the Bylaws require or permit the Owners or directors to take at a meeting may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the Owners or directors entitled to vote on the matter. The consent, which shall have the same effect as a unanimous vote of the Owners or directors, shall be filed in the records of minutes of the Association.

10.4 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

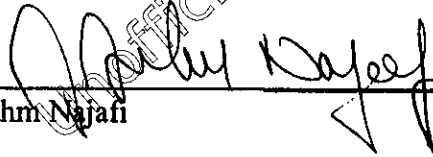
10.5 Conflicts. These Bylaws are intended to comply with the Act and the Declaration. In case of any irreconcilable conflict, such statute and document shall control over these Bylaws or the Rules.

DATED this _____ day of _____, 2002.

**THE VILLAS AT RED MOUNTAIN OWNER
ASSOCIATION, INC.**
A Utah non-profit Corporation

By _____

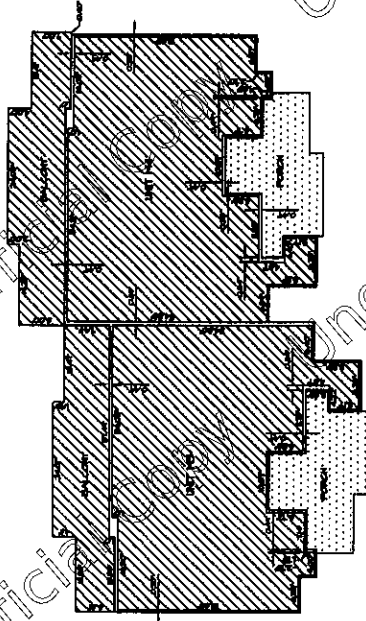
Name



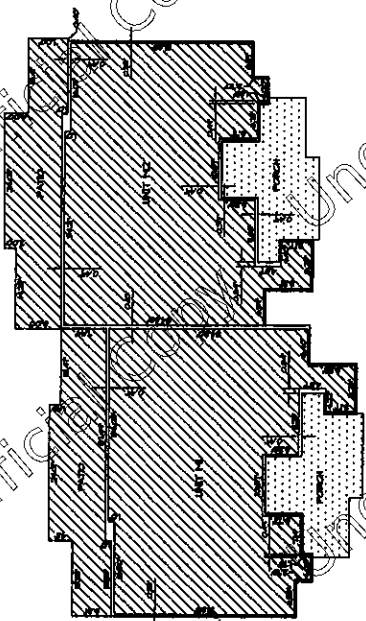
J. Jahm Najafi

Title

Director



SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

CEILING	CEILING	CEILING	CEILING
FLOOR	FLOOR	FLOOR	FLOOR
WALL	WALL	WALL	WALL
DOOR	DOOR	DOOR	DOOR
WINDOW	WINDOW	WINDOW	WINDOW
STAIR	STAIR	STAIR	STAIR
BALCONY	BALCONY	BALCONY	BALCONY
PORCH	PORCH	PORCH	PORCH

TYPICAL SECTION
SCALE: 1/8" = 1'-0"

FINAL PLAN OF
 THE VILLAS AT RED MOUNTAIN, PHASE I
 LOCATED IN SEC. 33, T. 41 S., R. 16 W. & SEC. 4, T. 42 S., R. 16 W.,
 SALT LAKE BASE AND MERIDIAN
 CITY OF IVINS, WASHINGTON COUNTY, UTAH

LEGEND
 [Symbol] EXISTING
 [Symbol] PROPOSED
 [Symbol] REMOVED
 [Symbol] FINISHED FLOOR ELEVATIONS
 [Symbol] FINISHED FLOOR ELEVATIONS
 [Symbol] FINISHED FLOOR ELEVATIONS
 [Symbol] FINISHED FLOOR ELEVATIONS

ROSENBERG ASSOCIATES
 ARCHITECTS
 1000 WEST 1000 SOUTH, SUITE 200
 WEST VALLEY CITY, UTAH 84113
 (801) 571-1000
 WWW.ROSENBERGASSOCIATES.COM

ROSENBERG ASSOCIATES ARCHITECTS 1000 WEST 1000 SOUTH, SUITE 200 WEST VALLEY CITY, UTAH 84113 (801) 571-1000 WWW.ROSENBERGASSOCIATES.COM	
PROJECT NO. SHEET NO. DATE	DRAWN BY CHECKED BY DATE