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BYLAWS

OF

THE ONE & NINE CONDOMINIUMS  
ASSOCIATION

a Utah nonprofit Association

2009

106-50  
16-05-43-001 thru 051

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**BYLAWS  
OF  
THE ONE & NINE CONDOMINIUMS ASSOCIATION**

*WHEREAS*, The One & Nine Condominiums, LLC, a Utah limited liability company (the "Declarant"), is the owner of certain units and certain other improvements heretofore constructed or hereafter to be constructed upon those premises described in that certain Amended and Restated Declaration of Protective Covenants, Conditions, Easements and Restrictions for The One & Nine Condominiums, recorded with the Salt Lake County Recorder as Entry No. 10509710, Book 9631, Pages 6931-6961, as amended by that certain Amendment to the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions, recorded with the Salt Lake County Recorder as Entry No. 10575433, Book 9663, Pages 6940-6949, as the same may be supplemented or amended from time to time in accordance with the terms thereof ("Declaration");

*WHEREAS*, the Declarant has established The One & Nine Condominiums Association, a Utah nonprofit corporation (the "Association") to manage and maintain The One & Nine Condominiums project for the benefit of Owners of Units, as those terms are defined in the Declaration, and to give effect to the provisions thereof; and

*WHEREAS*, in accordance with the Utah Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-16a-101, *et seq.* (the "Act"), the Utah Condominium Ownership Act, Utah Code Ann. §§ 57-8-1, *et seq.* (the "Condominium Act"), the Association's Articles of Incorporation, and the Declaration, the Board of Trustees of the Association have adopted the following Bylaws:

**ARTICLE 1. OFFICES**

**Section 1.1. Business Offices.** The principal office of THE ONE & NINE CONDOMINIUMS ASSOCIATION (the "Association") shall be located at any place either within or outside the State of Utah, as designated in the Association's Articles of Incorporation or the Association's most recent annual report on file with the Utah Department of Commerce, Division of Associations and Commercial Code (the "Division") providing such information. The Association may have such other offices, either within or outside the State of Utah as the Board of Trustees may designate or as the business of the Association may require from time to time. The Association shall maintain at its principal office a copy of those records specified in

Section 3.14 of Article 3 of these Bylaws. (16-6a-102(37))\*

Section 1.2. Registered Office. The registered office of the Association required by the Act shall be located within the State of Utah. The address of the registered office may be changed from time to time.

## ARTICLE 2. MEMBERS

Section 2.1. Annual Member Meeting. An annual meeting of the members shall be held each year on the date, at the time, and at the place, fixed by the Board of Trustees, for the purpose of the transaction of such other business as may come before the meeting. (16-6a-701)

Section 2.2. Special Member Meetings. Special meetings of the members may be called, for any purposes described in the notice of the meeting, by the Board of Trustees and shall be called by the Chairman of the Board at the request of a majority of the members of the Association.

Section 2.3. Place of Member Meetings. The Board of Trustees may designate any place, either within or outside the State of Utah, as the place for any annual meeting of the members. The Board of Trustees or the member(s) authorized by these Bylaws to request a meeting, as the case may be, may designate any place, either within or outside the State of Utah, as the place for any special meeting of the members called by such person or group. If no designation is made regarding the place of the meeting, the meeting shall be held at the principal office of the Association. (16-6a-701(2) and 16-6a-702(3))

Section 2.4. Notice of Member Meeting.

(a) Required Notice. Written notice stating the place, day, and hour of any annual or special member meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the person or group calling the meeting, to each member of record, and to any other member entitled by the Act or the Association's Articles of Incorporation to receive notice of the meeting. Notice shall be deemed to be effective when mailed. (16-6a-103 and 16-6a-704(4))

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Citations in parentheses are to Utah Code Annotated. These citations are for reference only and shall not constitute a part of these bylaws.

(b) Notice Not Required. If three (3) successive notices mailed to a member, addressed to a member at the member's address as shown on the records of the Association, have been returned as undeliverable, further notices to that member are not necessary until another address of the member is made known to the Association. (16-6a-103(4))

(c) Adjourned Meeting. If any member meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. However, if after the adjournment a new record date for the adjourned meeting is or must be fixed (see Section 2.5 of these Bylaws), then notice must be given pursuant to the requirements of paragraph (a) of this Section 2.4 to members of record who are entitled to vote at the meeting. (16-6a-704(4))

(d) Contents of Notice. Notice of any special meeting of the members shall include a description of the purpose or purposes for which the meeting is called. Except as provided in this paragraph (d) of Section 2.4, in the Articles of Incorporation, or in the Act, notice of an annual meeting of the members need not include a description of the purpose or purposes for which the meeting is called. (16-6a-704(2), (3))

(e) Waiver of Notice of Meeting. Any member may waive notice of a meeting by a writing signed by the Member which is delivered to the Association (either before or after the date and time stated in the notice as the date or time when any action will occur or has occurred) for inclusion in the minutes or filing with the Association's records. (16-6a-705)

(f) Effect of Attendance at Meeting. A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented. (16-6a-705)

Section 2.5. Members of Record. Upon purchase of a Unit, as that term is defined the Declaration, the owner of such Unit shall promptly furnish to the Association a copy of the recorded instrument by which ownership of such Unit has been vested in such owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may fix in advance a date as the record date. Such record date shall not be more than seventy (70) days prior to the date on which the particular action, requiring such determination of the members, is to be taken. If no record date is so fixed by the

Board of Trustees, the record date shall be at the close of business on the following dates:

(a) Annual and Special Meetings. With respect to an annual meeting of the members or any special meeting of the members called by the Chairman of the Board, the Board of Trustees or the member(s) authorized by these Bylaws to request a meeting, the close of business of the day before the first notice is delivered to members. (16-6a-706(1))

(b) Meeting Demanded by Members. With respect to a special member meeting demanded by the members pursuant to the Act, the earliest date of any of the demands pursuant to which the meeting is called, or sixty (60) days prior to the date the first of the written demands is received by the Association, whichever is later. (16-6a-702(2))

(c) Action Without a Meeting. With respect to actions taken in writing without a meeting (pursuant to Section 2.11 of these Bylaws), the date the first member delivers to the Association a signed written consent upon which the action is taken. (16-6a-707(6))

When a determination of the members entitled to vote at any meeting of the members has been made as provided in this Section, such determination shall apply to any adjournment thereof unless the Board of Trustees fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting. (16-6a-706(5))

Section 2.6. Member List. The Secretary shall make a complete record of the members, arranged in alphabetical order, with the address of each member. The member list must be available for inspection by any member, beginning on the earlier of ten (10) days before the meeting for which the list was prepared or two (2) business days after notice of the meeting is given and continuing through the meeting and any adjournments. The list shall be available at the Association's principal office or at a place identified in the notice of the meeting in the city where the meeting is to be held. A member, his or her agent, or attorney is entitled on written demand to inspect and, subject to the requirements of Section 2.14 of these Bylaws, to inspect and copy the list during regular business hours and during the period it is available for inspection. The Association shall maintain the member list in written form or in another form capable of conversion into written form within a reasonable time. (16-6a-710)

Section 2.7. Voting Requirements.

(a) Approval of Actions. Action on a matter is approved if a majority of the votes cast favor the action, unless the Declaration, Articles of Incorporation, a Bylaw adopted by the members pursuant to the Act, the Act, or the Condominium Act, requires a greater number of affirmative votes. (16-6a-714(3))

(b) Effect of Representation. Once a member is represented for any purpose at a meeting, the member is deemed present for the remainder of the meeting and for any

adjournment of that meeting, unless a new record date is or must be set for that adjourned meeting. (16-6a-714(2))

Section 2.8. Proxies. At all meetings of the members, a member may vote in person or by a proxy executed in any lawful manner. Such proxy shall be filed with the Association before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. (16-6a-712)

Section 2.9. Votes per Member. With respect to each matter, including the election of Trustees, submitted to the vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit or Units owned by such member.

Section 2.10. Association's Acceptance of Votes.

(a) Corresponding Name. If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation corresponds to the name of a member, the Association, if acting in good faith, is entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the member. (16-6a-713(1))

(b) Name does not Correspond. If the name signed on a vote, consent, waiver, proxy appointment, or proxy appointment revocation does not correspond to the name of a member, the Association, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, proxy appointment, or proxy appointment revocation and give it effect as the act of the member if:

(1) The member is an entity as defined in the Act and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the member and, if the Association requests, evidence of fiduciary status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(3) the name signed purports to be that of a receiver or trustee in bankruptcy of the member and, if the Association requests, evidence of this status acceptable to the Association has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(4) the name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and, if the Association requests, evidence acceptable to the Association of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, proxy appointment, or proxy appointment revocation;

(5) two or more persons are the member as cotenants or fiduciaries and the name signed purports to be the name of at least one of the cotenants or fiduciaries and the person signing appears to be acting on behalf of all the cotenants or fiduciaries; or

(6) the acceptance of the vote, consent, waiver, proxy appointment, or proxy appointment revocation is otherwise proper under rules established by the Association that are not inconsistent with the provisions of this Section 2.10. (16-6a-713(2))

(c) Membership in Name of Two or More Persons. If membership stands of record in the names of two or more persons, or if two or more persons have the same fiduciary relationship respecting the same votes, unless the Secretary is given written notice to the contrary and furnished with a copy of the instrument creating the relationship, their acts with respect to voting shall have the following effect:

(1) If only one votes, the act binds all; and

(2) if more than one votes, the vote shall be divided on a pro-rata basis. (16-6a-711(3))

(d) Rejection. The Association is entitled to reject a vote, consent, waiver, proxy appointment, or proxy appointment revocation if the Secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member. (16-6a-713(3))

(e) No Liability. The Association and its officer or agent who accepts or rejects a vote, consent, waiver, proxy appointment, or proxy appointment revocation in good faith and in accordance with the standards of this Section 2.10 are not liable in damages to the member for the consequences of the acceptance or rejection. (16-6a-713(4))

(f) Validity. Association action based on the acceptance or rejection of a vote, consent, waiver, proxy appointment, or proxy appointment revocation under this Section 2.10 is valid unless a court of competent jurisdiction determines otherwise. (16-6a-713(5))

Section 2.11. Informal Action by Members.

(a) Written Consent. Unless otherwise provided in the Articles of Incorporation, any action which may be taken at any annual or special meeting of members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by members having not less than the minimum voting power necessary to authorize or take the action at a meeting at which all members entitled to vote thereon were present and voted. (16-6a-707(1))

(b) Notice Requirements. Unless written consents of all members entitled to vote have been obtained, the Association shall give notice of any member approval without a meeting at least ten (10) days before the consummation of the action authorized by the approval to:

- (1) Those members entitled to vote who have not consented in writing;  
and
- (2) those members not entitled to vote and to whom the Act requires notice be given.

Such notice shall contain or be accompanied by the same material that would have been required if a formal meeting had been called to consider the action. (16-6a-707(2))

(c) Revocation. Any member giving a written consent, or the members' proxyholder or a personal representative of the member or their respective proxyholder, may revoke the consent by a signed writing describing the action and stating that the member's prior consent is revoked, if the writing is received by the Association prior to the effectiveness of the action. (16-6a-707(3))

(d) Effective Date. If the Association has received written consents signed by all members entitled to vote with respect to the action, the effective date of the action may be any date that is specified in all the written consents as the effective date of the action. The writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature. (16-6a-707(4))

(e) Election of Trustees. Notwithstanding paragraph (a) of this Section 2.11, in the event the members are entitled to vote for the election of trustees under Section 3.11, below, trustees may not be elected by written consent except by unanimous written consent of all members entitled to vote for the election of trustees. (16-6a-707(5))

(f) Effect of Action Without a Meeting. Action taken under this Section 2.11 has the same effect as action taken at a meeting of members and may be so described in any document. (16-6a-707(7))

Section 2.12. Waiver of Notice. A member may waive any notice required by the Utah Revised Nonprofit Association Act, the Declaration, the Association's Articles of Incorporation or these Bylaws, whether before or after the date or time stated in the notice as the date or time when any action will occur or has occurred. Such a waiver must be in a writing signed by the member and must be delivered to the Association for inclusion in the minutes of the relevant meeting of the members or in the Association's records. (16-6a-705(1))

Section 2.13. Voting for Trustees. In the event the members are entitled to vote under Section 3.11, below, each member shall have the right to vote, in person or by proxy, for as many persons as there are trustees to be elected. Cumulative voting is not authorized. (16-6a-717(1))

Section 2.14. Rights of Members to Inspect Association Records.

(a) Minutes and Accounting Records. The Association shall keep, as permanent records, minutes of all meetings of its members and Board of Trustees, a record of all actions taken by its members or Board of Trustees without a meeting, a record of all actions taken on behalf of the Association by a committee of the Board of Trustees in place of the Board of Trustees, and a record of all waivers of notices of meetings of its members, meetings of the Board of Trustees, or any meetings of committees of the Board of Trustees. The Association shall maintain appropriate accounting records. (16-6a-1601(1), (2))

(b) Absolute Inspection Rights. If a member gives the Association written notice of the member's demand at least five (5) business days before the date on which the member wishes to inspect and copy, a member (or the member's agent or attorney) has the right to inspect and copy, during regular business hours, any of the following records, all of which the Association is required to keep at its principal office:

- (1) The Association's Articles of Incorporation currently in effect;
- (2) the Association's Bylaws currently in effect;
- (3) resolutions adopted by its board of trustees relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (4) the minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(5) all written communications within the past three years to members generally as members;

(6) a list of the names and business or home addresses of the Association's current officers and trustees;

(7) the Association's most recent annual report delivered to the Division; and

(8) all financial statements prepared for periods ending during the last three years that a member could request pursuant to Section 16-6a-1606 of the Act. (16-6a-1601(5) and 16-6a-1602(1))

(c) Conditional Inspection Rights. If a member gives the Association a written demand made in good faith and for a proper purpose at least five business days before the date on which the member wishes to inspect and copy, the member describes with reasonable particularity the member's purpose and the records the member desires to inspect, and the records are directly connected with the member's purpose, the member (or the member's agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Association, any of the other records of the Association. (16-6a-1602(2))

(d) Copy Costs. The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Association may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents provided to a member. The charge may not exceed the estimated cost of production or reproduction of the records. (16-6a-1603)

(e) Membership; Beneficial Owner. Each Owner of a Unit, as those terms are defined in the Declaration, shall be a member of the Association; membership in the Association is deemed an appurtenance to the Unit, and is transferrable only in conjunction with the transfer of the title to the Unit. For purposes of this Section 2.14, the term "member" shall include a beneficial owner whose shares are held in a voting trust and any other beneficial owner who establishes beneficial ownership. (16-6a-1602(4)(a))

Section 2.15. Furnishing Financial Statements to a Member. Upon the written request of any member, the Association shall mail to the member its most recent annual financial statements, if any, showing in reasonable detail its assets and liabilities and the results of its operations. (16-6a-1606)

### ARTICLE 3. BOARD OF TRUSTEES

Section 3.1. General Powers. The property, affairs, and business of the Association shall be managed by a board of directors, referred to herein as the "Board of Trustees". As contemplated by the Declaration, the Board of Trustees shall give effect and to enforce the provisions of the Declaration. The Board of Trustees may exercise all of the powers of the Association, whether derived from law, the Articles of Incorporation, or the Declaration, except such powers as are by law, by the Declaration, by the Articles of Incorporation, or by these Bylaws vested solely in the members. It shall be the responsibility of the Board of Trustees to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the members who are entitled to vote;
- (b) supervise all officers, agents, independent contractors and employees of the Association, and to see that their duties are properly performed;
- (c) with respect to annual and special assessments, to:
  - (i) fix the amount of the annual, special or other assessments against each Unit in accordance with the terms of the Declaration;
  - (ii) in accordance with the terms of the Declaration, send written notice of each assessment to every owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
  - (iv) in accordance with the terms of the Declaration, foreclose the lien against any Unit for which assessments are not paid within ninety (90) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Trustees for the issuance of these certifies. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause common areas to be maintained; and

(h) adopt and publish rules and regulations governing the use of common areas, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof.

Section 3.2. Number, Tenure and Qualifications of Trustees.

(a) Number. The number of trustees of the Association shall be three (3).  
(16-6a-803)

(b) Tenure. As described in the Declaration, the initial Board of Trustees of the Association shall serve until such time as sixty percent (60%) of the Units have been sold. At the first annual meeting of the members held after the sale of sixty percent (60%) of the Units have been sold, the members shall elect three (3) trustees to serve as follows: One trustee shall be elected to serve for a term of three (3) years; one trustee shall be elected to serve for a term of two (2) years; and one trustee shall be elected to serve for a term of term of one (1) year. At each annual meeting thereafter, the members shall elect for two (2) year terms the appropriate number of trustees to fill vacancies created by expiring terms of trustees.

(c) Qualifications. Trustees shall be natural persons eighteen (18) years of age or older. Trustees shall be members of the Association.

Section 3.3. Regular Meetings of the Board of Trustees. The Board of Trustees may provide, by resolution, the time and place, either within or outside the State of Utah, for the holding of regular meetings, which shall be held without other notice than such resolution. (16-6a-814(1))

Section 3.4. Special Meetings of the Board of Trustees. Special meetings of the Board of Trustees may be called by or at the request of the chairman of the board or any trustee, who may fix any place, either within or outside the State of Utah, as the place for holding the meeting. (16-6a-814(2))

Section 3.5. Notice and Waiver of Notice of Special Trustee Meetings.

(a) Notice. Unless the Articles of Incorporation provide for a longer or shorter period, special meetings of the Board of Trustees must be preceded by at least two (2) days notice of the date, time, and place of the meeting. (16-6a-814(2)) Notice may be communicated in person, by telephone, by any form of electronic communication, or by mail or private carrier. (16-6a-103(2))

(b) Effective Date. Notice of any meeting of the Board of Trustees shall be deemed to be effective at the earliest of the following: (1) When it is received; (2) five (5) days after it is mailed; or (3) the date shown on the return receipt if it is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the trustee. (16-6a-103(5)).

(c) Waiver of Notice. A trustee may waive notice of any meeting. Except as provided in this Section 3.5, the waiver must be in writing and signed by the trustee entitled to the notice. The waiver shall be delivered to the Association for filing with the corporate records, but delivery and filing are not conditions to its effectiveness. (16-6a-815(1))

(d) Effect of Attendance. The attendance of a trustee at a meeting shall constitute a waiver of notice of such meeting, except when a trustee attends a meeting for the express purpose of objecting to the transaction of any business and at the beginning of the meeting, or promptly upon arrival, the trustee objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting. (16-6a-815(2))

Section 3.6. Quorum of Trustees. A majority of the number of trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees, unless the Association's Articles of Incorporation require a greater number. (16-6a-816(1))

Section 3.7. Manner of Acting.

(a) Action by Majority. If a quorum is present when a vote is taken, the affirmative vote of a majority of the trustees present is the act of the Board of Trustees, unless the Association's Articles of Incorporation, the Utah Revised Nonprofit Association Act, or the Declaration requires the vote of a greater number of trustees. (16-6a-816(3))

(b) Telephonic Meetings. Unless the Articles of Incorporation provide otherwise, any or all trustees may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all trustees participating may simultaneously hear each other during the meeting. A trustee participating in a meeting by this means is deemed to be present in person at the meeting. (16-6a-812(2))

(c) Effect of Presence at Meeting. A trustee who is present at a meeting of the Board of Trustees when corporate action is taken is considered to have assented to the action taken, unless:

- (1) The trustee objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting;

(2) the trustee contemporaneously requests his or her dissent or abstention as to any specific action to be entered into the minutes of the meeting; or

(3) the trustee causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before its adjournment or by the Association promptly after adjournment of the meeting. (16-6a-816(5))

(d) Right of Dissent or Abstention. The right of dissent or abstention as to a specific action is not available to a trustee who votes in favor of the action taken. (16-6a-816(6))

Section 3.8. Trustee Action By Written Consent. Unless the Articles of Incorporation, the Utah Revised Nonprofit Association Act, the Declaration provide otherwise, any action required or permitted to be taken by the Board of Trustees at a meeting may be taken without a meeting if each and every member of the Board of Trustees in writing either votes for the action or abstains from voting and waives the right to demand that action not be taken without a meeting. Action is taken by written consent at the time the last trustee signs a writing describing the action taken, unless, prior to that time, any trustee has revoked a consent by a writing signed by the trustee and received by the Secretary. Action taken by written consent is effective when the last trustee signs the consent, unless the Board of Trustees establishes a different effective date. Action taken by written consent has the same effect as action taken at a meeting of trustees and may be described as such in any document. (16-6a-813)

Section 3.9. Resignation of Trustees. A trustee may resign at any time by giving a written notice of resignation to the Association. A resignation of a trustee is effective when the notice is received by the Association unless the notice specifies a later effective date. A trustee who resigns may deliver a statement of his or her resignation pursuant to Section 16-6a-1608 of the Utah Revised Nonprofit Association Act to the Division for filing. (16-6a-807)

Section 3.10. Removal of Trustees. A majority of the Board of Trustees may remove one or more Trustees for cause at a meeting called for that purpose if notice has been given that a purpose of the meeting is such removal. (16-6a-808)

Section 3.11. Board of Trustee Vacancies.

(a) Vacancies. If a vacancy occurs on the Board of Trustees:

(1) If the vacancy occurs by reason of the death or resignation of a Trustee, or if a vacancy occurs by reason of an increase in the authorized number of Trustees, the Board of Trustees shall fill the vacancy;

(2) if the trustees remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the trustees remaining in office;

(3) if vacancies occur in the Board of Trustees by reason of the removal of a trustee, the vacancy shall be filled by the members at the meeting at which such trustee is removed;

(4) any trustee elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his or her predecessors, or for the term of the newly appointed trustee; and

(5) if at any time there are no trustees remaining in office, then the members may fill the vacancy. (16-6a-810(1))

(b) Election of Trustee Prior to Vacancy. A vacancy that will occur at a specific later date, because of a resignation effective at a later date, may be filled before the vacancy occurs, but the new trustee may not take office until the vacancy occurs. (16-6a-810(6))

Section 3.12. Trustee Compensation. No trustee shall receive compensation for any services that he or she may render to the Association as a Trustee; provided, however, that Trustees may be reimbursed for expenses incurred in performance of their duties as Trustees and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacity as a Trustees.

Section 3.13. Trustee Committees. Committees of the Board of Trustees may be established in accordance with Article 4 of these Bylaws.

Section 3.14. Trustee's Rights to Inspect Corporate Records.

(a) Absolute Inspection Rights. If a trustee gives the Association written notice of the trustee's demand at least five (5) business days before the date on which the trustee wishes to inspect and copy, the trustee (or the trustee's agent or attorney) has the right to inspect and copy, during regular business hours, any of the following records, all of which the Association is required to keep at its principal office:

- (1) The Association's Articles of Incorporation currently in effect;
- (2) the Association's Bylaws currently in effect;

(3) resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members;

(4) the minutes of all members' meetings, and records of all action taken by members without a meeting, for the past three years;

(5) all written communications within the past three years to members generally as members;

(6) a list of the names and business or home addresses of the Association's current officers and trustees;

(7) the Association's most recent annual report delivered to the Division; and

(8) all financial statements prepared for periods ending during the last three years that a member could request. (16-6a-1601(5) and 16-6a-1602(1))

(b) Conditional Inspection Rights. In addition, if a trustee gives the Association a written demand made in good faith and for a proper purpose at least five business days before the date on which the trustee wishes to inspect and copy, the trustee describes with reasonable particularity the trustee's purpose and the records the trustee desires to inspect, and the records are directly connected with the trustee's purpose, the trustee (or the trustee's agent or attorney) is entitled to inspect and copy, during regular business hours at a reasonable location specified by the Association, any other records of the Association. (16-6a-1602(2))

(d) Copy Costs. The right to copy records includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means. The Association may impose a reasonable charge, payable in advance, covering the costs of labor and material, for copies of any documents provided to the trustee. The charge may not exceed the estimated cost of production or reproduction of the records. (16-6a-1603)

Section 3.15. General Standards of Conduct for Trustees. The standards of conduct for the trustees of the Association shall be as follows:

(a) Each trustee shall discharge his or her duties as a trustee, including duties as a member of a committee, (i) in good faith, (ii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (iii) in a manner the trustee reasonably believes to be in the best interests of the Association. The Board of Trustees and members of the Association understand that the members of the Board of Trustees may have other business interests, activities and responsibilities that take a substantial portion of their time and attention. Accordingly, the members of the Board of Trustees are required to devote to the

business of the Association in fulfillment of their respective responsibilities as a trustee of the Association and/or an officer of the Association, as the case may be, only the time and attention that they shall unilaterally deem necessary in order to fulfill their responsibilities as a trustee and/or officer.

(b) In discharging his or her duties, a trustee is entitled to rely on information, opinions, reports, or statements including financial statements and other financial data, if prepared or presented by:

(i) one or more officers or employees of the Association whom the trustee reasonably believes to be reliable and competent in the matters presented;

(ii) legal counsel, public accountants, or other persons as to matters the trustee reasonably believes are within the person's professional or expert competence;

(iii) religious authorities or ministers, priests, rabbis or other persons (1) whose position or duties in the Association; or in a religious organization with which the Association is affiliated, the trustee believes justify reliance and confidence, and (2) who the trustee believes to be reliable and competent in the matters presented; or

(iv) a committee of the Board of Trustees of which the trustee is not a member, if the trustee reasonably believes the committee merits confidence.

(c) A trustee is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (b) of this Section 3.15 unwarranted.

(d) A trustee is not liable for any action taken, or any failure to take any action as a trustee, if the duties of the trustee have been performed in compliance with this Section 3.15. (16-6a-822)

(e) The standards of conduct set forth in this Section 3.15, or any breach of such standards, shall not affect the right or power of the Association to indemnify any individual pursuant to Article 6 of these Bylaws.

#### **ARTICLE 4. EXECUTIVE COMMITTEE AND OTHER COMMITTEES**

Section 4.1. Creation of Committees. Unless the Articles of Incorporation provide otherwise, the Board of Trustees may create an Executive Committee and such other

committees as it may deem appropriate and appoint members of the Board of Trustees to serve on such committees. Each committee must have two (2) or more members. (16-6a-817(1))

Section 4.2. Approval of Committees and Members. The creation of a committee and appointment of members to it must be approved by the greater of:

- (1) A majority of all the trustees in office when the action is taken; or
- (2) the number of trustees required by the Articles of Incorporation to take such action, or if not specified in the Articles of Incorporation, the number required by Section 3.7 of these Bylaws to take action. (16-6a-817(2))

Section 4.3. Required Procedures. Sections 3.4 through 3.10 of these Bylaws, which govern procedures applicable to the Board of Trustees, also apply to committees and their members. (16-6a-817(3))

Section 4.4. Authority. Unless limited by the Articles of Incorporation or the Act, each committee may exercise those aspects of the authority of the Board of Trustees which the Board of Trustees confers upon such committee in the resolution creating the committee. (16-6a-817(3))

Section 4.5. Authority of Executive Committee. The Executive Committee shall have and may exercise all powers of the Board of Trustees with respect to the management of the business and affairs of the Association during the intervals between the meetings of the Board of Trustees. Provided, however, the Executive Committee shall not have the power to fill vacancies on the Board of Trustees or to amend these Bylaws.

Section 4.6. Compensation. No member of a committee shall receive compensation for services rendered to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacity as a member of a committee.

## ARTICLE 5. OFFICERS

Section 5.1. Officers. The officers of the Association shall be a President, Secretary and Treasurer, each of whom shall be appointed by the Board of Trustees. The Board of Trustees may appoint, but shall not be required to appoint, a Vice President. Such other officers and assistant officers as may be deemed necessary may be appointed by the Board of Trustees. If specifically authorized by the Board of Trustees, an officer may appoint one or more

officers or assistant officers. The same individual may simultaneously hold more than one office in the Association. (16-6a-818)

Section 5.2. Appointment and Term of Office. The officers of the Association shall be appointed by the Board of Trustees for such term as is determined by the Board of Trustees. If no term is specified, each officer shall hold office until the officer resigns, dies, is removed in the manner provided in Section 5.4 of these Bylaws, or until the first meeting of the trustees held after the next annual meeting of the members. If the appointment of officers shall not be made at such meeting, such appointment shall be made as soon thereafter as is convenient. If a vacancy shall occur in any office, or if a new office shall be created, the Board of Trustees may appoint an officer or officers to fill such a vacancy or new office, and such appointment shall be for the term determined by the Board of Trustees. Each officer shall hold office until his or her successor shall have been duly appointed. (16-6a-818)

The designation of a specified term does not grant to the officer any contract rights, and the Board of Trustees may remove the officer at any time prior to the end of such term. (16-6a-821)

Section 5.3. Resignation of Officers. Any officer may resign at any time by giving written notice of resignation to the Association. (16-6a-820(1))

Section 5.4. Removal of Officers. Any officer or agent may be removed by the Board of Trustees at any time, with or without cause. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not of itself create contract rights. (16-6a-820)

Section 5.5. President. The President shall (i) be the principal executive officer of the Association and, subject to the control of the Board of Trustees, shall, in general, supervise and control all of the business and affairs of the Association, (ii) preside at all meetings of the members and the Board of Trustees, and (iii) sign, with the Secretary or any other proper officer of the Association authorized by the Board of Trustees deeds, mortgages, bonds, contracts, or other instruments which the Board of Trustees has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed. The President in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Trustees from time to time.

Section 5.6. Vice President. In the absence of the President or in the event of his or her death, inability, or refusal to act, the Vice President shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. If there is no Vice President, then the Treasurer shall perform such duties of the President. The Vice President may sign, with the Secretary or an Assistant Secretary deeds, mortgages, bonds, contracts,

or other instruments, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and shall perform such other duties as from time to time may be assigned to him or her by the President or by the Board of Trustees.

Section 5.7. Secretary. The Secretary shall:

(a) Keep the minutes of the proceedings of the members and of the Board of Trustees and the other records and information of the Association required to be kept, in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;

(c) be custodian of the corporate records and of any seal of the Association;

(d) when requested or required, authenticate any records of the Association;

(e) keep a register of the post office address of each member which shall be furnished to the Secretary by such member;

(f) sign with the President, the Vice President, or any other officer of the Association documents authorized by these bylaws or the Board of Trustees; and

(g) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or by the Board of Trustees. (16-6a-818 and 16-6a-819)

Section 5.8. Treasurer. The Treasurer shall:

(a) Have charge and custody of and be responsible for all funds and securities of the Association;

(b) receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies, or other depositories as shall be selected by the Board of Trustees; and

(c) in general perform all of the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the President or by the Board of Trustees.

If required by the Board of Trustees, the Treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Trustees shall determine.

Section 5.9. Assistant Secretaries and Assistant Treasurers. The Assistant Secretaries, when authorized by the Board of Trustees, may sign, with the President or the Vice President, certificates for stock of the Association, the issuance of which shall have been authorized by a resolution of the Board of Trustees. The Assistant Treasurers shall, if required by the Board of Trustees, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Trustees shall determine. The Assistant Secretaries and Assistant Treasurers, in general, shall perform such duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Trustees.

Section 5.10. Salaries. No officer shall receive compensation for any services rendered to the Association; provided, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacity as a officers.

Section 5.11. General Standards of Conduct for Officers. The standards of conduct for the officers of the Association shall be as follows:

(a) Each officer with discretionary authority shall discharge his or her duties under that authority (i) in good faith, (ii) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (iii) in a manner the officer reasonably believes to be in the best interests of the Association.

(b) In discharging his or her duties, an officer is entitled to rely on information, opinions, reports, or statements including financial statements and other financial data, if prepared or presented by:

(i) one or more officers or employees of the Association whom the officer reasonably believes to be reliable and competent in the matters presented;

(ii) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or

(iii) religious authorities or ministers, priests, rabbis or other persons (1) whose position or duties in the Association; or in a religious organization with which the Association is affiliated, the officer believes justify reliance and confidence, and (2) who the officer believes to be reliable and competent in the matters presented.

(c) An officer is not acting in good faith if he or she has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (b) of this Section 5.12 unwarranted.

(d) An officer is not liable for any action taken, or any failure to take any action as an officer if the duties of the office have been performed in compliance with this Section 5.12. (16-6a-822)

(e) The standards of conduct set forth in this Section 5.12, or any breach of such standards, shall not affect the right or power of the Association to indemnify any individual pursuant to Article 6 of these Bylaws.

## **ARTICLE 6. INDEMNIFICATION OF TRUSTEES, OFFICERS, EMPLOYEES, FIDUCIARIES, AND AGENTS**

Section 6.1. Limitation of Liability of Trustees and Officers. The personal liability of the trustees and officers of the Association to the Association or its members, or to any third person, shall be eliminated or limited to the fullest extent as from time to time permitted by Utah law. (16-6a-823, 907)

Section 6.2. Indemnification of Trustees and Officers. The Association shall indemnify and advance expenses to its trustees, officers, employees, fiduciaries or agents and to any person who is or was serving at the Association's request as a trustee, officer, partner, trustee, employee, fiduciary or agent of another domestic or foreign Association or other person or of an employee benefit plan (and their respective estates or personal representatives) to the fullest extent as from time to time permitted by Utah law. (16-6a-904, 907)

Section 6.3. Effect of Repeal or Modification of Article VI. Any repeal or modification of this Article VI by the members of the Association shall not adversely affect any right or protection of any person existing at the time of such repeal or modification.

Section 6.4. Insurance. In accordance with the terms of the Declaration, the Association shall obtain the insurance coverage described therein. In addition, the Association may purchase and maintain liability insurance on behalf of a person who is or was a trustee, officer, employee, fiduciary, or agent of the Association, or who, while serving as a trustee, officer, employee, fiduciary, or agent of the Association, is or was serving at the request of the Association as a trustee, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic Association or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a trustee, officer, employee, fiduciary, or agent, whether or not the Association would have power to indemnify him or her against the same liability under Sections 16-6a-902, 16-6a-903, or 16-6a-907 of the Act.

Insurance may be procured from any insurance company designated by the Board of Trustees, whether the insurance company is formed under the laws of the State of Utah or any other jurisdiction of the United States or elsewhere, including any insurance company in which the Association has an equity or any other interest through stock ownership or otherwise. (16-6a-908)

## **ARTICLE 7. EXECUTION OF INSTRUMENTS, BORROWING OF MONEY AND DEPOSIT OF CORPORATE FUNDS**

Section 7.1. Execution of Instruments. Subject to any limitation contained in the Act, the Articles of Incorporation, the Declaration, or these Bylaws, and subject to any limitations that may be imposed by the Board of Trustees, the President, in the name and on behalf of the Association, may execute and deliver any contract or other instrument. Subject to any limitation contained in the Utah Revised Nonprofit Association Act, the Articles of Incorporation or these Bylaws, the Board of Trustees may authorize any other officer or agent to execute and deliver any contract or other instrument in the name and on behalf of the Association; any such authorization may be general or confined to specific instances.

Section 7.2. Loans. No loan or advance shall be contracted on behalf of the Association, no negotiable paper or other evidence of its obligation under any loan or advance shall be issued in its name, and no property of the Association shall be mortgaged, pledged, hypothecated, transferred, or conveyed as security for the payment of any loan, advance, indebtedness, or liability of the Association, unless and except as authorized by the Board of Trustees. Any such authorization may be general or confined to specific instances.

Section 7.3. Deposits. All monies of the Association not otherwise employed shall be deposited from time to time to its credit in such banks or trust companies or with such bankers or other depositories as the Board of Trustees may select, or as from time to time may be selected by any officer or agent authorized to do so by the Board of Trustees.

Section 7.4. Checks, Drafts, etc. All notes, drafts, acceptances, checks, endorsements, and, subject to the provisions of these Bylaws, evidences of indebtedness of the Association shall be signed by the President or by such officer or officers or such agent or agents of the Association and in such manner as the Board of Trustees from time to time may determine. Endorsements for deposit to the credit of the Association in any of its duly authorized depositories shall be in such manner as the Board of Trustees from time to time may determine.

Section 7.5. Bonds and Debentures. Every bond or debenture issued by the Association shall be evidenced by an appropriate instrument which shall be signed by the President together with the Secretary. Where such bond or debenture is authenticated with the manual signature of an authorized officer of the Association or other trustee designated by the indenture of trust or other agreement under which such security is issued, the signature of any of the Association's officers named thereon may be a facsimile. In case any officer who signed, or

whose facsimile signature has been used on any such bond or debenture, shall cease to be an officer of the Association for any reason before the same has been delivered by the Association, such bond or debenture may nevertheless be adopted by the Association and issued and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

Section 7.6. Sale, Transfer, etc. of Securities. Sales, transfers, endorsements, and assignments of shares of stocks, bonds, and other securities owned by or standing in the name of the Association and the execution and delivery on behalf of the Association of any and all instruments in writing incident to any such sale, transfer, endorsement, or assignment, shall be effected by the Secretary together with the President, or by any other officers or agents authorized by the Board of Trustees.

Section 7.7. Proxies. Proxies to vote with respect to shares of stock of other Associations used by or standing in the name of the Association shall be executed and delivered on behalf of the Association by the President or by any officer or agent thereunto authorized by the Board of Trustees.

## **ARTICLE 8. DISTRIBUTIONS**

Section 7.1. Distributions. The Association shall not make distributions except to confer benefits upon its members in conformity with its purpose. (16-6a-1302)

## **ARTICLE 9. CORPORATE SEAL**

Section 7.1. Corporate Seal. The Board of Trustees may provide a corporate seal which may be circular in form and have inscribed thereon any designation including the name of the Association, Utah as the state of incorporation, and the words "Corporate Seal."

## **ARTICLE 10. FISCAL YEAR**

Section 7.1. Fiscal Year. The fiscal year of the Association shall be fixed by resolution of the Board of Trustees.

## **ARTICLE 11. AMENDMENTS**

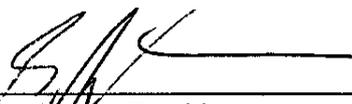
Section 7.1. Amendments. The Association's Board of Trustees may amend these Bylaws, except to the extent that the Articles of Incorporation, these Bylaws, or the Utah Revised Nonprofit Association Act reserve this power exclusively to the members in whole or in

part. However, the Board of Trustees may not adopt, amend, or repeal a Bylaw that fixes a member voting requirement that is greater than required by the Utah Revised Nonprofit Association Act. (16-6a-1012)

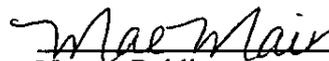
If authorized by the Articles of Incorporation, the members may adopt, amend, or repeal a Bylaw that fixes a greater voting requirement for members than is required by the Utah Revised Nonprofit Association Act, provided that a majority of all of the outstanding votes of the Association consent to such an adoption, amendment or repeal. Any such action shall comply with the provisions of the Utah Revised Nonprofit Association Act.

The members may amend or repeal the Association's Bylaws even though the Bylaws may also be amended or repealed by the Association's Board of Trustees; provided, however, that any such amendment or repeal shall also require the written consent of a majority of the Association's Board of Trustees.

ADOPTED this 17 day of February, 2009.

  
\_\_\_\_\_  
Blake Henderson, President

SUBSCRIBED AND SWORN to before me, this 17<sup>th</sup> day of February, 2009.

  
\_\_\_\_\_  
Notary Public  
Residing at: Heber City

My Commission expires: 5-4-2009.



# EXHIBIT 1

~~10575433  
12/8/2008 4:46:00 PM \$79.00  
Book - 9663 Pg - 6940-6949  
Gary W. Ott  
Recorder, Salt Lake County, UT  
PARK CITY TITLE CO  
BY: eCASH, DEPUTY - EF 10 P.~~

After Recording Return To:  
The Law Offices of Kirk A. Cullimore  
644 East Union Square  
Sandy, UT 84070

**AMENDMENT TO THE  
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS**

This Amendment to the Amended and Restated Declaration of Protective Covenants, Conditions and Restrictions ("Declaration") that established a condominium community known as The One & Nine Condominiums is executed on the date set forth below by the Declarant.

RECITALS

A. Certain real property in Salt Lake County, Utah, known as The One & Nine Condominiums was subjected to certain covenants, conditions, and restrictions pursuant to an Amended and Restated Declaration recorded August 28, 2008, as Entry No. 10509710, records of Salt Lake County, Utah (the "Declaration");

B. This amendment shall be binding against the property described in EXHIBIT A and the Declaration and any annexation or supplement thereto;

C. This amendment is intended to incorporate certain provisions required by the Department of Housing and Urban Development to qualify the Project for FHA financing;

D. Pursuant to Article X, Section 10.02 of the Declaration, the Declarant as sole owner of all Units has approved this amendment;

**NOW, THEREFORE**, the Declarant, hereby amends the Declaration as follows:

**Article I shall be amended to add Section 2.10A "Eligible Mortgagee," which shall read as follows:**

2.10A Eligible Mortgagee shall mean and refer to a holder, insurer or guarantor of a first mortgage on a Unit or the beneficiary, insurer or guarantor of a first deed of trust on a Unit, which has made a written request for notice in accordance with this Declaration. Any Mortgagee failing to provide the Association with a written request for notice shall not be an Eligible Mortgagee and shall lose its entitlement to notice, and any other rights extended to Eligible Mortgagees in the Project Documents until such time as it provides the Association with a proper written request for notice.

**Article I, Section 2.13, shall be amended to change the definition of "Mortgagee" in its entirety, the definition of "Mortgagee" shall now read as follows:**

Mortgagee shall mean and refer to an Eligible Mortgagee.

**Article III, shall be amended to add Section 3.03 "Computation of Percentage Interest after Partial**

**Condemnation or Destruction," which shall read as follows:**

3.03 Computation of Percentage Interest after Partial Condemnation or Destruction. After partial condemnation or destruction of the Project, the proportionate share of the Unit Owner's interest in the Common Areas shall be based on the number of Units remaining within the Project. Each remaining Unit shall have an equal undivided interest in the Common Areas. To calculate the undivided interest of a Unit, the Association shall divide 100 by the number of Units in the Project.

**Article IV, Section 4.03, shall be amended in its entirety to read as follows:**

4.03 Enforcement Powers. The Association shall have the power to enforce this Declaration by levying fines, 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.

**Article IV, Section 4.06, shall be amended in its entirety to read as follows:**

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 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.

**Article IV, Section 4.11, shall be amended in its entirety to read as follows:**

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 monthly basis, in advance on the first day of each month, 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 monthly assessments shall be prorated if the ownership of a condominium Unit commences on a day other than the first day of a month.

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.

**Article IV, Section 4.12(a), shall be amended in its entirety to read as follows:**

(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 monthly 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 monthly assessments until sixty percent (60%) of the Units have been sold.

**Article IV, Section 4.12(c), shall be amended in its entirety to read as follows:**

(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 monthly 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.

**Article IV, Section 4.13, shall be amended in its entirety to read as follows:**

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 monthly 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 monthly 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.

**Article VI, shall be amended to add Section 6.05 "Easement for Encroachment," which shall read as follows:**

6.05 Easement for Encroachment. If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance for the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance shall and does exist. Such encroachments shall not be considered to be encumbrances either to the Common Areas or to the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building(s) on the tract, by error in the appropriate Record of Survey Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

**Article VII, Section 7.03(a) shall be amended in its entirety to read as follows:**

(a) No animals, livestock, or poultry of any kind shall be permitted on any Unit or within any residence except domesticated dogs and cats not in violation of city ordinance. 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.

**Article VII, Section 7.03, last paragraph shall be amended in its entirety to read as follows:**

Any Owner violating or allowing violation of the Declaration, Bylaws, or rules and regulations shall be subject to a fine in an amount to be determined by resolution of the Board. 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, shall be amended to add Section 7.04 "Leases," which shall read as follows:**

7.04 Leases. Units may be rented only to a single Family.

(a) All leases and lessees shall be subject to the provisions of the Act and the Project Documents. Any owner who leases his/her Unit shall be responsible for assuring the Residents' compliance with the Act and the Project Documents.

(b) The leasing and renting of Units by Owners shall be in accordance with this Section. "Leasing or renting" of a Unit means the granting of a right to use or occupy a Unit for a specific term or an indefinite

term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean and include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

(i) Rental-Lease Limit. Owners, and Units shall be subject to the following restrictions:

1) No Owner may lease or rent less than their entire Unit and no Owner may lease or rent any Unit for a period of less than six (6) consecutive months.

2) No Unit may be rented or leased if the rental or lease results in more than forty-nine percent (49%) of Units (the "Rental-Lease Limit") being rented or leased at any given time, except Hardship Exemptions.

(ii) Application and Approval. Each Owner desiring to rent or lease a Unit shall apply to the Board for approval. The Board shall review the application and make a determination of whether the proposed lease will exceed the Lease Limit expressed above. The Board shall:

1) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

2) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit.

(iii) Hardship Exemption. Notwithstanding the above, in order to avoid undue hardships or practical difficulties such as the Owner's job relocation, disability, military service, charitable service, or other similar circumstances, the Board shall have discretion to approve an Owner's application to temporarily rent or lease the Owner's Unit.

The Board may not approve an application to rent or lease less than the Owner's entire Unit or to rent or lease the Unit for a period of less than six (6) consecutive months. Dormitory, hotel, hostel or similar type rentals are strictly prohibited.

(iv) Multiple Unit Ownership Limitation. An Owner who owns more than one Unit is not eligible to rent more than one Unit until the pending applications of:

1) All Owners who are not currently renting or leasing a Unit have been approved; and

2) All Owners who are currently renting or leasing fewer Units than the applicant have been approved.

(v) Review of Rental Applications. Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board pursuant to the following:

1) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application. Within ten (10) business days of receipt, the Board shall approve or deny an application and shall notify the Owner of the result, and, if permission is not given,

the reason for the denial within fifteen (15) business days of receipt of the application.

2) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease.

(vi) Application Form; Approval Process; Waiting List. An application form, the application and approval process, a waiting list, and any other rules deemed necessary by the Board to implement this section shall be established by rules adopted by resolution of the Board.

(vii) Lease Agreements – Required Terms. All Owners shall use and provide the Board with a copy of a written lease agreement. All lease agreements shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased. All lease agreements shall contain terms subjecting the resident to the terms, conditions, and restrictions of the Project Documents, as amended.

(viii) Violations of Rental Restrictions. If an Owner fails to submit the required application, fails to use and submit a copy of a written lease agreement with the required terms, and rents or leases any Units, and/or rents or leases any Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner and the Owner's Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by the Board. In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal or equitable remedies, including but not limited to, an action to terminate the rental or lease agreement and removal of any tenant or lessee.

(ix) Failure to Take Legal Action. Failure by an Owner to take legal action against his Resident who is in violation of the Act or Project Documents within ten (10) days after delivery of written demand to so do from the Board, shall entitle the Association to take any and all such action for and in behalf of said Owner and as his or her agent, including but not limited to the institution of legal proceedings on behalf of such Owner against his or her Resident for eviction, injunctive relief or damages. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or Resident for any legal action commenced under this Section that is made in good faith. Any expenses incurred by the Association, including reasonable attorneys' fees and costs of suit, shall be repaid to it by such Owner. The amount of the costs and expenses an Individual Assessment.

(x) Recovery of Costs and Attorney Fees; Owner Liable. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Subsection, regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Unit as an assessment pursuant to this Declaration. Additionally, the Owner shall be liable for all fines, assessments, or other penalties levied due to violations of their tenant. The Owner shall be personally liable for any violations caused by their tenant. Any assessments, fines or penalties levied under this Paragraph shall be an Individual Assessment.

(xi) Requesting Unpaid Assessments from Tenant. In the event that a unit is leased or rented, and the absentee owner fails to pay their regular, special or any other assessment, the Board may demand

that the tenant pay his or her rental payment to the Association until such time as the delinquent assessment is cured.

(xii) Owner Obligation to Inform Tenant and Association. Rental and lease agreements shall comply with the following:

1) The Owner shall provide the tenant or lessee with a copy of the Project Documents then in effect and shall take a receipt for delivery of the Project Documents. In the event the Project Documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board, or its membership.

2) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a copy of the Approved Lease Agreement and a copy of the receipt specified above. If the Owner fails to provide the receipt, the Association shall provide a copy of the Project Documents to the tenant or lessee and take a receipt therefor, and shall assess a reasonable charge therefor to the Owner as an assessment consistent with this Declaration.

(xiii) Termination of Lease or Rental Agreement for Violations. In addition to any other remedies available to the Association, the Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of the Project Documents, or any amendments thereto.

Notwithstanding anything contained herein to the contrary, the Association shall have legal and equitable standing as a third party beneficiary to enforce the provisions of the Project Documents against a tenant, including without limitation, the right to file a civil action to terminate the lease agreement. In addition to any other remedy herein, the Association shall have right to levy fines against the Owner for any violations of this Section.

(xiv) Voidable Transactions. Any transaction which does not comply with this Section shall be voidable at the option of the Board.

Article X, Section 10.02, shall be amended in its entirety and shall read as follows:

10.02 Amendment. The consent of Owners representing at least sixty-seven percent (67%) of the undivided interest ownership in the Common Areas shall be required to amend this declaration. The approval of fifty-one percent (51%) of Eligible Mortgagees shall be required to materially amend any provision of the Project Documents, or to add any material provision thereto. A provision shall be considered material if it establishes, provides for, governs or regulates any of the following:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of liens;
- (c) Reserves for maintenance, repair, and replacement of Common Areas;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use the Common Areas;
- (f) Responsibility for maintenance and repair of the Units, Limited Common Area, or Common Area;
- (g) Expansion or contraction of the Project;
- (h) Boundaries of Units;
- (i) The interests in the Common Areas and Limited Common Areas;
- (j) Convertibility of Units into Common Areas or Common Areas into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (m) Establishment of self-management by the Association where professional management has been required by any governmental agency or lending institution;  
Any provision for the express benefit of Eligible Mortgagees.

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) shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant.

IN WITNESS WHEREOF, One & Nine Condominiums, by and through the Declarant, has executed this Amendment to the Declaration as of the 5 day of December, 2008.

DECLARANT:  
THE ONE & NINE CONDOMINIUMS, L.L.C.

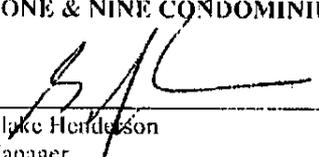
  
By: Blake Henderson  
Its: Manager

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.

Tax Parcel ID # 16-05-126-063

STATE OF UTAH )

County of Summit )  
:SS

On the 5<sup>th</sup> day of December, 2008, personally appeared Blake Henderson who, being first duly sworn, did that say that he is the manager of Declarant and that said instrument was signed and sealed in behalf of said Declarant by authority of the members thereof; and acknowledged execution of said instrument to be his voluntary act and deed.



*Diann Greer*  
Notary Public for Utah

# EXHIBIT 2

10509710  
08/28/2008 02:23 PM \$70.00  
Book - 9638 Pg - 6931-6961  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
BLAKE HENDERSON  
P O BOX 682925  
PARK CITY UT 84068  
BY: MGB, DEPUTY - WI 31 P.

After recordation, return to:

3) Michael C. O'Brien, Esq.  
VanCott, Bagley, Cornwall & McCarthy  
1790 Bonanza Drive, Suite E-250  
Park City, UT 84060

**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. 10509709, 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 28, 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.

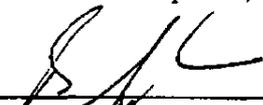
10.09 Enforcement of Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration:

- (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.

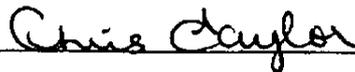
a Utah limited liability company

By Henderson Development, LLC, its Manager

By:   
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 A. Henderson, the manager of Henderson Development, LLC, the manager of THE ONE & NINE CONDOMINIUMS, LLC.



NOTARY PUBLIC

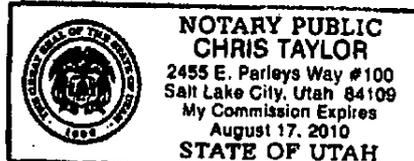


EXHIBIT "A"

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 28 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

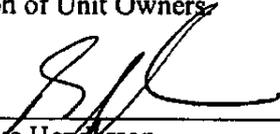
The Board of Trustees shall have the power to adopt and establish, by resolution, such Project, management and operational rules and regulations as it may deem necessary for the maintenance, operation, management and control of the Condominium Project, and the Board of Trustees may from time to time, 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

# EXHIBIT 3

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~~10182540  
08/02/2007 05:00 PM \$125.00  
Book 9499 Pg - 3532-3565  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
VAN COTT BAGLEY CORNWALL  
MCCARTHY PC PO BOX 45340  
50 S MAIN ST STE 1600  
SLC UT 84145-0340  
BY: ZJM, DEPUTY - WI 34 P.~~

34 - 49

After recordation, return to:

Ruth Hawe  
Van Cott, Bagley, Cornwall & McCarthy  
50 South Main, Suite 1600  
Salt Lake City, UT 84144

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

**The One & Nine Condominiums**

This Declaration of Covenants, Conditions and Restrictions, hereinafter referred to as "Declaration," is made and executed in Salt Lake County, State of Utah, this \_\_\_\_ day of August, 2007, 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, 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.

WHEREAS, 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, 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, hereinafter refers to as "plat", which document is dated \_\_\_\_\_, 2007, as Filing No. \_\_\_\_\_, concurrently herewith; and

WHEREAS, 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.

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 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\_\_\_\_, 2007, 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.

### 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 shall insure his entire Unit, including the structural portions of the Unit, against loss or damage by fire or by any other casualty, under the standard form of extended endorsement and broad form now in use in the State of Utah or under such other insurance as may be required by a Mortgagee of the Unit; provided that each such policy shall provide that it does not diminish that insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to Article VIII hereof.

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, 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 one (1) domesticated household pet owned by a Unit Owner, (including only one dog or one cat), or as are allowed pursuant to the rules and regulations. 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. In no event shall more than one (1) dog or one (1) cat be allowed in any Unit. 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 designated by the Board.

(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 and governed by the Trustees.

(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 area 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 waste will be committed in the common area.

(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 areas shall be kept clean and orderly. All storage of items shall be within the Units or in designated storage areas in the garage.

(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 be rented by the owners thereof, including as nightly rental units, subject to applicable Salt Lake City zoning ordinances.

(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.

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 Hazard Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the Development with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. The cost of such coverage shall be assessed to each Owner as provided in Article IV of this Declaration. Such insurance policy or policies shall

name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and

(b) such other risks as shall customarily be covered with respect to facilities similar in nature, location and use.

8.02 Liability Insurance. The Board shall procure and maintain from a company or companies holding a financial rating of Class VI or better from Best's Key Rating Guide a policy or policies (herein called the "Policy") of Public Liability Insurance to insure the Association, the Board, the Managing Agent and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas or activities thereon under a Comprehensive General Liability form. Such insurance shall be for such limits as the Board may decide, but not less than those limits customarily carried in connection with properties of comparable character and usage in Salt Lake County nor less than \$1,000,000 for personal injury and property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in nature, location and use. The policy shall contain a "Severability of Interest" endorsement which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds as between themselves are not prejudiced. The policy shall provide that the policy may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

8.03 Officers and Directors Insurance. The Board may procure and maintain a policy or policies of Officers and Directors Insurance (the "O&D Policy") insuring the officers and directors or trustees of the Association against any liabilities arising from any claim made by reason of any act in their respective capacity of officer, director or trustee of the Association.

8.04 Additional Insurance; Further General Requirements. The Board may also procure insurance which shall insure the Common Areas and the Association or the Owners and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible, provide:

(a) a waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any particular Owner or Owners;

(c) that it cannot be canceled, suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and

(d) that any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**8.05 Fidelity Coverage.** The Association may elect to maintain fidelity coverage to protect against dishonest acts on the part of officers, trustees, managing agents, directors and employees of the Association and all others (including volunteers) who handle, or are responsible for handling, funds of the Association. In that event, such fidelity bonds shall:

(a) name the Association as an obligee;

(b) be written in an amount based upon the best business judgment of the Association and shall not be less than the estimated maximum of funds (including reserve funds) in the custody of the Association or the Managing Agent at any given time during the term of each bond, but in no event be less than a sum equal to three months' assessment on all Units plus reserve funds;

(c) contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and

(d) provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the insured.

**8.06 Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least fifty percent (50%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owners and to the holder of any Mortgage on any Unit who shall have requested a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner and any Mortgagee.

**8.07 Other Insurance Provisions.** All insurance required pursuant to this Article VIII shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to this Article shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Areas or risks being insured.

## 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



STATE OF UTAH )  
 : ss.  
COUNTY OF Summit )

The foregoing instrument was acknowledged before me this 2 day of August, 2007, by Blake Henderson the Manager<sup>owner</sup> of Henderson Development, LLC, the manager of THE ONE & NINE CONDOMINIUMS, LLC.

\_\_\_\_\_  
NOTARY PUBLIC 

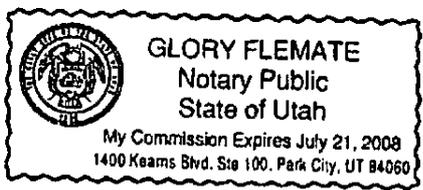


EXHIBIT "A"

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 \_\_\_\_\_ day in \_\_\_\_\_ of 20\_\_\_\_, 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.

ARTICLES OF INCORPORATION  
OF  
THE ONE & NINE CONDOMINIUMS  
HOMEOWNERS ASSOCIATION  
A Nonprofit Corporation

The undersigned person, being a natural person over the age of 18 years, executes these Articles of Incorporation to form and establish a not-for-profit corporation under the provisions of the Utah Revised Nonprofit Corporation Act, and adopts the following Articles of Incorporation:

1. Name. The name of the corporation is THE ONE & NINE CONDOMINIUMS HOMEOWNERS ASSOCIATION.

1. Duration. The duration of the corporation shall be perpetual, unless dissolved by the action of the Corporation or by operation of law.

2. Purposes. The purposes of the corporation are to (i) to function as the owners association for The One & Nine Condominiums, located in the city of Salt Lake City, County of Salt Lake, State of Utah; (ii) to exercise any and all rights, duties and obligations as set forth in the Declaration of Covenants, Conditions and Restrictions of The One & Nine Condominiums (the "CC&Rs"), dated August \_\_\_\_, and recorded in the official records of Recorder's Office of Salt Lake County, Utah, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, beginning at Page \_\_\_\_ ("Declaration"); (iii) to enforce the Declaration for the real property governed by the Declaration including, without limitation, real property located in Salt Lake County, Utah, as set forth in the Declaration (collectively, "Property"); (iv) to provide the other services, and perform all of the other functions set forth in the Declaration, or any amendment thereof, as may become desirable or necessary for the benefit of the owners of the Property, including, without limiting the generality of the foregoing, the power to fix, levy and collect fees, charges and assessments; (v) to do everything necessary and proper for the accomplishment of the purposes enumerated in these Articles, or any amendment thereof, or necessary or incidental to the protection and benefit of the owners association; and (vi) in general, to engage in any lawful act for which a nonprofit corporation may be organized under the Act, whether or not such act is similar in nature to the purposes set forth in the Articles, or any amendment thereof.

3. Membership. The members of the corporation shall be the owners of the condominiums in The One & Nine Condominiums (the "Members").

4. Voting Rights. Each Member is entitled to cast one vote for each Unit he or she owns on all matters presented to the members for approval. In the election of Trustees, members may accumulate their votes.

5. Registered Agent. The initial registered agent of the corporation is:

Blake Henderson  
P.O. Box 682925  
Park City, UT 84068

Acceptance of Appointment

I, Blake Henderson, hereby accept the appointment as the registered agent for The One & Nine Condominium Homeowners Association.

---

Blake Henderson

6. By-laws. The Board of Trustees will adopt by-laws consistent with these Articles. Thereafter, by-laws may be adopted, amended, or repealed by the vote of the Members.

7. Principal Place of Business. The principal place of business of the corporation, and its initial offices are located at: 1499 Park Avenue, Park City, Utah 84060. The corporation may establish such other offices and locations as it deems appropriate for the operation of its business.

8. Board of Trustees. There will be three Trustees of the corporation. The initial Board of Trustees, who will serve as provided in the CC&Rs and the Bylaws, are:

<u>Name</u>	<u>Address</u>
Blake Henderson	P.O. Box 682925 Park City, UT 84068
Neil Henderson	P.O. Box 682925 Park City, UT 84068
Yale Henderson	P.O. Box 682925 Park City, UT 84068

The Trustees will elect one of them to act as Chairman until the first annual Members meeting.

Trustees do not need to be Members.

At the first annual meeting of the Members following the sale of sixty percent (60%) of the Units, the Members shall be entitled to elect Trustees. Trustees shall be elected for three year terms with one third of the Trustees being elected each year. At this first election, one member of the Board of Trustees shall be elected to serve for a term of one year, one shall serve for a term of two years and one shall serve a term of three years. Thereafter, each Trustee shall serve a term of three years.

9. Officers. The initial officers of the corporation shall be appointed at the first meeting of the Board of Trustees. Officers serve at the pleasure of the Board of Trustees.

10. Annual Meeting. The annual meeting of Members will be held on the \_\_\_\_ day of \_\_\_\_\_, at The One & Nine Condominiums, at the hour of 7:00 p.m., or at such other time or place as may be stated in the notice of annual meeting.

11. Limitations on Liability. The Officers, Trustees, and Members of the corporation shall not be held personally liable for the debts and obligations of the corporation.

12. Incorporators. The incorporator of the corporation is:

Blake Henderson  
P.O. Box 682925  
Park City, UT 84068

13. Amendment. These articles of incorporation may be amended from time to time as permitted by law.

Wherefore the Incorporator has executed and verified these articles this \_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Blake Henderson