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RUSSELL SHIRTS \* WASHINGTON CO RECORDER Pg 0184  
2004 NOV 16 09:15 AM FEE \$75.00 BY AMH  
FOR: SOUTHERN UTAH TITLE CO

**SECOND AMENDMENT  
TO  
AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
THE CONDOMINIUMS AT RED MOUNTAIN,  
A CONDOMINIUM DEVELOPMENT  
(f/k/a The Villas at Red Mountain)**

This Second Amendment to Amended and Restated Declaration of Condominium for The Condominiums at Red Mountain, a Condominium Development ("Second Amendment") is executed pursuant to the provisions of that certain Declaration described in Recital "B" below and pursuant to the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.), by Pivotal Mark II, L.L.C., an Arizona limited liability company ("Declarant") and by The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation ("Condominium Association").

**RECITALS**

A. The Condominium Association is the association of condominium unit owners at The Condominiums at Red Mountain situated in Washington County, Utah ("Project") located on the real property described in Exhibit "A" attached hereto and incorporated herein by this reference.

B. On February 11, 2003, Declarant recorded with the office of the County Recorder for Washington County, State of Utah, an Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, in Book 1521, at Pages 2439 through 2517, with Recorder's Entry Number 803265 ("Declaration") covering the Project. In connection with the recording of the Declaration, Declarant also recorded a Record of Survey Map ("Map") for Phase I of the Project with the office of the County Recorder for Washington County, State of Utah, a reduced copy of such Map was attached as Exhibit D to the Declaration.

C. On March 25, 2003, Declarant and the Condominium Association recorded with the office of the County Recorder for Washington County, State of Utah, a First Amendment to Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, in Book 1532, at Pages 514 through 522, with Recorder's Entry Number 810382 ("First Amendment"), exercising Declarant's Option to Expand the Project and making certain other amendments to the Declaration. In connection with the recording of the

First Amendment, Declarant also recorded a Record of Survey Map for Phase II of the Project with the office of the County Recorder for Washington County, State of Utah. The definition of "Map" also includes such Record of Survey Map for Phase II recorded in accordance with Declarant's exercise of its Option to Expand the Project, as such Phase I and Phase II Maps have been or will be amended from time to time.

D. The Condominium Association was previously known as "The Villas at Red Mountain Owner Association, Inc., a Utah nonprofit corporation". The Condominium Association has filed or will file with the Utah Division of Corporations and Commercial Code those certain Amended and Restated Articles of Incorporation of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation ("Amended Articles") amending the name of the Condominium Association to "The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation" and making certain other technical edits as described therein. The Management Committee has also adopted those certain Amended and Restated Bylaws of the Association ("Amended Bylaws") which have been approved by Declarant and the Condominium Association in connection with such name change. The Condominium Association has the authority to execute this Second Amendment as successor in interest to The Villas at Red Mountain Owner Association, Inc.

E. Declarant and the Condominium Association desire to amend the Declaration to (1) change the name of the Project to "The Condominiums at Red Mountain, a Condominium Development"; (2) amend the name of the Condominium Association in accordance with the Amended Articles; and (3) amend and restate Exhibit "C" of the Declaration, a copy of which amended and restated Exhibit C is attached hereto and incorporated herein by this reference pursuant to the adoption of the Amended Bylaws. In connection with the recording of this Second Amendment, Declarant and the Condominium Association will record an amendment to the Map (both Phase I and Phase II) evidencing the change of the respective name of the Project and the Condominium Association.

F. Pursuant to Article 21 of the Declaration, the Declaration may be amended only by the affirmative vote or written consent of at least a bare majority of the Total Votes of the Condominium Association. Declarant owns all of the Units in the Project, and therefore, holds 100% of the Total Votes of the Condominium Association. Article 21 further provides that any amendment to the 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.

G. Pursuant to Section 9.2 of the Bylaws, an amendment to the Bylaws must be approved by Owners holding a majority of the Total Votes of the Condominium Association. Declarant holds 100% of the Total Votes of the Condominium Association and has approved the Amended Bylaws. Pursuant to Section 9.3 of the Bylaws, the Amended Bylaws have been certified by the President and Secretary of the Condominium Association as being adopted in accordance with the Bylaws and the provisions of the Act.

NOW, THEREFORE, Declarant and the Condominium Association hereby amend the Declaration as follows:

1. Defined Terms and Status of Recitals. Capitalized terms used and not otherwise defined in this Second Amendment shall have the meaning or meanings given to them in the Declaration. The Recitals set forth above shall constitute a portion of the terms of this Second Amendment.

2. Project Name. The name of the Project is hereby amended to be "The Condominiums at Red Mountain, a Condominium Development". All references in the Declaration to "The Villas at Red Mountain, A Condominium Development" are hereby deleted and replaced in their entirety with "The Condominiums at Red Mountain, a Condominium Development".

3. Condominium Association Name. In accordance with the Amended Articles, the name of the Condominium Association has been amended to be "The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation". The term "Condominium Association" as defined in Section 2.12 of the Declaration shall mean The Condominiums at Red Mountain Owners Association, Inc. and all references to "The Villas at Red Mountain Owner Association, Inc." are hereby deleted and replaced in their entirety with "The Condominiums at Red Mountain Owners Association, Inc."

4. Amendment and Restatement of Exhibit C. Exhibit C attached to the Declaration is hereby deleted in its entirety and replaced with the amended and restated Exhibit C attached hereto.

5. Declaration Remains in Effect. This Second Amendment shall be considered supplemental to the Declaration, to the Map and to the First Amendment, as all of the same may further be amended. Except as expressly amended by the foregoing, the Declaration, the Map and the First Amendment shall remain in full force and effect and shall not be cancelled, suspended or otherwise abrogated by the recording of this Second Amendment. In the event of any conflict or inconsistency between the provisions of this Second Amendment and the Declaration, this Second Amendment shall control.

6. Authority. Declarant hereby certifies that Declarant may execute this Second Amendment without the consent or signature of any other party or Owner. In addition, the President of the Condominium Association, by executing this Second Amendment, hereby certifies that the appropriate consent to this Second Amendment has been obtained.

[The remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, this Second Amendment is hereby executed this 4 day of OCTOBER, 2004.

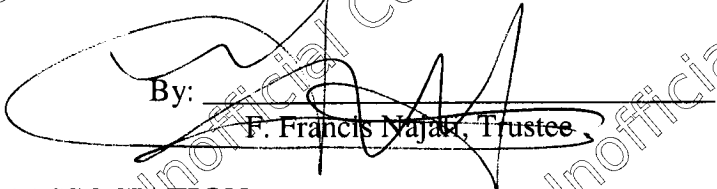
**DECLARANT:**

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

By: Pivotal Spa I, L.L.C.,  
Its: Administrative Member

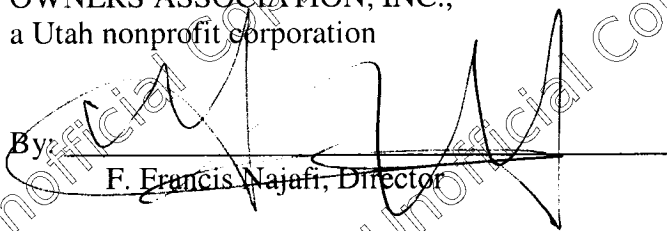
By: Pivotal Group X, L.L.C.,  
Its: Administrative Member

By: F. Francis Najafi, Trustee of the Najafi  
Family Trust  
Its: Administrative Member

By:   
F. Francis Najafi, Trustee

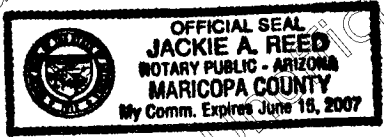
**CONDOMINIUM ASSOCIATION:**

**THE CONDOMINIUMS AT RED MOUNTAIN  
OWNERS ASSOCIATION, INC.,**  
a Utah nonprofit corporation

By:   
F. Francis Najafi, Director

STATE OF Arizona )  
 )  
:ss.  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of October, 2004, by F. Francis Najafi, Trustee of the Najafi Family Trust, the Administrative Member of Pivotal Group X, L.L.C., the Administrative Member of Pivotal Spa I, L.L.C., the Administrative Member of Pivotal Mark II, L.L.C., an Arizona limited liability company.

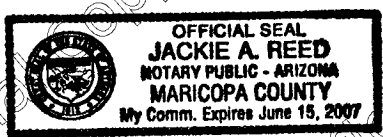


Jackie A. Reed  
NOTARY PUBLIC  
Residing at: Phoenix, AZ

My Commission expires: 6-15-07

STATE OF ARIZONA )  
 )  
:ss.  
COUNTY OF MARICOPA )

On the 4<sup>th</sup> day of October, 2004, personally appeared before me F. Francis Najafi, who, being by me duly sworn, did say that he is a director of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation.



Jackie A. Reed  
NOTARY PUBLIC  
Residing at: Phoenix, AZ

My Commission expires: 6-15-07

**Exhibit "A"****Project Legal Description**

All of Units M1, M2, M3 and M4, as established and described in that certain Final Plat of The Villas at Red Mountain, Phase I, recorded January 2, 2003, in Book 1512, at Page 1910, Instrument No. 796847, in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and all of Units N1, N2, N3, N4, O1, O2, O3, O4, P1, P2, P3, P4, Q1, Q2, Q3, Q4, R1, R2, R3, R4, S1, S2, S3, S4, T1, T2, T3, T4, U1, U2, U3, U4, V1, V2, V3, V4, W1, W2, W3, W4, X1, X2, X3, X4, Y1, Y2, Y3 and Y4 as established and described in that certain Final Plat of The Condominiums at Red Mountain, Phase II, Amended, recorded 11-16, 2004, in Book 1688 at Page 183 Instrument No. 91121 in the office of the County Recorder for Washington County, State of Utah, as the same may be amended from time to time; and the accompanying Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, recorded February 11, 2003, in Book 1521, at Page 2439, Instrument No. 803265, in the official records of Washington County, Utah, as amended by that certain First Amendment to Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, recorded March 25, 2003, in Book 1532, at Page 514, Instrument No. 810382, in the official records of Washington County, Utah, as such Declaration may be further amended from time to time, together with the undivided fee ownership interest in the Common Areas and Facilities appurtenant to said Units as set forth in said Condominium Declaration.

**Exhibit "C"**

**Amended and Restated Condominium Bylaws**

(See Amended and Restated Bylaws attached and incorporated herein by this reference.)

**AMENDED AND RESTATED BYLAWS**  
**OF**  
**THE CONDOMINIUMS AT RED MOUNTAIN**  
**OWNERS ASSOCIATION, INC.**

(a Utah nonprofit corporation)

These Amended and Restated Bylaws of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation, (these "Bylaws"), were voted upon and approved by PIVOTAL MARK II, L.L.C., an Arizona limited liability company (the "Declarant"), as the sole member of the Condominium Association on October 4, 2004 in accordance with the Utah Revised Nonprofit Corporation Act, §16-6a-101, *et seq.*, Utah Code Ann. (the "Act") and certified by the directors of the Condominium Association in accordance with Article 9 of the Original Bylaws as defined below. These Bylaws amend and restate those certain Bylaws of The Villas at Red Mountain Owner Association, Inc., a Utah nonprofit corporation (the "Original Bylaws"), which Original Bylaws were duly recorded with the Washington County Recorder, State of Utah as an attachment to the Declaration (as such term is defined in Section 1.1. below). These Bylaws are intended to make certain technical edits to the Original Bylaws and to change the name of the nonprofit corporation from The Villas at Red Mountain Owner Association, Inc. to The Condominiums at Red Mountain Owners Association, Inc. (the "Condominium Association"). These Bylaws shall supersede and replace the Original Bylaws in their entirety.

**ARTICLE 1.**

**PLAN OF CONDOMINIUM OWNERSHIP**

1.1 Name and Location. The Condominiums at Red Mountain (the "Project") is located in Washington County, Utah, and has been submitted to the Utah Condominium Ownership Act (the "Act") by the Amended and Restated Declaration of Condominium for The Villas at Red Mountain, a Condominium Development, which Declaration has been or will be amended to change the name of the Project to The Condominiums at Red Mountain (the "Declaration"). The location of the Project is more specifically described in the Declaration.

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

1.3 Purposes. The Condominium Association is formed under the provisions of 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 Project.



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

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

1.6 Incorporation. The Condominium Association shall be incorporated under the Utah Revised Nonprofit Act. The Articles 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 control.

1.7 Definitions. The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws. For purposes of these Bylaws, the term "Unit Owner(s)" shall have the same meaning as "Owner(s)" as defined in Section 2.26 of the Declaration.

## ARTICLE 2.

### MEETINGS OF ASSOCIATION

2.1 Turnover Meeting. For the Period of Declarant Control, the Management Committee 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 2.4. If Declarant fails to call the meeting, the meeting may be called and notice given by any Unit Owner. The expense of giving notice shall be paid or reimbursed by the Condominium Association. At the meeting, Declarant shall deliver to the Condominium 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.

2.2 Annual Meetings. The first meeting of the Condominium Association shall be held within one (1) year after the closing of the escrow for the first sale of a unit, or portion thereof or interest therein. Thereafter, there shall be at least one (1) annual meeting of the Condominium Association on the day and at the time as shall be determined by the Management Committee. The location shall be a reasonable place in the Project or some other location that is readily accessible at a reasonable cost to the largest number of Owners, in the sole discretion of the Management Committee. 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.

2.3 Special Meetings. Special meetings of the Condominium Association may be called by the president or secretary or by a majority of the Management Committee, and must be

called by such officers upon receipt of a written request from at least twenty percent (20%) 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.

2.4 Notice of Meetings. Notice of all meetings of the Condominium 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 or her address as it appears on the books of the Condominium 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. All notices of meetings shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by (i) United States mail, first class postage prepaid, (ii) electronic mail with confirmation of delivery, or (iii) facsimile transmission with confirmation of delivery. This requirement shall not apply to any Unit Owner who has signed a waiver of notice or a written consent to the holding of a meeting either before or after the meeting. Attendance of a Unit Owner at any meeting shall constitute a waiver of notice of such meeting, except where such Unit Owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not properly called or convened. Proof of such mailing shall be given by the affidavit of the person giving the notice. 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.

2.5 Record Date. The Management Committee may fix a date in the future as a record date for the determination of the Unit Owners entitled to notice of, and to vote at, any meeting of Unit Owners. The record date so fixed shall not be more than thirty (30) days prior to any action. When a record date is so fixed, only Unit Owners of record on that date shall be entitled to notice of, and to vote at, the meeting, notwithstanding any issuance of certificates or transfer recorded in the books of the Condominium Association after the record date. If no record date is fixed in accordance with the provisions of this Section, the record date for determining those Unit Owners entitled to receive notice of, or to vote at, a meeting of Unit Owners shall be the next business day preceding the day on which notice is given, or, if notice is waived, the next business day preceding the day on which the meeting is held. The record date for determining those Unit Owners entitled to vote by ballot without a meeting pursuant to Section 2.13 shall be the day on which the Management Committee issues the written ballot to each Unit Owner. For purposes of this paragraph, a person holding membership as of the close of business on the record date shall be deemed to be an Unit Owner of record.

2.6 Voting. Each Unit Owner shall have one vote for each Unit within the 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 Management Committee shall be entitled to vote on behalf of any Unit which has been acquired by or on behalf of the Condominium Association; provided, however, that the Management Committee 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 these 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 duly appointed by a Unit Owner, at any time prior to the meeting, shall be by a written instrument signed by a Unit

Owner, dated not more than eleven (11) months prior to such meeting (unless such instrument provides for a longer period not to exceed twenty-four (24) months from the date of its execution and states that it is coupled with an interest and is irrevocable). 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 Management Committee. Any First Mortgagee may designate a representative to attend meetings of the Condominium 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 Condominium 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 Condominium Association, the vote or proxy of such Unit with the secretary of the Condominium Association 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. Notwithstanding the foregoing, the owners of fractional interests in a Unit submitted to a fractional program shall not constitute co-Owners for the sole purposes of this Section 2.8. The Owners of such fractional interests shall each have the respective right to cast the fractional vote or votes assigned to such Owner's fractional interest as may be further described in the fraction program documents.

**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. In order to acknowledge any allocated voting rights, each Owner shall file a copy of such rental agreement, lease or contract with the secretary of the Condominium Association.

**2.10 Quorum of Unit Owners.** At any meeting of the Condominium Association, members holding ten percent (10%) 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 Condominium Association shall be as follows, unless otherwise determined by the Management Committee:

- (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 Action By Written Ballot. Any action that may be taken at any annual, regular, or special meeting of the Unit Owners may be taken without a meeting if the Condominium Association delivers a written ballot to every Unit Owner entitled to vote on the matter. The written ballot shall set forth each proposed action; and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this Section 2.13 shall be valid only when:

- (a) The time by which all ballots must be received by the Condominium Association has passed so that a quorum can be determined; and
- (b) The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

### ARTICLE 3.

#### MANAGEMENT COMMITTEE

3.1 Number and Qualification. The affairs of the Condominium Association shall be governed by a Management Committee 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 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 Management Committee of three (3) directors designated in the Articles ("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 2.1 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 (2) 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 Management Committee caused by any reason other than the removal of a director by a vote of the Condominium 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 Condominium Association or the next special meeting of the Condominium Association called for that purpose. Vacancies in Interim Directors shall be filled unilaterally by Declarant.

3.5 Resignation and Removal of Directors. At any regular or special meeting of the Condominium 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. Any member of the Management Committee who fails to attend three (3) consecutive Management Committee meetings or fails to attend at least twenty-five percent (25%) of the Management Committee meetings held during any fiscal year either in person or via telephone shall be deemed to have tendered his or her resignation, and his or her position shall be vacant following confirmation of the failure to attend by the affirmative vote of the remaining members of the Management Committee, notwithstanding such remaining members may be less than a quorum.

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

- (a) Operation, care, upkeep, maintenance, repair and replacement of the Common Areas and Facilities and Limited Common Areas and Facilities.

- (b) Determination of the amounts required for operation, maintenance and other affairs of the Condominium Association, and the making of such expenditures.
- (c) Adoption of a budget for the Condominium 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 Facilities and Limited Common Areas and Facilities.
- (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 Condominium Association.
- (f) Opening of bank accounts on behalf of the Condominium 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 Condominium Association.
- (h) Purchasing Units of the Project at foreclosure or other judicial sales in the name of the Condominium 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 Project acquired by the Condominium 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 and Facilities or Limited Common Areas and Facilities.
- (l) Designating one or more committees which, to the extent provided in the resolution designating the committee, shall have the powers of the Management Committee in the management of the affairs of the Condominium Association. At least one member of each committee shall be a member of the Management Committee.
- (m) Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws and the Rules and Regulations.
- (n) The filing of an Annual Report and any amendment in accordance with Utah law.

3.7 Manager. On behalf of the Condominium Association, the Management Committee may employ or contract for a Manager at a compensation to be established by the Management Committee. The Management Committee may delegate to the Manager such duties

and powers as the Management Committee may authorize. In the absence of such appointment, the Management Committee shall act as Manager.

3.8 Organizational Meeting. Within fourteen (14) days following the annual meeting of the Condominium Association or following any meeting at which an election of directors has been held, the Management Committee 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.

3.9 Regular and Special Meetings. Regular meetings of the Management Committee 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 Management Committee 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. Directors may participate in Management Committee meetings by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Utah law. Such participation shall constitute presence in person at the meeting.

3.10 Waiver of Notice. Any director may, at anytime, waive notice of any meeting of the Management Committee in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Management Committee 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 Management Committee, no notice to directors shall be required and any business may be transacted at such meeting.

3.11 Quorum of Management Committee. At all meetings of the Management Committee, 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 Management Committee. If at any meeting of the Management Committee 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. Directors shall not vote or act by proxy.

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

3.13 Liability and Indemnification of Directors and Officers. A member of the Management Committee or an officer of the Condominium Association shall not be liable to the Condominium 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 Management Committee or any officer of the Condominium Association is made a party to any proceeding because the individual is or was a director or officer of the Condominium

Association, the Condominium Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

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

## ARTICLE 4.

### OFFICERS

4.1 Designation. The principal officers of the Condominium Association shall be the president, the secretary and the treasurer, all of whom shall be elected by the Management Committee. The directors may appoint a vice president, an assistant treasurer, an assistant secretary, and such other officers as in their judgment may be necessary.

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

4.4 President. The president shall be the chief executive officer of the Condominium Association. He or she shall preside at all meetings of the Condominium Association and of the Management Committee. 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 Condominium Association.

4.5 Secretary. The secretary shall keep the minutes of all proceedings of the Management Committee and the minutes of all meetings of the Condominium 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 Condominium 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 Condominium 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 Management Committee, and shall disburse funds of the Condominium 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 Management Committee.

4.7 Execution of Instruments. All agreements, contracts, deeds, leases and other instruments of the Condominium Association, except checks, shall be executed by such person or persons as may be designated by general or special resolution of the Management Committee 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 Management Committee shall receive any compensation from the Condominium Association for acting as an officer. The Management Committee 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 Management Committee shall from time to time, and at least annually, prepare a budget for the Condominium 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 Facilities and Limited Common Areas and Facilities which must be replaced on a periodic basis.

5.2 Determination of Common Expenses. Common Expenses shall include all expenses designated as Common Expenses in the Declaration and, without limitation, the following:

- (a) Expenses of administration.
- (b) Expenses of maintenance, repair or replacement of Common Areas and Facilities and Limited Common Areas and Facilities or any other portions of the Project required to be maintained by the Condominium 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 Facilities 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 Condominium Association.

5.3 Obligation to Pay Common Assessments. Each Unit Owner, including Declarant, for each Unit for which a certificate of occupancy has been issued for the initial improvements comprising such Unit shall be liable for an equal share of the Common Expenses in accordance with Article 22 of the Declaration. Common Assessments may not be waived due to limited or nonuse of the Common Areas and Facilities or Limited Common Areas and Facilities, and no Unit Owner may offset amounts owing or claimed to be owing by the Condominium Association or Declarant to the Unit Owner against such Unit Owner's obligation to pay Common Assessments. Common Assessments shall be assessed on a monthly, quarterly or annual basis, at the election of the Management Committee, and the Management Committee shall take prompt action to collect from a Unit Owner any Common Assessments due which remains unpaid for more than thirty (30) days from the due date for its payment. The Management Committee may elect to round Common Assessments to the nearest dollar.

5.4 Initial Working Capital Fund. At the time of closing of the initial sale of each Unit, or a portion thereof or interest therein, the purchaser shall make an initial contribution to the working capital of the Condominium Association equal to two months regular Condominium Association Common Assessments for the Unit. Such initial contribution shall be in addition to the regular Common Assessment and shall not be considered as an advance payment of regular Common Assessments. The working capital fund shall be transferred to the Condominium 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 Condominium Association.

5.5 Commencement of Regular Common Assessments. Regular Common Assessments shall commence and be assessed by the Condominium Association in accordance with Article 22 of the Declaration.

5.6 Commencement of Common Assessment for Reserves. Regular Common Assessments for reserves as described in the Declaration and Section 5.9 shall commence and be assessed by the Condominium Association in accordance with Article 22 of the Declaration. Declarant has the right to subsidize the Condominium Association operating budget, but shall fully fund the Common Assessments for reserves; provided, however, Declarant may elect to defer payment of such Common Assessments to the Condominium Association for each Unit

owned by Declarant for which a certificate of occupancy has been issued until the closing of the sale of such Unit.

5.7 Special Common Assessments for Capital Improvements. In the case of any duly authorized capital improvement to the Common Areas and Facilities or Limited Common Areas and Facilities, the Management Committee may by resolution establish separate Special Common 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 Condominium Association shall not assess Units owned by the Declarant for additional capital improvements to the Project without the written consent of Declarant as long as Declarant owns any Unit within the Project.

5.8 Other Special Common Assessments. In the event the Management Committee determines that the Common Assessments established upon adoption of the budget as provided in Section 5.1 above will be insufficient to pay the Common Expenses, or the Management Committee determines that additional funds will be needed to meet unexpected or unbudgeted Common Expenses, the Management Committee may levy an additional Special Common Assessment. Such Special Common Assessment shall be allocated to each Unit for which a certificate of occupancy has been issued 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 exclusively by the Management Committee.

5.9 Reserves. The Declarant shall establish a reserve account for replacement of those Common Areas and Facilities and Limited Common Areas and Facilities 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 Common 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 Common 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 Condominium 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 Facilities and Limited Common Areas and Facilities and shall be kept separate from Assessments for maintenance and operating expenses. Nothing in this Section shall prohibit prudent investment of the reserve account. Assessments paid into the reserve account are the property of the Condominium 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 Common Assessments. In the event of default by any Unit Owner in paying any Common Assessments to the Condominium Association, including assessed Common Expenses and any other charge imposed or levied by the Condominium 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 Common Assessment from the due date thereof, or at such greater rate as may be established by

the Management Committee 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 Common 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 Management Committee from time to time, together with all expenses incurred by the Condominium Association in collecting such unpaid Common Assessments, including attorneys' fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the Common Assessment is not paid within thirty (30) days of its due date, the Management Committee may declare any remaining installments of Common 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 Condominium Association such Common 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 Common Assessments. In any suit brought by the Condominium Association to foreclose a lien on a Unit because of unpaid Common Assessments, pursuant to the provision of the Declaration and the Act, 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 Management Committee, acting on behalf of the Condominium 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 Common Assessments shall be maintainable without foreclosing the liens securing the same.

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

5.13 Priority of Lien; First Mortgages. Any lien of the Condominium Association against a Unit for Common 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 Common 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 in the event that it acquires title to the Unit through foreclosure or other means, shall not be relieved of the obligation to pay further Common 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 Common 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 Management Committee shall make and deliver a statement of the unpaid Common Assessments against the prospective grantor of 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 Common Assessments against the grantor in excess of the amount set forth in the statement.

5.15 Transfer Fee. The Management Committee 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 Management Committee and the Manager, if any, shall keep detailed records of the actions of the Management Committee and the Manager, minutes of the meetings of the Management Committee and minutes of the meetings of the Condominium Association. The Management Committee shall maintain copies of the rules, regulations and policies adopted by the Condominium Association, Management Committee and the Manager. The Management Committee shall maintain a list of Unit Owners entitled to vote at meetings of the Condominium Association pursuant to Section 2.5 and a list of all First Mortgagees of Units if the Management Committee is provided notice of such First Mortgagee in accordance with Section 20.1 of the Declaration. This list shall not be used or obtained for any purposes unrelated to a member's interest as a member, including but not limited to using the list for any unrelated commercial purpose or selling the list to any person.

6.2 Financial Records. The Management Committee 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 Common Assessment against the Owners, the dates and amounts in which the Common Assessment comes due, the amounts paid upon the account and the balance due on the Common 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, Manager or other person authorized by the Management Committee. Any invoices and similar bills or statements for nonbudgeted items in excess of \$1,000 shall require the authorization of the Management Committee.

6.5 Reports and Audits. From time to time the Management Committee, at the expense of the Condominium Association, may obtain an audit or review of the books and records pertaining to the Condominium 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 Condominium Association shall make available to Unit Owners and Mortgagees, for inspection, current copies of the Declaration, Bylaws, other rules concerning the Project, amendments or supplements to such documents, and the books, records, financial statements and current operating budget of the Condominium Association so long as such request is related to the Owner's interest in the Project. Upon written request, the Condominium Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Condominium 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 interior 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 or her 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 Condominium Association, however, may repair or replace, at the Condominium Association's expense, portions of Units to the extent reasonably necessary for the preservation of the Common Areas and Facilities and Limited Common Areas and Facilities in good condition and working order.

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

(c) Limited Common Areas and Facilities. All maintenance, repairs and replacements to the Limited Common Areas and Facilities shall be made by the Condominium 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 of the 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 Project as determined by the Management Committee in its sole and exclusive discretion, timely written notice shall be given to the Unit Owners and their

Mortgagees as identified on the Condominium Association's roster and any eligible Mortgage insurer or guarantor and the following provisions shall apply in addition to Article 17 of the Declaration:

(a) So long as it is economically feasible as the Management Committee shall exclusively determine, the Condominium Association shall be responsible for repairing, reconstructing or rebuilding all such damage or destruction to the Common Areas and Facilities and Limited Common Areas and Facilities and, to the extent of the Condominium 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 or her Unit as is not so covered by the Condominium 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 and Facilities or Limited Common Areas and Facilities 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 Condominium Association, to the extent not fully covered by the Condominium Association's insurance.

(c) In the event any portion of the insurance proceeds paid to the Condominium Association is not used to repair, reconstruct or rebuild the damaged or destroyed property, the Condominium 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 Project. If the property is removed from the 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 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 as identified on the Condominium Association's roster. The Condominium 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 and Facilities or Limited Common Areas and Facilities, and each Unit Owner appoints the Condominium Association to act as his or her attorney-in-fact for such purposes. All compensation, damages or other proceeds of the taking shall be payable to the Condominium Association and allocated and distributed as provided in the Declaration.

7.5 Restrictions and Requirements Respecting Use of 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 the Units that it owns for the purposes of marketing and selling the Units within the Project.

(b) Use of Common Areas and Facilities. The Common Areas and Facilities 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 and Facilities shall not be obstructed, damaged or unreasonably interfered with by any Unit Owner.

(c) Rules and Regulations. The Management Committee may adopt Rules and Regulations governing the conduct of persons on and the operation and use of the Units and Common Areas and Facilities and Limited Common Areas and Facilities. The Rules and Regulations, which shall not be inconsistent with the Declaration or these Bylaws, may be amended or modified from time to time by the Management Committee, as it may deem necessary or appropriate. A copy of each amendment, modification or revocation of the Rules and Regulations shall be delivered by the secretary to each Unit Owner upon such Unit Owner's request and shall be binding upon all Unit Owners and occupants of all Units from the date of the Management Committee's enactment of the same.

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 Condominium Association made pursuant to such documents, shall give the Management Committee, acting on behalf of the Condominium 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 Management Committee 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 Project until the correction of the violation has occurred.

The offending Unit Owner shall be liable to the Condominium Association for all costs and attorneys' fees incurred by the Condominium 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 Condominium Association in remedying the default, damage incurred



by the Condominium 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 Condominium Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings. These remedies are cumulative to other remedies provided in the Declaration and these Bylaws or in any other applicable laws.

## ARTICLE 8.

### INSURANCE

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

#### 8.2 Property Damage Insurance.

(a) The Condominium 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 Management Committee 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 Facilities and Limited Common Areas and Facilities (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 Facilities and all personal property and supplies belonging to the Condominium Association, together with all fixtures, improvements and alterations comprising a part of each Unit.

(d) Such policy or policies shall name the Condominium Association as insured, and shall provide for loss payable in favor of the Condominium 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 Condominium Association shall maintain comprehensive general liability insurance coverage insuring the Declarant, the Condominium Association, the Management Committee, the Unit Owners and the Manager, against liability to the public or to the Owners of Units and of Common Areas and Facilities and Limited Common Areas and Facilities, and their invitees or tenants, incident to the operation, maintenance,

ownership or use of the Project, including legal liability arising out of lawsuits related to employment contracts of the Condominium Association. There may be excluded from such policy or policies coverage of a Unit Owner (other than as a member of the Condominium Association or Management Committee) 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 or her, her or their action against another named insured.

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

8.5 Directors' and Officers' Liability Insurance. The Condominium 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.

8.6 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 Condominium Association agrees otherwise.

8.7 Other Insurance Requirements. Insurance obtained by the Condominium 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 Condominium Association, the Condominium Association's authorized representative, including any trustee with whom the Condominium 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 Condominium Association, or any insurance trustee or substitute trustee designated by the Condominium 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 Condominium 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 Condominium 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 Management Committee, 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 Condominium 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 Management Committee 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 Management Committee 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 Condominium Association within thirty (30) days after the purchase of such insurance.

**8.8 Optional Provisions.** The Management Committee 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 Condominium 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 available at a reasonable cost, 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) If available at a reasonable, 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 Management Committee 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 Management Committee 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. 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 Project. Any amendment which would limit or diminish any special Declarant rights established in these Bylaws shall require the written consent of Declarant so long as Declarant has the right to exercise such rights pursuant to the Declaration.

9.3 Execution and Recording. An amendment shall not be effective until certified by an officer or director of the Condominium 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 Condominium Association or to the Management Committee 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 Management Committee, 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 Management Committee, 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 Condominium 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 Arbitration. Except with respect to Assessment liens and foreclosure thereof which shall be accomplished pursuant to the Declaration and applicable Utah law, any unresolved dispute, disagreement or controversy between a Unit Owner and the Condominium Association shall at the request of either party be submitted to an arbitration board of at least three (3) members with one chosen by the Condominium Association, the other by the Unit Owner and a third by the other two arbitrators so chosen. The arbitrators shall act in accordance with the commercial Arbitration Rules and Regulations then in effect of the American Arbitration Board. At any time during the arbitration of a claim relating to the interpretation, application or enforcement of any covenants, conditions or restrictions applicable to the Project or these Bylaws or rules or regulations adopted by the Condominium Association, the arbitrators may issue an order prohibiting the action upon which the claim is based. An award must be made within thirty (30) days after the conclusion of arbitration, unless a shorter period is agreed upon by the Condominium Association. The decision of the majority of such arbitrators shall be binding on the Condominium Association. Such decisions shall include the awarding of costs, including reasonable attorneys fees, as the arbitrators shall determine. The decision of the arbitrators shall be judicially enforceable as a judgment.

10.6 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 and Regulations.

10.7 Severability. The provisions hereof 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.

**DIRECTOR CERTIFICATION**

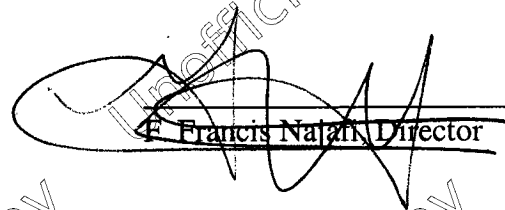
I, the undersigned, do hereby certify:

That I am a duly appointed director of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation;

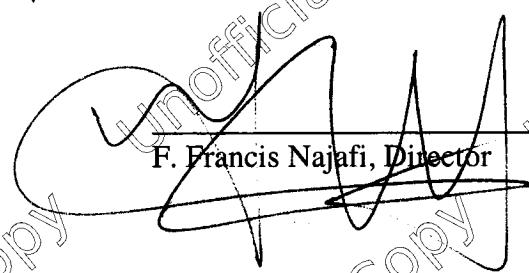
That the foregoing Bylaws constitute the Amended and Restated Bylaws of said Condominium Association, as duly adopted at a meeting of the Management Committee thereof held on October 4, 2004.

That the foregoing Bylaws were proposed and accepted by the Management Committee via a resolution adopting such Bylaws, which resolution was approved by Pivotal Mark II, an Arizona limited liability company, as the sole member of the Condominium Association and as Declarant in accordance with the amendment provisions of the Original Bylaws.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association (if any) this 4 day of October, 2004.

  
F. Francis Najafi, Director

Certified to be the Bylaws adopted by the Condominium Association and Declarant, as the sole member of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation, dated October 4, 2004.

  
F. Francis Najafi, Director

**DIRECTOR CERTIFICATION**

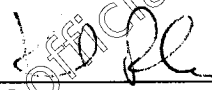
I, the undersigned, do hereby certify:

That I am a duly appointed director of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation;

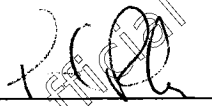
That the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted at a meeting of the Management Committee thereof held on October 4, 2004.

That the foregoing Bylaws were proposed and accepted by the Management Committee via a resolution adopting such Bylaws, which resolution was approved by Pivotal Mark II, an Arizona limited liability company, as the sole member of the Condominium Association and as Declarant in accordance with the amendment provisions of the Original Bylaws.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association (if any) this 4 day of OCTOBER, 2004.

  
\_\_\_\_\_  
Karl Polen, Director

Certified to be the Bylaws adopted by the Condominium Association and Declarant, as the sole member of The Condominiums at Red Mountain Owners Association, Inc., a Utah nonprofit corporation, dated OCTOBER 4TH, 2004.

  
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Karl Polen, Director

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