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**AMENDED AND RESTATED  
 DECLARATION OF PROTECTIVE COVENANTS,  
 CONDITIONS, EASEMENT AND RESTRICTIONS**

**The One & Nine Condominiums**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as "Declaration," is made and executed in Salt Lake County, State of Utah, this 28 day of August, 2008, by THE ONE & NINE CONDOMINIUMS, LLC, a Utah limited liability company designated and referred to hereinafter as "Declarant," pursuant to the provisions of the Utah Condominium Ownership Act (Sections 57-8-1 through 57-8-38, Utah Code Annotated (1953 as amended)).

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property located at Salt Lake City, Salt Lake County, Utah, and more particularly described as set forth on Exhibit "A" attached hereto and incorporated by reference; and

WHEREAS, the Declarant is the owner of certain units and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid premises which property shall constitute a condominium project under the terms of the provisions of the Utah Condominium Ownership Act (title 57, Chapter 8, Utah Code Annotated, 1953) and it is the desire and the intention of the Declarant to develop the project into condominiums and to sell and convey the individual units together with undivided ownership interests in the common areas and facilities to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, the Declarant has prepared under the supervision of Gregory R. Wolbach of Evergreen Engineering, Inc., License #187788, a Registered Utah Land Surveyor, a record of survey map of The One & Nine Condominiums Amended, hereinafter referred to as "plat", which document is dated Aug 28, 2008, as Filing No. 105097109, concurrently herewith; and

WHEREAS, the Declarant desires and intends by filing this Declaration and the aforesaid Plat to submit the above-described property and the building and other improvements constructed thereon together with all appurtenances thereto, to the provisions of the aforesaid act as a condominium project and to impose upon said property mutually beneficial restrictions under a general rule of improvement for the benefit of all of the said condominium units and the owners thereof; and

WHEREAS, the Declarant previously caused to be recorded a Declaration of Protective Covenants, Conditions, Easement and Restrictions recorded in the official records of Salt Lake County on August 2, 2007 as Entry No. 10182540, Book 9499, Pages 3532-3565 (the "Original Declaration"), relating to the property more particularly described on Exhibit "A" hereto, which Original Declaration was subsequent amended on two separate occasions; and

WHEREAS, the Declarant desires to fully amend and restate the Original Declaration and all subsequent amendments, as set forth in this Declaration; and

WHEREAS, pursuant to Sections 10.02 and 10.03 of the Original Declaration, the owners of more than 60% of the outstanding votes in the Association have consented to this amendment and restatement of the Original Declaration.

NOW, THEREFORE, the Declarant does hereby publish and declare that all of the property described above is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the Act and the following covenants, conditions, restrictions, uses, limitations and obligations all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into a condominium and shall be deemed to run with the land and shall be a burden and a benefit to Declarant, its successors and assigns and any person or persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, assigns, tenants, employees, and any other person who may in any manner use the property or any part thereof.

## ARTICLE I

### PURPOSE AND EFFECTUATION

1.01 Purpose. The purpose of this instrument is to provide for the preservation of the values of both Units and Common Areas within the Development, and for the maintenance of the Common Areas therein.

1.02 Effectiveness. From and after the effective date hereof: (1) Each part of the Development and each Unit shall constitute constituent parts of a single Condominium Development; (b) The Development shall consist of the Units and of any Common Areas which are described herein or depicted on the Plat; (c) The Declaration of Protective Covenants, Conditions, Easements and Restrictions for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the

provisions hereof; and (d) The Plat of the Development shall consist of the instrument which is identified as such in **Article II** hereof.

## **ARTICLE II**

### **DEFINITIONS**

When used in this Declaration each of the following terms shall have the meaning indicated:

2.01 Articles shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Division of Corporations and Commercial Code, State of Utah, as amended from time to time.

2.02 Assessment shall mean the amount which is to be levied and assessed against each Unit and paid by each Owner to the Association for Association expenses and purposes.

2.03 Association shall mean The One & Nine Condominiums, a Utah nonprofit corporation, its successors and assigns.

2.04 Board shall mean the Board of Trustees of the Association.

2.05 Bylaws shall mean and refer to the Bylaws of the Association as adopted by the Association and as amended from time to time.

2.06 Common Areas shall mean the land on which the building is located; and all portions of the property not located within any unit or limited common area, and also includes, but not by way of limitation, the outer walls and roofs of the building; the yards, gardens; installations consisting of central services, if any, such as power, light, gas, telephone, hot and cold water, heating, refrigerators, air fans, compressors, ducts and in general all apparatus and installations, if any, existing for common use; any utility pipes, connections, lines or systems servicing more than a single unit and all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; and all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use; and all repairs and replacements of any of the foregoing. Notwithstanding the foregoing, all load bearing structural features, such as posts and cross beams located within a unit shall be considered Common Area facilities or elements.

2.07 Condominium Act or The Act shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated 1953).

2.08 Condominium Unit means a Unit, together with the undivided interest in the common areas and facilities or elements appurtenant to such Unit.

2.09 Declarant shall mean The One & Nine Condominiums, LLC, a Utah limited liability company, its successors and assigns, if any, as developers of the Development.

2.10 Declaration shall mean this Amended and Restated Declaration of Protective Covenants, Conditions, Easements and Restrictions of The One & Nine Condominiums, as the same may be supplemented or amended from time to time.

2.11 Limited Common Areas shall mean and include those common areas and facilities designated in the Declaration as reserved for use of a certain unit or units to the exclusion of the other units as designated on the Plat.

2.12 Managing Agent shall mean any person or entity appointed or employed as Managing Agent by the Association.

2.13 Mortgage shall mean any recorded first mortgage or first deed of trust encumbering a Unit; and Mortgagee shall mean any mortgagee or beneficiary under a mortgage.

2.14 Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Salt Lake County, Utah) of a fee or undivided fee interest in any Unit, and any contract purchaser of any Unit. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Unit owned by it. Multiple owners of a particular Unit shall be jointly and severally liable as to all obligations and responsibilities of an Owner.

2.15 Plat shall mean and refer to the subdivision plat describing the Property entitled Plat "A", The One & Nine Condominiums, Salt Lake City, Salt Lake County, State of Utah, prepared and certified to by Gregory R. Wolbach of Evergreen Engineering, Inc. (a duly registered Utah Land Surveyor holding license no. 187788), executed and acknowledged by Declarant, accepted by Salt Lake City, and filed for record in the office of the County Recorder of Salt Lake County, Utah, on or about August 29, 2008, concurrently with this Declaration.

2.16 The Project or the Condominium Project shall mean the Property to be divided into condominiums, including all structures, improvements, appurtenances and common areas located or constructed thereon or belonging thereto.

2.17 Property shall mean all land covered by this Declaration, including Common Areas and Units, as described in Section 3.01 of Article III hereof.

2.18 Parking Unit shall mean any one of seven (7) parking stalls not assigned to a Condominium Unit, but shown and designated on the plat as Parking Stalls P-501, P-502, P-503, P-504, P-505, P-506, and P-507.

2.18 Unit shall mean the element of a condominium which is independently owned, encumbered, or conveyed but not owned in common with the owners of other condominiums in the project as shown on the Plat, including Parking Units. The boundary lines of each Unit not designated as a Parking Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceilings, windows and window frames, doors and door frames, and trim and includes both the

portions of the building and grounds and improvements so described as a Unit and the space so encompassed. Unit also includes the parking area and storage space shown and designated on the Plat as being a part of each individual condominium, with such parking areas and storage spaces identified by reference to their condominium numbers (e.g., parking area P-101A and storage area S-101 in respect of Condominium Unit 101).

### **ARTICLE III**

#### **PROPERTY DESCRIPTION**

3.01 Property. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the real property in Salt Lake City, Salt Lake County, State of Utah, as more fully described on Exhibit "A".

3.02 Division into Units. The Development is hereby divided into fifty (50) Units, seven (7) of which are Parking Units only, numbered as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc., all as set forth in this Declaration. No further subdivision or combining of Units shall be allowed. Each Parking Unit shall hold an undivided one three-hundred eighth (0.324675%) undivided ownership interest, and each of the remaining 43 Units shall hold an undivided one-forty-fourth (2.272727%) undivided ownership interest in the Common Areas.

### **ARTICLE IV**

#### **ASSOCIATION**

4.01 Homeowners Association Purposes. To effectively enforce this Declaration, the Declarant has created a Utah Non-Profit corporation called The One & Nine Condominiums Homeowners Association. The Association shall be comprised of the Owners of Units within the One & Nine Condominiums Project, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall have and exercise, as necessary, the powers set forth herein.

4.02 Board of Trustees and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with its Articles and Bylaws as the same may be amended from time to time. The Association, by and through the Board shall (a) govern and manage all Association Property, and (b) enforce the provisions of this Declaration. The initial Board shall be comprised of three (3) members. The Board may also appoint committees. The Declarant shall have the initial right to appoint and remove members of the Board until the sale of sixty percent (60%) of the Units by Declarant. Thereafter, members of the Board shall be elected as provided in the Bylaws. Neither the Association nor any officers or directors, employees, committee members, nor the Declarant,

shall be liable to any Unit Owner or to any other person for any damage, act, omission to act, negligence, or other matter of any kind or nature, except for gross negligence.

4.03 Enforcement Powers. The Association shall have the power to enforce this Declaration by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however, this shall not limit the individual rights of Unit Owners to personally enforce this Declaration in their own name.

4.04 Maintenance Responsibilities. The Association may own or be granted easements over portions of the Property within the Project. The responsibility to maintain and properly control the use of these parcels, when granted, vests in the Association, which has the power to perform maintenance services and in all other respects manage or supervise the management of those portions of the Property. The Association will maintain the ADA walks and the ADA parking stall, as shown on the Plat.

4.05 Snow Removal. The Association shall be responsible for snow removal, and shall have the power to make assessments against the owners for purposes of providing this service.

4.06 Assessments. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. Assessments will be determined annually to meet the anticipated and recurring expenses of the Association including, but not limited to, the costs of landscape maintenance, taxes, water, snow removal, insurance, common area utility service, reimbursement of expenses incurred by the Trustees and Architectural Committee in performance of their obligations, and enforcement of this Declaration. Notice of the Assessment and the proposed amount of the quarterly Assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners.

The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of a majority of the Owners in a meeting called for that purpose.

4.07 Assessments Constitute Lien, Mortgagee Protection. Any validly imposed assessment by the Association shall constitute a lien against the Units in the Project. The Association shall have the right to foreclose on that lien when any assessment remains unpaid for a period of more than 90 days from the date the assessment was levied, but if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Unit shall have priority from the date that the first Notice of Lien on a specific Unit is recorded in the office of the Salt Lake County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Unit, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay assessments is a personal obligation of the Owner of each Unit, and the Association may proceed to collect against the Owner, or the prior Owner of any Unit in the event of a sale. No Mortgagee or

Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, shall be held liable for the unpaid assessments of the Owner whose Unit was acquired by the Mortgagee or Beneficiary under a Trust Deed.

4.08 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Unit showing the assessments to be paid in full, or the amount of any past due assessments. The Buyer or lender for whom such a statement was prepared will be entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement. The Association may charge a reasonable fee for preparation of such statement.

4.09 Duties and Powers of the Association. In addition to the duties and powers enumerated in the Articles of Incorporation and Bylaws of the Association, or as elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Own and/or maintain and otherwise manage all of the common areas, and all facilities, improvements, and landscaping thereon, including but not limited to the private streets and street fixtures, parking areas, fences, and all other property acquired by the Association.

(b) Pay any real and personal property taxes and other charges assessed against the common areas.

(c) Have the authority to obtain, for the benefit of all of the common areas, utility services, including all water, gas, and electric services and refuse collection.

(d) Grant easements where necessary for utilities and sewer facilities over the common areas to serve the common areas and the Units.

(e) Maintain such policy or policies of insurance as the Board of Trustees of the Association deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its members, all as more specifically set forth below.

(f) Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall provide for the right of the Association to terminate the same upon reasonable notice to said manager or managing agent, or prior thereto for cause.

(g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Trustees of the Association.

(h) Have the power to adopt and establish by resolution such building management and operational rules as the Association may deem necessary, desirable and convenient for the maintenance, operation, management and control of the Project, and the Association may, from time to time by resolution, alter, amend and repeal such rules. Unit owners shall, at all times, obey such rules and see that they are faithfully observed by those persons over whom they have

or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit owners and/or occupants of the Project.

(i) In the event Unit Owners or Officers and Trustees of the Association reach an impasse or are deadlocked with respect to any action requested by an Owner, then the aggrieved Owner and/or the Association shall submit themselves to binding arbitration in accordance with the rules and regulations of the American Arbitration Association as they may be amended from time to time. The fees and costs of the arbitration shall be borne equally by the Association and the Unit Owner or Owners requesting such action.

4.10 Compliance with Provisions of Declaration and Bylaws. Each owner shall comply strictly with the provisions of this Declaration and the Bylaws of the Association, and the decisions and resolutions of the Association adopted pursuant thereto and as may be lawfully amended from time to time. Failure so to comply shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the managing agent or board of trustees in the name of the Association on behalf of the owners or, in a proper case, by an aggrieved owner.

4.11 Liability for Assessments. All owners of Units shall be obligated to pay the assessments imposed by the board of trustees or managing agent of the Association to meet the common expenses. The assessments shall be made equally according to each owner's ownership interests in and to the common areas and facilities which is 1/309<sup>th</sup> per Parking Unit, and 1/44<sup>th</sup> per Unit for the remaining 43 Units. Assessments for the common expenses, including insurance, shall be due on a quarterly basis, in advance on the first day of each of January, April, July, and October of each year, or as the board may otherwise direct. The managing agent or board of trustees shall prepare and deliver or mail to each owner an itemized annual statement showing the various estimated or actual expenses for which the assessments are made. Contribution for quarterly assessments shall be prorated if the ownership of a condominium Unit commences on a day other than the first day of a quarter.

No owner may exempt himself from liability for their contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or facilities, or by abandonment of their Unit.

4.12 Assessment for Common Expenses. The assessments made upon the owners by the Association shall be based upon the cash requirements deemed to be such aggregate sum as the managing agent or board of trustees of the Association shall from time to time determine is to be paid by all of the condominium Unit owners, to provide for the payment of all actual and estimated expenses growing out of or connected with the maintenance and operation of the common areas and facilities. Said sum may include, among other things, the following: expenses of management; taxes and special assessments, until separately assessed; fire insurance with extended coverage and vandalism and malicious mischief insurance with endorsements attached issued in the amount of the maximum replacement value of all of the condominium Units; casualty and public liability and other insurance premiums; landscaping and care of grounds; common lighting and heating; repairs and renovations; garbage collections; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by



the managing agent or board of trustees under or by reason of this declaration; the payment of any deficit remaining from a previous period; the creation of a reasonable contingency or other reserve or surplus fund as well as other costs and expenses relating to the common areas and facilities.

(a) Initial Assessments. Upon closing of the purchase of any Unit, the purchaser thereof shall pay an initial assessment, in an amount to be determined by the Trustees. Said initial assessment shall be in addition to and not as a replacement for any annual or quarterly assessment later assessed pursuant hereto. The Declarant shall not be required to pay any initial assessments, and shall not be required to pay any annual or quarterly assessments until sixty percent (60%) of the Units have been sold.

(b) Annual Budget. On or before November 1 each year, the Association shall prepare or cause to be prepared an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(c) Notice and Payment. The Association shall furnish to each Owner a copy of the budget and notify each Owner as to the amount of the quarterly Assessment with respect to their Condominium on or before December 15 each year for the calendar year following such date. Any installments of any Assessment that remains unpaid for more than ten (10) days shall be assessed a late fee of FIFTEEN DOLLARS (\$15.00) per days. In addition, any such unpaid installments shall bear interest at the rate of one & one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such installment is due until paid. All late fees and interest shall be and become a part of the assessment, and shall constitute a lien against the delinquent owner's Unit. The failure of the Association to give timely notice of any Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

(d) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's Assessment, the Association may levy additional or special assessments in accordance with the procedure set forth in Section 4.12(d), except that the vote therein specified shall be unnecessary.

(e) Special Assessments. In addition to the Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of at least sixty percent (60%) of the total votes of the Association, Special Assessments, payable over such periods 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 expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association or incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof.

Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one & one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

4.13 Liability for Common Expense Upon Transfer of Condominium Unit. Upon payment of a reasonable fee and upon the written request of any owner or any mortgagee or prospective mortgagee of a condominium Unit, the Association, by its managing agent or board of trustees, shall issue a written statement setting forth the amount of the unpaid common expenses, if any, with respect to the subject Unit, the amount of the current quarterly assessment and the date such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which should be conclusive upon the association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness is complied with within fifteen (15) days, all unpaid common expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

The grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for their proportionate share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor; provided however, that upon payment of a reasonable fee, and upon written request, any prospective grantee shall be entitled to a statement from the managing agent or board of trustees, setting forth the amount of the unpaid assessments, if any, with respect to the subject Unit, the amount of the current quarterly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which shall be conclusive upon the Association. Unless such request for a statement of indebtedness shall be complied with within fifteen (15) days of such request, then such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the subject Unit.

4.14 Mortgaging a Condominium Unit -- Priority. Any owner shall have the right from time to time to mortgage or encumber their interest by deed of trust, mortgage or other security instrument.

4.15 Mortgage Protection. Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any condominium shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to the provisions hereof on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed

hereunder to such purchaser as an owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) If requested in writing by a mortgage holder, the Association shall give a written notification to a holder of a recorded first mortgage on any Unit within the project, of any default by the mortgagor of such Unit in the performance of the mortgagor's obligations created under this Declaration and the Plat in connection herewith, which default is not cured within thirty (30) days.

(c) Unless the Act otherwise provides or unless all Unit owners and all holders of first mortgage liens on individual Units have given their prior written approval, the owners of the condominium project or the board of trustees of the Association shall not be entitled to:

- (i) Change the pro rata interest or obligations of any Unit for purposes of levying assessments and determining shares of the common areas and facilities and proceeds of the project;
- (ii) Partition or subdivide any Unit or the common areas and facilities of the project; nor
- (iii) By act or omission seek to abandon the condominium status of the project except as provided by statute in case of substantial loss of the Units and common areas and facilities of the condominium project.

(d) No amendment to this paragraph shall affect the rights of the holder of any such mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

4.16 Limitation of the Association's Liability. The Association and its agents shall not be liable for any failure of water supply, utility, or other services to be obtained and paid for by the Association hereunder or for injury or damage to person or property caused by the elements or by another owner or person in the Project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any part of the building, or from any of its pipes, drains, conduits, appliances, or equipment, or from any other place unless caused by gross negligence of the Association or its duly authorized employees or agents. No diminution or abatement of common expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common areas or from any action taken to comply with a law, ordinance or order of a governing authority.

4.17 Limitation of Declarant Liability. In the event any Unit or owner, or the Association, has any potential claim, demand, or cause of action against Declarant with regard to any property conveyed by the Declarant or any Unit or common area of the Project, however arising and for whatever cause or reason whatsoever, such Unit, Owner, or the Association shall immediately give written notice to Declarant of such claim or demand. Declarant shall then have ninety (90) days from receipt of such notice to examine, discuss, and evaluate such claim or demand. Following said initial 90-day period, Declarant shall then have ninety (90) days to

resolve such claim or demand. Following this 90-day resolution period, in the event the claim or demand has not been resolved to the Owner, Unit or Association's satisfaction, then in that event, such claim or demand shall be submitted to binding arbitration in accordance with the rules and regulations of the American Arbitration Association as they may be amended from time to time. The fees and costs of the arbitration shall be borne by the non-prevailing party in such arbitration.

4.18 Formative Documents. The Articles of Incorporation and By-laws of the Association are included as Exhibit B and incorporated by reference as part of this Declaration.

## ARTICLE V

### DUTIES AND OBLIGATIONS OF OWNERS

5.01 Maintenance and Repairs. Except for those portions which the Association is required to maintain and repair hereunder, each owner shall at the owner's expense keep the interior of their Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition. For purposes of maintenance, repair, alteration and remodeling, an owner shall be deemed to own the windows, doors, interior walls, the materials (such as but not limited to plaster, gypsum dry walls, paneling, wallpaper, brick, stone, paint, wall and floor tile, and flooring making up the finished surfaces of the perimeter walls, ceilings and floors within the Unit and the Unit doors and windows. The owner shall not be deemed to own any utilities running through their Unit which serve more than one Unit except as a tenant in common with the other owners. Such right to repair, alter and remodel shall carry the obligation to replace any finishing materials removed with similar or other types or kinds of finishing materials of equal or better quality. All fixtures and equipment installed within the Unit commencing at a point where the utilities lines, pipes, wires, conduits or systems (which for brevity are hereafter referred to as "utilities") enter the Unit shall be maintained and kept in repair by the owner thereof.

5.02 No Liens. Each owner shall promptly discharge any lien which may hereafter be filed against their Unit and shall otherwise abide by the provisions of Section 57-8-19 of the Utah Condominium Act, relating to liens against Units. The owner shall indemnify and hold harmless each of the other owners from and against all liability arising from the claim of any lien against the Unit of any other owner or against the common areas for construction performed or for labor, materials, services or other products incorporated in or otherwise attributable to the owner's Unit at such owner's request.

5.03 Prohibition Against Structural Changes by Owner. The owner shall do no act nor any work that will impair the structural soundness or integrity of the building or safety of the property or impair any easement without the written consent of all owners. The owner shall not paint, decorate or alter any portion of the exterior of the building or other common area, or any other area contained therein without first obtaining written consent of the Association or its duly authorized agent.

5.04 Insurance. Notwithstanding any insurance coverage required to be provided herein by the Association:

(a) Each Owner shall pay his proportionate share of such insurance coverage on a pro-rata or other equitable basis as determined by the Board after consultation with the applicable insurance carrier or agent of such carrier; and

(b) Each Owner, at their individual discretion, is encouraged to purchase insurance to cover the cost of the deductible for the Association's insurance, as more fully described in Article VIII hereof. The Association deductible shall be as described in paragraph 8.10 hereof. Each Owner is responsible for the maintenance of its Unit, and for repairs or damage he causes to another Unit or the Common Area and Facilities. Each Owner shall be responsible for insurance to cover the contents of its Unit, for insurance covering loss of rent or rental income, and such other insurance as said Owner shall determine.

5.05 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

5.06 Transfer of Interests. Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration following such transfer.

## ARTICLE VI

### PROPERTY RIGHTS AND CONVEYANCES

6.01 Easement Concerning Common Areas. Each Unit shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Unit and shall in no event be separated therefrom.

6.02 Form of Conveyancing; Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_ as identified in the Plat recorded in the office of the Salt Lake County Recorder as Entry No. \_\_\_\_\_, and Map Filing No. \_\_\_\_\_ contained within Plat \_\_\_\_\_ of The One & Nine Condominiums Amended, Salt Lake City, Salt Lake City, Salt Lake County, State of Utah, SUBJECT TO the Declaration of Protective Covenants, Conditions, Easements and Restrictions, The One & Nine Condominiums, recorded in the office of the Salt Lake County Recorder in Book \_\_\_\_\_, at Page \_\_\_\_\_, as Entry No. \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as

provided for, in said Declaration of Protective Covenants, Conditions, Easements and Restrictions (as said Declaration may have heretofore been amended or supplemented).

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

6.03 Transfer of Title to Common Areas. Within a reasonable time following the recordation of this Declaration, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens, if possible, other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities. Declarant shall make every effort to release any liens on Common Areas securing construction financing within the Development as quickly as possible, leaving only the Units as security therefor.

6.04 Limitation on Easement. Each Unit's appurtenant right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(a) The right of the Association to govern by reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all of the Owners;

(b) The right of Salt Lake City, Utah, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the holder of each and every Mortgage that encumbers any Unit and (ii) the Owners of Units to which at least sixty percent (60%) of the total votes in the Association appertain.

## ARTICLE VII

### USE RESTRICTIONS

7.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Units and residential improvements set forth herein.

7.02 Zoning; Use of Units. The Property is zoned and restricted pursuant to applicable ordinance provisions of Salt Lake City. Each Unit and Owner are subject to the uses and

restrictions approved by such zoning. Units shall not be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

7.03 Prohibited Use and Nuisances. The following uses and practices are specifically prohibited, in addition to any additional prohibitions which may, from time to time, be adopted by the Board pursuant to this Declaration:

(a) No animals, livestock, or poultry of any kind shall be permitted on any Unit or within any residence except (i) two (2) domesticated household pets owned by a Unit Owner not exceeding 20 pounds per pet or, in the alternative, (ii) one (1) domestic household pet owned by a Unit Owner not exceeding 40 pounds. No pets shall be permitted in any Unit by any guest or renter of any Unit. No "exotic" pets shall be allowed. Exotic pets shall include but not be limited to any snakes, reptiles, pigs, birds, or wild animals. No aggressive dogs, including but not limited to, pit bulls, rottweilers, dobermans, shall be allowed. Any domesticated household pets allowed hereunder shall be kept indoors during the hours of 10:00 p.m. to 6:00 a.m. Pet owners are required to immediately pick up and properly dispose of all feces left by any household pet. Any damage or destruction caused by any household pet shall be the sole responsibility of the Unit owner allowing such pet in the Unit.

(b) No parking of boats, trailers, motorhomes or other recreational vehicles of any kind shall be permitted, except as set forth in any rules and regulations adopted by the Board.

(c) Outside television or radio aerial or antenna, satellite dish, or other similar device for reception or transmission may only be permitted on any Unit or on the exterior of the Building upon written approval of the Board, and only on an area in the center of the roof or such other located designated by the Board; provided, however, that the Board shall ensure that satellite dishes are allowed in locations appropriate for proper reception.

(d) No yard signs or signs of any kind may be placed on or around any Unit or any structure thereon, except one (1) professional sign of a conventional size may be placed in a window of the structure to advertise that the Unit is for sale. One (1) flag, no larger than 24" x 36", may be displayed in any unit window or balcony.

(e) There shall be no obstruction of the common areas. Nothing shall be stored in the common areas, altered, constructed in or on, or removed from the common areas, without the prior written consent of the Trustees of the Association, which may be withheld in the Trustee's sole discretion.

(f) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners, to be determined by the Trustees. Rugs and padding shall be maintained on seventy percent (70%) of all floor surfaces (excluding kitchens, bathrooms and

closets) in Units located over other Units to adequately reduce sound transmission between Units.

(g) Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of insurance thereon, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in their Unit or in the Common Areas which will result in the cancellation of insurance on any Unit or any part of the Common Areas, or which would be in violation of any law. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

(h) Except in areas designated on the Plat or by the Association, no rubbish, trash, garbage or other waste shall be stored, kept, deposited, or burned within the Condominium Project. All trash, rubbish, garbage or other waste within the boundaries of the Condominium Project shall be kept only in sanitary containers. Each Unit shall be kept free of trash and refuse by the owner of such Unit, and shall be maintained in a clean and orderly condition. No person shall allow any unsightly, unsafe or dangerous conditions to exist on or in any Unit.

(i) No open fires shall be permitted on any part of the Project. Notwithstanding the foregoing, stand-alone gas barbeque units may be used on the balcony of a unit, provided that the smoke from such barbeque is not excessive and does not create a nuisance.

(j) Except as otherwise provided herein, no part of any Unit shall be used for any commercial or business purpose.

(k) Balcony, terrace, and deck areas shall be kept clean and orderly, and Unit Owners shall maintain in good repair lighting and planters in or on said balcony, terrace, and deck areas. All storage of items shall be within the Units or in designated storage areas in the garage. No Unit Owner shall allow anything whatsoever to fall from the balconies, terraces, decks or windows of the premises, nor shall he sweep or throw from his Unit any dirt or other substances outside or onto the Common Areas. No Unit Owner shall allow anything to be set on, or any person to stand on, the ledges or cornices of the building.

(l) Any and all outdoor lighting shall be as determined and maintained by the Association. No other outdoor lighting is permitted. Notwithstanding the foregoing, each Unit may display reasonable holiday lighting during the period from the day after Thanksgiving until January 2 of each year.

(m) Sounds and noises from Units and balconies are to be maintained at a level that is respectful of other Unit residents, to be determined and governed by the Trustees.

(n) As part of the overall program of marketing the Units, Declarant shall have the right of use of the common area and facilities thereon, without charge, during the sales



and construction period to aid in its marketing activities. Such right shall cease to exist upon Declarant's sale of all of the Units.

(o) The Units may not be rented by the owners thereof as nightly rental units, and any Unit Owner violating this section shall be subject to a restraining order and disgorgement of all rental monies.

(p) The Association shall maintain an on-site storage area for maintenance equipment, furnishings, bedding and other items, to be determined at the discretion of the Trustees.

(q) Each Owner shall ensure that all clothes dryers and other appliances installed in his Unit are in compliance with applicable health, safety, and other building code requirements.

(r) No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to any of the Units or the Common Areas, or any portions thereof. No Owner shall overload the floor of his Unit. No Owner shall permit the use or operation in his Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake any of the Units or the Common Areas, or any portions thereof.

(s) Each Owner acknowledges and agrees to a restriction on window treatments for exterior windows facing 100 South street and 900 East street, and all windows facing the court yard. Such window treatments are restricted in color to white, off-white, or a natural wood stain, and must be (i) plantation shutters with a slat width of 2 ½ to 4 inches or (ii) wood blinds with a slat width of at least 2 ½ inches. Each Owner shall purchase and/or maintain such shutters or blinds in good repair.

Any Owner violating or allowing violation of any of the above prohibitions on its Unit, on another Unit, or the Common Areas shall be subject to a \$100 fine for each occurrence of a violation or for each day said violation remains unremedied. Upon receipt of a notice of such violation from the Association, such Owner shall immediately commence whatever steps are necessary to remedy the violation. At such time as the remedy of the violation is complete, the Owner shall so certify to the Association. In the event such Owner shall not remedy the violation, Declarant or the Association, as the case may be, shall have the right, at its election, (i) to seek injunctive relief from a court of competent jurisdiction, and/or (ii) shall be entitled to remedy the violation. Any and all fines provided for in this paragraph, together with all amounts expended by Declarant or the Association, as the case may be, including reasonable costs and attorneys fees, to remedy any violation hereunder, shall be, constitute, and remain: (a) a charge and continuing lien upon the Unit until fully paid; and (b) the personal, joint and several obligation of the Owner or Owners of such Unit at the time the violation occurs.

## ARTICLE VIII

### INSURANCE

8.01 Insurance. The Board may adopt General Insurance House Rules, Policies and Procedures intended as a guide for owners and residents in order to maintain the insurability of the project, keep the insurance premium reasonable, and enforce the maintenance responsibilities of the individual owners. The Association shall obtain the following insurance coverages ("The Association Master Policy"):

- a. Public Liability. Public liability for all Common Areas;
- b. Common Area and Facilities. Property, fire and extended hazard for all Common Areas;
- c. Buildings and Units. Special form property, fire and extended hazard for all Buildings that contain more than one Unit, including any improvement which is a permanent part of a Building, including by way of example only, cabinets, floor and wall coverings, built-in appliances, and attached fixtures.
- d. D&O. Directors and officers in not less than \$1,000,000; and
- e. Fidelity Bond. Fidelity bond, in an amount not less than the reserves and operating capital of the association.

8.02 Insurance Company. The Association shall use a responsible insurance company or companies duly qualified and licensed in the State of Utah, with an A.M. Best rating of "A" or higher.

8.03 Minimum Amount of Insurance Coverage. The limits of each liability insurance policy purchased for the Association shall be in an amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate for bodily injury, death, and property damage. This amount may be increased by the Board.

8.04 Name Association as Additional Insured. Any insurance policy obtained independently by a Neighborhood Association, if any, shall name the Association as a certificate holder, additional insured.

8.05 Association Insurance Premium. The premiums for the Association insurance; including but not limited to: general liability, property coverage, directors and officers, and fidelity bond coverage shall be a part of the Common Area Assessment.

8.06 Unit Owner Obligation. This obligation and right of the Association to purchase insurance coverage as set forth herein does not preclude the right or negate the obligation of each Owner to insure his own Unit for his benefit.

(a) Public Liability Insurance. Each Owner will obtain public liability insurance for his Unit and shall provide the Association with a Certificate of Insurance upon request.

(b) Building Coverage. Each Owner shall have a minimum amount of \$10,000 for Building coverage added to his individual unit owner's policy including any applicable endorsement to cover the Association's property deductible for a loss or claim that originates within the defined definition of a unit.

(c) Premium. The insurance premium on any Owner's policy shall be the sole and separate responsibility of that Owner.

(d) Maintenance of Coverage. The Owner shall obtain and keep in full force and effect at all times the required insurance coverage provided by companies duly authorized to do business in Utah.

(e) Not a Limitation. The provisions of this subsection shall not be construed to limit the power or authority of the Owner to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as it may deem appropriate.

(f) Default. If an Owner fails to maintain the required insurance or fails to provide a Certificate of Insurance within three (3) days of a request, and fails to remedy a default within ten (10) days of written notice, the Association may but is not obligated to, without further notice, purchase the required insurance and to assess the cost of such insurance as a direct assessment against the Owner and the Owner's Unit.

8.07 Contents, Personal Property, Liability. The Association Master Policy DOES NOT cover the contents of the Unit or the personal property of the Unit or Unit Owner or renter such as, by way of example only, automobiles, furniture, furnishings, appliances, paintings, pictures, wall hangings, clothing, personal belongings and effects, and other contents; or personal liability.

8.08 Loss of Rents. The Association Master Policy DOES NOT cover loss of rents or rental income.

8.09 Insurance of Contents and Lost Rents. Any insurance to cover contents and lost rents or rental income is the sole and separate responsibility of the individual Unit Owner and/or renter.

8.10 Payment of Deductible. It is presumed that the claimant is responsible to pay the deductible; provided, however, the deductible on a claim made against the Association Master Policy shall be paid for by the party (i) who would be liable for the loss, damage, claim, or repair in the absence of insurance or (ii) from whose Unit the causal event originates. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party(s) responsibility bears to the total. If a loss is caused by an act of

God or nature or by an element, risk or peril beyond the control of the parties, then the Unit Owner shall be responsible for the deductible. Each Unit Owner is encouraged to purchase insurance to cover the cost of the deductible as stated above in 8.6b. The association deductible will be \$10,000 or less. 90 days written notice will be given to Unit owners in the event the Board elects to increase the deductible in an amount greater than \$10,000. Unit owner shall be responsible for the association deductible despite inadequate insurance personally carried.

8.11 Damages. Each Unit Owner is responsible for the maintenance of his Unit and for the repair of any damage he causes to another Unit or the Common Area and Facilities.

8.12 Right to Adjust Claims. The Association has the right, power and authority to adjust claims.

8.13 Use of Insurance Proceeds and Repairs. Repair of damage shall be completed within a reasonable time and insurance proceeds shall be used to repair the covered damage.

## ARTICLE IX

### RIGHTS OF MORTGAGEES

9.01 Title and Mortgagee Protection. A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Unit or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Unit or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

9.02 Preservation of Common Area. The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Except as contemplated by Section 6.04(c), unless the Association shall receive the prior written approval of (a) all first Mortgagees of Units; and (b) the Owners of all Units, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Areas, except to grant reasonable easements for utilities and similar or related purposes.

9.03 Notice of Matters Affecting Security. The Association shall give written notice to any Mortgagee of a Unit that has requested such notice whenever:

(a) there is any material default by the Owner of the Unit subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within sixty (60) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$50,000.00; or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

9.04 Notice of Meetings. The Board shall give to any mortgagee of a Unit requesting the same, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

9.05 Right to Examine Association Records. Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the Mortgage.

9.06 Right to Pay Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

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

9.08 Construction. 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 IX, 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.

## ARTICLE X

### MISCELLANEOUS

10.01 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or

mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to the Managing Agent or any Trustee of the Association.

10.02 Amendment. The vote of Owners (including Declarant) who collectively hold at least sixty percent (60%) of the total outstanding votes in the Association shall be required to amend this Declaration (including the Association Bylaws set forth herein). Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association's President (or Vice President) and Secretary wherein they certify that the vote required for amendment has occurred and a record thereof exists in the Association records. In addition, such right of amendment shall be subject to the following qualification: no amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), to a Mortgagee or to the Association shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant, by such Mortgagee or by such Association, as the case may be.

10.03 Consent in Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section 10.03:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

10.04 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property or the Additional Land may be assigned.

10.05 Interpretation. 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, 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, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

10.06 Condemnation. If at any time or times an insubstantial or minor part of the Common Areas or any part thereof shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be payable to the Association and shall be used by the Association to the extent necessary for restoring or replacing any improvements on the remainder of the Common Areas. In the event of any other taking or condemnation, the interests of the Association, the Owners and Mortgagees shall be as they may appear.

10.07 Damage and Destruction. In case of fire, casualty or any other disaster, the insurance proceeds, if sufficient to reconstruct the building, shall be used to reconstruct it. As used in this paragraph, "reconstruct" means restoring the building to substantially the same condition in which it existed prior to the fire, casualty or other disaster, with each Unit and the common areas having the same vertical and horizontal boundaries as before. Such reconstruction shall be accepted by the Association. If the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the Association, using proceeds of insurance, if any, on the building for that purpose, and the Unit owners shall be liable for assessments for any deficiency.

10.08 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 parties who heretofore acquired or hereafter acquire any interest in a Unit, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interest in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.09 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration:

- (a) Any Owner;
- (b) The Association; or
- (c) Any Mortgagee.

The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorneys' fees.

a Utah limited liability company

By Henderson Development, LLC, its Manager

By: [Signature]  
Its: Manager

STATE OF UTAH            )  
                                  : ss.  
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of \_\_\_\_\_, 2008, by Blake Henderson, the manager of Henderson Development, LLC, the manager of THE ONE & NINE CONDOMINIUMS, LLC.

[Signature: Chris Taylor]

NOTARY PUBLIC

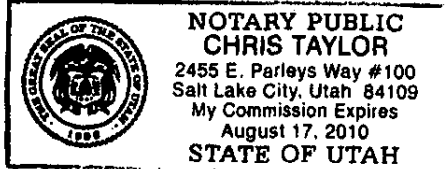




EXHIBIT "A"

Legal Description of Property

BEGINNING AT THE SOUTHEAST CORNER OF LOT 1, BLOCK 58, PLAT "B", SALT LAKE CITY SURVEY, SAID POINT OF BEGINNING BEING SOUTH 89° 58'22" WEST 64.35 FEET AND NORTH 00°01'38" WEST 63.58 FEET FROM THE MONUMENT AT THE INTERSECTION OF 900 EAST AND 100 SOUTH STREETS, SAID POINT OF BEGINNING ALSO BEING THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF 100 SOUTH STREET AND THE WEST RIGHT OF WAY LINE OF 900 EAST STREET; RUNNING THENCE ALONG SAID NORTH RIGHT OF WAY LINE OF 100 SOUTH STREET SOUTH 89°58'28" WEST 222.78 FEET; THENCE NORTH 00°01'27" WEST 210.24 FEET; THENCE NORTH 89°58'36" EAST 222.76 FEET TO THE WEST RIGHT OF WAY LINE OF 900 EAST STREET; THENCE ALONG SAID WEST RIGHT OF WAY LINE SOUTH 00°01'42" EAST 210.23 FEET TO THE POINT OF BEGINNING.

CONTAINS: 46,834.39 SQUARE FEET OR 1.075 ACRES.

**EXHIBIT "B"**

**Form of Articles of Incorporation and Bylaws**

**BY-LAWS OF THE ONE & NINE CONDOMINIUMS  
HOMEOWNERS ASSOCIATION**

I. **IDENTITY.** These are the By-Laws of The One & Nine Condominiums Homeowners Association, duly made and provided for in accordance with the Utah Condominium Ownership Act. Any term used herein which is defined in the Declaration to which these By-Laws are appended shall have the meaning ascribed therein.

II. **APPLICATION.** All present or future Owners, tenants, or other persons who might use the facilities of The One & Nine Condominiums in any manner are subject to the regulations set forth in these By-Laws. The mere acquisition or rental of any of the Units or parts thereof or the Common Areas and facilities will signify that these By-Laws are accepted, ratified, and will be complied with by said persons.

III. **ADMINISTRATION OF CONDOMINIUM PROJECT**

1. **Place of Meetings.** Meetings of the Unit Owners shall be held at such place within the State of Utah as the Board of Trustees may specify in the notice, except as herein otherwise specified.

2. **Annual Meetings.** The first annual meeting of the Unit Owners shall be held at the Project on the 25 day in August of 2008, or sooner at the Declarant's discretion. Thereafter, the annual meetings shall be held on such day of each succeeding year; provided, however, that whenever such date falls on Saturday, Sunday or a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Board of Trustees may by resolution fix the date of the annual meeting on such date or at such other place as the Board of Trustees may deem appropriate.

3. **Special Meetings.** Special meetings of the Association of Unit Owners may be called at any time by the Board of Trustees or by Unit Owners who collectively hold at least fifty (50) percent of the total vote. Notice of said meeting shall be delivered not less than ten (10) days prior to the date fixed for said meeting. Such meeting shall be held on the Project or such other place as the Board of Trustees or Unit Owners calling the meeting may specify and the notice thereof shall state the date, time and matters to be considered.

4. **Notices.** Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to the Unit Owner concerned.

5. **Quorum.** At the meeting of the Unit Owners, the Owners of more than fifty (50) percent of the Unit Owners shall constitute a quorum for any and all purposes, except where by express provisions a greater vote is required, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum the chairman of the meeting may adjourn the meeting from time to time, without notice other than by announcement at the meeting, until holders of the amount of interest requisite to constitute a quorum shall

attend. At any such adjourned meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

6. Voting. When a quorum is present at any meeting, the vote of the Unit Owners representing more than sixty (60%) percent of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Board of Trustees, unless the question is one upon which, by express provision of the Declaration or these Bylaws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All votes may be cast either in person or by proxy.

7. Waivers of Notice. Any Unit Owner may at any time waive any notice required to be given under these by-laws, or by statute or otherwise. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed such waiver.

#### IV. BOARD OF TRUSTEES

1. Purpose of Powers. The business, Property and affairs of the Condominium Project shall be managed and governed by the Board of Trustees.

2. Election. The initial Board of Trustees shall be elected as provided in the Declaration. Once the Declarant has sold sixty percent (60%) of the Units, then each Board member shall be elected at the next annual meeting of the Association falling within an even numbered year. The directors shall hold office for a period two (2) years. Directors are elected by a plurality of the votes cast by the Units, at a meeting at which a quorum is present.

3. Vacancies. Vacancies on the Board of Trustees not occurring at a regularly-scheduled election period shall be filled by regular election at a special meeting called for such a purpose, as provided in the Declaration.

4. Regular Meetings. A regular annual meeting of the Board of Trustees shall be held immediately after the adjournment of each annual meeting of the Unit Owners. Regular meetings, other than the annual meeting, shall or may be held at regular intervals at such places and at such times as either the president or the Board of Trustees may from time to time designate.

5. Special Meetings. Special meetings of the Board of Trustees shall be held whenever called by the president, vice president, or by two or more Members. By unanimous consent of the Board of Trustees, special meetings may be held without call or notice at any time or place.

6. Quorum. A quorum for the transaction of business at any meeting of the Board of Trustees shall consist of a majority of the Members of the Board of Trustees then in office.

7. Compensation. Members of the Board of Trustees shall not receive any stated salary or compensation; provided that nothing herein contained shall be construed or preclude any Member of the Board of Trustees from serving the Project in any other capacity and receiving compensation therefor.

8. Waiver of Notice. Before or at any meeting of the Board of Trustees, any Member thereof, may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member of the Board of Trustees at any meeting thereof shall be a waiver of notice by him of the time and place thereof.

9. Adjournments. The Board of Trustees may adjourn any meeting from day to day or for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty days.

## V. OFFICERS

1. Designation and Election. The principal officers of the Board of Trustees shall be a president, a secretary and a treasurer (or one individual may serve as the secretary/treasurer), each of whom shall be elected by and from the Board of Trustees. The Board of Trustees may appoint an assistant secretary and an assistant treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Board of Trustees immediately following the annual meeting of the Unit Owners; provided, however, that elections of officers may be held at any other meeting of the Board of Trustees.

2. Other Officers. The Board of Trustees may appoint such other officers, in addition to the officers hereinabove expressly named, as they shall deem necessary, who shall have authority to perform such duties as may be prescribed from time to time by the Board of Trustees.

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then Members of the Board of Trustees.

4. President. The president shall be the chief executive of the Board of Trustees, and shall exercise general supervision over its Property and affairs. He shall sign on behalf of the Condominium Project all conveyances, mortgages and contracts of material importance to its business, and shall do and perform all acts and things which the Board of Trustees may require of him. He shall preside at all meetings of the Unit Owners and the Board of Trustees. He shall have all of the general powers and duties which are normally vested in the office of the president of a corporation, including, but not limited to, the power to appoint committees from among the Members (or otherwise) from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium Project.

5. Secretary. The secretary shall keep the minutes of all meetings of the Board of Trustees and of the Unit Owners; shall have charge of the books and papers as the Board of Trustees may direct; and shall in general, perform all the duties incident to the office of secretary.

6. Treasurer. The treasurer shall have the responsibility for the funds and securities of the Board of Trustees and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Board of Trustees. He shall be responsible for the deposit of all moneys and all other valuable effects in the name, and to the credit of, the Board of Trustees in such depositories as may from time to time be designated by the Board of Trustees.

7. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid to an officer for services performed by him for the Board of Trustees in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Trustees.

## VI. ACCOUNTING

1. Books and Accounts. All books and accounts shall be kept under the direction of the treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. An accounting of the income and expenses of the Condominium Project shall be prepared and submitted to the Unit Owners at or before the annual meeting of the Unit Owners. Provided, however, that a certified audit by a certified public accountant approved by the Unit Owners shall be made if Owners representing at least seventy-five (75%) percent of the undivided interest in the Common Areas and Facilities determine to require the same.

3. Inspection of Books. The books and records of the Condominium Project shall be available at the principal office of the Board of Trustees for inspection at reasonable times by any Unit Owner.

## VII. RULES

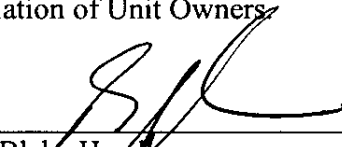
The Board of Trustees shall have the power to adopt and establish, by resolution, such Project, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Condominium Project, and the Board of Trustees may from time to time, by resolution, alter, amend, and repeal such rules and regulations. Unit Owners and their guests, tenants and invitees shall at all times obey such rules and regulations and use their best efforts to see that they are faithfully observed by their lessees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such rules and regulations shall apply and be binding upon all Unit Owners and the Condominium Project. Provisions of the Act pertaining to rules and regulations are incorporated herein by reference and shall be deemed a part hereof.

## VIII. AMENDMENT OF THE BY-LAWS

These By-Laws may be altered or amended by the majority vote of the Board of Trustees or of the Association of Unit Owners except where the Act or the Declaration require a different procedure for their amendment or alteration.

## IX OPERATION AND MAINTENANCE OF THE CONDOMINIUM PROJECT

The Board of Trustees shall be responsible for the maintenance, control, operation and management of the Condominium Project in accordance with the provisions of the Act, the Declaration under which the Condominium Project was established and submitted to the provisions of the Act, these by-laws and such rules and regulations as the Association of Unit Owners may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the Association of Unit Owners



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Blake Henderson  
Manager