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**DECLARATION**  
**OF**  
**LOOKOUT AT RANCH LANDING COMMERCIAL CENTER**

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**DECLARATION  
OF  
LOOKOUT AT RANCH LANDING COMMERCIAL CENTER**

THIS DECLARATION is made and executed this \_\_\_\_ day of March, 2009, by RKW 2006, LLC, a Utah limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

A. Declarant is the fee owner of that certain real property (hereinafter sometimes referred to as the "Subject Property") more particularly described in Article II hereof; and

B. Declarant desires to provide for the preservation of the values and amenities of the Subject Property and for maintenance of the Common Areas. To this end, and for the benefit of the Subject Property and of the Owners thereof, Declarant desires to subject the Subject Property described in Section 2.1 of this Declaration and the various Parcels now or hereafter contained within the entire tract hereinafter described to the covenants, restrictions, easements, charges, and liens hereinafter set forth; and

C. Declarant deems it desirable for the efficient preservation of the values and amenities of the Subject Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse the assessments and charges hereinafter provided for, and otherwise to administer and enforce the provisions of this Declaration. For such purpose Declarant has, in conjunction with recordation of this Declaration, caused or will cause to be organized under the laws of the State of Utah, a non-profit corporation, LOOKOUT AT RANCH LANDING COMMERCIAL CENTER ASSOCIATION, INC.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Subject Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, obligations, and lien hereinafter set forth.

I. DEFINITIONS

When used in this Declaration, including the recitals hereto, the following terms shall have the meaning indicated.

1.1 "Additional Land" shall mean that real property described on Exhibit "C" attached hereto which may be added to the Project in accordance with the provisions of Article XV.

1.2 "Association" shall mean Lookout at Ranch Landing Commercial Center Association, Inc., a Utah nonprofit corporation and its successors and assigns.

1.3 "Board of Directors" shall mean the committee charged by this Declaration with and having the responsibility and authority on behalf of the Association to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

1.4 "Building" shall mean and refer a building constructed and to be located upon any Parcel comprising a part of the Project together with all improvements located on or with respect to the Parcel concerned which are used in connection with such Building

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association.

1.6 "City" shall mean Heber City, Utah.

1.7 "Common Areas and Facilities" or "Common Areas" shall mean, refer to, and include: to that part of the Property which is not included with the Parcels and which is owned by the Association for the common use and enjoyment of the Owners, or the limited use of certain Owners as to limited common areas, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and personal property owned by the Association when the context so requires and:

(a) All General Common Areas and Facilities designated as such in the Plat and in this Declaration.

(b) All Limited Common Areas and Facilities designated as such in the Plat.

(c) All tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus, installations and facilities included within the Project and existing for common use.

(d) The outdoor lighting, concrete block retaining wall, landscaping, walkways, parking spaces, parking lot, dumpster area, and any other common elements the Association deems to construct.

1.8 "Common Expenses" shall mean and refer to all sums which are assessed against and expended on behalf of all Owners and all sums which are required by the Association to perform or exercise its functions, duties, or rights under this Declaration, the management agreement for the operation of the Project, if any, and such rules and regulations as the Association may from time to time make and adopt. By way of illustration, but not in limitation, Common Expenses shall include: (i) expenses of administration, maintenance, operation, repair and replacement of those components of the Common Areas that must be maintained and/or replaced on a periodic basis together with such reserves as may be from time to time established for the same by the Association; (ii)

expenses agreed upon by the Association, or the Owners, and lawfully assessed against the Owners in accordance with the Declaration; (iii) expenses declared to be Common Expenses by this Declaration, or the Bylaws; and (iv) any valid charge against the Project as a whole.

1.9 "Declarant" shall mean and refer to RKW 2006, LLC, a Utah limited liability company, and any successor and assign of Declarant which, either by operation of law, or through a voluntary conveyance, transfer, or assignment comes to stand in the same relation to the Project as did its predecessor.

1.10 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.11 "General Common Areas" shall mean and refer to such General Common Areas and Facilities designated as such in the Plat and shall also include all areas outside the Parcels. In the event of any conflict between this Declaration and the Plat the Declaration shall control.

1.12 "Limited Common Areas" shall mean and refer to those Common Areas and Facilities, if any, designated herein or on the Plat as reserved for the use of a certain Parcel or Parcels to the exclusion of other Parcels.

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

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

1.15 "Mortgage" shall mean and include a mortgage, a deed of trust or other security instrument by which a Parcel or any part thereof is encumbered.

1.16 "Mortgagee" shall mean and include a mortgagee of a mortgage on any Parcel, a beneficiary of a deed of trust on any Parcel, or a secured party of any other security instrument by which a Parcel or any part hereof is encumbered.

1.17 "Officers" shall mean and refer to the Officers of the Association as duly elected or appointed in accordance with terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1.18 "Official Records" shall mean the official records of the County Recorder for Wasatch County, Utah.

1.19 "Owner" shall mean the person or persons, including the Declarant, owning in fee or undivided interest in any Parcel. In the event a Parcel is the subject of any executory contract of sale, the contract purchaser shall, unless the Seller and the pur-



chaser have otherwise agreed and have informed the Association in writing of such agreement, be considered the Owner for purposes of voting. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. In the event that any Parcel is subjected to the provisions of a condominium declaration, the condominium association created by the filing of such declaration shall be deemed the Owner for purposes of this Declaration and the owners of each separate condominium unit shall not be owners as provided in this Declaration.

1.20 "Parcel" shall mean and refer to any one of the separately and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different parcels; and (b) which is intended to be used as the site of a single commercial use. Each Parcel has been improved with one or more Buildings.

1.21 "Parcel Number" shall mean the number, letter or combination thereof designating a Parcel within the Project. If a separate Parcel Number is not assigned by Wasatch County, Declarant may assign one for purposes of identifying it for the purposes of this Declaration.

1.22 "Percentage Interest" shall mean and refer to the undivided percentage interest of each Owner in the Common Areas and Facilities of the Property. The Percentage Interest which is appurtenant to a Parcel shall be equal to the ratio between the Size of such Parcel and the aggregate Size of all Parcels in the Project. The Percentage Interest of each Parcel is set forth in Exhibit "B" attached hereto and incorporated herein by reference. "Percentage Interests" shall be the sum total of each and every Percentage Interest and shall equal 100%. Declarant is authorized to make minor adjustments in the Percentage Interests to assure that the total adds up to 100%.

1.23 "Person" shall mean an individual, corporation, partnership, association, trustee or other legal entity.

1.24 "Plat" shall mean and refer to any plat of a planned unit development, or any plat or map and all amendments or supplements thereto similar to the foregoing: (a) which covers the Property; (b) which describes or creates one or more Parcels; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the planned unit development created by the Plat shall constitute the Development; and which is (d) recorded in the Official Records (as defined above). It is anticipated that a Plat be recorded concurrently with or subsequent to the recording of this Declaration.

1.25 "Project" shall mean the Property and the improvements constructed thereon sometimes referred to and known as "Lookout at Ranch Landing Commercial Center", including any Additional Land subject to the terms of this Declaration.

1.26 "Property" shall mean and refer to the Subject Property and any Additional Land added to the provisions of this Declaration, the Buildings, all improvements and structures on the Subject Property and Additional Land subject to the terms of this Declaration, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.27 "Size" shall mean and refer to the area of floor space of a Parcel, in square feet, rounded off to a whole number. Declarant's determination of the Size of a Parcel, as set forth in this Declaration or in any amendment or supplement hereto pursuant to Article V hereof shall be conclusive, absent manifest error.

1.28 "Subject Property" shall mean the real property upon which the Project is situated, as more particularly described on Exhibit "A" attached hereto.

1.29 "Unit" shall mean and refer to each space located within a Building which is designed and intended for commercial use as permitted herein, together with all mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of among other items, and as appropriate, wallpaper, paint, flooring, carpeting and tile.

## II. PROPERTY DESCRIPTION

2.1 Submission. The Subject Property which is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration consists of the following-described real property situated in Wasatch County, State of Utah.

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described real property (the real property).

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related facilities to the extent that they are located outside the Parcels included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a

manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Building, containing one or more Units, on each and every Parcel; and (ii) to improve the Common Areas with such facilities, including, but not limited to, roads, recreational facilities, walkways and various landscaped areas, designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall, unless sooner terminated in accordance with its terms, expire seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Wasatch County, Utah.

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the real property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipeline, cable, wire, utility line, or similar facility which traverses or partially occupies the real property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

2.2 Expansion. The Project shall be subject to expansion in accordance with the provisions of Article XV hereinbelow.

### III. PARCEL DESIGNATIONS

3.1 Description and Legal Status of Parcels. The Plat shows each Parcel Number, its location, dimensions from which its Size may be determined, the Common Areas to which it has immediate access and the Limited Common Areas, if any, reserved for each Parcel. The undivided ownership interest in the Common Areas and Facilities appurtenant to a Parcel may not be partitioned from the balance of the Common Areas and Facilities by an action pursuant to Chapter 6 of Title 78B, Utah Code Annotated (2008 Replacement) as may be amended from time to time.

3.2 Contents of Exhibit "B". Exhibit "B" to this Declaration contains the following information with respect to each Parcel contained in the Project as of the date hereof: (i) the Parcel Number; (ii) its Size; and (iii) the Percentage Interest which is assigned to and appurtenant to the Parcel.

#### IV. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.1 Estate of an Owner. The Project is hereby divided into Parcels, each consisting of a fee simple interest in a Parcel and a Percentage Interest as set forth in the attached Exhibit "B". The Percentage Interests set forth in Exhibit "B" are hereby declared to be appurtenant to the respective Parcels.

4.2 Title. Title to a Parcel may be held or owned by any Person or more than one Person and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenants or tenancy in common.

4.3 Inseparability. No part of a Parcel or the legal rights comprising ownership of a Parcel may be separated from any other part thereof during the period of ownership prescribed herein, so that each Parcel and the Percentage Interest appurtenant to such Parcel shall always be conveyed, devised, encumbered, or otherwise affected only as a complete Unit. Notwithstanding the foregoing, a Parcel may be subdivided in accordance with the requirements of applicable law and the prior approval of the Association. Upon such subdivision, each separately created portion of real property shall become a Parcel subject to the provisions of this Declaration. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Parcel shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Parcel, together with all appurtenant rights created by law or by this Declaration. Nothing in this Section 4.3 shall preclude the creation of a condominium project upon any Parcel.

4.4 Computation of Percentage Interests. The Percentage Interest which is appurtenant to a Parcel shall be equal to the ratio between the Size of such Parcel and the aggregate Size of all Parcels in the Project. Declarant reserves the right to make minor adjustments in some or all of the Percentage Interests which result from the strict application thereof for the purpose, but only for the purpose, of assuring that the total of all Percentage Interests equals 100%. Percentage Interests shall be for all purposes, including, without limitation, voting and participation in Common Expenses.

4.5 Partition Not Permitted. The Common Areas shall be owned in common by all the Owners of Parcels, and no Owner may bring any action for partition thereof.

4.6 Owner's Rights to Common Areas. Subject to the limitations contained in this Declaration, any Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Owner or Owners.

4.7 Utility Easements and Common Facilities.

4.7.1. Utility Easements. Declarant hereby creates and reserves for each Parcel a mutual easement for the benefit of all Parcels and each Owner of a Parcel takes his Parcel subject to a general easement over, across, through and under the Parcel for ingress to, egress from, and installation, replacement, repair and

maintenance of all utility and service lines and systems, including, without limitation, water, sewer, natural gas, telephone, electricity and cable communication that service one or more Parcels or any portion thereof. The Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 4.7 upon the request of any Owner showing good cause therefor.

**4.7.2. Installation and Maintenance.** Pursuant to the easement reserved as provided in Section 4.7.1, a utility or service company may install and maintain facilities and equipment on a Parcel and affix and maintain lines, wires, circuits and conduits on, in and under the roofs and exterior walls of improvements constituting the Building to provide service to the Units located within such Building. Any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners of Buildings and Units located therein and other utility and service companies.

**4.8 Owner's Rights with Respect to Buildings.** After initial construction of a Building by the Declarant or any Owner, each Owner shall have the exclusive right at his sole cost and expense to maintain, repair and replace his Building and all Units located therein. Each Owner shall be required to maintain, repair, replace, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of each Unit and all walls, ceilings, floors and doors within such boundaries.

**4.9 Easement for Access to Parcels.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Parcel, and to the Limited Common Areas, if any, designated for use in connection with his Parcel, and such rights shall be appurtenant to and pass with the title to each Parcel.

**4.10 Easement for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Parcel, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. If any part of a Building built upon a Parcel encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Parcel, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of a Building, by error in the Plat, by settling, rising or shifting of the earth, or by change in position caused by repair or reconstruction of the Project or any part thereof.

**4.11 Easement of Access for Repair, Maintenance and Emergencies.** Some of the Common Areas are or may be conveniently accessible across the Parcels or only through Buildings. The Owners of other Parcels shall have the irrevocable right, to be exercised by the Association (or its agent), as their agent, to have access to each Parcel and Unit constructed therein and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any

of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Parcel or Unit(s) constructed thereon. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Building or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Building or Unit at the instance of the Association shall be an expense of the Association; provided, however, that if such damage is the result of negligence of the Owner of a Building or Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by assessment pursuant to Article IX below.

4.12 Association's Right to Use of Common Areas. The Association shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and the functions which it is obligated or permitted to perform pursuant to this Declaration.

4.13 Easements Deemed Created. All conveyances of Parcels (or portions thereof, including any Units located therein) hereafter made, by whatever means, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.8, 4.9, 4.10, 4.11, and 4.12, above, and Section 5.2. below, even though no specific reference to such easements or to those Sections appears in any such conveyance.

#### V. UNITS AND LIMITED COMMON AREAS

5.1 Conveyances. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Parcel shall describe the interest or estate involved substantially as follows:

Parcel No. \_\_\_\_\_ [or legal description], Contained within Lookout at Ranch Landing Commercial Center, as the same is identified in the Plat recorded in Book \_\_\_\_\_, at Page \_\_\_\_\_, and in the "Declaration of Covenants, Conditions and Restrictions of Lookout at Ranch Landing Commercial Center" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Iron County Recorder.

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

5.2 Transfer of Title. Declarant agrees to convey and by recording of the Plat does convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed.

5.3 Maintenance of Buildings. Each Building, and all utility facilities, including but not limited to all exteriors, roofs, electrical, plumbing, heating, air conditioning, water, sewer lines, ducts, and other such apparatus serving solely such Building or any portion thereof, shall be maintained by the Owner of the Parcel thereof (as as applicable, Units located therein) so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Parcel or other portions of the Project. Each Owner shall keep the interior of his Building, including without limitation, interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in good state of repair. In the event that any such Building shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the Owner of such Building shall fail to correct such condition or state of disrepair promptly following written notice from the Association and only upon the approval of the Board of Directors, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Building and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair. The Association shall have the irrevocable right to have access to each Building (and Units located therein) from time to time during such reasonable hours as may be necessary to insure each Owner's compliance with the provisions of this Section 5.2.

5.4 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Parcel, and all improvements located thereon. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the Percentage Interest therein appurtenant to his Parcel. Any Mortgage or other encumbrance of any Parcel 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.

5.5 Taxation of Parcels. Each Parcel within the Project, including each Parcel's appurtenant Percentage Interest in the Common Areas, shall be deemed to be a Parcel and shall upon conveyance of any Parcel by Declarant be assessed separately for all taxes, assessments, and other charges of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Parcels in proportion to the Percentage Interests appurtenant to such Parcels. All such taxes, assessments, and other charges of each respective Parcel shall be separately levied against the Owner thereof. No forfeiture or sale of any Parcel for delinquent taxes,

assessments, or other governmental charges shall divest or in any way affect the title to any other Parcel.

5.6 Limited Common Areas. The Limited Common Areas of the Project and the Parcels to which they are appurtenant are those areas, if any, designated as Limited Common Areas on the Plat. The Owner of a Parcel shall keep at his sole cost and expense, the Limited Common Areas designated for use in connection with his Parcel, in a good, clean, sanitary and attractive condition and in a good state of repair. In the event that an Owner fails to keep the Limited Common Areas appurtenant to his Parcel, in a good, clean, sanitary and attractive condition, and in a good state of repair, the Association may cause the same to occur, at the expense of the Owner, in accordance with the procedures set forth in Section 5.3 above.

5.7 Mechanic's Liens. No labor performed or material furnished or used in connection with any Parcel with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a notice of mechanic's lien against the Parcel of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas, except the Percentage Interest therein appurtenant to the Parcel of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

## VI. THE ASSOCIATION

6.1 Membership. Every Owner shall be entitled and be required to be a member of the Association. If title to a Parcel is held by more than one Person, the membership related to such Parcel shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which the title to such Parcel is held. An Owner shall be entitled to one membership for each Parcel owned by him. Each such membership shall be appurtenant to the Parcel from which it is derived and shall be transferred automatically by conveyance of such Parcel. No person or entity other than an Owner may be a member of the Association, and the Bylaws of the Association shall so provide. Such Bylaws shall in addition state that membership in the Association may not be transferred except by the transfer of a Parcel; provided, however, that the rights of membership may be assigned to a Mortgagee as further security for a loan secured by a Mortgage on a Parcel.

6.2 Board of Directors. The conduct of the affairs of the Association shall be governed and controlled by a Board of Directors which shall consist of three (3) Director positions and shall consist of those who are eligible to serve pursuant to this Declaration. Two (2) of the Director positions shall each be nominated for election by the Owner of a different Parcel. One individual may fill more than one Director position, but one individual may not fill more than two (2) Director positions. Any Director filling more than one Director position shall be entitled to one vote for each Director position which he or she holds. Notwithstanding the foregoing, until (i) the expiration of seven (7) years from the date that the Declaration (exclusive of amendments or supplements) is recorded in the official records of the County Recorder of Wasatch, State of Utah, or such shorter period as the



Declarant may determine in its sole discretion, or (ii) a date not later than one hundred twenty (120) days after the date upon which Parcels representing seventy-five percent (75%) of the total Percentage Interests as defined in the Declaration that have been conveyed to purchasers, (the "Period of Administrative Control") Declarant shall have the exclusive right to appoint and remove all Directors and Officers and exercise power or authority assigned to the Association under its governing documents. The qualifications of individuals permitted to serve on the Board of Directors shall be established by the Bylaws of the Corporation. Said Board of Directors shall exercise such powers as are provided by this Declaration, Articles of Incorporation, the laws of the State of Utah, and the Bylaws of the Corporation. The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the Period of Administrative Control, each Director position will hold its office for a term as follows: initially two (2) Director positions shall be elected for a term of one year and one (1) Director position shall be elected for a term of two (2) years, and at each annual meeting thereafter the Owners shall elect the number of Directors or Director positions whose terms are to expire, for a term of two (2) years. Owners, designated representatives of Owners, spouses of Owners, Mortgagees (or designees of Mortgagees), partners of partnerships owning a Parcel, directors or officers of corporations owning a Parcel, Managers or Members of limited liability companies owning a Parcel, and Trustees of trusts owning a Parcel shall be eligible to serve on the Board of Directors.

Officers and Directors shall be reimbursed for all expenses reasonably incurred in connection with business related to the Board of Directors. The Board of Directors may fix such compensation for any member as may be reasonable in light of the Board of Director's duties which that Director is required to perform.

6.3 Votes and Voting. The number of votes appurtenant to each respective Parcel shall be equal to the product of the Percentage Interest set forth in Exhibit "B" attached hereto (as the same may be revised as the result of minor adjustments as provided in Section 4.4) multiplied by One Hundred (100). The number of votes appurtenant to each Parcel as set forth in said Exhibit "B" (subject to revisions the result of minor adjustments as provided in Section 4.4) shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The number of votes appurtenant to each Parcel may not be divided between multiple Owners of such Parcel or between matters which require the vote of Owners.

## VII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

7.1 Common Areas. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment, if any, related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner of a Parcel shall keep the Limited Common Areas, if any, designated for use in connection with his Parcel, in a good, clean, sanitary and attractive condition and in a state of good repair. The Association shall

be responsible for the maintenance and repair of all Common Areas, excluding, however the Limited Common Areas. The cost of such management, operation, maintenance and repair by the Association of the Common Areas shall be borne as provided in Article VIII.

7.2 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel of the Association as it shall be determined to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain on behalf of the Association and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection, snow removal, ground maintenance, and other common services to each Parcel. The cost of such services shall be borne as provided in Article VIII. The Declarant may enter into one or more professional management contracts on behalf of the Association pursuant to the provisions hereof; provided the Association shall have the right to terminate any such contract, without cause, at any time after transfer of control of the Association to Owners.

7.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of the Association and all of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as each Owner's respective Percentage Interest. Such interest shall not be transferable except with the transfer of a Parcel. A transfer of a Parcel shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each owner may use such property in accordance with the purpose for which it is intended, subject to rules and regulations adopted by the Association as provided herein, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Parcel under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Parcel.

7.4 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Parcels and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation: (i) a requirement that window coverings, including the interior surfaces of any window or door glass used in Parcels shall present a uniform appearance of type and color from the exterior of the Building and that the Association shall have the right to inspect and reinspect and approve all proposed window coverings to insure compliance with such rules before installation thereof in a Unit constructed upon a Parcel; (ii) that certain types of vehicles may not be parked upon a Parcel, except for delivery of goods to a Parcel; and (iii) that Limited Common Areas conform to standardized regulations regarding appearance, maintenance and modifications thereof. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Asso-

ciation may also take judicial action against the Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law. In addition to any other remedies, the Association may impose fines in accordance with the Act and this Declaration as set forth in Section 16.9, herein, for violation of any of the foregoing restrictions.

7.5. Compliance with Law. No portion of the Project may be occupied for any use which is in violation of applicable ordinances, laws and regulations of any governmental entity having jurisdiction over the use of all or any portion of the Project.

7.6. Nuisances. No Owner or Occupant shall create a nuisance in the Project. No rubbish or debris of any kind shall be placed or permitted to accumulate outside a Building upon any Parcel, and no odor shall be permitted to arise therefrom, including open burning, so as to render any Parcel or any portion thereof unsanitary, unsightly, offensive or detrimental to any property in the vicinity thereof or to the Occupants thereof. No use or operation shall be conducted in the Project that is noxious, objectionable, unsightly or detrimental to others in any manner and due to any cause such as, but not limited to, vibration, sound, radiation, air, water, drainage or sewer pollution, dust or emission of odorous toxic or nontoxic substances.

7.7 Granting Easements. The Association may, without a vote or consent of the Owners, or of any other person, grant or create, on behalf of the Association, on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Areas.

7.8 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or By-law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

## VIII. ASSESSMENTS

8.1 Agreement to Pay Assessment. Declarant, for each Parcel owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants, and each Owner of any Parcel by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

8.2 Amount of Total Annual Assessments. The total annual assessments against all Parcels shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates

may include, among other things: expenses of management, grounds maintenance, taxes and special assessments, until the Parcels are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; water charges; snow removal expenses; sewer service charges; garbage removal charges, repairs and maintenance expenses; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Notwithstanding the foregoing, the total amount of annual assessments shall not exceed the previous year's annual assessments (determined for an entire 12 month period) by more than 25% without the affirmative vote of eighty percent (80%) or greater of the votes allocated to the Parcels as provided herein and the affirmative vote of at least fifty-one percent (51%) of first Mortgagees. The first annual assessment for Units for the calendar year 2009 shall be prorated and commence thirty (30) days after recording of this Declaration in the Office of the Wasatch County Recorder and shall be assessed an amount per year based upon a calculation of \$1.00 per square foot of the size of the Unit. This estimate shall be subject to change in accordance with the procedures set forth in this Declaration.

8.3 Apportionment of Annual Assessments. Expenses attributable to the Common Areas and to the Project (excluding expenses for private utility services to each Parcel, Building and Units located within a Building) as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests.

8.4 Notice of Annual Assessments and Time for Payment Thereof. Annual assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the annual assessment with respect to his Parcel not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the next calendar year. Such assessment shall be due and payable in equal monthly installments on the first day of each and every month of each year; provided, however, that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Project but not later than sixty (60) days after the conveyance of the first Parcel. The first annual assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the Owners. Each monthly assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after it is due. In addition to the foregoing, the payment of any delinquent assessment shall be subject to the payment of a late fee as established by the Board of Directors. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner for such assessment, but the date when payment shall become due in such case shall be deferred to a date ten (10) days after such notice shall have been given.

8.5 Special Assessments for Capital Improvements. In addition to the annual assessments authorized by this Article, the Association may levy in any assessment year a special assessment, payable over such period of time as the Association may determine,

for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interest. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable (both before and after judgment) if not paid within thirty (30) days after such date.

#### 8.6 Lien for Assessments.

(a) All sums assessed to any Parcel pursuant to this Article, together with interest thereon, as provided herein, shall be secured by a lien on such Parcel in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Parcel, except only for: (a) valid tax and special assessment liens on the Parcel in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Owner recorded in the Official Records prior to the date a notice (as provided herein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

(b) To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Parcel and a description of the Parcel. Such a notice shall be signed by an officer of the Association and shall be recorded in the Official Records. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by power of sale or judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Parcel which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the

foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Parcel as the Owner thereof.

(c) A release of notice of lien shall be executed by an officer of the Association and recorded in the Official Records upon payment of all sums secured by such lien which has been made the subject of a recorded notice of lien.

(d) Any Mortgagee or encumbrancer holding a lien on a Parcel may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such Mortgagee or encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

(e) A lien for common area assessments will not be affected by the transfer or conveyance of a Parcel, unless such transfer is pursuant to a foreclosure of a mortgage with priority. In such event, the prior Owner shall nevertheless remain liable for the delinquent assessments.

8.7 Personal Obligation of Owner. The amount of any annual or special assessment against any Parcel shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Parcel.

8.8 Statement of Account. Upon payment of a reasonable fee not to exceed Twenty Five Dollars (\$25.00) and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Parcel, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to a Parcel, the amount of the current yearly assessment and the date that such assessment becomes or became due, the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with by the Association within ten (10) days, and the purchaser subsequently acquires the Parcel.

8.9 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 8.8, a purchaser of a Parcel shall be jointly and severally liable with the seller for all unpaid assessments against the Parcel up to the time of the grant or conveyance,

without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

8.10 Reserve for Replacements. Commencing one year from the recordation of this Declaration, the Association shall be required to establish and maintain an adequate reserve fund for the cost of reasonably predictable and necessary major repairs, maintenance and replacement of Common Areas, excluding Limited Common Areas. Such reserve shall be funded out of Common Area Assessments. Any amount paid to this reserve shall not be considered as an advance payment of regular assessments. This reserve fund shall be transferred to a segregated fund in the name of the Association upon transfer of control of the Association to the Owners. The Declarant shall be prohibited from using the reserve funds to defray any of its expenses, reserve contribution, or construction costs, or make up any budget deficits while it is in control of the Association. Upon transfer, the reserve account provided herein shall be maintained separate from the general operating and assessment account of the Association, but in the Association's name.

8.11 Attorneys Fees. The Association is entitled to recover all costs and expenses incurred by the Association in collecting any unpaid assessments, including reasonable attorneys' fees, whether an action is brought against an owner to recover a money judgment for any unpaid assessment or to file a lien against the Parcel for the failure to pay any assessment, or to enforce said lien by any foreclosure action and/or subsequent trustee sale.

8.12 Association Rights Against Leasing Owners. (a) As set forth in Utah Code Ann. Section 57-8a-205, as may be amended, if the Owner of a Parcel who is leasing the Parcel fails to pay any Assessment for a period of more than sixty (60) days after it is due and payable, the Board of Directors, upon compliance with the Community Association Act, Utah Code Ann. Section 57-8a-101 *et. seq.* (the "Act") may demand that the Owner's tenant pay to the Association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid. The manager or Board of Directors must give the notices, hold all funds and otherwise exercise the rights provided in this Section 8.12 in accordance with the requirements of the Act as the same may be amended from time to time.

## IX. INSURANCE

9.1 Provided by Association. The Association shall secure and at all times maintain for the benefit of the Association and the Owners the following insurance coverages:

(a) Hazard Coverage. A multi-peril policy or policies of fire and other hazard insurance covering the Common Areas improvements, with extended coverage and all other coverages in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use, including the standard "All risk" endorsement, on a replacement cost basis in an

amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the Project. Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The assured shall be the Association as a trustee for the Owners, or their authorized representatives.

(b) Public Liability. A comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, the Board of Directors and its members, the Manager, and the Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project which may arise among themselves, to the public, or to any invitees, licensees, or tenants of the Project, or of the Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, its committee members, its Officers or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain for the benefit of and on behalf of the Association workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Fidelity Insurance or Bond. If the Board of Directors elects, the Association shall purchase for the benefit of and on behalf of the Association, in amounts not less than three (3) months assessments for all Units, and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of Committee members, Officers, employees and others who hold or administer funds, destruction or disappearance of money or securities, and forgery. The fidelity policy or bond shall name the Association as the insured.

9.2 Additional Provisions. The following additional provisions shall apply with respect to insurance.

(a) In addition to the insurance and bond coverage described above, the Association shall secure and at all times maintain for the benefit of and on behalf of the Association, insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Project in construction, nature and use.



(b) All insurance policies shall be written by a company holding a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, Bylaws or policy, contributions or assessments may be made against the Borrower or a Mortgagee; 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) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Mortgagee or the borrower from collecting insurance proceeds.

(c) The Association, on behalf of all Owners, individually and collectively, shall have the authority to adjust losses with respect to insurance secured and maintained by the Association, to pursue claims, negotiate and settle claims, and to enter into agreements relative to the same, and each Owner shall be deemed to have appointed the Association as an attorney-in-fact for such purpose.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association for the benefit of the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Association, the Trustees, Officers of the Association, the Manager and its members, the Owners, and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(f) Any Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Owner who individually obtains insurance covering any portion of the Project shall

supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

(g) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(h) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(i) The foregoing provisions of this Article IX shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage. In addition to any insurance coverage required hereunder, the Association may obtain such other insurance or additional insurance in such amounts and in such forms as the Association may deem proper from time to time.

(j) The Association shall have no responsibility regarding insurance on the improvements of any Owner located on a Parcel or the personal property of Owners. Each Owner shall acquire for his own protection, such insurance on the improvements made upon each such Owner's Parcel and the contents thereof as he deems appropriate.

(k) The maximum deductible amount for policies covering Common Area improvements shall be the lesser of \$10,000 or 1% of the policy face amount.

## X. DAMAGE OR DESTRUCTION

10.1 Procedures. In the event of damage of or destruction of part or all of the improvements in the Project, the following procedures shall apply:

(a) Insurance Proceeds Sufficient to Repair or Reconstruct. If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) Damage and Destruction less than 75%. If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all Owners shall be assessed for any deficiency on the basis of their respective Percentage Interests.

(c) Damage or Destruction Exceeds 75%. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and unless the Owners within 60 days after the destruction or damage by a vote of at least 67% elect not to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) Substantial Damage or Destruction but Owners Elect Not to Repair or Reconstruct. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Owners, within 60 days after the destruction, and by a vote of at least 67% elect not to repair or reconstruct the affected improvements, the Association shall promptly record with the Wasatch County Recorder a notice setting forth such facts.

10.2 Determination of Extent of Damage or Destruction. Any reconstruction or repair which is required to be carried out by this Article X regarding the extent of damage to or destruction of Project common area improvements shall be made by one or more general contractors and/or MAI appraisers selected by the Association. If more than one estimate of damages is obtained, the decision of any two such estimators shall be conclusive, if they agree, and if they do not, the average of their estimates shall be conclusive.

## XI. CONDEMNATION

11.1 Consequences of Condemnation. If at any time or times during the continuance of the ownership pursuant to this Declaration, all or any part of the Common Areas of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

11.2 Proceeds. All compensation, damages or other proceeds obtained as a result of the events described in Section 11.1, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association. The Association, on behalf of all Owners, individually and collectively, shall have the authority to represent the Association and all Owners and in such regard shall represent their interests in proceedings, negotiations, settlement and agreements, and each Owner shall be deemed to have appointed the Association as attorney-in-fact for such purpose.

11.3 Use and Distribution of Award. In the event that Common Areas are taken and to the extent that any improvements are not restored, each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award among Owners in proportion to their respective Percentage Interests in the Common Areas. Distribution of apportioned proceeds shall be made by checks

payable jointly to the respective Owners and their respective Mortgagees and encumbrancers.

11.4 Reorganization. In the event of any condemnation results in the complete or partial taking results in the complete or partial taking of a Parcel, the Association shall thereafter reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Parcels for amendment of this Declaration as provided.

11.5 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article X, above.

## XII. USE OF PARCELS AND COMMON AREAS

12.1 Parcel Use Restrictions. All Parcels and the Building and Units constructed thereon by the Declarant or any other Owner within the Project shall be used exclusively for commercial uses permitted by Wasatch County as of the date of this Declaration, including but not limited to assisted living facilities, senior care facilities, office and retail use, and uses incidental to the foregoing, and for no other purposes subject only to the restrictions set forth in this Declaration and applicable zoning ordinances of the City which may now or which may in the future be applicable to the Property. Furthermore, the following uses shall be prohibited in the Project: (i) any public or private nuisance; (ii) any place of public entertainment or amusement, including but not limited to a bowling alley, skating rink, electronic or mechanical games arcade (except as an incidental use to a retail or commercial business, in which case such use shall be restricted to less than five percent (5%) of the floor area occupied by such business), billiard room, pool hall, discotheque, dance hall, banquet hall, night club, bar or tavern; (iii) massage parlor; provided that such limitation shall not be applicable to massages given as part of other services rendered in a day spa or similar facility, (iv) a "head shop," pornographic or "adult" store of any kind, (iv) the manufacture, storage, sale or consumption of drugs, except the legal personal use or possession of drugs for medicinal purposes; (v) any gambling; or (v) any establishment whose employees' standard uniform or dress is substantially intended to entice a customer's patronage by an appeal to the customer's sexual interest, such as a "Hooters" restaurant or a "Bikini Cuts" barber/style shop or any similar establishment. Any lease or rental agreement for a Parcel/Unit must be in writing and subject to the terms of the Declaration, Bylaws, rules, and regulations, and other documentation of the Association.

12.2 Use of Common Areas. There shall be no obstruction of the Common Areas by the Owners and/or their tenants, or invitees without the prior consent of the Association. The Association may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for the purpose of protecting the interests of all the Owners or protecting the Parcels or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Areas except upon the prior written consent of the Association.

12.3 Prohibition of Damage and Certain Activities. Nothing shall be done on any Parcel or kept in any Building or Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or an increase of the rate of the insurance on the Project or any part thereof, over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on any Parcel, Building, or in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from such damage or waste caused by him or his invitees; provided, however, that any invitee of the Declarant shall not be under any circumstances deemed to be an invitee of any other Owner. No noxious, destructive or offensive activity shall be carried on any Parcel or in any Building or Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully occupying a Parcel, Building or Unit in the Project.

12.4 Rules and Regulations. No Owner shall violate the rules and regulations for the use of the Parcels and of the Common Areas as adopted from time to time by the Association.

12.5 Structural Alterations. No alterations shall be made to any Building or Unit which compromise any structural component or the external appearance of any Building or Unit and no plumbing, electrical or similar work within the Common Areas (including but not limited to Limited Common Areas) shall be done, by any Owner without the prior written consent of the Association.

12.6 Restriction on Signs and Attachments. Owners or their lessees, if any, shall be permitted to erect signage to identify their businesses, outside of their Buildings, however, no signs shall be erected, displayed or maintained on any part of the Project without the prior written approval of the Board of Directors. The approval of the Board of Directors shall not be unreasonably withheld and criteria for permissible signage shall be established by the Board of Directors and set forth in the Rules and Regulations of the Association. In addition, no flags, satellite dishes, windsocks, wind chimes, hanging plants, bird feeders, advertising devices or exterior attachments or attachments visible from outside a Building (collectively, "Attachments") shall be erected, displayed or maintained on any part of the Project without the prior written approval of the Board of Directors, except (i) as may be necessary temporarily to caution or warn of danger or to provide directions as required by law and (ii) such signs as Association may erect and maintain incident to the advertising the identity of the occupant and/or the sale or lease of Parcels, Buildings, or Units. If the Board of Directors consents to the erection of any such signs or devices, other than identity signs, the same shall be removed promptly at the request of the Board of Directors. Any satellite dishes shall be erected at locations approved by the Board of Directors, preferably on the roof of a Building.

12.7 Recreational Vehicles and Restrictions on Parking. No recreational vehicle (boats, campers, trailers, motor homes, or similar items) or trucks in excess of 1 ton shall be parked on any portion of the Common Areas or any Parcel except in common areas designated for immediate loading and unloading only, nor shall the same be left in such area overnight. All such parking shall be subject to rules and regulations adopted by the Association. Parking stalls shown on the Plat as Common Areas shall be maintained by the Association. The cost of such management, operation, maintenance and repair by the Association shall be borne as provided in Article VIII.

### XIII. MORTGAGEE PROTECTION

13.1 Notice to First Mortgagee. From and after the time a first Mortgagee (or an insurer or guarantor thereof) makes written request to the Association therefor, stating both its name and address and the Parcel Number or address of the Parcel on which it has (or insures or guarantees) a Mortgage, the Association shall notify such first Mortgagee (or an insurer or guarantor thereof) in writing of the following: (i) in the event that the Owner of the Parcel encumbered by the first Mortgage held by such first Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of its obligations under this Declaration; (ii) any condemnation or casualty loss that affects either a material portion of the Project or the Parcel securing its Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of first Mortgagees.

13.2 Priority of Liens for Unpaid Assessments. The lien or claim against a Parcel for unpaid assessments or charges levied by the Association pursuant to this Declaration or the Act shall be subordinate to a Mortgage affecting such Parcel provided that such Mortgage was recorded prior to recording of such notice of lien or claim levied by the Association, and the Mortgagee thereunder which comes into possession of or which obtains title to the Parcel shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of foreclosure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Parcels including the Parcel in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Parcel affected or previously affected by the Mortgage concerned.

13.3 First Mortgagee Consents. Unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each Parcel which is encumbered by a Mortgage) of the individual Parcels subject to first Mortgages consent in writing, the Association shall not be entitled, by act, omission, or otherwise:

(a) To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas);

(b) To use hazard insurance proceeds resulting from damage to any part of the Common Areas of the Project for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article IX;

(c) To change the pro rata interests or obligations of any Parcel which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Parcel in the Common Areas, except as such changes may occur as a result of partial condemnation, expansion of the Project, or as otherwise permitted hereunder.

#### 13.4 Miscellaneous Mortgagee Rights.

(a) The Association shall not: (i) alter the provisions of Article IX in such a way as to diminish the insurance protection required to be afforded to the parties designated to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Article.

(b) Any first Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. After the commencement of sale of individual Parcels, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs, maintenance and replacement of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Parcels rather than by special assessments.

(c) From and after the time a first Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.

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

(e) In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article XIII, the provision or clause which results in the greatest protection and security for a

Mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

(f) No amendment to this Declaration which has the effect of diminishing the rights, protection, or security afforded to first Mortgagees shall be accomplished or effected unless fifty-one percent (51%) of the first Mortgagees of the individual Parcels have given their prior written approval to such amendment. A change to the provisions governing the events set forth in Section 14.1(c) would be considered material requiring the consent of first Mortgagees as provided herein. Any amendment to this Article XIII shall be accomplished by an instrument executed by the Association and filed for record in the Official Records. In any such instrument an officer of the Association shall certify that any prior written approval of first Mortgagees required by this Article XIII, as a condition to amendment, has been obtained.

13.5 Implied Approval. In the event that the approval of a first Mortgagee is required pursuant to the provisions of this Article XIII or elsewhere herein, in the event a first Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, approval will be deemed to have been given, provided notice was delivered to such Mortgagee by certified or registered mail, "return receipt" requested.

#### XIV. AMENDMENT

14.1 Amendment. Except as provided in and/or subject to the terms of items (a) through (c) below, the vote of Owners holding at least 67% of the Percentage Interests in the Common Areas shall be required to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required by this Article for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

(a) Any amendment to Article XIII ("Mortgagee Protection") shall be subject to the requirements for amendment contained in such Article XIII.

(b) For a period of three (3) years from the recordation of this Declaration, Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Project.

(c) A change to the following provisions would require the vote of Owners as provided in this Section 14.1 as well as the vote of first Mortgagees in accordance with the requirements of Section 13.4 (f) above:

(i) voting rights, except with respect to expansion of the Project as specified in Article XV;



- (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas;
- (iv) re-assignment of the responsibility for maintenance and repairs;
- (v) reallocations of interests in the general or Limited Common Areas, or rights to their use, except with respect to expansion of the Project as specified in Article XV';
- (vi) redefinition of any Parcel boundaries;
- (vii) convertibility of Parcels into Common Areas or vice versa;
- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project, except as provided in Article XV herein;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Parcels;
- (xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Parcel;
- (xii) a decision by the Association of the Project to establish self-management if professional management has been required previously by the Declaration, Bylaws or other operating documents for the Association, or by an eligible Mortgagee; or
- (xiii) any provisions that expressly benefit first Mortgagees, insurers, or guarantors.

#### XV. EXPANDABLE PROJECT

15.1 Reservation to Expand. The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and improvements to be constructed thereon, all in accordance with the provisions of this Article XV. All such expansion shall be conducted in accordance with applicable zoning and building codes, ordinances, statutes, and regulations.

15.2 Additional Land. The Project may be expanded by the addition of all or a portion of the real property designated on Exhibit "C" attached hereto and incorporated herein by reference, such real property or portions thereof where applicable being referred to as "Additional Land".

15.3 No Limitations upon Option. Expansion of the Project by the Declarant is without limitation and shall be effective without the prior approval of the Association.

15.4 Termination of Option. Declarant's right to expand the Project as provided in this Article XV shall expire ten (10) years from the date of recording of this Declaration (exclusive of any amendments or supplements) in the official records of the Office of the County Recorder of Wasatch County, State of Utah.

15.5 Order of Addition. The Additional Land designated on Exhibit "C" attached hereto and incorporated herein by reference, may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof constituting Additional Land) may be added at any time within the period allowed for expansion of the Project.

15.6 Improvements Upon Additional Land. All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All improvements to be constructed upon Additional Land will be constructed and operated in compliance with the requirements of this Declaration.

15.7 Compatible Construction. All structures and improvements erected upon any Additional Land added to the Project will be compatible with the structures and improvements now upon or to be constructed upon the Subject Property, all such additional structures and improvements to be approximately equal or better in terms of quality of construction and materials to be used. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards. Declarant specifically reserves the right to modify architectural style for structures and improvements to be erected upon Additional Land to be added to the Project.

15.8 Description of Improvements. Although Declarant intends to construct upon Additional Land Buildings, no assurances can be made by the Declarant as to the description of improvements that will be made upon any Additional Land.

15.9 Declarant's Reserved Rights. Declarant hereby reserves the right with respect to any Additional Land, to create Limited Common Areas and Facilities within any Additional Land added to the Project, and with respect thereto reserves the right to create such Common Areas and Facilities in such types, sizes and numbers as the Declarant

deems appropriate in its sole discretion. No assurances are made herein by Declarant with respect to the type, sizes or number of such areas, to be created, if any.

15.10 Supplemental Plat. The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the official records of the Office of the County Recorder of Wasatch County, State of Utah, a supplemental Plat pertaining to such Additional Land to be added to the Project, and showing the location and dimensions (the vertical and horizontal boundaries), of each Unit located within a Building created from and located upon such Additional Land, and the Unit designation of each Unit so created.

15.11 Supplemental Declaration. Simultaneously with the recording of said Supplemental Plat as required by the provisions of Section 15.10 above, the Declarant shall duly execute, acknowledge and record in the official records in the Office of the County Recorder of Wasatch County, State of Utah, a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include the following: (i) a legal description by metes and bounds of the Additional Land added to the Project; (ii) the designation of each Parcel created from and included within the Additional Land; and (iii) the Percentage Interest allocated and appertaining to all Parcels within the Project.

15.12 Qualifications. Each expansion of the Project by the addition of Additional Land shall be subject to the following additional qualifications:

(a) Percentage Interest. The Percentage Interest appertaining to a Parcel and each Parcel shall be re-computed in accordance with the provisions of Section 4.4 taking into consideration the Units contained upon the Additional Land to be included within the Project. Such re-allocations shall be effective as of the date of recordation of the Supplemental Declaration. The re-computed Percentage Interest shall be reflected in an Amended Exhibit "B".

(b) Following the addition to the Project of Additional Land, the total of the Percentage Interest appertaining to all Parcels shall in all event equal 100%.

(c) All improvements to be constructed upon portions of the Additional Land shall be substantially completed and all taxes due on the property to be annexed shall be paid prior to the annexation to the Project.

(d) Liens arising in connection with the Declarant's ownership and/or construction of the improvements on the Additional Land to be added to the Project shall not adversely affect the rights of existing Parcel Owners or the priority of the first Mortgages on Parcels in the existing Project.

15.13 Amendment to this Article. This Article VI shall not be amended without the written consent of the Declarant.

## XVI. GENERAL PROVISIONS

16.1 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

16.2 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Parcel or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Parcel shall comply with, and all interests in all Parcels shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Parcel or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

16.3 Limitation on Association's and Declarant's Liability. The Association and Declarant shall not be liable for any failure of water service or other utility services to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or Person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any part of the Building or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority.

16.4 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented a Parcel, but the Owner of a Parcel shall have no obligation for expenses or other obligations accruing after the date of conveyance of such Parcel. In the event of the rental or lease of a Parcel, Building or Unit, an Owner shall be deemed to have granted a license to his tenant(s) of his right to use the Common Areas for the term of the lease or the period of rental and such Owner shall have no right to use the Common Areas during the term or period of such lease or rental, except as it relates to the exercise of such Owner's rights as a landlord.

16.5 Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for

convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

16.6 Agent for Service of Process. Russell K. Watts, whose address is 5200 South Highland Drive, Salt Lake City, Utah 84117, is the person to receive service of process. The Association shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the official records of the Office of the County Recorder of Iron County, State of Utah.

16.7 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the official records of the Office of the County Recorder of Iron County, State of Utah.

16.8 Request for Notice. The Association hereby requests that a copy of any notice of default and a copy of notice of sale under any mortgages or deeds of trust filed for record against any Parcels be mailed to the Lookout at Ranch Landing Commercial Center Association at 5200 South Highland Drive, Salt Lake City, Utah 84117.

16.9 Enforcement and Remedies. If any Owner or occupant fails to comply with any provision hereof, including any of the rules and regulations promulgated hereunder by the Association, within ten (10) days after written notice of violation thereof (except that, where such violation cannot reasonably be cured within ten (10) days, the ten (10) day period will be extended to that reasonably required, as long as the Owner/occupant commences the cure within such ten (10) day period and diligently pursues the same to completion) (the "Cure Period"), the Association may:

a. suspend such Owner's voting rights in the Association during any period or periods during which such Owner or the occupants of its Parcel fail to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration; and Owners shall be responsible for any non-compliance hereunder of all occupants of their respective Parcels;

b. take judicial action against the Owner and/or occupant to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law.

16.10 Waiver of Jury.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT AND THE ASSOCIATION AND EACH PARCEL OWNER BY ACCEPTING A DEED TO A PARCEL HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, CAUSE OF ACTION, CLAIM,

DEMAND OR PROCEEDING ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, THE OWNERSHIP OF A PARCEL, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF DECLARANT, ASSOCIATION AND A PARCEL OWNER OR PARCEL OWNERS WITH RESPECT TO THIS DECLARATION OR ANY OTHER ASSOCIATION DOCUMENTS, OR THE TRANSACTIONS RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT, ASSOCIATION AND EACH PARCEL OWNER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT DECLARANT, ASSOCIATION, OR A PARCEL OWNER MAY FILE AN EXECUTED COPY OF THIS AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF DECLARANT, ASSOCIATION AND EACH PARCEL OWNER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. DECLARANT, ASSOCIATION, OR AND PARCEL OWNER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTER CLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

EXECUTED by Declarant on the day and year first above written.

DECLARANT:

RKW 2006, LLC, a Utah limited liability company

*Russell K. Watts*

By: RUSSELL K. WATTS  
Its: MANAGER

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

On the 16<sup>th</sup> day of March, 2009, personally appeared before me Russell K. Watts, who being by me duly sworn, did say that he is the Manager of RKW 2006, LLC, a Utah Limited Liability Company, and that the foregoing Declaration was signed on behalf of said limited liability company by authority of the operating agreement or a resolution of its members, and the said Russell K. Watts acknowledged to me that said limited liability company executed the same.

Notary Public  
**KIMBERLY S. SMITH**  
637 East Center  
Heber City, Utah 84032  
My Commission Expires  
January 14, 2012  
State of Utah

*[Signature]*  
NOTARY PUBLIC  
33

EXHIBIT "A"  
to  
Declaration of  
**LOOKOUT AT RANCH LANDING COMMERCIAL CENTER**

(Property Description)

LEGAL DESCRIPTION

Beginning at a point which is North 253.85 feet and East 432.57 feet from the Southwest corner of Section 5, Township 4 South, Range 5 East, Salt Lake Base and Meridian;

Thence North 136.00 feet; thence East 249.07 feet; thence South 00°23'34" East 136.00 feet along the East boundary of Ranch Landing; thence West 250.00 feet to the point of beginning.

*part of OHS-1522-1*

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**EXHIBIT "B"**  
to  
Declaration of  
**LOOKOUT AT RANCH LANDING COMMERCIAL CENTER**

(Percentage Interest)

<u>Parcel NO</u>	<u>SIZE</u>	<u>PERCENTAGE INTEREST</u>	<u>VOTES</u>
1	_____ sq. ft.	_____	_____
2			
Total	_____ sq. ft.	100%	100.00



EXHIBIT "C"  
to  
Declaration of  
**LOOKOUT AT RANCH LANDING COMMERCIAL CENTER**

RANCH LANDING COMMERCIAL PROPERTY (Additional Land)

BEGINNING AT A POINT WHICH IS NORTH 56.61 FEET AND EAST 23.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN;

THENCE NORTH 00°00'39" WEST 333.25 FEET;  
THENCE EAST 408.88 FEET;  
THENCE SOUTH 136.00 FEET;  
THENCE EAST 250.00 FEET;  
THENCE SOUTH 00°23'34" EAST 209.21 FEET;  
THENCE SOUTH 89°43'55" WEST 642.16 FEET;  
THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE RIGHT 23.61 FEET (CENTRAL ANGLE OF 90°11'19" AND CHORD OF NORTH 45°10'25" WEST 21.25 FEET);  
THENCE SOUTH 89°37'22" WEST 3.03 FEET TO THE POINT OF BEGINNING.

*part of OH 9-1522-1*