

DECLARATION OF CONDOMINIUM

FOR

THE BRIANWOOD CONDOMINIUM PROJECT

An Expandable Condominium Project

1980

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DECLARATION OF CONDOMINIUM

FOR

THE BRIANWOOD CONDOMINIUM PROJECT

An Expandable Condominium Project

This Declaration of Condominium, hereinafter referred to as the "Declaration," is made and executed this 16<sup>th</sup> day of January, 1980, by BRIAN HEAD ENVIRONMENTS, INCORPORATED, a Utah corporation, hereinafter referred to as the "Declarant."

RECITALS

A. Description of Land. The Condominium Project subject hereof is situated in and upon the following described land in Iron County, State of Utah:

Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and Meridian; and running thence North 44°20' West 215.98 feet; thence North 30°00' East 51.93 feet; thence North 45°40' East 300.00 feet; thence South 35°00' East 233.09 feet; thence South 45°40' West 312.20 feet to the point of beginning.

Together with a 66.0 foot right-of-way described as follows: Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and Meridian, and running thence North 44°20' West 406.18 feet to the Easterly right-of-way line of State Highway No. 143; thence South 45°40' West along said Easterly right-of-way line 66.00 feet; thence South 44°20' East 422.74 feet; thence North 31°34'43" East 68.05 feet to the point of beginning.

B. Building and Improvements. The Declarant is the record fee simple owner of the Subject Land. The Declarant has constructed or will construct a certain Building and other improvements in and upon the Subject Land, as shown on the Record of Survey Map referred to below.

C. Record of Survey Map. The Declarant intends to execute and record in the office of the County Recorder of Iron County, State of Utah, a certain instrument pertaining to the Project and entitled "Record of Survey Map for The Brianwood Condominium Project, An Expandable Condominium Project."

D. Intent and Purpose. The Declarant intends by recording this Declaration and the Map to submit the Subject Land, the Building, and all other improvements situated in or upon the Subject Land to the provisions of the Condominium Act as a fee simple Condominium Project and to impose upon said property

mutually beneficial restrictions under a general plan of improvement for the benefit of all Condominiums within said Project and Owners thereof.

E. Expandable Project. The Declarant intends to reserve herein the right to expand the Project by adding thereto certain additional land and improvements in accordance with the provisions of this Declaration and the Condominium Act.

NOW, THEREFORE, the Declarant does hereby make the following Declaration:

## ARTICLE I

### DEFINITIONS

1.01. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02. "Association" shall mean Brianwood Owners Association, a Utah nonprofit corporation, organized to be the Association referred to herein.

1.03. "Board of Trustees" shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and the Articles of Incorporation and By-laws of the Association.

1.04. "Building" shall mean that certain three (3) story condominium building that has been or will be constructed on the Subject Land, as such condominium building is shown on the Map.

1.05. "Common Areas" shall mean all physical portions of the Project, except all Units.

1.06. "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all Owners and all other property (real, personal, or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Area, except to the extent otherwise expressly provided in this Declaration.

1.07. "Condominium" shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit A hereto.

1.08. "Condominium Act" shall mean the Utah Condominium Ownership Act and amendments thereto. (Title 57, Chapter 8, Utah Code Annotated).

1.09. "Declarant" shall mean Brian Head Environments, Incorporated, a Utah corporation.

1.10. "Limited Common Areas" shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.03 hereof. Any balconies, porches, or storage facilities that are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation.

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

1.12. "Map" shall mean the Record of Survey Map for The Brianwood Condominium Project, an Expandable Condominium Project, pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Iron County, State of Utah.

1.13. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

1.14. "Mortgagee" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.

1.15. "Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Iron County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.16. "Project" shall mean the Subject Land, the Building, and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

1.17. "Subject Land" shall mean the land upon which the Project is situated, as more particularly described in Paragraph A of the Recitals above.

1.18. "Total Votes of the Association" shall mean the total number of votes appertaining to all Condominiums in the Project, as shown in Exhibit A attached hereto.

1.19. "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of the Building and bounded by the interior surfaces of the walls, floors, ceilings, windows, doors, and built-in fireplaces, if any, along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor



coverings on interior surfaces shall be deemed to be a portion of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: Bearing walls, floors, ceilings, and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

### SUBMISSION AND DIVISION OF PROJECT

2.01. Submission to Condominium. The Declarant, as record fee simple owner of the Subject Land, hereby submits the Subject Land, the Building, and all other improvements now or hereafter made in or upon the Subject Land to the provisions of the Condominium Act. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as The Brianwood Condominium Project. All of said property 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 said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums; 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 the Declarant, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02. Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas, as set forth in Exhibit A attached hereto and by this reference made a part hereof.

## ARTICLE III

### EXPANSION OF PROJECT

3.01. Additional Land. The Declarant hereby reserves the right, at its option, to expand the Project in accordance with the provisions of this Declaration and the Condominium Act, by adding thereto all or any portion or portions of the following described land (hereinafter referred to as the "Additional Land") located in Iron County, State of Utah:

Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and

Meridian and running thence North 44° 20' West 215.98 feet; thence South 30° 00' West 468.55 feet; thence South 10° 16' 39" East 293.20 feet; thence North 19° 55' East 90.00 feet; thence North 45° 50' East 77.69 feet; thence North 31° 34' 43" East 470.74 feet to the point of beginning.

The Declarant's option to expand the Project shall be unlimited and may be exercised at any time and from time to time (without the consent of the Owners or any other person or persons) during the period beginning on the date that this Declaration is recorded and ending seven (7) years thereafter. The Declarant may, at any time or at different times, add to the Project all or any portion or portions of the Additional Land in any order and without limitations. The Declarant shall in no event be obligated to add to the Project all or any portion or portions of the Additional Land whatsoever, nor shall the Declarant be limited as what portion or portions of the Additional Land, if any, may be added to the Project.

3.02. Additional Units and Improvements. The Declarant shall have the right to create a maximum of seventy (70) Units on the Additional Land, and a maximum of fifty (50) Units per acre (or proportional equivalent) on any portion or portions of the Additional Land added to the Project. All Units created on the Additional Land or any portion or portions of such land added to the Project shall be restricted exclusively to the same residential and similar purposes as are Units on the Subject Land. The Declarant makes no assurances (a) as to whether structures erected on any portion of the Additional Land added to the Project will be compatible with structures erected on the Subject Land in terms of the quality of construction, principal materials used, or architectural styles, or (b) as to the location or locations of any improvements that may be made on any portions of the Additional Land added to the Project, or (c) as to what improvements, if any, may be made on any portions of the Additional Land added to the Project, or (d) as to what types of Units may be created on any portions of the Additional Land added to the Project. The Declarant reserves the right to create Limited Common Areas within any portion or portions of the Additional Land, and makes no assurances as to the types, sizes, or maximum number of such Limited Common Areas.

3.03. Expansion of Project. The Project may be expanded under the provisions of this Declaration and the Condominium Act from time to time by recording in the office of the County Recorder of Iron County, State of Utah, a new or supplemental Record of Survey Map and an amendment to this Declaration. Such new or supplemental Record of Survey Map shall be duly executed and acknowledged by the Declarant, and by any and all other owners and lessees of that part of the Additional Land added to the Project, and shall contain the information necessary to comply with the provisions of Section 57-8-13(1) of the Condominium Act, as amended. The required amendment to this Declaration shall also be duly executed and acknowledged by the Declarant, and by any and all other owners and lessees of that part of the Additional Land added to the Project, shall contain a legal description by metes and bounds of that part of the

Additional Land added to the Project, and shall reallocate undivided interests in the Common Areas in accordance with the provisions of Section 3.04 hereof.

3.04. Reallocation of Undivided Interests. In the event the Project is expanded in accordance with the provisions of this Declaration and the Condominium Act, and in each such event, the undivided interests in the Common Areas and the votes appurtenant to the Units shall be reallocated among all of the Units in the Project, including the Units added to the Project. A part of the entire interest in the Common Areas shall be allocated to each Unit in proportion to the size of such Unit, and the total of the undivided interests so allocated to all of the Units in the Project shall add up to one hundred percent (100%). The size of each Unit shall be determined on the basis of the approximate number of square feet of floor space within such Unit, and percentages of undivided interests may be rounded off. The votes shall be similarly reallocated, and the total of the votes so allocated to all of the Units in the Project shall add up to one thousand (1,000).

#### ARTICLE IV

##### NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.01. Interior of Units. 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 his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries.

4.02. Maintenance of Units. Each Owner shall keep the interior of his Unit, including without limitation, interior walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

4.03. Right to Combine Units. With the written consent of the Association, two or more Units may be utilized by the Owner or Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Association, any walls, floors, or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner or Owners of such adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of

the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas.

4.04. Title. Title to a Condominium within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.

4.05. Ownership of Common Areas. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit A attached hereto and by this reference made a part hereof. Except as otherwise provided in this Declaration or in the Condominium Act, the percentages appurtenant to each Unit as shown in said Exhibit A shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner.

4.06. Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof during the period of condominium ownership hereunder, 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 Condominium. Every devise, encumbrance, conveyance, or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

4.07. No Subdivision. No Unit or portion thereof may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership.

4.08. 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.

4.09. Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part

thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance of any Condominium 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.

4.10. Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

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

4.12. Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. 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 Condominium within the Project and all of the limitations on such ownership as described in this Declaration and/or the Articles of Incorporation and Bylaws of the Association.

## ARTICLE V

### EASEMENTS

5.01. Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, 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, an easement for such encroachment and

for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Subject Land, an easement for such encroachment shall and does exist. 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 the Building or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

5.02. Easements for Maintenance, Cleaning, and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association 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 maintenance, cleaning, repair, or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

5.04. Association's Right to Use Common Areas. The Association 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 it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

5.05. Easement for Access to Condominiums. Each Condominium shall have access to a public street by an Access Easement shown on the Map. In the event the Declarant or the Association provides a suitable substitute easement at any time in the future, each Owner, by acceptance of a conveyance of a Condominium, agrees for himself and his successors in interest to reconvey to the Declarant (upon 30 days' written notice by the Declarant) all of such Owner's right, title, and interest in the

original easement or easements. Each Mortgagee, by acceptance of a Mortgage on a Condominium, agrees for itself and its successors in interest to release the original easement or easements from such Mortgage upon like notice and subject to like proviso, upon receipt of proper instruments subjecting the suitable substitute easement to the lien of the Mortgage, provided that the Mortgage shall have the same priority with respect to the substitute easement as it had with respect to the original easement or easements.

5.06. Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein as shown on the Map, for the purpose of completing construction of all and any improvements to be constructed on any portion or portions of the Additional Land added to the Project, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

5.07. Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE VI

### RESTRICTIONS ON USE

6.01. Residential Uses. The Units within the Project shall be used exclusively for residential and lodging purposes, such purposes to be confined to Units within the Project. No Unit shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Units owned by Declarant as sales models or property management offices, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time.

6.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.03. Restriction on Signs. No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or

devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Association, except as may be temporarily necessary to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Association.

6.04. Restriction on Animals. No animals, birds, fish, reptiles, or pets of any kind shall be brought or allowed to remain in or upon any part of the Project, unless and until written authorization is obtained from the Association. The Association, in the sole discretion of its Board of Trustees, shall have the right to revoke such authorization at any time.

6.05. No Structural Alterations. No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or to the Common Areas. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of the Building or the safety of property or impair any easement or hereditament appurtenant to the Project.

6.06. No Obstructions. 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, except with the prior written consent of the Association.

6.07. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project 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 that which the Association, but for such activity, would pay. 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, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

6.08. Rules and Regulations. The Owners shall comply with each and all of the rules and regulations governing use of the Units and/or Common Areas, as such rules and regulations may from time to time be adopted, amended, or revised by the Association, in the sole discretion of its Board of Trustees.

6.09. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project or on any portions of the Additional



Land added to the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any of said provisions, covenants, conditions, or restrictions upon completion of the construction.

## ARTICLE VII

### THE ASSOCIATION

7.01. Membership. Each Owner shall be entitled and required to be a member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Condominium shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium.

7.02. Board of Trustees. Until such time as the responsibility for electing the Trustees of the Association is turned over to the Owners in accordance with Utah law, the Declarant shall have the exclusive right to appoint and to remove all such Trustees.

7.03. Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit A attached hereto and by this reference made a part hereof. The number of votes appurtenant to each Condominium as set forth in said Exhibit A shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded; provided, however, that the number of votes appurtenant to each respective Condominium may be subject to change in the event the Project is expanded as provided in Article III hereof.

7.04. Amplification. The provisions of this Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration. A copy

of the initial Bylaws of the Association are attached hereto as Exhibit B and by this reference made a part hereof.

7.05. Amendment of Article. This Article VII shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

#### ARTICLE VIII

##### CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.01. Common Areas. The Association, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair; provided, however, that each Owner shall keep the Limited Common Areas, if any, designated for use in connection with his Unit in a good, clean, safe, sanitary, and attractive condition. The Association shall be responsible for the maintenance and repair of the exterior of the Building and the grounds, including without limitation painting, repair and replacement of exterior trim and roofs, and maintenance of landscape, walkways, and driveways. The Association shall also be responsible for maintenance, repair, and replacement of Common Areas within the Building, including without limitation hallways, elevators, utility lines, and all Common Facilities, improvements, and other items located within or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

8.02. Manager. The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

8.03. Miscellaneous Goods and Services. The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. The Association may 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. In addition to the foregoing, the Association may acquire, and pay for out of the Common Expense Fund, 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), and insurance, bonds, and other goods and services common to the Units.

8.04. Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such Fund.

8.05. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units, the Common Areas, and the Limited Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

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

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

## ARTICLE IX

### ASSESSMENTS

9.01. Agreement to Pay Assessments. Declarant, for each Condominium owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX.

9.02. Annual Assessments. Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with maintenance and operation of the Common Areas and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, among other things, the following: Expenses of management; taxes and special assessments (until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Association employees, including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.02 shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. Declarant shall be liable for the amount of any assessments against completed Condominiums owned by it.

(c) Annual Budget. Annual Assessments shall be determined on a May 1 through April 30 fiscal year basis. On or before April 1 each year (commencing with April 1, 1980), the Association shall prepare or cause to be prepared an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Annual Assessments shall be made on a May 1 through April 30 fiscal year basis. The Association shall furnish to each Owner a copy of the budget and notify each Owner as to the amount of the Annual Assessment with respect to his Condominium on or before April 15 each year for the fiscal year commencing on May 1 next following such date. Each Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, that the first Annual Assessment shall be based upon and shall be payable in equal monthly installments for the balance of the fiscal year remaining after the date hereof. All unpaid installments of any Annual Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such installment is due until paid. The failure of the Association to give timely

notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 9.03 below, except that the vote therein specified shall be unnecessary.

9.03. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the total votes of the Association, Special Assessments, payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.04. Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium, and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Iron County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in

which mortgages on real property may be foreclosed in the State of Utah. 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 Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium. The rights of the Association under this Section 9.04 shall be in addition to any other rights provided by law with respect to liens for and collection of unpaid assessments.

9.05. Personal Obligation of Owner. The amount of any Annual or Special Assessment against any Condominium shall be the personal obligation of the Owner of such Condominium 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 Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.06. Statement of Account. Upon payment of a reasonable fee not to exceed \$10.00 and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.07. Personal Liability of Purchaser. Subject to the provisions of Section 9.06, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.08. Amendment of Article. This Article IX shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

ARTICLE X

INSURANCE

10.01. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) Fire and Casualty Insurance. The Association shall obtain a policy or policies of insurance on the Project in such amounts as shall provide for replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained by other condominium projects similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the Project.

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

(d) Fidelity Insurance or Bond. The Association shall purchase, in such amounts and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of trustees, officers, and employees, destruction or disappearance of money or securities, and forgery.

10.02. Form of Insurance. Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) Casualty Insurance. Casualty insurance shall be carried in a form or forms naming the Association as the insured, as trustee for the Owners and for the Declarant (whether or not Declarant is an Owner), and such policy or policies shall specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Areas). Each policy shall provide a standard, noncontributory mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. Each policy

also shall provide that it cannot be cancelled either by the insured or by the insurance company until after fifteen (15) days prior written notice is first given to each Owner, to the Declarant, and to each Mortgagee which has requested such notice in writing. The Association shall furnish to each Owner, and to each Mortgagee requesting the same, a certificate of coverage, including an identification of the Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name the Association as the insured, as trustee for each Owner and for the Declarant (whether or not Declarant is an Owner), and shall protect the Association, each Owner, and the Declarant against liability for acts or omissions of the Association and all other persons and entities in connection with the ownership, operation, maintenance, or other use of the Project. Each such policy shall provide that it cannot be cancelled either by the insured or by the insurance company until after fifteen (15) days prior written notice to the Association, to each Owner, and to the Declarant.

(c) Policies. The Association shall make every effort to secure insurance policies that will provide for the following:

(i) The insurer shall waive subrogation as to any claims against the Association, the Declarant, the Manager, the Owners, and their respective servants, agents, and guests;

(ii) The policy or policies on the Project cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

(iii) The policy or policies on the Project cannot be cancelled, invalidated, or suspended on account of the conduct of any trustee, officer, or employee of the Association, without a prior demand in writing that the Association cure the defect; and

(iv) Any "no other insurance" clause in the policy or policies on the Project shall exclude individual Owners' policies from consideration.

10.03. Additional Coverage. The provisions of this Declaration 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 by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.04. Adjustment and Contribution. Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.



10.05. Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium; his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents, and guests, if such insurance can be obtained pursuant to industry practice without additional premium charge for the waiver of subrogation rights.

10.06. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

11.01. Association as Attorney in Fact. 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 from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his 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.

11.02. Definition of 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.

11.03. Procedures. In the event any part of the Project is damaged or destroyed, the Association shall proceed as follows:

(a) Estimate of Costs. 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 that part of the Project damaged or destroyed.

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(b) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out. The proceeds of all insurance collected or maintained by the Association shall be available to the Association to pay the costs of such repair and reconstruction. If the proceeds of such insurance are insufficient to pay the actual costs of such repair and reconstruction, the Association shall levy a Special Assessment sufficient to provide funds to pay such actual costs of repair and reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.03 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.

(c) Insufficient Insurance--Less than 75% Destruction. 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 Building is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The proceeds of all insurance collected or maintained by the Association shall be available to the Association to pay the costs of such repair and reconstruction. 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 9.03 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.

(d) Insufficient Insurance--75% or More Destruction. 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 Building is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 11.03(c) hereof if, but only if, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the total votes of the Association to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the total votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Iron County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A hereto, 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.

11.04. Repair or Reconstruction. If the damage or destruction is to be repaired and 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 the same vertical and horizontal boundaries as before.

11.05. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments made pursuant to Sections 11.03(b) and (c) 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 cost 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 proportion to their respective percentages of ownership of the Common Areas.

11.06. Sale of Condominium Project. Notwithstanding all other provisions hereof, the Owners may, by an affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners and it shall thereupon become the duty of each and every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect such sale. The proceeds of any

such sale shall be divided among all Owners in proportion to the undivided interest in the Common Areas owned by each respective Owner, as set forth in Exhibit A hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the interest of such Owner in the Project.

11.07. Amendment of Article. This Article XI shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

## ARTICLE XII

### CONDEMNATION

12.01. Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

12.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

12.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

12.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Association shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners

of those Condominiums that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; and

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a member of the Association. The Association shall reallocate the voting rights and the undivided interest in the Common Areas appurtenant to such Unit in accordance with the Condominium Act.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XI hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

12.05. Amendment of Article. This Article XII shall not be amended unless the Owners of all Condominiums in the Project shall unanimously consent and agree to such amendment by duly recorded instruments.

### ARTICLE XIII

#### OBSOLESCENCE

13.01. Adoption of Plan. Owners holding seventy-five percent (75%) or more of the total votes of the Association may agree that the Project is obsolete and may adopt a written plan for the renewal and reconstruction of the Project, provided that such plan has the unanimous written approval of all first Mortgagees of record at the time of the adoption of such plan. Written notice of adoption of such plan shall be given to all Owners.

13.02. Payment for Renewal and Reconstruction. The Association shall levy a Special Assessment sufficient to provide

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funds to pay the estimated expenses of renewal or reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 9.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

13.03. Sale of Project. Notwithstanding any other provision of this Declaration, the Owners may at any time, by an affirmative vote of at least seventy-five percent (75%) of the total votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Association shall forthwith record in the Office of the County Recorder of Iron County, State of Utah, a notice setting forth such facts, and upon the recording of such notice by the Association, the Project shall be sold or otherwise disposed of by the Association as attorney in fact for all of the Owners. Such action shall be binding upon all Owners, and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective percentages of ownership of the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association and shall be further identified by the Condominium designation and the name of the Owner. The Association, as attorney in fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of assessments made pursuant to this Declaration, third to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owner.

13.04. Amendment of Article. This Article XIII shall not be amended unless the Owners of all Condominiums in the Project shall unanimously consent and agree to such amendment by duly recorded instruments.

#### ARTICLE XIV

##### COMPLIANCE WITH DECLARATION AND BYLAWS

14.01. Compliance. Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same

may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

14.02. Enforcement and Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

## ARTICLE XV

### GENERAL PROVISIONS

15.01. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

15.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

15.03. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if

personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. Mail, postage prepaid, addressed to the Association at its offices at the Project, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed given when personally served or when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section, as the case may be.

15.04. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, shall obtain an audit, by certified public accountants, of all books and records pertaining to the Project at no greater than annual intervals, and copies thereof shall be furnished to the Owners.

15.05. Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least sixty percent (60%) of the total votes in the Association consent and agree to such amendment by instruments duly recorded in the office of the County Recorder of Iron County, State of Utah.

15.06. Effective Date. This Declaration shall take effect upon recording.

15.07. Agent for Service. For so long as Declarant owns Condominiums with appurtenant votes exceeding fifty-one percent (51%) of the total votes of the Association, the agent for service of process under the Condominium Act shall be Eugene E. Buttery, whose address is P. O. Box 43, Brian Head, Utah 84719. Thereafter, the agent for service of process shall be the current President of the Association, and the Association shall cause such President's name and address to be listed in an appropriate instrument recorded in the office of the County Recorder of Iron County, State of Utah.

15.08. Owner's Obligations. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

15.09. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury to or damage of any person or property caused by the elements or by another Owner or person





EXHIBIT A

(Attached to and forming a part of the Declaration of Condominium for The Brianwood Condominium Project, an Expandable Condominium Project)

UNITS, UNDIVIDED OWNERSHIP INTERESTS, AND VOTES

<u>UNIT NO.</u>	<u>SIZE*</u> <u>(Square Feet)</u>	<u>UNDIVIDED OWNERSHIP INTERESTS**</u> <u>(Percentage)</u>	<u>VOTES</u>
1	622	1.9%	19
2	622	1.9%	19
3	622	1.9%	19
4	622	1.9%	19
5	622	1.9%	19
6	622	1.9%	19
7	622	1.9%	19
8	622	1.9%	19
9	482	1.5%	15
10	482	1.5%	15
11	482	1.5%	15
12	482	1.5%	15
13	656	2.0%	20
14	656	2.0%	20
15	622	1.9%	19
16	622	1.9%	19
17	482	1.5%	15
18	622	1.9%	19
19	622	1.9%	19
20	622	1.9%	19
21	622	1.9%	19
22	622	1.9%	19
23	622	1.9%	19
24	622	1.9%	19
25	622	1.9%	19
26	482	1.5%	15
27	482	1.5%	15
28	482	1.5%	15
29	482	1.5%	15
30	656	2.0%	20
31	656	2.0%	20
32	622	1.9%	19
33	622	1.9%	19
34	660	2.0%	20
35	824	2.5%	25
36	824	2.5%	25
37	824	2.5%	25
38	824	2.5%	25
39	824	2.5%	25
40	824	2.5%	25
41	824	2.5%	25
42	824	2.5%	25
43	660	2.0%	20

44	660	2.0%	20
45	660	2.0%	20
46	660	2.0%	20
47	858	2.75%	27.5
48	858	2.75%	27.5
49	824	2.5%	25
50	<u>824</u>	<u>2.5%</u>	<u>25</u>
TOTALS	<u>32,658</u>	<u>100 %</u>	<u>1,000</u>

\*Size has been determined on the basis of the approximate number of square feet of floor space within each respective Unit, as shown on the Map and rounded off.

\*\*Undivided Ownership Percentages have been computed on the basis of the relative sizes of the Units (as shown above) and rounded off.

EXHIBIT B

(Attached to and forming a part of the Declaration of Condominium for The Brianwood Condominium Project, an Expandable Condominium Project)

BYLAWS

OF

THE BRIANWOOD OWNERS ASSOCIATION

A Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Co-operative Association Act, the Board of Trustees of The Brianwood Owners Association, a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.01. Name. The name of the nonprofit corporation is The Brianwood Owners Association, hereinafter the "Association."

1.02. Offices. The principal office of the Association shall be at The Brianwood Condominium Project, an Expandable Condominium Project, hereinafter the "Project", situated upon the following described real property in Iron County, State of Utah:

Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and Meridian, and running thence North 44° 20' West 215.98 feet; thence North 30°00' East 51.93 feet; thence North 45°40' East 300.00 feet; thence South 35°00' East 233.09 feet; thence South 45°40' West 312.20 feet to the point of beginning.

Together with a 66.0 foot right-of-way described as follows: Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and Meridian, and running thence North 44°20' West 406.18 feet to the Easterly right-of-way line of State Highway No. 143; thence South 45°40' West along said Easterly right-of-way line 66.00 feet; thence South 44°20' East 422.74 feet; thence North 31°34'43" East 68.05 feet to the point of beginning.

1.03. Expandable Project. Brian Head Environments, Incorporated, a Utah corporation, will have the right, at its option, to expand the Project in accordance with the provisions of the Utah Condominium Ownership Act and the Declaration referred to in Section 2.01 hereof to include all or any part or

parts of the following described real property in Iron County, State of Utah:

Beginning at a point East 589.94 feet and South 129.96 feet from the Southwest corner of Section 2, Township 36 South, Range 9 West, Salt Lake Base and Meridian and running thence North 44° 20' West 215.98 feet; thence South 30°00' West 468.55 feet; thence South 10°16'39" East 293.20 feet; thence North 19°55' East 90.00 feet; thence North 45°50' East 77.69 feet; thence North 31°34' 43" East 470.74 feet to the point of beginning.

## ARTICLE II

### DEFINITIONS

2.01. Definitions. Except as otherwise provided herein or required by the context hereof, all terms defined in Article I of the Declaration of Condominium for The Brianwood Condominium Project, an Expandable Condominium Project, hereinafter referred to as the "Declaration", shall have such defined meanings when used in these Bylaws.

## ARTICLE III

### MEMBERS

3.01. Annual Meetings. The annual meeting of members shall be held on the third Saturday in August each year at 10:00 o'clock a.m., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the election of Trustees shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the members.

3.02. Special Meetings. Special meetings of the members may be called by the Board of Trustees, the President, or upon the written request of members holding not less than twenty percent (20%) of the total votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

3.03. Place of Meetings. The Board of Trustees may designate any place in Iron County, State of Utah as the place of meeting for any annual meeting or for any special meeting called by the Board. A waiver of notice signed by all members may designate any place, either within or without the State of Utah, as the place for holding such meeting. If no designation is made, or if a special meeting is otherwise called, the place

of the meeting shall be at the principal office of the Association.

3.04. Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time, place, and purposes of all meetings of the members (whether annual or special) to be delivered, not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his registered address, with first class postage thereon pre-paid. Each member shall register with the Association such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a member's Unit address shall be deemed to be his registered address for purposes of notice hereunder.

3.05. Members of Record. Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium has been vested in such owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting, for determining members entitled to notice of or to vote at any meeting of the members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Condominiums in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members.

3.06. Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the total votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

3.07. Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument

authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.08. Votes. With respect to each matter (except the election of Trustees) submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. At each election of Trustees, each member entitled to vote at such election shall have the right to accumulate his votes by giving one candidate as many votes as shall equal the number of Trustees to be elected multiplied by the number of votes relating to his membership, or by distributing such votes on the same principle among any number of candidates. The election of Trustees shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the members, but such holders must act unanimously to cast the votes relating to their joint membership.

3.09. Waiver of Irregularities. All inaccuracies and/or irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and/or method of ascertaining members present shall be deemed waived if no objection thereto is made at the meetings.

3.10. Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

#### ARTICLE IV

##### BOARD OF TRUSTEES

4.01. General Powers. The property, affairs, and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws, or by the Declaration vested solely in the members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions, and powers as are properly delegable.

4.02. Number, Tenure, and Qualifications. The number of Trustees of the Association shall be five (5). The initial Board of Trustees specified in the Articles of Incorporation

shall serve until the Declarant turns over to the members, in accordance with Utah law, the responsibility for electing Trustees. At the first annual meeting of the members held after the Declarant turns over to the members responsibility for electing Trustees, the members shall elect, in accordance with principles of cumulative voting, five (5) Trustees to serve as follows: The two (2) candidates receiving respectively the first and second highest number of votes shall be elected to serve for a term of three (3) years; the two (2) candidates receiving respectively the third and fourth highest number of votes shall be elected to serve for a term of two (2) years; and the candidate receiving the fifth highest number of votes shall be elected to serve for a term of one (1) year. At each annual meeting thereafter, the members shall elect for three (3) year terms the appropriate number of Trustees to fill all vacancies created by expiring terms of Trustees. Trustees must be members of the Association.

4.03. Regular Meetings. The regular annual meeting of the Board of Trustees shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the members. The Board of Trustees may provide by resolution the time and place, within Iron County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

4.04. Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any place, within Iron County, State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally, or mailed to each Trustee at his registered address, or by Telegram. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with first class postage thereon pre-paid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Trustee may waive notice of a meeting.

4.05. Quorum and Manner of Acting. A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

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

4.07. Resignation and Removal. A Trustee may resign



at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee, except those appointed by Declarant, may be removed at any time, for or without cause, by the affirmative vote of sixty percent (60%) of the total votes of the Association at a special meeting of the members duly called for such purpose.

4.08. Vacancies and Newly Created Trusteeships. If vacancies shall occur in the Board of Trustees by reason of the death or resignation of a Trustee (other than a Trustee appointed by Declarant), or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created Trusteeships shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancies in the Board of Trustees occurring by reason of the member's removal of a Trustee may be filled by election by the members at the meeting at which such Trustee is removed. If vacancies shall occur in the Board of Trustees by reason of death, resignation, or removal of a Trustee appointed by the Declarant, such vacancies shall be filled by an appointment to be made by the Declarant. Any Trustee elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Trusteeship, as the case may be.

4.09. Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees, may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

## ARTICLE V

### OFFICERS

5.01. Number. The officers of the Association shall be a President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Trustees.

5.02. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary or the Treasurer. No person holding two or more offices shall act in or execute any instrument in the capacity of more than

one office. The President, the Secretary, and the Treasurer shall be and remain Trustees of the Association during the entire term of their respective offices. No other officer need be a Trustee.

5.03. Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be members or Trustees of the Association.

5.04. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.05. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.06 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Trustees may require of him.

5.07. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Trustees may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Trustees may require of him.

5.08. The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Board of Trustees. He shall perform such other duties as the Board of Trustees may require of him.

5.09. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that officers may be reimbursed for expenses incurred in performance of their duties as officers and, except as otherwise provided in these Bylaws, may be

compensated for services rendered to the Association other than in their capacities as officers.

## ARTICLE VI

### COMMITTEES

6.01. Designation of Committees. The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least two (2) Trustees. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that committee members may be reimbursed for expenses incurred in performance of their duties as committee members and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee members.

6.02. Proceedings of Committees. Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.

6.03. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least two-thirds of the authorized membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

6.04. Resignation and Removal. Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation either to the President, the Board of Trustees, or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder.

6.05. Vacancies. If any vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## ARTICLE VII

### INDEMNIFICATION

7.01. Indemnification Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse judgment, order, or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

7.02. Indemnification Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.03. Determination. To the extent that a Trustee, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit,

or proceeding referred to in Sections 7.01 or 7.02 hereof, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Sections 7.01 or 7.02 hereof shall be made by the Association only upon a determination that indemnification of the Trustee, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.01 or 7.02 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit, or proceeding, or (ii) by independent legal counsel in a written opinion, or (iii) by the Owners by the affirmative vote of at least fifty percent (50%) of the total votes of the Association at any meeting duly called for such purpose.

7.04. Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit, or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the Trustee, officer, employee, or agent to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this Article.

7.05. Scope of Indemnification. The indemnification provided for by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested members or Trustees, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this Article shall apply to all present and future Trustees, officers, employees, and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees, or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.06. Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee, or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

7.07. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance

maintained, pursuant to this Article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

#### ARTICLE VIII

##### FISCAL YEAR AND SEAL

8.01. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of May each year and shall end on the 30th day of April next following, except that the first fiscal year shall begin on the date of incorporation.

8.02. Seal. The Board of Trustees may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, and the words "Corporate Seal."

#### ARTICLE IX

##### RULES AND REGULATIONS

9.01. Rules and Regulations. The Board of Trustees may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Board of Trustees, and with copies of all amendments and revisions thereof.

#### ARTICLE X

##### AMENDMENTS

10.01. Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty percent (60%) of the total votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed, or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Iron County, State of Utah.

IN WITNESS WHEREOF, the undersigned, constituting all

of the Trustees of The Brianwood Owners Association, have here-  
unto set their hands this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Douglass H. Perry

\_\_\_\_\_  
Charles Shepler

\_\_\_\_\_  
Eugene E. Buttery

\_\_\_\_\_  
James Turek

\_\_\_\_\_  
Walter J. Asher

ACKNOWLEDGMENTS

STATE OF )  
                  ) : ss.  
COUNTY OF )

On the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_, personally ap-  
peared before me DOUGLASS H. PERRY, CHARLES SHEPLER, EUGENE E.  
BUTTERY, JAMES TUREK, and WALTER J. ASHER, the signers of the  
within and foregoing Bylaws of The Brianwood Owners Association,  
each of whom duly acknowledged to me that he executed the same.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at:

My Commission Expires:  
\_\_\_\_\_