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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
THE INN AT SNOWBIRD**

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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**FOR**  
**THE INN AT SNOWBIRD**

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR THE INN AT SNOWBIRD ("**Declaration**") is executed pursuant to the provisions of the Declaration of Covenants, Conditions and Restrictions, Turramurra Lodge, described in Recital A hereof, and the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, §§ 57-8-1- through 57-8-37, as amended (the "**Act**"), by Turramurra Owners Association Inc., d/b/a The Inn at Snowbird Owners Association ("**Association**") on behalf of the Owners (defined below).

**RECITALS**

A. On January 4, 1973 Snowbird, Ltd., a Utah limited partnership ("**Declarant**") recorded with the Recorder of Salt Lake County, Utah, that certain Declaration of Covenants, Conditions and Restrictions, Turramurra Lodge ("**Original Declaration**"), as Entry No. 2510027, covering certain real property situated in Salt Lake County, Utah known as The Inn at Snowbird (the "**Project**," formerly known as Turramurra Lodge), which property is more particularly described on Exhibit A attached hereto and incorporated herein by reference ("**Property**"). On January 4, 1973, in connection with the recording of the Declaration, Declarant also recorded that certain Site Plan, Turramurra Lodge (Condominium Two) with the Recorder of Salt Lake County, Utah, as Entry No. 2510026 ("**Plat**").

B. On September 6, 2011, the required number of owners of condominium units in the Project recorded with the Recorder of Salt Lake County, Utah, that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for The Inn at Snowbird, as Entry No. 11238631, in Book 9948, beginning at Page 123 ("**First Amendment**").

C. Pursuant to Section 30 of the Original Declaration, as amended by the First Amendment, the Original Declaration "may be amended by the affirmative vote of at least sixty-seven percent (67%) of the total votes, which votes may be cast at a meeting duly called, at which meeting Owners may either vote in person or by proxy, or may be cast without a meeting by means of written ballot delivered or mailed to the Owners." Section 30 further provides that such amendment "shall be evidenced by an instrument executed by an officer of the Management Committee and containing a certification from an officer of the Management Committee that the appropriate Owner consent has been obtained and shall be duly recorded in the office of the Salt Lake County Recorder."

D. This Declaration has been approved by the affirmative vote of at least sixty-seven percent (67%) of the total votes of the Owners, and such Owners desire to exercise their right to amend and restate the Original Declaration, as amended, as set forth herein.

E. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits attached hereto and incorporated herein by this reference shall be enforceable equitable covenants and equitable servitudes and shall run with the land. This Declaration amends in its entirety, restates, supersedes and completely replaces the Original Declaration, including the First Amendment and any other amendments to the Original Declaration.

F. The Project shall be known as "The Inn at Snowbird" and is intended to be a condominium project pursuant to the Act.

NOW, THEREFORE, the Association, on behalf of the Owners, hereby declares, covenants and agrees that each of the Recitals A through F is incorporated into and made a part of this Declaration for all purposes and further declares, covenants and agrees that the Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to 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 the Property and the Units, and shall be deemed to run with the land and shall be a burden and a benefit to any person acquiring, leasing or owning and interest in the real property and improvements.

#### ARTICLE 1 DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article 1.

1.1. "**Act**" shall mean the Condominium Ownership Act (Title 57, Chapter 8, Utah Code).

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

1.3. "**Articles**" shall mean the Articles of Incorporation of the Association.

1.4. "**Assessments**" shall mean those assessments described in Article 15 to fund the Common Expenses, and include Regular Assessments, Special Assessments and any other assessments levied by the Association.

1.5. "**Association**" shall mean Turramurra Owners Association Inc., d/b/a The Inn at Snowbird Owners Association, a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

1.6. "**Building**" shall mean the building constructed as part of the Project, as described in Section 2.2.

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

1.8. **“Common Area Manager”** shall mean the person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas.

1.9. **“Common Areas”** shall mean all portions of the Project other than the Units, as described in Article 4 hereof. The undivided interest in the Common Areas appurtenant to each Unit is based upon the Par Value of a Unit in the Project as described in Section 4.2 hereof, and is set forth in Exhibit B hereto.

1.10. **“Common Expense Fund”** shall mean one or more deposit or investment accounts of the Association into which are deposited the Assessments.

1.11. **“Common Expenses”** shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas, all premiums for insurance obtained by the Association for the benefit of the Project, and all other expenses denominated as Common Expenses by this Declaration or by the Act.

1.12. **“Cost of Living Index”** shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1982-1984 = 100 compiled by the Bureau of Labor Statistics, United States Department of Labor. The Index for September 2011 is the reference base index.

1.13. **“County”** shall mean Salt Lake County, Utah.

1.14. **“Declaration”** shall mean this Amended and Restated Declaration of Condominium for The Inn at Snowbird, and all amendments, modifications and supplements hereto.

1.15. **“Eligible Mortgagee”** shall mean and refer to a First Mortgagee that has requested notice of certain matters from the Association in accordance with Section 14.1 of this Declaration.

1.16. **“Limited Common Areas”** shall mean a portion of the Common Areas designated by the Declaration or the Act, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units.

1.17. **“Management Committee”** shall mean the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

1.18. **“Mortgage”** shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A **“First Mortgage”** is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

1.19. **“Mortgagee”** shall mean any person or entity named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A **“First Mortgagee”** shall mean

any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage.

1.20. "**Owner**" shall mean any person or entity at any time holding title to a Unit within the Project. The term Owner shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

1.21. "**Par Value**" shall mean the number of points assigned to each Unit as described herein and in the Act and used to determine ownership interests and votes of Units. In accordance with the provisions of the Act, the statement of Par Value should not be considered to reflect or control the sales price or fair market value of any Unit.

1.22. "**Plat**" shall mean that certain Site Plan, Turramurra Lodge (Condominium Two) recorded in the official records of Salt Lake County, Utah on January 4, 1973, as Entry No. 2510026, as it may be amended from time to time pursuant to this Declaration and the Act.

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

1.24. "**Property**" shall mean that certain real property situated in the County of Salt Lake, State of Utah, more particularly described on the attached Exhibit A, on which the Units and other improvements are located.

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

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

1.27. "**Supplemental Plat**" shall mean any amendment to the Plat made in accordance with this Declaration and the Act.

1.28. "**Total Votes of the Association**" shall mean the total number of votes appertaining to all Units, as described in Article 16 hereof.

1.29. "**Unit**" shall mean and refer to an individual portion of the Project designated as a Unit on the Plat and designed for separate ownership and use as described in Article 3 hereof.

1.30. "**Unit Number**" shall mean the number, letter or combination of numbers and letters that identify modules within a single Unit in the Project; each Unit may be referred to by multiple Unit Numbers.



**ARTICLE 2**  
**DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS AND**  
**SUBMISSION TO THE ACT**

2.1. Description of the Property. The Property on which the Units and improvements are located is situated in Salt Lake County, Utah and more particularly described on the attached Exhibit A. The Property was previously subject to that certain Lease Agreement, whereby Declarant as lessor leased to the Association, for the exclusive use and benefit of the Owners, the ground upon which the Project is located. Such lease interest was merged with fee simple title by that certain Deed recorded on February 21, 1979 as Entry No. 3239564 in the Salt Lake County Recorder's Office whereby Declarant granted and conveyed the surface rights in the Property to the Association.

2.2. Improvements. The improvements consist of one freestanding seven (7) story residential Building containing forty-two (42) Units, which Units may include multiple modules and storage areas. The Building is of steel/concrete construction. The roof is a flat membrane roof. Exteriors are of concrete beams and wood siding. The Building is supplied with telephone and other electronic communication services, electricity, natural gas, water, and sewer service.

2.3. Submission to the Act. The Property, the Building and all other improvements thereon are hereby submitted to the provisions of the Act. All of the Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a residential condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

**ARTICLE 3**  
**DESCRIPTION OF UNITS**

The boundary lines of each Unit are as set forth on the Plat and consist of enclosed rooms bounded by the unfinished perimeter walls, ceilings, floors, doors, and windows thereof. A Unit shall include any drywall, wall paneling, wood, tile, paint, paper, carpeting, or any other wall, ceiling, or floor covering, windows and window frames, shutters, doors and door frames. A Unit shall also include any fireplace or stove hearth, facing brick, tile or firebox. A Unit shall further include fixtures and hardware and all improvements attached to or contained within the unfinished perimeter walls, ceilings, and floors. A Unit shall include any heating and refrigerating elements or related equipment, utility lines and outlets, electrical and plumbing fixtures, pipes, and all other related equipment required to provide heating, air-conditioning, hot and cold water, electrical, or other utility services to the Unit and located within the unfinished perimeter walls, ceilings, and floors; provided, however, that a Unit shall not include any of the structural components of the Building or utility or service lines located within the Unit but

serving more than one Unit. For purposes of this Article 3, the term “**unfinished perimeter wall**” means the interior surfaces of the studs, supports, and other wooden, metal, or similar structural materials which constitute the interior face of a wall of a Unit. The Plat and/or Exhibit B hereto contain the Unit Numbers of each Unit in the Project.

#### **ARTICLE 4 DESCRIPTION AND OWNERSHIP OF COMMON AREAS**

4.1. Description of Common Areas. The Common Areas shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation: the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, flues, chimney cases, roofs, patios, decks, balconies, vestibules, lobbies, entrances and exits of the Building; the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air-conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith; trash rooms and storage rooms; the sidewalks, walkways, parking areas, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Property; the pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and, in general, all other parts of the Project designated as Common Areas and existing for the use of one or more of the Owners. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control. The Common Areas include the surface rights to the Property, which rights are vested with the Association as more fully described in Section 2.1 above, for the use and benefit of the Owners.

4.2. Calculation of Undivided Interest. The undivided interest in the Common Areas appurtenant to each Unit in the Project is based upon the Par Value of such Unit, which is determined by the number of separate modules in the Unit as set forth in Exhibit B. There shall be one (1) Par Value point allocated to each Unit for each module within the Unit. The percentage of undivided interest in the Common Areas and the votes appurtenant to each Unit has been determined by dividing the number of Par Value points allocated to each Unit by the total number of Par Value points allocated to all Units in the Project, as set forth in the attached Exhibit B. In accordance with the provisions of the Act, the statement of Par Value shall not be considered to reflect or control the sales price or fair market value of any Unit. The undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Amendment. The sum of the undivided interests in the Common Areas allocated to all Units may be greater or less than one hundred percent (100%) due to rounding.

4.3. Description of Limited Common Areas. Limited Common Areas means those parts of the Common Areas which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Areas shall include any balcony, deck, patio, entryway, or porch adjacent to a Unit, and any individual fireplace chimneys and flues in the Building, and individual water and sewer service

lines, and any plumbing or other installation servicing a Unit, including, but not limited to, all such items designated as Limited Common Areas on the Plat or as provided for by the Act. The deck, balcony or patio and the fireplace chimneys which are accessible from, associated with, and which adjoin a particular Unit, without further reference thereto, shall be used in connection with such Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument. The use and occupancy of designated Limited Common Areas shall be reserved to the Units as shown on the Plat, as specified in this Declaration, or as provided by the Association. If shown on the Plat, the Limited Common Areas will be marked with a number corresponding to the Unit Number of a Unit. The Limited Common Areas so marked shall be appurtenant to the Unit indicated. Owners may not reassign Limited Common Areas between or among Units in which they have an interest. Notwithstanding the foregoing, the Association hereby reserves the right to reassign Limited Common Areas to the fullest extent permitted under the Act.

## **ARTICLE 5 NATURE AND INCIDENTS OF UNIT OWNERSHIP**

5.1. Nature of Units. Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

5.2. Use of Property. Subject to the limitations contained in this Declaration, and subject to any rules and regulations adopted by the Association, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and the exclusive right to occupy and use such Owner's Unit and any Limited Common Areas designated for exclusive use by such Owner or all Owners.

5.3. Alteration of Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of such Owner's Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of such Owner's Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reassign or change the boundaries of such Units. No Owner may subdivide such Owner's Unit.

5.4. Right of Entry. The Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter into any Unit for the purpose of maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

5.5. Additional Rules. The Association shall have the power to establish specific rules and regulations governing use of the Common Areas and Limited Common Areas.

## **ARTICLE 6 TITLE TO UNITS**

6.1. Title to Units. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah, subject to the limitations set forth in Section 7.2.

6.2. Title Inseparable. Title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

6.3. Multiple Unit Numbers. Each Unit may be identified by multiple Unit Numbers, which Unit Numbers refer individually to separate modules within a Unit, but collectively refer to a single Unit. The modules that together create a single Unit are identified on Exhibit B attached hereto, with each Unit represented on a separate line in the chart. By way of example, modules 101 and 102, together with storage area S-101, collectively are a single Unit. Individual modules and storage areas may not be separately conveyed, devised, or encumbered, but must be treated together as a complete Unit in accordance with Section 6.2 above.

6.4. No Partition. The Common Areas shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

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

6.6. Labor and Services; Indemnification. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner (including interest in any portion of the Common Areas) unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association or provided for in the Declaration, shall be deemed to be

performed or furnished with the express consent of each Owner. In such event, the Owner may remove his or her Unit from a lien against two (2) or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his or her Unit.

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

6.8. Proof of Ownership. Any person or entity, on becoming an Owner, will furnish the Secretary of the Association with a photocopy of the recorded deed or other instrument or such other evidence as may be specified by the Management Committee under the Bylaws or the Association rules, vesting the person with the interest required to make such person or entity an Owner. At the same time, the Owner will provide the Association with the single name and address to which the Association will send any notices given pursuant to the governing documents of the Project. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Owner will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Owner.

## ARTICLE 7 RESTRICTIONS ON USE

7.1. Restrictions on Use of Units and Common Areas. The Units and Common Areas, including but not limited to the Limited Common Areas, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

7.1.1. No Unit shall be used for commercial purposes; provided, however, that nothing in this Subsection shall prevent (a) the Association, Common Area Manager, or a duly authorized agent from using the Common Areas for property management services, lobby, guest services, vending machines, laundry facilities, or back-of-house operations; or (b) any Owner or his or her duly authorized agent from renting or assigning the use of his or her Unit from time to time.

7.1.2. No noxious, offensive or illegal activity shall be carried on, in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners.

7.1.3. No activities shall be conducted, or improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

7.1.4. To the extent such prohibition is permitted by law, no signs, flags or advertising devices of any nature, including, without limitation, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, or except as may be authorized by the Management Committee.

7.1.5. No portable solid-fuel burning devices such as charcoal grills and wood burning stoves or fireplaces shall be used, kept or stored within any Units or Limited Common Areas.

7.1.6. No motor vehicle classed by manufacturing rating as exceeding three-quarter ton and no motor home, trailer, detached camper or camper shell, boat or other similar equipment or recreational vehicle may be kept or parked at the Project.

7.1.7. No motor vehicle shall be constructed, repaired or serviced at the Project.

7.1.8. The rules and regulations of the Association may prohibit and/or regulate the kind and number of pets permitted at the Project from time to time.

7.1.9. The draperies, shades and other interior window coverings in Units shall present a uniform appearance from the outside of the Units. All draperies, shades or other interior window coverings shall be installed only with the prior written approval of the Management Committee. The Management Committee shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of Buildings.

7.1.10. No Unit, or portions thereof, may be further divided or subdivided (either physically or legally) or a fractional portion thereof sold or conveyed so as to be held in divided ownership as described in Section 7.2 below (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

7.1.11. No Owner shall, without the prior written consent of the Management Committee, make or permit to be made any exterior alteration, improvement or addition in or to any Unit or the Project. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas (including Limited Common Areas). No Owner shall, without the prior written consent of the Management Committee, improve or modify a Unit, any Limited Common Areas or other Common Areas in a manner that would increase the square footage of any Unit.

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

7.1.13. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by such Owner or Owner's guests, lessees, licensees or invitees.

7.1.14. No Owner shall violate the rules and regulations for the use of Units and Common Areas as adopted from time to time by the Management Committee.

7.1.15. As provided in Section 7 of the Original Declaration: "All renting and leasing of owner's units and common areas in the condominium shall be handled exclusively through a single professional rental agency according to the terms and provisions of a rental agreement approved by the Management Committee and said rental agent. Said rental agent shall be initially designated by Declarant for an initial term of five (5) years and until a successor rental agent is designated. Thereafter the rental agent shall be selected by two-thirds (2/3) majority vote of the owners participating in the rental program, provided that if no rental agent can be agreed upon, or a designated rental agent resigns, the Management Committee may assume the duties of said rental agent for the remaining term of said rental agreement, or until a rental agent is designated as provided herein. Nothing herein shall prevent a Manager designated by the Management Committee from also being the rental agent provided for herein." This provision from the Original Declaration shall continue in full force and effect and shall require all Owners renting their Units to utilize the designated rental agent and participating Owners may by two-thirds (2/3) vote designate the rental agent.

7.1.16. As provided in Section 16(a) of the Original Declaration: "No Owner shall permit more than four (4) persons to occupy each designated modular Unit except by advance permission of Manager, nor shall any Owner permit use of his Unit(s) for purposes other than residence or lodging, it being expressly understood that renters, lessees or paying guests occupying such Unit(s) can do so only by authority of Manager and subject to the terms and conditions of the Rental Pool Agreement." This provision from the Original Declaration shall continue in full force and effect, and shall require that Owners renting all or a portion of their Units must enter into rental management agreements with the Common Area Manager.

7.2. Prohibition on Fractional Ownership. No Unit, or portion thereof, shall be used for the operation of or developed as a "Fractional Program." For purposes of this Declaration, "Fractional Program" specifically means:

7.2.1. Any and all use and occupancy arrangements falling within the definition of "timeshare interests" under the Utah Timeshare and Camp Resort Act (Utah Code Ann. §§ 57-19-1, et seq.);

7.2.2. Units used for the operation of a timesharing, fractional ownership, interval ownership, private residence club or similar program whereby the right to exclusive use of the Unit rotates among participants in the program, regardless of whether such program utilizes a fixed or floating schedule, a first come-first served reservation system or any other arrangement;

7.2.3. Units used for the operation of a reservation or time-use system among co-owners of a Unit, regardless of whether or not any co-owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating, if one or more of the following conditions exist: (i) the ownership interest in such Unit is marketed for sale to the public subject to such system; or (ii) the co-owners are or were required as a condition of purchase of the ownership interest in such Unit to subject the interest to a pre-determined reservation or time-use system among co-Owners; or

7.2.4. Units used in the marketing, offering or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Unit, or involving the Unit and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

7.2.5. Notwithstanding the foregoing, but provided that no interests are marketed to the public, a Fractional Program does not include: (a) ownership of a Unit by a family trust so long as all beneficiaries of the trust are closely related family members; (b) ownership of a Unit by an entity where all members, partners, or shareholders of such entity are closely related family members; (c) ownership of a Unit by an entity where there are four (4) or fewer members, partners, or shareholders of such entity who are not closely related family members; (d) ownership of a Unit by four (4) or fewer individuals who are not closely related family members; or (e) ownership of a Unit by more than four (4) individuals where all Owners are closely related family members. For purposes herein, "closely related family members" refer to an individual's spouse, children, grandchildren, parents, grandparents, and siblings, whether by blood, marriage, or adoption.



7.3. Association Rules. All Owners are given notice that use of their Units and the Common Areas is limited by the rules and regulations of the Association, as adopted by the Management Committee and as modified from time to time. By acceptance of a deed, each Owner acknowledges and agrees that the use and enjoyment and marketability of the Owner's Unit can be affected by this provision and that the rules and regulations may change from time to time.

7.4. Governance of Project. It is intended that this Declaration alone, incorporating by reference the Articles and the Bylaws, shall govern all rights with respect to the use, possession, enjoyment, management and disposition of Units in the Project. Accordingly, all rights with respect to the use, possession, enjoyment, management and disposition of any Units in the Project which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess or manage commonly owned property), are hereby unconditionally and irrevocably subordinated to this Declaration and related Project governing documents for so long as this Declaration and the Units created hereby shall remain in effect.

## **ARTICLE 8 ASSOCIATION AND MANAGEMENT COMMITTEE**

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

8.2. Management Committee. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of five (5) natural persons. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

8.3. Powers of Management Committee. Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, the Utah Revised Nonprofit Corporation Act, Utah Code Annotated §§ 16-6a-101 *et seq.*, this Declaration and the Bylaws, including but not limited to the following:

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

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

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

8.3.4. To determine and pay the Common Expenses.

8.3.5. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article 15 hereinafter.

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

8.3.7. To maintain the Association in good standing with the Utah Division of Corporations and Commercial Code, including filing annual reports.

8.3.8. To open bank accounts on behalf of the Association and to designate the signatories therefore.

8.3.9. To purchase, hold, sell, convey, mortgage or lease any one (1) or more Units in the name of the Association or its designee.

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

8.3.11. To obtain insurance for the Association with respect to the Common Areas, as well as worker's compensation insurance.

8.3.12. To repair or restore the Project following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

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

8.3.14. To pledge, hypothecate or otherwise encumber current or future Assessments for any purpose permitted under this Declaration.

8.3.15. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The Association or the Management Committee shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

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

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

8.3.18. To grant easements and rights-of-way over the Common Areas and to approve signage for the Project.

8.3.19. The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas of the Project if Owners entitled to cast a majority of the Total Votes of the Association agree to that action at a meeting or by written ballot distributed to Owners by mail. Any such agreement shall comply with all other applicable provisions of the Act.

8.3.20. Subject to the limitations of Section 8.9, the Act and any other applicable law, the Management Committee may delegate to a Common Area Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section 8.3.

8.4. Limitation on Liability of Management Committee. Members of the Management Committee, the officers and any assistant officers, agents and employees of the Association (a) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (b) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (c) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (d) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.5. Indemnification of Management Committee. When a member of the Management Committee is sued for liability for actions undertaken in his or her role as a member of the Management Committee, the Association shall (subject to the provisions of Utah's Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Annotated) as amended) indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful misconduct, intent to inflict harm on the Association or an Owner or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

8.6. No Sale of Property. Neither the Management Committee nor the Common Area Manager shall sell any property of the Association except as permitted by the Act and this Declaration.

8.7. Personnel. The Management Committee may, on behalf of the Association, obtain and pay for the services of such personnel as the Management Committee shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished directly by the Association or by any person or entity with whom or with which it contracts. The Management Committee may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration.

8.8. Utilities. Certain of the utilities and services to the Units and/or Common Areas may not be separately metered. The Management Committee may, on behalf of the Association, acquire and pay for as a Common Expense, water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Areas and for the Units to the extent not separately metered or billed, insurance, bonds, and other goods and services common to the Units.

8.9. Common Area Manager. The Association acting through the Management Committee may enter into a contract with a Common Area Manager for the management of the Project which complies with the requirements of Section 8.3 hereof as applicable to the Project, and with a term as determined by the Management Committee in its sole discretion. The Common Area Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself.

8.10. No Liability for Latent Defects. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE 10, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.

## ARTICLE 9 MAINTENANCE, ALTERATION AND IMPROVEMENT

9.1. Maintenance of Common Areas. The maintenance, replacement and repair of the Common Areas shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas or utility services shall be repaired promptly and the cost thereof charged to the Association as a Common Expense. The Association shall maintain the

Common Areas in good repair and in a clean and orderly manner consistent with other similarly situated condominium projects located in Salt Lake County.

9.2. Right of Entry. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association, its agents and contractors, shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas or at any time for the purpose of making any emergency repairs and when necessary to prevent damage to the Common Areas or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

9.3. Owner's Obligation to Maintain Property. Notwithstanding anything in this Declaration to the contrary, the Owner at the Owner's expense shall maintain and keep in repair the interior of the Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Units or the Common Areas. All fixtures, equipment, and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the Unit, shall be maintained and kept in repair by the Owner of that Unit. Owners shall use such practices prescribed by the manufacturer in the maintenance of all tile, wood, granite, and other materials installed in the Unit. Owners shall pursue any warranty matters directly with the manufacturer. An Owner shall also maintain and keep in repair any entry door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Building, or impair any easement or hereditament. Except as otherwise provided in this Declaration, an Owner shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Areas at such Owner's expense. Except as otherwise may be set forth herein, no Owner shall alter any Common Areas without the prior written consent of the Association.

9.4. Failure to Maintain. In the event that portions of a Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Management Committee, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform

such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 15 of this Declaration.

9.5. Prohibition on Liens. No labor performed or materials furnished for use and incorporated in any Unit with the consent of or at the request of the Owner of the Unit or the Owner's agent, contractor or subcontractor shall be the basis for the filing of a lien against a Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Areas, or any part thereof.

9.6. Release of Liens. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 9.5 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given written notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with Article 15 below.

## **ARTICLE 10 INSURANCE**

10.1. Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

10.1.1. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; Limited Common Areas; the Building including all Units; fixtures, machinery, building service equipment, personal property and supplies comprising a part of the Common Areas maintained for the service of the Project or owned by the Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such "master" or "blanket" policy shall afford

protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Management Committee deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (a) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (b) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Management Committee otherwise determines, in its sole discretion, the maximum deductible amount for such a policy covering the Common Areas shall be no more than Fifty Thousand Dollars (\$50,000). Further, unless the Management Committee otherwise determines, in its sole discretion, for losses related to individual Units that are covered by such a policy, the deductible related to each individual Unit shall be no more than Twenty-Five Thousand Dollars (\$25,000.00). Funds to cover these deductible amounts shall be included in the Association's operating account.

10.1.2. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision, and any commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least Three Million Dollars (\$3,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, contractual and all-written contract insurance, workers' compensation and employer's liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's

claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least thirty (30) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

10.1.3. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to the Common Area Manager, the Common Area Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Common Area Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. In addition, the Common Area Manager shall, within a reasonable time period, submit evidence to the Association that he or she has secured such fidelity insurance. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association, or the Common Area Manager, as the case may be, at any given time during the term of each bond.

10.1.4. The name of the insured under each policy required to be maintained by Section 10.1 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name if required by law.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

10.2. Required Endorsements. Each policy required to be maintained by Section 10.1 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

10.3. Additional Provisions. Each policy required to be maintained by Section 10.1 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively



or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

10.4. Management Committee Duties. In contracting for the policies of insurance required to be maintained by Section 10.1, the Management Committee shall make reasonable efforts to secure (where economically feasible and reasonably available) coverage commonly required by private mortgage investors for projects similar in construction, location and use.

10.5. Additional Insureds. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any Insurance Trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

10.6. Insurance Provider Performance Requirements. Each insurance policy maintained pursuant to the foregoing Sections 10.1.1, 10.1.2, and 10.1.3 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (a) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (b) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this Article 10 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.7. Review of Policies. All insurance policies shall be reviewed regularly by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

10.8. Owner to Insure. Notwithstanding anything in this Article 10 to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage

insurance on such Owner's personal property and furnishings and on any upgrade made to the structures and fixtures of the Owner's Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Unit caused by any improvement to the Unit made by such Owner, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the improvements.

## **ARTICLE 11 DESTRUCTION OR DAMAGE**

11.1. Appointment of Association. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed to a Unit shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

11.2. Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.3. Association's Duties. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

11.3.1. The Association shall give timely written notice to any Eligible Mortgagee on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Unit subject to such First Mortgage.

11.3.2. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

11.3.3. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

11.3.4. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 15.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

11.3.5. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association, vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction and if, to the extent permitted by the Act, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units subject to Mortgages held by Eligible Mortgagees do not approve such repair and reconstruction, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

11.3.5.1. the Project shall be deemed to be owned in common by the Owners;

11.3.5.2. Each Owner shall own an undivided interest in the Project equal to his or her ownership interest in the Common Areas;

11.3.5.3. Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

11.3.5.4. The Project shall be subject to an action for partition at the suit of any Owner or the Association, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the percentage of undivided interest owned by each Owner in the Project after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner or any liens against the Common Areas.

11.3.6. In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.4. Diligence. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

11.5. Repair Fund. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Assessments made pursuant to Section 15.1.3 hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in accordance with their undivided percentage interests in the Common Areas.

## ARTICLE 12 TERMINATION

12.1. Vote Required. Except as otherwise provided in Article 11, the Project may be terminated only by agreement of Owners entitled to vote all (100%) of the Total Votes of the Association.

12.2. Removal from the Act. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project.

12.3. Sale of Project Following Termination. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

12.4. Sale of Property Following Termination. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 12.1 and 12.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the Owners' respective undivided interests in the Common Areas. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

12.5. Distribution of Proceeds. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

### **ARTICLE 13 EMINENT DOMAIN**

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

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

13.3. Condemnation of Units. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his or her award with the Management Committee, then at the option of the Management Committee, either a Special Assessment shall be made against the defaulting Owner and his or her Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

13.4. Removal from the Act. In the event the Project is removed from the provisions of the Act pursuant to Article 12 above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners' respective undivided interests in the Common Areas.

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

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

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

13.6. Amendment Following Condemnation. Changes in Units, in the Common Areas and in the ownership of the Common Areas that are affected by the taking referred to in this Article 13 shall be evidenced by an amendment to this Declaration and the Plat adopted by the Management Committee, which need not be approved by the Owners.

#### **ARTICLE 14 MORTGAGEE PROTECTION**

This Article 14 preserves Section 11 of the Original Declaration, which section shall continue in full force and effect, with the updated defined terms and internal cross references provided for below. Notwithstanding all other provisions hereof:

14.1. Assessment Lien Subordinate. The liens created hereunder upon any Unit shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness

secured by any recorded First Mortgage (as defined in Section 1.18 above) 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 Article 15 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.

14.2. No Amendment. No amendment to this Article 14 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.

14.3. Extension of Protection. By subordination agreement executed by a majority of the Management Committee, the benefits of Section 14.1 and 14.2 above may be extended to Mortgages not otherwise entitled thereto.

## **ARTICLE 15 ASSESSMENT OF UNITS BY THE ASSOCIATION**

15.1. Assessments. The making and collection of Assessments by the Association from Owners of Units for their share of Common Expenses shall be subject to the following provisions and other provisions, if any, set forth in the Bylaws:

15.1.1. Each Owner, for each Unit owned, shall be liable for a proportionate share of the Common Expenses, such share being the same as the ownership interest in the Common Areas appurtenant to the Unit owned by him or her. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Article 15 shall be the Common Expense Fund. Assessments shall include Regular Assessments, Special Assessments and any other assessments levied by the Association. Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Assessments shall be levied against each separate Unit.

15.1.2. The Association may not impose a Regular Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Regular Assessment, unless approved by a majority of votes cast at a meeting of the Association at which a quorum is present or by written ballot. The Association shall provide notice, by first class mail to all Owners, of any change in the Regular Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Assessment is due.

15.1.3. In addition to the Regular Assessments, the Association may levy in any calendar year, Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Areas,

including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Assessments from the Owners. However, in any fiscal year, except as otherwise provided in this Declaration, the Management Committee shall not, unless approved by a majority of votes cast at a meeting of the Association at which a quorum is present or by written ballot, levy Special Assessments which in the aggregate exceed twenty-five percent (25%) of the budgeted gross expenses of the Association for that fiscal year. The portion of any Special Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the special assessment against an Owner is a remedy utilized by the Management Committee to reimburse the Association for costs incurred in bringing the Owner and/or his or her Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument for the Project. The Management Committee shall provide notice by first class mail to all Owners of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

15.1.4. All Assessments shall be due as determined pursuant to the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of twenty-one percent (21%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a reasonable late fee, established by the Management Committee from time to time. All payments of Assessments shall be first applied to accrued interest and late fees, costs of collection, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas are reassigned, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

15.1.5. There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Office of the Salt Lake County Recorder of a written notice of lien by the Management Committee or the Common Area Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of



the state of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. In furtherance of such rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Act and this Declaration. The Association and each Owner hereby appoint First American Title Insurance Company as trustee for the purpose of exercising the power of sale in connection with any non-judicial foreclosures as provided in the Act; provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in the Act. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, for the sole purpose of securing each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 14.1 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

15.1.6. In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her Assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement shall be furnished within ten (10) business days after receipt of the request and upon payment of a reasonable fee and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith. The grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement furnished under this Section.

15.1.7. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his or her Unit or by waiving any services or amenities

provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

15.1.8. The lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case any First Mortgagee who obtains title to a Unit pursuant to the remedies in the Mortgage or through foreclosure will not be liable for Assessments or charges accrued before the acquisition of the title to the Unit by the First Mortgagee, but such acquisition shall not relieve any Owner from paying further Assessments. If the Association's lien priority includes costs of collecting unpaid Assessments, the Association will be liable for any fees or costs related to the collection of such unpaid Assessments.

15.2. Reserves. The Association through the Management Committee shall include in the Assessments amounts representing sums to be used for the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section. Upon the transfer of a Unit, the reserves previously paid by the transferring Owner shall remain the property of the Association, for the use and benefit of the Association in making future repairs, replacements, improvements and capital additions to the Project.

15.3. Use of Reserve Fund. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas for which the Association is responsible and for which the reserve fund was established, or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations set forth in Section 15.1.3 hereof.

15.4. Reserve Study. The Association shall, on a reasonable periodic basis as determined by the Management Committee, but in no event less frequently than every five years, conduct a reserve study, which may include:

15.4.1. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of thirty (30) years or less.

15.4.2. Identification of the probable remaining useful life the components identified in Section 15.4.1 above, as of the date of the study.

15.4.3. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 15.4.1 above, during and at the end of its useful life.

15.4.4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

15.5. Leased Units. If an Owner shall at any time lease his or her Unit and fails to pay Assessments within sixty (60) days after the Assessments are due, the Management Committee may, at its option, so long as such default shall continue, demand in writing (which writing shall comply with the notice requirements of the Act) and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid. This Section 15.5 shall be incorporated by reference into every lease agreement entered into by and between an Owner and his or her tenant, whether or not this Section is expressly referenced therein.

15.6. Retained Provisions from Original Declaration. Notwithstanding anything in this Declaration to the contrary, the following provisions from paragraph 9 of the Original Declaration shall continue in full force and effect:

15.6.1. Within thirty (30) days prior to the beginning of each fiscal year the Management Committee shall estimate the net charges to be paid during such year (including a reasonable provision for contingencies and replacements and less any expected income and any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners pursuant to the percentages set forth in the schedule attached hereto and marked Exhibit B. Declarant will be liable for the amount of any Assessment against completed Units owned by Declarant. If said sum estimated proves inadequate for any reason, including nonpayment of any Owner's Assessment, the Management Committee may at any time levy a further Assessment, which shall be assessed to the Owners in like proportions, unless otherwise provided herein. Each Owner shall be obligated to pay Assessments made pursuant to this paragraph to the Management Committee in equal monthly installments on or before the tenth day of each month during such year, or in such other reasonable manner as the Management Committee shall designate.

15.6.2. The rights, duties and functions of the Management Committee set forth in this paragraph shall be exercised by Declarant for the period ending thirty (30) days after the election of the first Management Committee hereunder.

15.6.3. All funds collected hereunder shall be expended for the purposes designated herein.

15.6.4. The omission by the Management Committee, before the expiration of any year, to fix the Assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed. Amendments to this paragraph shall be effective only upon unanimous written consent of the Owners and their mortgagees. No Owner may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Unit.

15.6.5. The Manager or Management Committee shall keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Area, specifying and itemizing the maintenance and repair expenses of the Common Area and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Owners at convenient hours of week days.

## **ARTICLE 16 VOTING**

16.1. Voting Rights. At any meeting of the Association, each Owner of a Unit, either in person or by proxy, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in Exhibit B. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

16.2. Character of Voting Rights. The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Amendment.

## **ARTICLE 17 EASEMENTS**

17.1. General Grant of Easements. 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 of 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 of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, 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.

17.2. Easement over Common Areas. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to the Unit he or she is occupying and to any Limited Common Areas appurtenant to his or her Unit, and shall have the right to the horizontal, vertical and lateral support of his or her Unit.

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

17.4. Grant Implied. All conveyances of Units within the Project shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

17.5. Utility Easement. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity, and a cable communication system; provided, however, the use of such general easement shall require the prior written consent of the Management Committee. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, data transmission, and other communication services to erect and maintain the necessary equipment on or beneath the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without unduly disturbing the uses of the Owners or the Association; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, the Management Committee shall have, and is hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 17.5 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property.

17.6. Public Safety Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

## **ARTICLE 18 ENFORCEMENT**

18.1. Compliance with Project Documents. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the rules and regulations and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with

provisions of the Declaration or the decisions of the Association. Owners shall have a similar right or action against the Association. Failure to so comply shall be grounds for: (a) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (b) the Management Committee to impose monetary penalties (subject to the requirements set forth in the Act, including, without limitation, any notice and hearing requirements), temporary suspensions of an Owner's right to the use of a Unit or the Common Areas (subject to the requirements set forth in the Act, including, without limitation, any notice and hearing requirements), or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing.

18.2. No Forfeiture; Exceptions. The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:

18.2.1. The judgment of a court; or

18.2.2. A foreclosure for the failure of an Owner to pay assessments duly levied by the Association.

18.3. Judicial Authority Required. The Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

## ARTICLE 19 GENERAL PROVISIONS

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

Management Committee  
The Inn at Snowbird Owners Association  
3165 East Millrock Drive, Suite 150  
Holladay, UT 84121

19.2. Amendment. Except as otherwise provided in this Declaration, the provisions of this Declaration may be amended by the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association, which votes may be cast at a meeting duly called, at which meeting Owners may either vote in person or by proxy, or may be cast without a meeting by means of written ballot delivered or mailed to the Owners. Any amendment, whether approved at a meeting or by ballot, shall be evidenced by an instrument executed by an officer of the Management Committee and containing a certification from an officer of the Management Committee that the appropriate Owner consent has been obtained and shall be duly recorded in the office of the Salt Lake County Recorder. The percentage of votes necessary to amend a specific clause or section in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause or section.

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

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

19.5. Conflict. In case of any conflict between this Declaration and the Articles or the Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles and the Bylaws, the Articles shall control. The foregoing to the contrary notwithstanding, in the event of any inconsistency between this Declaration or the Articles or the Bylaws, on the one hand, and or any applicable law, including the Act or the Federal Fair Housing Administration Act, on the other, then in all events the applicable law shall control.

19.6. Captions. The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

19.7. Governing Law. This Declaration and the Plat and all issues and disputes arising out of either, shall be construed and controlled by and under the laws of the State of Utah.

19.8. Effective Date. This Declaration shall take effect when recorded in the office of the County Recorder for Salt Lake County, State of Utah.





**EXHIBIT A  
LEGAL DESCRIPTION**

All Units, Common Area, and Restricted Common Area pursuant to that certain Record of Survey Map, Turramurra Lodge (Condominium Two), recorded on January 4, 1973 as Record Number 2510026 in the Official Records of Salt Lake County, Utah, more particularly described as follows:

Beginning at a point in unsurveyed ground South 55° 38.7' West 8190 feet, more or less, from the South Quarter corner of Section 32, Township 2 South, Range 3 East, Salt Lake Base and Meridian, said point being South 80° 30' West 580 feet and North 21° 30' West 39.29 feet from corner No. 2 of the Anna Lode Mining Claim, Survey No. 5913, and running thence South 67° 54.4' West 38.18 feet; thence North 30° 04' West 34.0 feet; thence North 47° 54.4' East 25.0 feet; thence North 12° 14.33' West 47.08 feet; thence North 19° 45.53' East 28.73 feet; thence North 67° 54.4' East 132.0 feet; thence South 75° 34.13' East 28.39 feet; thence South 22° 05.6' East 65.10 feet; thence South 67° 54.4' West 148.81 feet; thence South 22° 05.6' East 28.0 feet; thence South 67° 54.4' West 13.82 feet to the point of beginning. (containing 0.365 acres)

Subject to an easement along the boundary lines of said parcel extending from the said boundary lines to the face of the existing building, in favor of Snowbird, Ltd., its successors or assigns, for purposes of connecting appurtenant utilities, means of access and related structures.

**EXHIBIT B**  
**SCHEDULE OF UNITS, SQUARE FOOTAGE, PAR VALUE,**  
**VOTES AND UNDIVIDED INTERESTS IN COMMON AREAS**

Unit Number*	Approximate Square Footage**	Number of Modules	Par Value Points	Undivided Interest in Common Area	Total Unit Votes
101, 102, S-101	1011	2	2	2.74%	2
103, 104, S-104	1011	2	2	2.74%	2
105, 106, S-105	1011	2	2	2.74%	2
107, 108, S-108	1011	2	2	2.74%	2
201, 202, S-201	1011	2	2	2.74%	2
203, 204, S-204	1012	2	2	2.74%	2
205, 206, 305, S-205	1463	3	3	4.11%	3
207, 208, 308, S-208	1463	3	3	4.11%	3
301, 302, 401, S-301	1463	3	3	4.11%	3
303, 304, 404, S-304, S-404	1463	3	3	4.11%	3
306, 307, S-307	1011	2	2	2.74%	2
309	445	1	1	1.37%	1
310	445	1	1	1.37%	1
311	445	1	1	1.37%	1
312	445	1	1	1.37%	1
402, 403, S-403	1011	2	2	2.74%	2
405, 406, S-405	1011	2	2	2.74%	2
407, 408, S-408	1011	2	2	2.74%	2
409, S-409	437	1	1	1.37%	1
410, S-410	437	1	1	1.37%	1
411, S-411	437	1	1	1.37%	1
412, S-412	437	1	1	1.37%	1
503, 504, S-503	1010	2	2	2.74%	2
505, 506, 605, S-505	1463	3	3	4.11%	3
507, 508, 608, S-508	1463	3	3	4.11%	3
510, S-510	438	1	1	1.37%	1
511, S-511	437	1	1	1.37%	1
512, S-512	437	1	1	1.37%	1
601, 602, 701, S-601	1463	3	3	4.11%	3
603, 604, 704, S-604, S-704	1463	3	3	4.11%	3
606, 607, S-606	1011	2	2	2.74%	2
609, S-609	437	1	1	1.37%	1
610, S-610	437	1	1	1.37%	1
611, S-611	437	1	1	1.37%	1
612, S-612	437	1	1	1.37%	1
702, 703, S-702	1011	2	2	2.74%	2

<b>Unit Number*</b>	<b>Approximate Square Footage**</b>	<b>Number of Modules</b>	<b>Par Value Points</b>	<b>Undivided Interest in Common Area</b>	<b>Total Unit Votes</b>
705, 706, S-705	1011	2	2	2.74%	2
707, 708, S-708	1011	2	2	2.74%	2
709, S-709***	437	1	1	1.37%	1
710, S-710	437	1	1	1.37%	1
711, S-711	437	1	1	1.37%	1
712, S-712	437	1	1	1.37%	1
<b>Totals:</b>	<b>35205</b>	<b>73</b>	<b>73</b>	<b>100.01%</b>	<b>73</b>

\* Numbers correspond to module designation on the original floor plan. Prefix "S" denotes storage spaces appurtenant to each grouping of modules. Each line, with a grouping of Unit Numbers, represents a single Unit. Modules within a single Unit may have been modified as approved by the Board.

\*\*Approximate square footage includes storage areas. Square footage has been calculated by the Management Committee and is an approximate number that should not be relied upon by Owners for determining value of the Unit. Square footage may be calculated using many varying methods and no warranty or representation is made as to the actual size and dimensions of the Units. The approximate square footage stated in this Exhibit B is not used in calculating an Owner's undivided interest in the Common Area.

\*\*\*Unit owned by the Association.

**EXHIBIT C  
BYLAWS**

**(see attached)**

**AMENDED AND RESTATED BYLAWS**

**for**

**TURRAMURRA OWNERS ASSOCIATION, INC.  
(d/b/a The Inn at Snowbird Owners Association)**

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## AMENDED AND RESTATED BYLAWS

for

### TURRAMURRA OWNERS ASSOCIATION, INC. (d/b/a The Inn at Snowbird Owners Association)

Pursuant to Section 30 of the By-Laws (“**Original By-Laws**”) of Turramurra Owners Association, Inc. (d/b/a The Inn at Snowbird Owners Association) (“**Association**”), the Members, by vote of seventy-five percent (75%) of the Total Votes of the Association, may amend the Original By-laws. The Members have exercised their rights to adopt these Amended and Restated Bylaws of Turramurra Owners Association, Inc. (d/b/a The Inn at Snowbird Owners Association) (“**Bylaws**”). All prior versions, amendments and restatements to the Bylaws of the Association are hereby terminated in their entirety and replaced with these Bylaws. The term “**Members**” as used herein shall refer to all members of the Association.

The administration of the Association shall be governed by the Amended and Restated Declaration of Condominium for The Inn at Snowbird recorded in the Office of the Salt Lake County Recorder, State of Utah (“**Declaration**”), the Articles of Incorporation for The Inn at Snowbird Owners Association, these Bylaws, the Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.) (the “**Act**”) and the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Ann.), (the “**Nonprofit Act**”). Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meanings set forth in Article 1 of the Declaration, unless the context clearly indicates otherwise.

#### ARTICLE 1 APPLICATION OF BYLAWS

All present and future Owners, Mortgagees, lessees and occupants and their guests, and any other persons who may use the facilities of the Project in any manner are subject to the Declaration, these Bylaws, and all rules and regulations adopted by the Association pursuant thereto (together, the “**Governing Documents**”). The acceptance of a deed or other instrument of conveyance to a Unit, or the occupancy of any Unit, shall constitute an acceptance and ratification of and an agreement to comply with the provisions of the Declaration, these Bylaws and any Association Rules.

#### ARTICLE 2 MANAGEMENT COMMITTEE

2.1. Administration of Association. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Management Committee consisting of five (5) natural persons (“**Directors**”) who shall be Owners. Solely for the purposes of this Article 2, the term “Owner” shall include Owners, the spouse of an Owner who is married to and not legally separated from an Owner, and Designated Members (as defined in Section 3.13 below).

2.2. Composition. At every annual meeting, the Association shall elect the Directors to fill those positions becoming vacant at such meeting, pursuant to the terms of this Article 2.

2.3. Nominating Committee; Nominations.

2.3.1 Nomination Process. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors. Nominations of persons to be elected to the Management Committee at the annual meeting may be made: (a) by a "Nominating Committee" constituted pursuant to Section 2.3.2 or (b) by Owners of record, in accordance with the provisions of this Section 2.3.1. Candidates for Director may be nominated by an Owner by submitting written nominations, together with written biographical information and acceptance by each person nominated, to the Management Committee not later than November 15 for the next annual meeting to be held pursuant to Section 2.11 of these By-Laws. Those persons nominated as provided in this paragraph will be included in the list of candidates considered by the Nominating Committee for election to the Management Committee at the annual meeting. The Nominating Committee shall select from nominations made by a member of the Committee and Owners those persons to be recommended to the Management Committee as candidates for election to the Management Committee. On or before the Management Committee's December meeting, the Nominating Committee shall submit to the Management Committee the list of candidates selected by the Committee for election at the next annual owners meeting. Nominees are subject to the approval of the Management Committee; any candidate not approved by the Management Committee shall be deemed to have been disapproved and his or her name will not be included in the list of candidates submitted to the Owners for election. In absence of submission of candidates by the Nominating Committee, or in absence of a Nominating Committee (caused by resignation, inability of members to act, failure to convene, or any other cause) the Management Committee shall select its own list of candidates, by December 20 of such year. The Management Committee shall designate the final candidates, determine if each is willing to serve, and provide information regarding each candidate to the Owners prior to the annual meeting of Owners.

2.3.2 Nomination Committee. The Management Committee shall appoint two of the members of the Nomination Committee. The third member of the Committee shall be the person who is the Secretary/Treasurer of the Association, holding that office from time to time. The Nominating Committee may nominate the Secretary/Treasurer as a candidate for election to the Management Committee. The members appointed by the Management Committee shall consist of current Owners, at least one of which is a former member of the Association's Management Committee or a former member of the Management Committee of the Inn at Snowbird. The appointed members shall serve for two years and the terms shall be staggered; provided, however, the initial appointments shall be for a one-year term and a two-year term as designated by the Management Committee. If an appointed member resigns or is unable to serve, the Management Committee shall appoint a person, with the required qualifications, to fill the term. Notice of meetings shall be given in the same manner as required for Directors under Section 3.04, provided, however, meetings maybe held by telephone or by other audio and/or video conferencing. Two members of the Committee shall constitute a quorum.



2.3.3 Election of Directors. Regardless of the number of candidates, the candidates receiving the highest amount of votes among the number of candidates equaling the number of Directors to be elected shall be elected as Directors.

2.4. Voting for the Management Committee. Voting for Directors may be by written or oral vote, unless an Owner objects to such procedure, in which case voting shall be by secret written ballot. At any meeting of the Association, each Member, either in person or by proxy, for each Director position to be filled, shall be entitled to the number of votes set forth in the Declaration for each Unit. When there are multiple positions to be filled, Members may not cumulate votes or cast all votes in favor of a single candidate.

2.5. Term. Directors shall serve for terms of two (2) years beginning immediately upon their election by the Members. The Directors shall serve until their respective successors are elected, or until death, resignation, or removal.

2.6. Resignation. Any Director may resign at any time by giving written notice to the Chairman of the Association or to the remaining Directors. Any Director who (a) fails to attend three (3) consecutive Management Committee meetings or fails to attend at least twenty-five percent (25%) of the Management Committee meetings held during any fiscal year, or (b) fails to meet his or her assessment obligations under the Declaration shall be deemed to have tendered his or her resignation, and his or her position shall be vacant following confirmation of the failure to attend meetings or meet assessment obligations by the affirmative vote of the remaining Directors, notwithstanding such remaining Directors may be less than a quorum.

2.7. Removal. The Members, representing at least two-thirds (2/3) of the Total Votes of the Association present in person or by proxy at any meeting of the Members may remove any Director elected by the Members with or without cause. A Director may only be removed by the Members at a meeting called for the purpose of removing such Director and if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of such Director.

2.8. Vacancies. If vacancies shall occur in the Management Committee by reason of the death or resignation of a Director, the Directors then in office shall continue to act, and such vacancies shall be filled by a vote of the Directors then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Director by the Association may be filled by election at the meeting at which such Director is removed or any subsequent regular or special meeting of the Association. A vacancy resulting from a removal shall only be filled by the vote of Members holding a majority of the total votes present in person or by proxy at a meeting of the Association where a quorum is present.

2.9. Compensation. Directors shall receive no compensation for their services unless expressly approved by the vote or written assent of sixty seven percent (67%) of the Total Votes of the Association; provided, however, that Directors shall be reimbursed by the Association for reasonable expenses actually incurred for attendance at regular and special meetings of the Management Committee and any other expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Any Director may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such

employment shall be approved by vote or in writing by all Directors not including the Director to be employed.

2.10. Powers. The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Governing Documents. The Management Committee is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective immediately upon adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Governing Documents.

2.11. Management Committee Meetings. The regular meetings of the Management Committee shall be held at least annually at such times and places within the Project, or some other reasonable and suitable location in Salt Lake County, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to Directors, as the Management Committee shall determine. A majority of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management Committee. Directors may participate in meetings by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Utah law. Such participation shall constitute presence in person at the meeting.

2.12. Special Meetings of the Management Committee. Special meetings of the Management Committee may be called by written notice signed by the Chairman or any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in Salt Lake County unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Directors. To the extent permitted by Utah law, special meetings of the Management Committee may be held by telephonic conference or other means as described in Section 2.11 above.

2.13. Notices. Notices of all regular Management Committee meetings shall be given in writing, by personal delivery, first-class or certified mail, facsimile (fax) or electronic (e-mail) transmission to each Director not less than thirty (30) days prior to the meeting, provided that this requirement shall not apply to any Director who has signed a waiver of notice or a written consent to the holding of a meeting. Special meetings of the Management Committee must be preceded by two days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by Utah law. The giving of notice of any meeting shall be governed by the rules set forth in §16-6a-103 of the Nonprofit Act.

2.14. Waiver of Notice. A Director may waive any notice of a meeting before or after the time and date of the meeting stated in the notice. A Director's attendance at or participation in a meeting waives any required notice to that Director of the meeting unless such Director, at the beginning of the meeting or promptly upon the Director's arrival at the meeting, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice and the objecting Director does not vote for or assent to action taken at the meeting.

2.15. Actions and Open Meetings. Directors shall act only as a Management Committee, and individual Directors shall have no powers as such. Regular and special meetings of the Management Committee shall be open to all Members; provided, however, that the Members who are not on the Management Committee may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Management Committee. The Management Committee may, with the approval of a majority of a quorum of its Directors, adjourn the meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and similar orders of business. The nature of any and all business to be considered in executive session shall first be announced in open session.

2.16. Action Without a Meeting. Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if one or more consents in writing, setting forth the action so taken, are signed by all Directors and such signed consents are filed with the records of the Association. To take action by written consent, such consent must be signed by each Director indicating either: (a) a vote in favor of the action; or (b) a vote against the action or abstaining from voting on the action as well as a waiver of the right to demand that action not be taken without a meeting. Action may be taken under this Section 2.16 only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting where all Directors were present. The consents of Directors may be sent to the Association by electronically transmitted facsimile or other form of wire or wireless communication providing a complete copy of the document, including a copy of the signature of the Directors.

2.17. Fiscal Year. The fiscal year shall be set by resolution of the Management Committee. In the absence of a Management Committee resolution, the fiscal year shall be June 1 through May 31.

2.18. Liability of Directors. When a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful misconduct, intent to inflict harm on the Association or a Member or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the Director who so acted. Directors are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

2.19. Eligibility for Directors. An officer, employee, agent or director of a corporate Owner of a Unit, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member of a limited liability company that owns a Unit, a fiduciary of an estate that owns a Unit, and the spouse of an Owner who is married to and not legally separated from an Owner may be considered an Owner for the purpose of determining eligibility for Directors of the Management Committee. Where the person serving or offering to serve as an officer or Director of the Management Committee is not the record Owner, such person shall file proof of authority in the records of the Association.

2.20. Common Area Manager. The Management Committee or the officers appointed thereby may delegate to the Common Area Manager, or such other persons as it so determines, all of the duties and obligations of the Management Committee set forth herein and in the Declaration to the extent such duties and obligations are properly delegable.

2.21. Special Committees. The Management Committee may designate by resolution such committees and subcommittees as the Management Committee deems appropriate, from time to time. Each committee shall exercise those powers granted to it by an enabling resolution of the Management Committee; provided, however that no committee shall exercise any power which is excluded from the delegation of the power of the Management Committee by the laws of the State of Utah or the Governing Documents.

### **ARTICLE 3 MEMBERSHIP, VOTING AND MEETINGS OF THE ASSOCIATION**

3.1. Membership. Every Owner of a Unit shall be a Member.

3.2. Votes in the Association. All Members shall be entitled to the number of votes associated with the Unit owned by such Member as set forth in Exhibit B of the Declaration. Any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of the total votes represented in person or by valid proxy at such meeting.

3.3. Membership Rights. Each Member shall have the respective rights, duties and obligations set forth in the Declaration and these Bylaws and such other rights, duties and obligations as are set forth in the Governing Documents, as the same may be amended from time to time.

3.4. Annual Association Meetings. There shall be an annual meeting of the Association at the date and time fixed by the Management Committee at a reasonable place in the Project or some other location that is readily accessible at reasonable cost to the largest possible number of Members as determined by the Management Committee.

3.5. Special Meetings of the Association. Special meetings of the Association may be called by the Chairman, a majority of the Management Committee, or if the Association receives one or more written demands for a meeting that (a) state the purpose for which the special meeting is to be held and (b) are signed and dated by Members representing at least fifteen percent (15%) or more of the Total Votes of the Association. Special meetings of the Association may be held at a reasonable place in the Project or some other location that is readily accessible at reasonable cost to the largest possible number of Members as determined by the Management Committee. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Members.

3.6. Notice of Meetings of the Association. Notice of the annual meeting of the Association and of any special meetings of the Association shall be hand delivered, sent by facsimile (fax) or electronic (e-mail) transmission, or sent by first-class or certified mail, no fewer than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting to each

Member entitled to vote at such meeting at such Member's address as shown in the records of the Association or to any other mailing address designated in writing by the Member. Consent to electronic notice is deemed granted in the event a Member provides a fax number or e-mail address to the Association. Such notice shall specify the place, date and hour of the meeting and a description of any matters that must be approved by the Members for which the Members' approval is sought at such meeting. The notice of a special meeting shall also include a description of the purposes for which the meeting is called. If any annual or special meeting of the Members is adjourned to a different date, time or place, notice need not be given of the new date, time and place if the new date, time and place are announced at the meeting before adjournment. Notwithstanding the foregoing sentence, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed pursuant to Section 3.8 of these Bylaws or applicable law, notice of the adjourned meeting must be given pursuant to the requirements of this Section 3.6 to Members entitled to vote at the meeting.

3.7. Meetings by Telecommunication. Any or all of the Members may participate in an annual, regular, or special meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting.

3.8. Quorum. The presence in person or by proxy of Members holding fifty-one percent (51%) or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Members of record properly given shall constitute a quorum. In the absence of a quorum at a Association meeting, a majority of those present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall require the presence in person or by proxy of Members holding thirty percent (30%) or more of the Total Votes of the Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings of the Association. Unless otherwise expressly provided in the Nonprofit Act, the Declaration and these Bylaws, any action may be taken at any meeting of the Members upon a majority vote of the Members who are present in person or by proxy.

3.9. Robert's Rules. Robert's Rules of Order Newly Revised (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Governing Documents, the Nonprofit Act, or any special rules of order the Association may adopt.

3.10. Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Association may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of Directors; (c) specify the time by which a ballot must be received by the

Association in order to be counted; and (d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter. Approval by written ballot pursuant to this Section 3.10 shall be valid only when:

3.10.1 The time by which all ballots must be received by the Association has passed so that a quorum can be determined; and

3.10.2 The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

3.11. Action by Written Consent. Other than the election of Directors, any action that may be taken at any annual or special meeting of the Association may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. Such consents shall be signed, dated and delivered to the Association within a sixty (60) day period. Notice must be given to those Members who have not consented at least ten (10) days before the action takes effect.

3.12. Proxies. At each meeting of the Association, each Member entitled to vote shall be entitled to vote in person or by proxy. The right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member or by his, her or its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered, at the beginning of the meeting, to the Secretary/Treasurer of the Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. A Member may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. A proxy is void if it is not dated or purports to be revocable without notice.

3.13. Exercise of Voting. In the event that a Unit is owned by more than one Owner, then by the majority written designation of all Owners after the initial conveyance of such Unit, one Owner shall be appointed as the designated Member ("**Designated Member**") for the Unit for the purposes of voting on Association matters and for billing purposes. This Designated Member may be changed at any time by delivering to the Association written notification of such change signed by all the Owners of the Unit. In the absence of such a designation, if only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the Owners of a Unit is present at a meeting of the Unit, the vote allocated to that Unit may be cast only by the Designated Member. Absent a written designation, there shall be deemed to be majority agreement if any one of the Owners casts the votes allocated to the Unit owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Unit.

3.14. Voting Procedures. A change in the ownership of a Unit shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded; the Management Committee shall thereafter be given written notice of such change and provided satisfactory evidence thereof.

3.15. Transfer of Membership. The rights and obligations of any Member shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and then only to the transferee of ownership of the Unit. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Unit shall operate to transfer the Membership appurtenant to said Unit to the new Owner thereof. Each Purchaser shall notify the Association of his, her or its purchase of a Unit.

3.16. Members of Record. For the purpose of determining Members entitled to notice of or to vote at a meeting of the Association, or in order to make a determination of Members for any other proper purpose, the Management Committee shall fix in advance a date as the record date for any such determination of Members. The record date shall not be more than thirty (30) days prior to the date of the particular meeting of the Association or the date on which the particular action requiring such determination of Members is to be taken, as applicable, unless otherwise extended by the Management Committee. If no record date is fixed, the record date for such determination of Members entitled to vote shall be four o'clock in the afternoon on the day before the day on which notice of the meeting is mailed or delivered. When a determination of Members entitled to vote at any meeting of the Association has been made as provided in this Section 3.16, such determination shall apply to any continuation of such meeting following an adjournment.

#### **ARTICLE 4 OFFICERS**

4.1. Designation. The officers shall be a Chairman, Vice President, and Secretary/Treasurer and such other officers as may from time to time be appointed by the Management Committee as it may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such; provided, however, that an officer may be reimbursed for expenses incurred in performance of his or her duties as an officer to the extent such expenses are approved by the Management Committee and may be compensated for services rendered to the Association other than in the capacity as an officer. All officers and employees of the Association shall serve at the will of the Management Committee. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. Any one person may hold any two or more offices, except that the Chairman may not also be the Secretary/Treasurer.

4.2. Chairman. The Chairman shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of a Association, including the appointment of committees. The Chairman shall exercise general supervision over the Project and its affairs. He or she shall sign, and the Secretary/Treasurer shall witness, on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. He or she shall do and perform all acts which the Management Committee may require.

4.3. Vice President. The Vice President shall perform the functions of the Chairman in his or her absence or inability to serve. He or she shall do and perform all acts which the Management Committee may require.

4.4. Secretary/Treasurer. The Secretary/Treasurer shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Members and the Management Committee. The Secretary/Treasurer shall also be responsible for the fiscal affairs of the Association, and shall have the custody and control of the funds of the Association, but may delegate the daily handling of funds and the keeping of records to the Common Area Manager. The Secretary/Treasurer shall, upon the request of the Chairman, report the state of the finances of the Association at any meeting of the Management Committee or the Members. He or she shall do and perform all acts which the Management Committee may require.

4.5. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the Chairman or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Management Committee at any time, with or without cause.

4.6. Execution of Amendments. Any officer may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

## ARTICLE 5 COMMON EXPENSES; ASSESSMENTS

5.1. Assessments. All Common Expenses shall be assessed against Members in accordance with the undivided interest allocated to each Unit as described in Exhibit B to the Declaration.

5.2. Common Expenses. The Management Committee shall approve or disapprove the estimated Common Expenses for the coming fiscal year. Assessments shall be assessed on a monthly, quarterly or annual basis, at the election of the Management Committee, to the Members.

5.3. Billing Statement for Assessments. The Management Committee shall submit a billing statement to each Member of the amount of the Assessment owed by such Member, at least thirty (30) days prior to the date payment such Assessment is due. Such billing statement shall identify the amount of Assessments due and the due date.

5.4. No Exemption. No Member shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his, her or its Unit.

5.5. Assessment Records. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Members during regular business hours. In accordance with the actions of the Management Committee in assessing Common Expenses



against the Units, the Treasurer shall keep an accurate record of such Assessments and of the payments thereof by each Member.

5.6. Statements for Purchasers. Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic Assessments and the amount of unpaid Assessments charged against such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, the purchaser shall not be liable for the payment of an amount in excess of the unpaid Assessments shown thereon, provided that the former Owner shall remain so liable. Any such excess which cannot be promptly collected from the former Owner-grantor shall be reassessed by the Management Committee as a Common Expense to be collected from all Members, including without limitation the purchaser of such Unit and his, her or its successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Management Committee for which the Assessment is made relate in whole or in part to any period prior to that date. The Management Committee is authorized to require a reasonable fee not to exceed \$10.00, unless otherwise authorized by the Act, for furnishing such statements.

5.7. Statements for Members and Mortgagees. In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days prior written request therefor, provide to any Member and to any Mortgagee, a current statement of unpaid Assessments for Common Expenses and for any expenses of and advances by the Management Committee with respect to a Unit. The Management Committee is authorized to require a reasonable fee not to exceed \$10.00, unless otherwise authorized by the Act, for furnishing such statements.

5.8. Collection. All Assessments shall be a separate, distinct and personal liability of the Members at the time each Assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of Assessments. In all cases where all or part of any Assessments for Common Expenses, and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Management Committee shall reassess the same as a Common Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Assessments.

5.9. Limitations on Alterations, Additions and Improvements of Common Areas. There shall be no structural alterations, capital addition to, or capital improvements of the Common Areas requiring an expenditure in excess of One Hundred Thousand Dollars (\$100,000.00) without prior approval of Members holding a majority of the Total Votes of the Association unless said capital improvements are paid for by the Common Area Manager and recouped out of the gross proceeds from rentals and leases over a period of not less than two (2) years nor more than five (5) years.

## ARTICLE 6 LITIGATION

6.1. Expenses. If any action is brought by a Director on behalf of the Association, the expenses of suit, including reasonable attorneys' fees, shall be a Common Expense. Except as otherwise provided by the Declaration or applicable Utah law, if any action is brought against the Members or against the Management Committee or the Directors, officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Members, the expenses of suit, including attorneys' fees, shall be a Common Expense. If any action is brought against one or more, but less than all Members, with the result that the ultimate liability would, if proved, be borne solely by such Members named as defendants, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Members, as a Common Expense or otherwise.

6.2. Defense. Except as otherwise provided by applicable Utah law, any action brought against the Association, the Management Committee or the Directors, officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee and the Members and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Members, shall be directed to such Members who are named defendants, which Members shall promptly give written notice thereof to the Management Committee, and such action shall be defended by such Members.

## ARTICLE 7 ENFORCEMENT

7.1. Abatement and Enjoinment of Violations by Members. The violation of any Association Rules, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

7.1.1 To enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Member or Members, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass provided that items of construction may not be altered or demolished without proper judicial proceedings; and/or

7.1.2 To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.2. Monetary Fines. The Management Committee may assess a fine against a Member for violations of the Governing Documents provided that the Management Committee shall give notice to the Member of the violation and inform the Member that a fine will be imposed if the violation is not cured within the time designated by the Management Committee, which shall be at least 48 hours. The Management Committee may levy fines in the amounts

that it, in its sole discretion, shall determine to be reasonable for each violation of the Governing Documents provided that cumulative fines for a continuing violation may not exceed \$500 per month unless otherwise allowed by law. A Member who is assessed a fine may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed.

7.3. Cause of Action. The Management Committee shall have a right of action against Members who fail to comply with any provision of the Governing Documents or the decisions of the Association or Management Committee. Before pursuing such cause of action, the Management Committee shall provide the Member notice of the alleged violation and the opportunity to request an informal hearing.

7.4. Temporary Suspension. The Management Committee may impose a temporary suspension of a Member's right to use the Common Areas or other appropriate discipline against a Member who has failed to comply with any provision of the Governing Documents. Prior to such suspension or other discipline, the Management Committee shall provide the Member notice of the alleged violation and the opportunity to request an informal hearing.

7.5. Remedies Cumulative. These remedies are cumulative to other remedies provided in the Declaration and these Bylaws, any rules or regulations adopted by the Management Committee, or in any other applicable laws.

## ARTICLE 8 ACCOUNTING

8.1. Accounting and Recordkeeping. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Secretary/Treasurer. The Association shall maintain financial records, records of Assessments as required by Section 5.5 above and such other records as required by the Declaration or by law. The cost of any audit shall be a Common Expense unless otherwise provided in the Declaration.

8.2. Financial Statements. At the close of each fiscal year, the books and records of the Association shall be prepared by an independent public accountant approved by the Management Committee, and financial statements shall be prepared by said accountant and made available at such location as records of the Association are maintained for inspection by Members during normal business hours.

8.3. Budget. A budget for each fiscal year shall be adopted by the Management Committee and distributed to all Members prior to the beginning of the fiscal year to which the budget applies.

8.4. Maintenance and Inspection of Records. The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project maintained by the Association, Common Area Manager or managing company shall be made available for inspection and copying by any Member or his, her or its duly appointed representative at any reasonable time and for a purpose reasonably related to his, her or its interest as a Member, at the office where the records are maintained,

including the Common Area Manager's office. Upon receipt of an authenticated written request from a Member along with the fee prescribed by the Management Committee to defray the costs of reproduction, the Common Area Manager or other custodian of records of the Association shall prepare and transmit to the Member a copy of any and all records requested. The Association may, as a condition to permitting a Member to inspect the membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the Member's interest in the Association. The Management Committee shall establish reasonable rules with respect to:

8.4.1 Notice to be given to the custodian of the records by the Member desiring to make the inspection or obtain copies;

8.4.2 Hours and days of the week when such an inspection may be made;  
and

8.4.3 Payment of the cost of reproducing copies of documents requested by a Member.

8.5. Inspection by Directors. Every Director shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Director agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and the Director's interest in the Association.

## **ARTICLE 9 RENTAL OR LEASE OF UNITS BY MEMBERS**

9.1. Member Responsible. The provisions of these Bylaws shall apply with equal force to all occupants of a Unit. Any Member who rents or leases or otherwise permits any other person to utilize his, her or its Unit shall be responsible for the conduct of his, her or its occupants, and upon written notice from the Management Committee or the Common Area Manager, said Member shall be responsible for correcting violations committed by such occupants of the Declaration, these Bylaws or the rules and regulations adopted by the Association.

9.2. Violations. If a Member fails to correct violations by his, her or its occupants within the time designated by the Management Committee, the Management Committee or Common Area Manager shall be deemed to be the agent of the Member and empowered to take any enforcement action the Member would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Member and payable within thirty (30) days of assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Declaration.

9.3. Remedies. The power of the Management Committee or Common Area Manager hereunder over occupants shall include but not be limited to any and all legal remedies available

under the laws of the State of Utah. Any Member by the act of renting, leasing or otherwise permitting any other person to utilize his, her or its Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Common Area Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Common Area Manager shall include but not be limited to the right to seek eviction of the occupant without any liability to the Member.

#### **ARTICLE 10 AMENDMENT OF BYLAWS**

Except as otherwise provided in the Declaration, these Bylaws, or by applicable law, these Bylaws may be amended by the vote of Members holding at least a majority of the Total Votes of the Association at a meeting duly called for such purpose; or without a meeting by the written assent of the Members holding at least a majority of the Total Votes of the Association. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Members, and the amendment shall be effective upon recording in the Office of the Salt Lake County Recorder.

#### **ARTICLE 11 MISCELLANEOUS**

11.1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally sent by United States mail, first class postage prepaid, facsimile (fax) or electronic (e-mail) transmission to:

11.1.1 If to a Member, at the mailing address, fax number or e-mail address which the Member has designated in writing and filed with the Secretary/Treasurer or, if no such address has been designated, at the street address of such Member's Unit; or

11.1.2 If to the Association or the Common Area Manager, at the principal office of the Association or the Common Area Manager, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section 11.1.

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

11.3. Waiver. The failure of the Management Committee to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by the Management Committee.

11.4. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

11.5. Effective Date. These Bylaws shall take effect as of the date of recording in the Official Records of Salt Lake County, Utah.

11.6. Counterparts. These Bylaws may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

