

**DECLARATION OF CONDOMINIUM  
AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND BYLAWS  
FOR  
ESCALA LODGES CONDOMINIUM  
AND  
ESCALA LODGES SUBDIVISION, PLAT A**

A Utah Mixed Use Expandable Condominium and Subdivision with Convertible Land and Space

This Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions for Escala Lodges Condominium and for Escala Lodges Subdivision, Plat A, a mixed-use development (the "Declaration") is made and executed by Morinda Properties Escala Lodges LC, a Utah limited liability company, of 333 West River Park Drive, Provo, Utah 84604 (hereinafter "Declarant"), pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

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ALAN SPRIGGS, SUMMIT CO RECORDER  
2005 JUN 17 12:16 PM FEE \$344.00 BY GGE  
REQUESTOR: DON E MULLEN

**RECITALS.**

Declarant holds both legal and equitable title to the real property located in the County of Summit, State of Utah, hereinafter more particularly described, upon which Declarant desires to develop a mixed-use condominium project (the "Tract").

The Property is an area of unique natural beauty, featuring distinctive terrain;

By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to create a mixed use development in which beauty shall be substantially preserved, which will enhance the desirability of working, living or recreating on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

Recorded simultaneously herewith is a Condominium Plat of the Project as required by the Act.

Declarant has constructed, is in the process of constructing or will construct upon the Property certain Lots, Cabins, Units, Common Area and Facilities, and other improvements. All of such construction has been, or is to be, performed in accordance with the SPA for The Canyons and plans contained in the Plat Maps to be recorded concurrently herewith.

Declarant intends to sell to various purchasers fee title to the individual Lots or Units contained in the Tract, and a corresponding membership interest in the Association of Lot Owners subject to the Plat Maps, and the covenants, conditions and restrictions set forth herein.

Since the completion of the Project may be in phases, the completed Project will consist of the original phase and all subsequent phases.

All capitalized terms used in this Declaration shall have the definitions as set forth herein.

The Project shall be known as Escala Lodges.

#### ARTICLE 1. DEFINITIONS.

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article 2.

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

Activity Card shall mean those certain cards which may be issued by the Association and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Project or within the real property governed by this Declaration, subject to the payment of fees which may be established by the Management Committee from time to time.

Assessable Property shall mean each Unit or Lot, except for Exempt Property.

Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

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

Area of Common Responsibility shall mean the Common Area, together with those areas, if any, which the Association does not own but which by the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Association.

Area of Personal Responsibility shall mean a Unit or Lot, together with those areas, if any, which the Owner does not own but which by the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, or by contract become the responsibility of the Owner.

Articles shall mean the Articles of Incorporation of Escala Lodges Homeowners Association.

Association shall mean Escala Lodges Homeowners Association.

Base Common Assessment shall mean the Regular Assessment, less any surcharges, upgrades or other authorized add-on amounts for Activity Cards, Private Amenities, or other private benefits.

Benefited Assessment shall mean an Assessment levied against a particular Unit or Units for expenses incurred or to be incurred by the Association in accordance with this Declaration.

Building shall mean any of the structures constructed in the Project.

Builder shall mean a Person who builds a structure in the Project.

Business and Trade shall be construed to have their ordinary and generally accepted meanings, which shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time; (b) such activity is intended to or does generate a profit; or (c) a license is required therefor. Anything to the contrary notwithstanding, the leasing of a residence shall not be considered a trade or business within the meaning of this subsection.

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

Cabin shall mean any simple structure constructed upon a Lot in accordance with the Design Guidelines which is intended for use and occupancy as a detached single family residence.

Cabin Lot shall mean a Lot upon which a Cabin has been or will be constructed.

Capital Improvements shall mean all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to the ordinary repair, maintenance or replacement of existing capital assets.

County shall mean Summit County and/or the Board of County Commissions, when appropriate.

Commercial Unit Owner shall mean any person or entity or combination thereof, including Declarant, at any time owning a Commercial Unit. The term "Commercial Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

Commercial Unit shall mean a Unit within the Project which has been so designated in Declaration, or any amendment or supplement thereto, and/or on the Condominium Plat.

Common Area Manager shall mean the person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas and Facilities excluding the operation of the Units as residential or commercial facilities.

Common Areas and Facilities shall mean all portions of the Project other than the Units, as described herein. The undivided interest in the Common Areas and Facilities appurtenant to

each Unit is based upon the Par Value of such Unit as described below and is set forth in Exhibit "C" hereto.

Common Assessments shall mean those assessments described in Article 21 to fund the Common Expenses, and include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Association.

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

Common Expenses shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

Condominium Plat shall mean the Condominium Plat of Escala Lodges recorded in the office of the County Recorder for Summit County, State of Utah, a reduced copy of which is attached hereto as Exhibit "I," as it may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the initial Condominium Plat may be amended at such time as the Buildings are constructed in the event there are material changes in the Building boundaries or elevations as constructed. Such an amendment to the Condominium Plat is expressly authorized and may be undertaken by Declarant without the consideration or consent of any other Owners. To the extent required by applicable law, such amendment shall be subject to the review and approval of the County and the Development Agreement for The Canyons Specially Planned Area ("SPA") Plan dated July 6, 1998 (the "Canyons SPA Agreement").

Convertible Land shall mean those portions of the Project which may be converted into Units and Limited Common Areas and Facilities, as provided herein, and as designated on the Condominium Plat.

Convertible Land Effective Date shall mean the date on which a Supplemental Declaration With Convertible Land and Supplemental Condominium Plat With Convertible Land designating Convertible Land are recorded in the office of the County Recorder.

Convertible Space shall mean that Convertible Space that may later be converted into one or more Units or Limited Common Areas.

Convertible Space Effective Date shall mean the date on which a Supplemental Declaration With Convertible Space and Supplemental Condominium Plat With Convertible Space designating Convertible Space are recorded in the office of the County Recorder.

Cost of Living Index shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100 compiled by the Bureau of Labor Statistics, United States Department of Labor. The Index for December 1982-1984 is the reference base index. Declarant may select any other comparable index which measures changes in the cost of living.

County shall mean Summit County, Utah.

County Recorder shall mean the Summit County Recorder, State of Utah.

Covenant to Share Costs shall mean any declaration of easements and/or covenant to share costs executed by Declarant or the Association and recorded in the Office of the County Recorder which creates easements for the benefit of the Association and the present and future owners of real property subject to such Covenant to Share Costs and/or which obligates the Association and such owners to share the costs of maintaining certain property described therein.

Declarant shall mean Morinda Properties Escala Lodges LC, a Utah limited liability company, or any successor in interest.

Declaration shall mean this Declaration of Condominium, and all amendments, modifications and supplements hereto.

Design Guidelines mean and refer to the architectural, design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to, application and plan review procedures, adopted pursuant hereto and applicable to the Project, and as set forth in the SPA for The Canyons, which are incorporated herein by this reference.

Design Review Committee Rules shall mean the rules adopted by the CRC.

Dwelling Unit shall mean any building or structure or portion of any building or structure situated upon a Lot which is intended for use and occupancy as an attached or detached residence for a single family, including but not limited to Cabins, Residential Units and so forth.

Developmental Rights shall mean the right under the Act to exercise any of the rights set forth in Article 10 hereof.

Eligible Insurer shall mean an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

Eligible Mortgagee shall mean a First Mortgagee which has requested notice of certain matters from the Association in accordance with Article 19.1 of this Declaration.

Exclusive Common Area shall mean that portion of the Common Area intended for the exclusive use or primary benefit of one or more but less than all Neighborhoods.

Exempt Property shall mean property exempt from and not subject to the obligation to pay Common Expenses or Assessments.

Improvement shall mean any physical improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including by way of illustration but not limitation any (a) residence, building, guest house, screening wall, other accessory building, fence or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, shed, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed

to a structure or permanently attached to a building or Lot; (d) any swimming pool, basketball or athletic court, radio or television antennae or receiving dish; (e) any paving, exterior lights, fixtures, curbing, trees, shrubs, hedges, grass, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related equipment, and (g) any other structure of any kind or nature.

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

Lot shall mean a portion of the Property, other than the Common Area and Units, intended for any type of independent ownership and use as may be set out in this Declaration and as shall be shown on the Plat Maps filed with this Declaration or amendments thereto. Where the context indicates or requires, the term Lot includes any cabin, dwelling, living unit, physical structure or improvement constructed on the Lot.

Lot Number shall mean the number, letter or combination thereof designating a particular Lot.

Lot Owner shall mean (a) the Person(s), including without limitation the Declarant, holding an aggregate fee simple interest in a Lot. The term Lot Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

Management Committee shall mean the group of volunteer Owners appointed or elected in accordance with this Declaration and the Bylaws to manage the affairs of the Association, aka the Board of Trustees of the Association.

Mortgage shall mean any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

Mortgagee shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in the Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

Neighborhood shall mean any residential, commercial or mixed area within the Project which is designated as a Neighborhood, whether or not governed by a Neighborhood Association. A Neighborhood may be comprised of more than one housing type. In addition, a

parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

Neighborhood Assessments shall mean Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses.

Neighborhood Association shall mean an owners' association having jurisdiction over a specific Neighborhood concurrent with, but subordinate to, the Association.

Neighborhood Expenses shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of the Owners within a particular Neighborhood or Neighborhoods, which may include reasonable reserves, as the Management Committee may specifically authorize and as may be authorized herein or in a Supplemental Declaration applicable to a Neighborhood.

Neighborhood Representative shall mean the representative selected by the Members within a Neighborhood to represent the Neighborhood in Association matters other than those requiring a vote of the membership. An alternate Neighborhood Representative may carry out the responsibilities of the Neighborhood Representative in his absence.

Owner shall mean any person, including Declarant, at any time owning real estate within the Project (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association) and shall include the owners of Lots and Commercial, Residential, Parking or Storage Units. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

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

Parking Unit shall mean a Unit within the Project which has been so designated in Declaration, or any amendment or supplement thereto, and/or on the Condominium Plat.

Parking Unit Owner shall mean any person or entity or combination thereof, including Declarant, at any time owning a Parking Unit. The term "Parking Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

Person shall mean a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

Plat shall mean the Plat Maps of Escala Lodges recorded in the office of the County Recorder for Summit County, State of Utah, a reduced copy of which is attached hereto as Exhibit "I," as it may be amended from time to time pursuant to this Declaration, and where the context requires the Condominium Plat. It is contemplated that the initial Plat may be amended at such time as the Buildings are constructed in the event there are material changes in the

Building boundaries or elevations as constructed. Such an amendment to the C Plat is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. To the extent required by applicable law, such amendment shall be subject to the review and approval of the County and the Development Agreement for The Canyons Specially Planned Area ("SPA") Plan dated July 6, 1998 (the "Canyons SPA Agreement").

Private Amenity shall mean certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of or within the Project, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise; for example by way of illustration and not limitation, any utility, communications facility, Internet, phone, television or music service provider, snow making equipment, shared equipment or rooms, and all related and supporting facilities and improvements which are owned and operated by Persons other than the Association shall be a Private Amenity. Any property constituting a Lot, Unit or Common Area hereunder shall not be considered a Private Amenity.

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

Project Documents shall mean the Act, Declaration, Bylaws and Rules.

Property shall mean that certain real property situated in the County of Summit, State of Utah, more particularly described in Article 2 hereinafter, on which the Units and other improvements are located.

Recreational, Oversized or Commercial Vehicle shall mean any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.

Reduced Common Areas shall mean those Common Areas and Facilities as reduced by the conversion of Convertible Land or Space.

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

Repair shall mean merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

Residence shall mean any building or portion of a building, including a guest house or other accessory building, situated upon a Lot or other portion of the Property, and designed and intended for separate, independent use and occupancy as a single family residence.



Residential Unit Owner shall mean any person or entity, including Declarant, at any time owning a Residential Unit. The term "Residential Owner" shall not include any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

Residential Unit shall mean a Unit within the Project which has been so designated in Declaration, or any amendment or supplement thereto, and/or on the Condominium Plat.

ACCESS EASEMENT AGREEMENT shall mean the easement and right of way for the installation, maintenance, use and operation of the road entry and utilities as shown on the Plat and Exhibit "E" attached hereto and incorporated herein by this reference

SPA for The Canyons shall mean the Specially Planned Area Development Agreement for The Canyons ("SPA") Plan dated July 6, 1998 (aka "Canyons SPA Agreement").

Shared Equipment Room shall mean both the structure, facility, room or space in which the equipment is housed and the boiler, heating, refrigeration, chilling, cooling, electronics, phone or internet and other equipment the Association may share or use in combination with another project, development or association of owners, subject to the Covenant to Share Costs. This includes by way of illustration but not limitation the right to market or sell excess heating or cooling capacity for a fee.

Single Family Home or Residence shall mean both the architectural style of a Dwelling Unit and the nature of the residential use thereof or activity permitted therein.

Ski Easement shall mean the easement for right of way and access to and from the ski areas, slopes and facilities as shown on the Plat and Exhibit "D" attached hereto and incorporated herein by this reference.

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

Storage Unit shall mean a Unit within the Project which has been so designated in Declaration, or any amendment or supplement thereto, and/or on the Condominium Plat.

Storage Unit Owner shall mean any person or entity or combination thereof, including Declarant, at any time owning a Parking Unit. The term "Storage Unit Owner" shall not include any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

Storm Sewer Easement shall mean the easement and right of way for the installation, maintenance, use and operation of the storm sewer system as shown on the Plat and Exhibit "F" attached hereto and incorporated herein by this reference.

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

Supplemental Condominium Plat With Convertible Land shall mean the document of that name to be recorded as provided by Article 28 below to create and/or convert Convertible Land to one or more Residential Units or Commercial Units or to Limited Common Areas as permitted thereunder.

Supplemental Condominium Plat With Convertible Space shall mean the document of that name to be recorded as provided by Article 29 below to create and/or convert Convertible Space to one or more Residential Units or Commercial Units or to Limited Common Areas as permitted thereunder.

Supplemental Declaration With Convertible Land shall mean the document of that name to be recorded as provided by Article 28 below to create and/or convert Convertible Land to one or more Residential Units or Commercial Units or to Limited Common Areas as permitted thereunder.

Supplemental Declaration With Convertible Space shall mean the document of that name to be recorded as provided by Article 29 below to create and/or convert Convertible Space to one or more Residential Units or Commercial Units or to Limited Common Areas as permitted thereunder.

Total Votes of the Association shall mean the total number of votes appertaining to all Units, as described in Article 36 hereof.

Unit shall mean a physical portion of the Project designed for separate ownership and occupancy as described in Article 3 hereof. The Project includes, and the definition of Unit shall be deemed to include Residential Units and Commercial Units, or where the context clearly requires a Lot or Lots.

Unit Number shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project. The Unit Number for Commercial Units and Residential Units shall consist of alphabetic or numeric characters representing, in order: the building in which the Unit is located and the room number of the Unit.

Use Restrictions shall mean the rules and initial use restrictions set forth below and as they may be modified, amended, repealed, canceled, limited, withdrawn or expanded from time to time.

Visible From Neighboring Property shall mean, with respect to an object, that the object is or would be visible to a six-foot tall person standing at ground level on any part of neighboring property, except where the object is visible solely through a wrought iron fence and would not be visible if the wrought iron fence were a solid fence.

Utility Easement shall mean the easement and right of way for the installation, maintenance, use and operation of the common and private utilities as shown on Exhibit "G" attached hereto and incorporated herein by this reference.

Water Line Easement shall mean the easement and right of way for the relocation, installation, maintenance, use and operation of the water line in favor of Summit Water Distribution Company as shown on the Plat and Exhibit "H" attached hereto and incorporated herein by this reference.

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

2.1 The Property on which the Units and Improvements are located is situated in Summit County, Utah and more particularly described as follows:

**PARCEL 1**

Commencing at the Northeast corner of Section 1, Township 2 South, Range 3 East, Salt Lake Base and Meridian; thence North  $89^{\circ}59'43''$  West 1,887.02 feet; thence South 0.89 feet to the Southerly right of way line of High Mountain Road and the Easterly line Lot 16 of the Park City West Plat No. 2, on file and of record in the office of the Summit County Recorder, said point being the POINT OF BEGINNING; thence South along the East line of said Lot 16, a distance of 193.48 feet; thence leaving said East line South  $51^{\circ}34'55''$  East, a distance of 185.07 feet; thence South, a distance of 215.00 feet to the centerline of Red Pine Road Right-Of-Way; thence along said centerline, West, a distance of 145.00 feet; thence leaving said centerline North, a distance of 44.87 feet to the Southwest corner of vacated Lot 14 of said subdivision; thence along the South line of said vacated Lot 14, West, a distance of 147.29 feet to the Southwest corner of said vacated Lot 14; thence leaving said vacated Lot 14 and along the boundary of said Park City West Plat No. 2 the following calls: South, a distance of 25.00 feet; thence West, a distance of 300.00 feet; thence North, a distance of 25.00 feet; thence West, a distance of 126.23 feet to the southwest corner of vacated Lot 13 of said subdivision; thence along the West line of said Lot, North, a distance of 479.50 feet to the Northwest corner of said vacated Lot 13; thence East along the said subdivision boundary, a distance of 406.23 feet to the vacated centerline of Brad Avenue of said Park City West Plat No. 2; thence along said centerline the following calls: South, a distance of 66.00 feet to a point of curve to the left having a radius of 60.00 feet and a central angle of  $60^{\circ}00'00''$ ; thence Southeasterly along the arc a distance of 62.83 feet; thence South  $60^{\circ}00'00''$  East, a distance of 29.92 feet to the intersection of the centerline of vacated Jeannine Drive; thence along the centerline of the vacated Jeannine Drive North  $30^{\circ}00'00''$  East, a distance of 143.02 feet to the Southerly right of way line of said High Mountain Road and point of curvature of a 200 foot radius curve to the right, radius point bears South  $17^{\circ}24'57''$  East; thence along the arc of said curve and said right of way 40.77 feet through a central angle of  $11^{\circ}40'46''$  to the curves end and the POINT OF BEGINNING.

Containing 7.136 acres, more or less.

**PARCEL 2**

Together with a right-of-way for roadway purposes, as granted in that certain Warranty Deed recorded August 2, 1977 as Entry No. 139351 in Book M97 at Page 730 of the Official Records; being more particularly described as being fifty (50) feet in width, twenty-five (25) feet on either side of the following described centerline:

Beginning at a point on the South line of a county road which is 1253 feet North and 750 feet West from the Northeast corner of Section 1, Township 2 South, Range 3 East, Salt Lake Base and Meridian; and running thence South 680.6 feet; thence South 10°00' East 355 feet; thence 1112.96 feet along the arc of a 636.62 foot radius curve to the right; thence West 881 feet.

2.2 The Property is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein.

2.3 The Property is SUBJECT To the described easements and rights of way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration but not limitation all American and other Ski Easements, ACCESS EASEMENT AGREEMENT, Storm Sewer Easement, Utility Easement, Water Line Easement, and other easements as determined necessary by the Declarant to provide reasonable access to the amenities.

2.4 ALL OF THE FOREGOING IS SUBJECT TO: The SPA for The Canyons. All ski easements and other easements as determined necessary by the Declarant to provide reasonable access to the amenities. The right of the Declarant, its successors and assigns to access and use without limitation or restrictions all easements, rights of way, roads, streets and driving lanes to access the Property, adjoining or other land for purposes of developing, maintaining or improving said real estate. All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and right-of-way; all easements and right-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Survey Mapss or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-describe Tract/ and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common are improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities. The right of skiers to access the ski areas and amenities. A perpetual easement and right of way in, on, across, over, under and through the Property, and other appurtenances and rights incident to, appurtenant to, or accompanying said real property (and any Additional Land which may be added to the Project from time to time) for the benefit of the Declarant and his successors and assigns for the purpose of installing, constructing, maintaining and operating a Private Amenity or Amenities, including by way of illustration but not limitation the right to erect, maintain and operate in, on or about the Property communications facilities, air conditioned equipment room or rooms, water lines, utility lines, transmission lines, electronic equipment, transmitting and receiving antennas, generator and generator pad, and supporting equipment and structures thereto. The right of Declarant or another Person, developer or association of owners to access and use any Shared Equipment Room or facility.

2.5 It is the intent of the Declarant that the Project will consist of 6-8 Lots, of which it is estimated that 4-6 will be Cabin Lots; up to 3 multi-level Buildings, one 6-stories, one 5-stories and one 3-stories; recreational amenities; Common Area and Facilities; Shared Equipment Room(s); underground parking; commercial spaces and other improvements of a less significant nature. The Declarant reserves the right to increase or decrease the number of Cabin Lots. A variety of floor plans will be available for the Commercial Units and the Residential Units. It is anticipated that the first and second floor of the six story Building will consist of flexible commercial space. It is the intent of the Declarant that the resort exploit its potential uses as a hotel or meeting place, including by way of illustration but not limitation a meeting center, offices, suites, recreation center, with a day spa, pool, hot tubs, restaurants, and so forth. The initial improvements will consist of freestanding multi-story mixed use Building containing approximately 84-132 Residential and Commercial Units. The Buildings will be constructed on top of a concrete parking structure supported by concrete post and beam/footing and foundation system. The structures will be of steel and wood framing including timbers, logs and metal support members, with wood and stone siding. The roofs will be sloped with asphalt shingles and metal flashing. The Buildings will be supplied with telephone, cable, satellite or other electronic television and programming services, electricity, natural gas, water, and sewer service, and may be jointly or severally metered, or in combination.

2.6 Declarant hereby submits the Property, the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a mixed use condominium project. All of said Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said Project and division thereof into Commercial Units, Residential Units, Parking Units and Storage Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Association is hereby granted a limited license to the use of the name "Escala Lodges" in connection with the administration and operation of its interest in the Project.

2.7 Declarant shall comply with all density requirements established by Summit County.

### ARTICLE 3. DESCRIPTION OF UNITS.

The boundary lines of each Unit are as set forth on the Condominium Plat and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting

interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior finished 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 Condominium Plat and/or Exhibit A hereto contain the Unit Number of each Unit in the Project.

**ARTICLE 4. DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES.**

4.1 The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes and entrances and exists of the Buildings; the grounds and recreational facilities, if any, and certain parking areas in the Project, designated as part of the Common Areas and Facilities on the Condominium Plat; the areas used for storage of janitorial supplies and maintenance equipment and materials; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Condominium Plat or any Supplemental Condominium Plat; and all repairs and replacements of any of the foregoing. Parking stalls which are Common Areas and Facilities may be utilized for locating trash containers, laundry facilities and similar items if needed by the Association. Unless otherwise expressly noted in writing, no parking stalls shall be assigned and parking shall be accessed on a first come first served basis. All utilities to the Residential Units and the Commercial Units, excluding the unit designated on the plat as a restaurant unit, including but not limited to, electricity, water, sewer and natural gas, shall not be separately metered and shall constitute Limited Common Facilities of the Association, assessed solely to the Residential and Commercial Owners in their Common Assessments. With respect to the restaurant unit, water, sewer, electricity and natural gas shall be separately metered. In the event of a conflict between this Declaration and the Condominium Plat, the provisions of the Declaration shall control.

4.2 The undivided interest in the Common Areas and Facilities appurtenant to each Unit in the Project is based upon the Par value of such Unit, which is determined by the number of points allocated to each Unit. There shall be three (3) points allocated to each square foot in a Commercial Unit. Four (4) points allocated to each square foot in a Residential Unit. Consequently, the total number of points for each Commercial Unit is calculated by multiplying the square footage area of such Unit by three (3). The total number of points allocated to each Residential Unit is calculated by multiplying the square footage area of such Unit by four (4). For the purposes of this Article, the area of each Unit is measured from the interior finished surface of each perimeter wall of the Unit. The total number of points allocated to each Cabin

Lot is calculated by multiplying the square footage area of such Cabin Lot by (4). For the purposes of this Article, the area of each Cabin Lot is measured from the property lines as established by the plat map which was filed with this document. The total number of points allocated to each Parking Unit is one (1). The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be determined by dividing the number of points allocated to that Unit by the total number of points allocated to all Units in the Project. In accordance with the provisions of the Act, the statement of Par Value shall not be considered to reflect or control the sale price or fair market value of any Unit. Notwithstanding anything to the contrary hereinabove stated, where there are minor size variations between Residential Units containing the same number of bedrooms and containing substantially same square footage, Declarant reserves the right, but not the obligation, to allocate the same par value to each such Unit. The purpose of this allocation is to permit Declarant to establish the same par value for Residential Units containing the same essential features. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered without the express prior written consent of at least two-thirds of the Total Vote. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent. Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent.

#### ARTICLE 5. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, balconies, patios, storage closets, certain hallways and corridors, and parking areas as indicated by the Declaration, the Condominium Plat or the Act to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only the Commercial Units or only the Residential Units shall be Limited Common Areas and Facilities with respect to the Units which they serve. Mechanical systems serving both Commercial Units and Common Areas and Facilities shall, to the extent permitted by law, be Limited Common Areas and Facilities with respect to the Commercial Units which they serve. The Limited Common Areas and Facilities shall be those areas designated as such on the Condominium Plat, in this Declaration or as provided for by the Act. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Condominium Plat or as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

#### ARTICLE 6. NATURE AND INCIDENTS OF RESIDENTIAL UNIT OWNERSHIP.

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

6.2 Subject to the limitations contained in this Declaration, each Residential Owner shall have the non-exclusive right to use and enjoy the common Areas and Facilities and the exclusive right to occupy and use their Unit and any Limited Common Areas and Facilities designated for exclusive use by such Residential Owner or all Residential Owners; provided,

however, if a Residential Unit Owner desires to include his Unit in the rental pool, he must have the pre-designated approved furnishings and finish package.

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

6.4 The Management Committee shall have the right to enter into any Residential Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

6.5 Nothing in this Declaration shall limit the rights of Declarant or any other Residential Owner to operate the Units owned by it for transient rental purposes.

6.6 Hot tubs are only allowed on the ground floor as approved by the Management Committee. No Residential Owner may install any hot tub within any deck area which is a part of their Residential Unit or the Limited Common Areas and Facilities appurtenant to their Residential Unit without the prior express written consent of the Management Committee, who must determine it is structurally feasible, does not jeopardize the soundness or safety of the building, reduce value, impair an easement, or constitute a nuisance. Permission granted may be subsequently withdrawn, anything to the contrary notwithstanding. No Residential Owner shall store or locate skis, mountain bikes and other similar personal property within deck or patio areas whether located in the Residential Unit or within Limited Common Areas and Facilities appurtenant to said Unit. The Association shall have the power to establish specific rules and regulations governing use of deck areas.

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

6.8 All owners must comply with Village Resort Management Association agreement which prohibits the use of any Unit on a full-time basis or as a permanent residence.

#### ARTICLE 7. NATURE AND INCIDENTS OF COMMERCIAL UNIT OWNERSHIP.



7.1 Each Commercial Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration. All Convertible Space shall, prior to the exercise of the Option to Convert with respect to such Space, be treated as a single Commercial Unit for all purposes hereunder, including, without limitation, Association voting and Common Assessments. Commercial Units may be used for retail purposes if approved by the County.

7.2 Each Commercial 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 surfaces of all walls, ceilings, floors and doors within such boundaries. Each Commercial 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.

7.3 Upon written notice to the Management Committee, two or more Commercial Units may be utilized by the Commercial Owner(s) thereof as if they were one Unit. Any walls, floors or other structural separations between any two such Units, may, for as long as the two Units are utilized as one Unit, be utilized by the Commercial Owner(s) of the adjoining Units as Limited Common Areas and Facilities, 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 Commercial Units which, but for joint utilization of the two Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owner(s) of each of the two Units and the structural separations between the two Units shall thereupon become Common Areas and Facilities.

7.4 Commercial Units may be subdivided or combined as set forth in the following paragraphs:

7.5 No Commercial Unit or Units shall be subdivided and/or combined either by agreement or legal proceedings, except as expressly provided herein. An Owner or Owners may subdivide or combine Commercial Units by giving notice in writing to the Management Committee, the Mortgagees of the Commercial Unit(s) to be subdivided or combined and, if required by local law, to the County. The notice must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Condominium Plat.

7.6 The subdivision or combination of a Unit will be accepted only if approved in writing by the Mortgagees of the Unit(s) to be subdivided, if required by their Mortgages, and by the County, to the extent required by applicable law. The Management Company may approve the subdivision only as to form and legal sufficiency. The County, if required, may approve the proposal as to applicable planning and zoning requirements.

7.7 A subdivision of Commercial Units shall provide for reallocation of the percentage ownership in the Common Areas and Facilities among the resulting Units on the basis

of points, consistent with the provisions of Article 4.2, so that the combined percentages of ownership of the resulting Unit(s), are identical with the combined percentage ownerships of the subdivided Unit(s) prior to subdivision.

7.8 The Commercial Owner(s) of the Unit(s) to be subdivided or combined shall be responsible for all costs associated with its implementation including but not limited to costs of amendment and recording of the Amendment and Supplemental Condominium Plat to effect the proposal; review of the documents for form, including reasonable attorneys' fees incurred by the Management Committee; and the cost of any modifications to the Project to implement the proposal.

7.9 Upon receipt of all approvals, the Commercial Owner(s) may proceed according to the proposed plans and specifications; provided that the Management Committee may, in its discretion, require that the Management Committee or its agent administer the work, or that provisions for the protection of other Units or Common Areas and Facilities and/or reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Condominium Plat, if any, and the changes in the Declaration shall be placed of record, at the requesting Owner's expense, as amendments thereto.

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

#### ARTICLE 8. NATURE AND INCIDENTS OF PARKING UNIT AND STORAGE UNIT OWNERSHIP.

8.1 Parking is a premium. There is less than one (1) parking stall per Unit. Common parking stalls are not assigned and may be accessed only on a first come first served basis by Owners, residents, guests and invitees. Owners shall have no control over the parking stalls. Owners may not rent, lease or assign the stalls. Anything to the contrary notwithstanding, some parking stalls may be designated by the Declarant as Parking Units.

8.2 Each Parking Unit or Storage Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration. All Convertible Land or Space within Convertible Land or Convertible Space designated for Parking Unit(s) or Storage Unit(s) on the Plat shall, prior to the exercise of the Option to Convert with respect to such Land or Space, be treated as a single Parking Unit or Storage Unit for all purposes hereunder, including, without limitation, Association voting and Common Assessments.

8.3 Each Parking Unit or Storage Unit Owner shall strictly abide by the Parking Unit Rules and the Storage Unit Rules adopted by the Management Committee.

8.4 Each Parking Unit or Storage Unit Owner shall keep his Parking Unit or Storage Unit broom clean and free of debris.

8.5 Upon written notice to the Management Committee, two or more Parking Unit or Storage Units may be utilized by the Owner(s) thereof as if they were one Unit. Any walls, floors or other structural separations between any two such Units, may, for as long as the two Units are utilized as one Unit, be utilized by the Owner(s) of the adjoining Units as Limited Common Areas and Facilities, 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 Parking Units or Storage Units which, but for joint utilization of the two Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owner(s) of each of the two Units and the structural separations between the two Units shall thereupon become Common Areas and Facilities.

8.6 No Parking Unit or Storage Unit or Units shall be subdivided.

8.7 A combining of Units shall provide for reallocation of the percentage ownership in the Common Areas and Facilities among the resulting Units on the basis of points, consistent with the provisions of Article 4.2, so that the combined percentages of ownership of the resulting Unit(s), are identical with the combined percentage ownerships of the subdivided Unit(s) prior to subdivision.

8.8 The Owner(s) of the Unit(s) to be subdivided or combined shall be responsible for all costs associated with its implementation including but not limited to costs of amendment and recording of the Amendment and Supplemental Condominium Plat to effect the proposal; review of the documents for form, including reasonable attorneys' fees incurred by the Management Committee; and the cost of any modifications to the Project to implement the proposal.

8.9 Upon receipt of all approvals, the Commercial Owner(s) may proceed according to the proposed plans and specifications; provided that the Management Committee may, in its discretion, require that the Management Committee or its agent administer the work, or that provisions for the protection of other Units or Common Areas and Facilities and/or reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Condominium Plat, if any, and the changes in the Declaration shall be placed of record, at the requesting Owner's expense, as amendments thereto.

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

8.11 Parking Units and Storage Units may only be owned by Residential or Commercial Unit Owners. Any attempt to otherwise convey an ownership interest in a Parking Unit or a Storage Unit shall be void ab initio.

8.12 Parking Units and Storage Units may only be used by Owners or residents of a Residential Unit or a Commercial Unit and any attempt to lease, license or otherwise convey the right to use said Units shall be void ab initio.

#### ARTICLE 9. TITLE TO UNITS.

9.1 Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

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

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

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

9.5 No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

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

#### ARTICLE 10. CERTAIN ADDITIONAL DEVELOPMENTAL RIGHTS.

The following additional Developmental Rights are hereby granted or reserved by Declarant:

10.1 Declarant hereby reserves an easement throughout the Project for a period of five (5) years from the recording of this Declaration for the purpose of (a) relocating the waterline onto the Property in favor of Summit Water Distribution Company or its assigns, and (b) completing all improvements contemplated by the Declaration and the Condominium Plat.

10.2 Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Units which it owns or leases or on the Common Areas and Facilities of the Project. Declarant shall be entitled to utilize, at any one time, up to 4 Units which it owns or leases and some or all of the Common Areas and Facilities as sales offices, management offices, and models anywhere in the Project. Declarant may relocate sales offices, management offices and models to other Common Areas and Facilities at any time.

10.3 Declarant hereby reserves the right to assign, sell, lease, transfer, exchange or otherwise convey ownership or the right to use unassigned Parking Units or Storage Units to Owners for a fee.

10.4 There is hereby established a period of Declarant control of the Association, during which period Declarant or persons designated by it shall have the authority to appoint and remove the Association officers and members of the Management Committee. The period of Declarant control shall terminate no later than the earlier of:

10.4.1 five (5) years after the first Unit is conveyed to an Owner; or

10.4.2 after Units to which three-fourths (3/4) of the undivided interest in the Common Areas and Facilities appertain have been conveyed to Owners, or after all the Additional Land has been added to the Project and all Convertible Land has been converted, whichever last occurs.

10.5 Declarant reserves the sole and exclusive right to directly supervise the construction of all Buildings, Residences and Improvements to be constructed, installed or erected on the Property which are a part of the Project in order to protect its integrity and control the grading and site elements relative to each particular Building or Lot.

10.6 Declarant reserves the right to establish Shared Equipment Room(s), including by way of illustration but not limitation the right to market or sell excess heating or cooling capacity.

#### ARTICLE 11. INITIAL USE RESTRICTIONS.

11.1 The Units, Convertible Land and Space and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Management Committee shall be used in accordance with the following restrictions:

11.2 The Commercial Units within the Project may be used only as commercial and retail uses permitted by the County including but not limited to convention and conference facilities, health and fitness facilities, retail uses approved by the County, ski facilities, storage uses as approved by the County and for such other uses as may be allowed under applicable law; provided, however, that if the particular use of any Commercial Unit increases the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, the Owner of such Commercial Unit shall be assessed for and shall pay the amount of such increase. Units shall not be used for:

11.2.1 Sales, distribution, rental or viewing of sexually explicit materials or sexually explicit performances;

11.2.2 Sales of paraphernalia related to illegal drugs; and

11.2.3 Any other illegal purpose.

Unless consented to in writing by the Association, in its sole and absolute discretion, the Commercial Units shall not be used for:

11.2.4 A national branded convenience store;

11.2.5 The storage or sale of petroleum products or other hazardous materials;  
and

11.2.6 Any business establishment creating noxious or harmful odors.

11.3 All customers, clients, patrons, and licensees of Owners of Commercial Units shall be permitted to enter upon the Project and shall have a non-exclusive license across the Common Areas and Facilities to the extent reasonably necessary for access to such Commercial Units.

11.4 The Parking Common Areas shall be utilized solely for the purpose of parking automobiles and other wheeled conveyances appropriate to the size and function of the parking facilities located within the Project and for the location and storage of trash receptacles, laundry facilities, storage uses and other purposes approved by the Association. There is no place to park Recreational, Commercial and Oversized Vehicles in the Project, except for purposes of loading and unloading. All Recreational, Commercial and Oversized Vehicles must be parked outside the Project.

11.5 The Parking Units and Storage Units shall be used in accordance with the Parking Rules and Storage Rules adopted by the Management Committee.

11.6 No resident may operate a commercial Trade or Business in or from his Residential Unit with employees of any kind; no commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Residential Unit; no commercial trade or business may be conducted in or from a Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator

has a city issued business license; (c) the business activity satisfies the Home Occupation Guidelines adopted by the Management Committee, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Management Committee. Notwithstanding the foregoing, the leasing of a Unit or Lot shall not be considered a trade or business within the meaning of this subsection. Also, nothing in this subsection shall prevent (a) Declarant or an affiliated entity or a duly authorized agent from using any Residential Unit owned or leased by Declarant as sales offices and model Units or a property management office as provided in Article 10.2 hereof, or (b) any Owner or his duly authorized agent from renting or assigning use rights to his Unit from time to time.

11.7 No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project nor shall anything be done on or placed in or upon any part of the Project which is or may become a nuisance or may cause unreasonable embarrassment, disturbance or annoyance to Owners, especially if it is Visible From A Neighboring Property.

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

11.9 No signs, flags or advertising devices of any nature including, without limitation, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Declarant as part of its sales program, or except as may be utilized in connection with any retail uses approved by the County, or in connection with the operation of the Residential Units as commercial overnight accommodations should Declarant so elect, or except as approved or permitted by the County or the SPA for The Canyons (if required by law) with respect to the Commercial Units.

11.10 No pets or animals of any kind shall be kept, raised or bred in any Unit, the Common Area, or on any portion of the Project.

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

11.12 Except as otherwise provided in the Declaration, no Residential Unit, or portions thereof, may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common or other form of joint undivided ownership).

11.13 No Owner shall, without the prior written consent of the Management Committee, make or permit to be made any alteration, improvement or addition in or to any Unit. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any

easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

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

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

11.16 No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Association.

11.17 No Owner of any Unit shall offer or sell any interest in such Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

11.18 No Cabin Lot or other Owner may deny skiers or hikers reasonable access to the ski areas and amenities.

11.19 No trees shall be removed from the Property, except for (a) diseased or dead trees, and (b) trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in writing by the Management Committee.

11.20 No fences, clotheslines, above-ground tanks, woodpiles, and other similar items shall be erected, placed or maintained in the Project, unless approved in writing by the Management Committee.

## ARTICLE 12. LEASE

Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. Vacation, daily, weekly, short term and the like leases are allowed. Other than the foregoing, there is no restriction on the right of any Owner to lease his Unit. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.



ARTICLE 13. ASSOCIATION AND MANAGEMENT COMMITTEE.

13.1 The Association shall be governed by the following provisions:

13.1.1 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of five (5) natural persons as provided in the Bylaws, including at least one (1) person from among the Commercial Owners. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

13.1.2 Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

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

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

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

13.5 To determine and pay the Common Expenses.

13.6 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article 21 hereinafter.

13.7 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers including but not limited to, contracts for management of the parking areas.

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

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

13.10 To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Management Committee, the Association or the project in excess of \$100,000 (as measured in 2003 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of \$100,000 shall not require Association approval.

13.11 To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, as well as worker's compensation insurance.

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

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

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

13.14 To establish Shared Equipment Room(s), including by way of illustration but not limitation the right to market or sell excess heating or cooling capacity.

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

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

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

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

13.19 The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project if Owners entitled to a cast a majority of the Total Votes of the Association agree to that action at a meeting or by written ballot distributed to Owners by mail. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey such Limited Common Areas or Facilities or subject same to the Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

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

13.21 When a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

13.22 Neither the Management Committee nor the Common Area Manager shall sell any property of the Association except as permitted by the Act and this Declaration.

13.23 The Association acting through the Management Committee may enter into a contract with the Common Area Manager for the management of the Project, subject to the restrictions set forth herein. The Common Area Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself. Any such management agreement executed on or before the termination of Declarant control of the appointment of the Management Committee as described in Article 10.4 may be terminated by the Association without cause at any time after termination of such control. The above term and termination provisions shall not apply to any other types of service contracts.

13.24 The power and authority to enter into an easement, lease or license agreement, or any combination thereof, with the owner or operator of a Private Amenity to provide space and access for a specific purpose or use in the Common Areas, provided such purpose or use is consistent with the residential nature of the Project.

13.25 The power and authority to revenue share with a Private Amenity or utility companies.

13.26 The power and authority to enter into Bulk Service Agreements.

ARTICLE 14. MAINTENANCE, ALTERATION AND IMPROVEMENT.

14.1 The maintenance, replacement and repair of the Area of Common Responsibility shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. This includes the maintenance, repair and replacement of all Parking Unit and Storage Unit improvements, common parking areas, porches and decks and all conduits, ducts, plumbing and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

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

14.3 Each Owner is responsible for the maintenance, repair and replacement of his Lot or Unit, including all fixtures, lateral pipelines, utility systems servicing only his Unit, glass, windows, window units and doors.

ARTICLE 15. INSURANCE.

15.1 The Association shall at all times maintain in force insurance meeting the following requirements:

15.2 A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities; all Buildings including all Units; fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or Facilities or owned by the Association, but excluding land, foundations, excavations, (and other items normally not covered by such policies.) References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, locations, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement costs of all elements of the Project covered by such

policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Management Committee deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance).

15.3 If any habitable structure located within the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Condominium Plat, a "master" or "blanket" policy of flood insurance shall be maintained covering the Buildings (a separate policy is required for each separate multi-story building that houses Units), any machinery and equipment that are not part of a Building and all Common Areas and Facilities within the Project (hereinafter "Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for all Buildings and Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities.

15.4 Unless the Management Committee otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. The Person or Persons responsible for the loss, damage or claim shall be liable for the deductible. The Association may purchase, for the benefit of each Residential or Commercial Unit Owner, an owner's policy of insurance covering the deductible on the master policy, which shall be considered a Common Expense.

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

15.6 Each policy required shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or

substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

15.7 Each policy required shall provide, if available, for the following: recognitions of any insurance trustee agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

15.8 In contracting for the policies of insurance required, the Management Committee shall make reasonable efforts to secure, if the Management Committee deems such advisable, coverage which provides the following endorsement: (1) "Inflation Guard Endorsement" (2) "Building Ordinance or Law Endorsement", if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "Steam Boiler and Machinery Coverage Endorsement", if the project has central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Association may purchase separate stand-alone boiler and machinery coverage.

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

15.10 The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision, and any commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, locations, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the

Common Areas and Facilities, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

15.11 The Management Committee shall have the authority to adjust claims, including by way of illustration but not limitation the authority to decide not to submit a claim.

15.12 If there is duplicate coverage of a claim, then the insurance of the Owner shall be considered primary and the insurance of the Association shall be considered secondary.

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

15.14 Each insurance policy maintained pursuant to the foregoing Articles shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this shall not be construed to limit the power or

authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

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

#### ARTICLE 16. DESTRUCTION OR DAMAGE.

16.1 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 or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

16.2 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 and Facilities having substantially the same vertical and horizontal boundaries as before.

16.3 In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

16.3.1 The Association shall give timely written notice to any holder of any First Mortgage on a Unit who request such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or Facilities or a Unit subject to such First Mortgage.

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

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

16.3.4 If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special



Common 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 Common Assessment shall be allocated and collected as provided herein, 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.

16.3.5 If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction and if, to the extent permitted by the Act, Eligible Mortgagees who represent at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by Eligible Mortgagees do not approve such repair and reconstruction, the Association shall record in the office of the County Recorder of Summit County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

16.4 The Project shall be deemed to be owned in common by the Owners;

16.5 Each Owner shall own an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities;

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

16.7 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 of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the percentage of undivided interest owned by each Owner in the Project after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

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

16.9 If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect

repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

16.10 If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Common Assessments made pursuant hereto shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners equally.

16.11 This Article shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

#### ARTICLE 17. TERMINATION.

17.1 Except as otherwise provided herein, the Project may be terminated only by agreement of Owners entitled to vote all of the votes of all Units.

17.2 All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of the Act.

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

17.4 The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved by at least three-fourths (3/4) of the undivided ownership interest and eligible mortgagees. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear,

based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

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

#### ARTICLE 18. EMINENT DOMAIN.

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

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

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

18.4 In the event the Project is removed from the provisions of the Act, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities.

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

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

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

18.8 Changes in Units, in the Common Areas and Facilities and in the ownership of the Common Areas and Facilities that are affected by a taking shall be evidenced by an amendment to the Declaration and the Condominium Plat, which need not be approved by the Owners.

#### ARTICLE 19. MORTGAGEE PROTECTION.

19.1 Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

19.2 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

19.3 Any delinquency in the payment of Common Assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

19.4 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

19.5 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified herein.

19.6 Any judgment rendered against the Association.

19.7 Except as provided elsewhere in this Declaration, the vote or prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association (unless pursuant to a specific provision of this Declaration the consent of Owners

entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

19.7.1 Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

19.7.2 Amend any material provision of the Declaration, Articles, Bylaws or Condominium Plat. "Material provisions" include any provision affecting the following: (an amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

19.7.3 Voting rights;

19.7.4 Increases in Common Assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

19.7.5 Reductions in reserves for maintenance, repair, and replacement of Common Areas and Facilities;

19.7.6 Responsibility for maintenance and repairs;

19.7.7 Reallocation of interests in the Common Areas and Facilities, except where otherwise specifically permitted by this Declaration, or rights to their use;

19.7.8 Redefinition of any Unit boundaries;

19.7.9 Convertibility of Units into Common Areas and Facilities or vice versa, except as otherwise permitted by this Declaration;

19.7.10 Hazard or fidelity insurance requirements;

19.7.11 Imposition of any restrictions on the leasing of Units;

19.7.12 Imposition of any restrictions on Owner's right to sell or transfer his or her Unit;

19.7.13 A decision by the Association to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgagee.

19.7.14 Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

19.7.15 The benefits of Eligible Mortgagees.

19.8 Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

19.9 The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

19.10 The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

19.11 In the event any taxes or other charges which may or have become a lien on the Common Areas and Facilities are not timely paid, or in the event the required hazard insurance is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

19.12 No provision of this Declaration or the Articles gives or may give an Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas and Facilities.

#### ARTICLE 20. AMENDMENT.

The Declarant may unilaterally amend the Declaration at any time prior to the expiration of its Period of Control and during such time, no amendment shall be valid or enforceable without Declarant's prior express written consent. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Condominium Plat shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast in person or by proxy

at a meeting duly called for such purpose or otherwise approved in writing by such Owners; provided, however, no amendment to this Declaration which materially affects the Commercial Units shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Commercial Unit Owners; and no amendment to this Declaration which materially affects the Residential Units shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Residential Unit Owners; no amendment to this Declaration which materially affects the Lots shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Lot Owners; no amendment to this Declaration which materially affects the Cabin Lots shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Cabin Lot Owners; and no amendment to this Declaration which materially affects the Parking Units shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Parking Unit Owners; and no amendment to this Declaration which materially affects the Storage Units shall be valid or enforceable without the prior express written consent of at least sixty-seven percent (67%) of the Storage Unit Owners. Any amendment authorized pursuant to this Article shall be accomplished through the recordation in the office of the Summit County Recorder of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Article for amendment has occurred.

#### ARTICLE 21. ASSESSMENT OF UNITS BY THE ASSOCIATION.

21.1 The making and collection of Common Assessments by the Association from Owners for their share of Common Expenses shall be subject to the following provisions:

21.2 Each Owner, excluding Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as the ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him; provided, however, the Declarant may reduce a Cabin Lot's share of the Common Expenses to a Base Common Assessment or declare it Exempt Property, although the right to access and use the amenities shall remain appurtenant to the Cabin Lot regardless. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital asset reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Article shall be the Common Expense Fund. Common Assessments shall include Regular Common Assessments (which shall include the Base Common Assessment) and Special Common Assessments. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Assessments. After an assessment has been made by the association, regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit, and shall commence as to all Units in each phase of the Project on the first day of the month following the closing of the first sale of a Unit in such phase. As long as Declarant has control over the Association as set forth herein, Declarant shall be responsible for any budget shortfall attributable to Units Declarant owns.

21.3 In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only, for the purpose of

defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners. However, in any fiscal year, except as otherwise provided in this Declaration, the Management Committee shall not, without the vote or written assent of Owners, constituting a quorum, casting a majority of the Total Votes of the Association at a meeting or election of the Association, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment against an Owner is a remedy utilized by the Management Committee to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument for the Project. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

21.4 All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a one hundred and fifty dollar (\$150.00) late fee, adjustable from year to year at the discretion of the Management Committee pursuant to the Cost of Living Index. All payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

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



the method recognized under the laws of the state of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Annotated, as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Common Assessments against the Unit which shall become due during the period of foreclosure, and all such Common Assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code). The Association and each Owner hereby appoint High Country Title Company as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code and made applicable hereto by Title 57, Chapter 8 Utah Code. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for herein and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith.

21.6 The amount of any Common Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

21.7 The personal obligation of an Owner to pay unpaid assessments against his Unit as described herein shall not pass to successors in title unless assumed by them. Provided,

however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

21.8 The Association through the Management Committee shall include in the Common Assessments amounts representing sums to be used for the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Article and shall be set up as capital reserve accounts for the Units. In the event of transfer of a Unit, the capital reserve account for such Unit shall be deemed transferred to the transferee of the Unit. In assessing the Owners for capital improvements to the Common Areas and Facilities, there shall be no single improvement exceeding the sum of One Hundred Thousand Dollars (\$100,000) (as measured in 2003 dollars and thereafter adjusted by the Cost of Living Index) made by the Management Committee without the same having been first voted on and approved by the majority of the votes of those present in person or by proxy at a meeting of the Association duly called for that purpose. The foregoing shall not apply in connection with damage or destruction referred to in Article 16 hereof or to such structural alterations or capital additions or capital improvements to the Common Areas and Facilities as are necessary in the Management Committee's reasonable judgment to preserve or maintain the integrity of the Common Areas and Facilities.

21.9 The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth herein. At least once every three (3) years the Management Committee shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

21.10 Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, has a useful life of less than 30 years.

21.11 Identification of the probable remaining useful life the components identified in and as of the date of the study.

21.12 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified during and at the end of its useful life.

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

21.14 For the purposes of this Article, the term "reserve account requirements" means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

#### ARTICLE 22. WORKING CAPITAL FUND.

A working capital fund equal to at least two monthly installments of the annual assessment for each Unit shall be established and maintained for the Project. Each Unit's share of the working capital fund shall be collected from the purchaser of a Unit and transferred to the Association at the time of the closing of the initial sale of that Unit. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any Regular Common Assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

#### ARTICLE 23. ACTIVITY CARDS.

The right to access and use of recreational facilities within the Project may be subject to the presentation of a valid Activity Card issued by the Association. Activity Cards may be suspended or cancelled for material violations of the Project Documents. Activity Cards are not transferable without the prior express written consent of the Management Committee. As long as the Declarant owns any Property, the Association shall provide the Declarant, free of charge, with as many Activity Cards as the Declarant, in its sole discretion, deems necessary for the purpose of marketing the Property. The Declarant may transfer the Activity Cards to prospective purchasers of Units subject to such terms and conditions as it may determine.

#### ARTICLE 24. PRIVATE AMENITIES.

The right to access and use any Private Amenity within or about the Project is strictly subject to the rules and procedures of such Private Amenity. Subject to such rules and

procedures, any Person allocated an Activity Card shall be permitted to access and use any Private Amenity within the Common Area. The Private Amenities are not subject to the Project Documents. No Person automatically gains any right to enter or use any Private Amenity by virtue of membership in the Association, ownership or occupancy of a Unit. Rights to use the Private Amenities will be granted only to such Persons, and on such terms and conditions, as may be determined by their respective owners. Except as otherwise agreed by any owner of a Private Amenity, such owners shall have the right from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions for use of their respective Private Amenities and to terminate use rights altogether. Except as provided herein, no representations or warranties, either written or oral, have been or are made by the Declarant or any other Person with regard to the nature or size of improvements to, or the continuing ownership or operation of any Private Amenity. No purported representation or warranty, written or oral, in conflict with this Article shall be effective without an amendment to this Declaration executed or joined into by the Declarant, so long as it owns any of the Property, and the owner(s) of any Private Amenity which is the subject thereof. It is Declarant's intention that the Association and the owner of any Private Amenity will cooperate to the maximum extent possible in the operation of the Project; provided, however, the Association shall have no power under this Declaration to promulgate any use restrictions, rules or guidelines affecting activities on a Private Amenity. If reasonably available, the Association may purchase and operate for the benefit of the Owners any Private Amenity and its facilities, infra-structure and easements as provided for or identified herein or in the Plat Maps or, in the alternative, contract separately for such services.

#### ARTICLE 25 EXCLUSIVE COMMON AREA.

The Declarant reserves the right to designate certain portions of the Common Area as Exclusive Common Area as long as it owns any of the Property. Exclusive Common Area shall be Common Area that is reserved for the exclusive use or primary benefit of Owners, occupants, and invitees of real estate within a particular Neighborhood or Neighborhoods. Exclusive Common Area may include, without limitation, recreational facilities, landscaped rights of way and medians, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Area shall be assessed as a Neighborhood Assessment in addition to the Base Common Assessment against the Owners in those Neighborhoods to which the Exclusive Common Area is assigned. The Declarant may designate Exclusive Common Area or change such designation by recording a Supplemental Declaration with the Office of the County Recorder indicating the Exclusive Common Area and the Neighborhood or Neighborhoods to which it is assigned. In addition, by recording a Supplemental Declaration, the Association may designate Common Area as Exclusive Common Area upon a majority vote of all of the Owners of the Association; provided, however, as long as the Declarant owns any of the Property, its consent shall be required for any designation or change in designation of Exclusive Common Area. The Association may permit Owners in other Neighborhoods to use all or a portion of Exclusive Common Area assigned to other Neighborhoods upon payment of reasonable use fees which shall offset the Neighborhood Expenses attributable to such Exclusive Common Area.

ARTICLE 26. NEIGHBORHOODS.

Neighborhoods may be established by the Declarant or the Association. The Owners within a particular Neighborhood shall be considered Members of that Neighborhood Association. Each Neighborhood Association shall elect a Neighborhood Management Committee to manage its affairs, consisting of at least three but no more than nine members. Each member shall serve for a one year term. Any Neighborhood Association may, upon the affirmative vote, written consent, or a combination thereof, of a majority of the Members of the Neighborhood Association, request that the Association provide an increased level of service or special services for the benefit of Units in such Neighborhood. In such event, the Association may, but shall not be obligated to, provide such service or services. If provided, all costs shall be assessed against the real estate within such Neighborhood as a Neighborhood Assessment pursuant to this Declaration. The Neighborhood Representative shall communicate all such requests to the Management Committee. Each Neighborhood shall hold meetings annually or more often as required. All Owners in the Neighborhood shall be entitled to attend Neighborhood meetings. The Neighborhood Representative shall preside over Neighborhood meetings and shall place such issues on the agenda as the Management Committee may determine. The presence of at least 25% of the Owners in a Neighborhood shall constitute a quorum at any Neighborhood meeting. Each Neighborhood shall elect a Neighborhood Representative. Any Owner within a Neighborhood shall be eligible to serve as the Neighborhood Representative. Any Neighborhood Representative may be removed, with or without cause, by the Management Committee if it determines that the Neighborhood Representative is not acting in good faith or fairly representing his Neighborhood.

ARTICLE 27. EXPANSION OF THE PROJECT.

27.1 Declarant hereby reserves the option to expand the Project to include additional Units in the Project. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire five (5) years from the date following the first conveyance of a Unit in Phase I to a Unit purchaser unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said five (5) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be constructed on any or all portions of the Additional Property.

27.2 Supplemental Declarations and Supplemental Mapss. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Salt Lake County, Utah, no later than five (5) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Maps or Mapss containing the same information with respect to the new Units as was required on the Maps with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

27.3 In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any Additional Land added to the Project by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration and the Supplemental Maps. The recordation in the office of the Salt Lake County Recorder of a Supplemental Maps incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such expansion the respective undivided interests in the new Common Areas added to the Project as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Project as a result of such expansion.

27.4 The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Maps and Supplemental Declaration in the said office of the Salt Lake County Recorder.

27.5 Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Project shall be an undivided interest of the Project as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Declarations recorded pursuant hereto and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration.

27.6 Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Maps incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

27.7 If the Project is expanded as hereinbefore contained, then it is further provided that:

27.8 All or any part of the Additional Land may be added to the Project without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one family per Unit.

27.8.1 Portions of the Additional Land may be added to the Project at different times without any limitations.

27.8.2 Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Maps. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas.

27.8.3 No assurances are made concerning:

27.8.3.1 The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Project.

27.8.3.2 Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

27.8.3.3 Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I.

27.8.3.4 Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Project.

27.8.4 Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (b) the creation, construction, or addition to the Project of any additional property; (c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (d) the taking of any particular action with respect to the Additional Land, the Project, or any Land.

27.8.5 Assuming that only Phase 1 of the Project is completed, the minimum number of Buildings would be 3, the minimum number of Lots would be 5, the minimum number of Commercial Units would be 48, the minimum number of Residential Units would be 84, and the maximum percentage of ownership interest of each Unit would be 8.7185%. Assuming all Phases in the Project are completed and all of the Additional Land is added to the Project, then (a) the maximum number of Buildings would be 5, the maximum number of Lots would be 6, the maximum number of Cabin Lots would be 10, the maximum number of

Commercial Units would be 72, the maximum number of Residential Units would be 161, the maximum number of Parking Units would be undetermined, and the maximum number of Storage Units would be undetermined; (b) there would be approximately 11.336 acres; (c) the maximum number of Residential and Commercial Units per net acre would be about 18.79; and (d) the minimum Percentage Interest of each Commercial and Residential Unit would be 0.0004%. Provided, however, the number of Units actually constructed and the actual undivided percentage of ownership interest of each Unit may actually be somewhere in between the numbers and percentages set forth above.

27.8.6 Pursuant to Title 38, CFR Section 36.4360 (a) (5), which is incorporated herein by this reference, the Declarant shall purchase at its own expense and maintain a general liability insurance policy in the sum of not less than \$1 million to cover any liability which owners of previously sold units are exposed to as a consequence of further and future expansion of the project pursuant hereto.

#### ARTICLE 28. CONVERTIBLE LAND

28.1 Any Supplemental Declaration With Convertible Land and Supplemental Condominium Plat with Convertible Land shall designate the Land that may be or is converted to one or more Units or Limited Common Areas in accordance with Section 57-8-7 of the Act and the remaining provisions of this Article.

28.2 The Declarant hereby reserves the option to convert Common Area to Units located in the designated Convertible Land to create up to \_\_\_\_\_ Residential Units, \_\_\_\_\_ Commercial Units, \_\_\_\_\_ Parking Units or \_\_\_\_\_ Storage Units. This option to convert Common Area into Units in the Convertible Land may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire five (5) years from the date following the recordation of this Declaration, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said five (5) years. Such Units must be constructed on the Convertible Land.

28.3 The conversion of the Common Area into Units located in the Convertible Land may be accomplished by the filing for record by the Declarant in the office of the County Recorder of Summit County, Utah, no later than five (5) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with Supplemental Condominium Plat or Plats containing the same information with respect to the new Units as was required for Units on the original Condominium Plat. The conversion may be accomplished in phases by successive supplements or in one supplemental conversion.

28.4 In the event of such conversion of Common Area into Units constructed in the Convertible Land, the definitions used in this Declaration automatically shall be modified to encompass and refer to the Project as so converted. Reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such conversion shall be effective to transfer rights in the Project, with additional references to the Supplemental



Declaration With Convertible Land and the Supplemental Condominium Plat With Convertible Land. The recordation in the office of the county recorder of a Supplemental Condominium Plat With Convertible Land incident to any conversion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such conversion the respective undivided interest or interests in the property as modified by such conversion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, security in the interest so acquired by the Owner of the Unit as affected by such conversion.

28.5 The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Maps With Convertible Land and Supplemental Declaration With Convertible Land in the said office of the county recorder.

28.6 Each deed of Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental Declaration With Convertible Land, as per Section 57-8-13.2 of the Act. The proportionate interest of each Unit Owner in the Common Areas after any conversion within the Project shall be an undivided interest of the Project as so converted. A power coupled with an interest is hereby granted to the undersigned, its successors and assigns, as attorney in fact to shift percentages of undivided ownership interest in and to the Common Areas in accordance with the Supplemental Declarations recorded pursuant hereto and the Act, and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish such a shifting of ownership percentages in the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the percentages of ownership in the Common Areas can be accomplished. Accordingly, upon the recordation of a Supplemental Declaration With Convertible Land and Supplemental Plat With Convertible Land incident to any conversion, the revised schedule of undivided ownership interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control. Notwithstanding anything to the contrary herein, change in the percentage of undivided ownership interest in the Common Areas caused by the conversion of Convertible Land may be effected more than five (5) years after the effective date of this Declaration without the prior written consent or vote of at least two-thirds (2/3rds) of the Total Vote.

28.7 If a conversion or conversions occur as contemplated above, then:

28.7.1 All or any part of the Convertible Land may be converted without any limitations whatsoever save and except that all additional Residential Units or Commercial Units created are subject to all recorded Use Restrictions.

28.7.2 Portions of the Convertible Land may be converted within the Project at different times without any limitations.

28.7.3 The undersigned shall have the right without further conveyance or documentation to have access to the Convertible Land through the easement areas as shown on the Condominium Plat. No Unit Owner or Owners shall not allow anything to be obstruct or interfere with said easement areas.

28.7.4 No assurances are made concerning:

28.7.4.1 The locations of any Commercial Unit or improvement that may be made on any portion of the Convertible Land within the Project.

28.7.4.2 The type, kind or nature of improvement which may be created on any portion of the Convertible Land, except that the common facilities, Buildings and Units will be comparable to the other Buildings, Units and facilities, and will be of a similar quality of materials and construction within the Project.

28.7.4.3 Whether any Units created on any portion of the Convertible Land will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the other similar Units in the Project.

28.7.4.4 The type, size, or maximum number of Limited Common Areas which may be created within any portion of the Convertible Land within the Project.

28.8 Notwithstanding anything to the contrary which may be contained herein, the Amended Declaration is not intended, and shall not be construed so as to impose upon the undersigned any obligation respecting, or to restrict the undersigned in any way with regard to: (i) the conversion of any portion of the Convertible Land within the Project; (ii) the creation, construction, or addition to the Project of any additional Units; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Convertible Land within the Project.

28.9 Assuming all of the Convertible Land is converted, the maximum number of Residential Units or Commercial Units added would be \_\_\_\_\_, making that the total number of Residential Units or Commercial Units in the Project, and the minimum percentage of ownership interest of each Commercial and Residential Unit would be \_\_\_\_\_%; the maximum number of Parking Units added would be \_\_\_\_\_, making that the total number of Parking Units in the Project, and the minimum percentage of ownership interest of each Parking Unit would be \_\_\_\_\_%; the maximum number of Storage Units added would be \_\_\_\_\_, making that the total number of Storage Units in the Project, and the minimum percentage of ownership interest of each Storage Unit would be \_\_\_\_\_%; provided, however, the number of Units actually constructed and the actual undivided percentage

of ownership interest of each Unit may actually be somewhere in between the numbers and percentages set forth above.

#### ARTICLE 29 CONVERTIBLE SPACE

29.1 Any Supplemental Declaration With Convertible Space and Supplemental Condominium Plat with Convertible Space shall designate the Space that may be or is converted to one or more Units or Limited Common Areas in accordance with Section 57-8-7 of the Act and the remaining provisions of this Article.

29.2 The Declarant hereby reserves the option to convert Common Area to Units located in the designated Convertible Space to create up to \_\_\_\_\_ Residential Units, \_\_\_\_\_ Commercial Units, \_\_\_\_\_ Parking Units or \_\_\_\_\_ Storage Units. This option to convert Common Area into Units in the Convertible Space may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire five (5) years from the date following the recordation of this Declaration, unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said five (5) years. Such Units must be constructed on the Convertible Space.

29.3 The conversion of the Common Area into Units located in the Convertible Space may be accomplished by the filing for record by the Declarant in the office of the County Recorder of Summit County, Utah, no later than five (5) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with Supplemental Condominium Plat or Plats containing the same information with respect to the new Units as was required for Units on the original Condominium Plat. The conversion may be accomplished in phases by successive supplements or in one supplemental conversion.

29.4 In the event of such conversion of Common Area into Units constructed in the Convertible Space, the definitions used in this Declaration automatically shall be modified to encompass and refer to the Project as so converted. Reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such conversion shall be effective to transfer rights in the Project, with additional references to the Supplemental Declaration With Convertible Space and the Supplemental Condominium Plat With Convertible Space. The recordation in the office of the county recorder of a Supplemental Condominium Plat With Convertible Space incident to any conversion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Project as it existed before such conversion the respective undivided interest or interests in the property as modified by such conversion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Project as it existed, security in the interest so acquired by the Owner of the Unit as affected by such conversion.

29.5 The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the

Supplemental Maps With Convertible Space and Supplemental Declaration With Convertible Space in the said office of the county recorder.

29.6 Each deed of Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental Declaration With Convertible Space, as per Section 57-8-13.4 of the Act. The proportionate interest of each Unit Owner in the Common Areas after any conversion within the Project shall be an undivided interest of the Project as so converted. A power coupled with an interest is hereby granted to the undersigned, its successors and assigns, as attorney in fact to shift percentages of undivided ownership interest in and to the Common Areas in accordance with the Supplemental Declarations recorded pursuant hereto and the Act, and each deed of a Unit in the Project shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish such a shifting of ownership percentages in the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the percentages of ownership in the Common Areas can be accomplished. Accordingly, upon the recordation of a Supplemental Declaration With Convertible Space and Supplemental Plat With Convertible Space incident to any conversion, the revised schedule of undivided ownership interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Project conflict irreconcilably, the terms of that instrument which was recorded most recently shall control. Notwithstanding anything to the contrary herein, change in the percentage of undivided ownership interest in the Common Areas caused by the conversion of Convertible Space may be effected more than five (5) years after the effective date of this Declaration without the prior written consent or vote of at least two-thirds (2/3rds) of the Total Vote.

29.7 If a conversion or conversions occur as contemplated above, then:

29.7.1 All or any part of the Convertible Space may be converted without any limitations whatsoever save and except that all additional Residential Units or Commercial Units created are subject to all recorded Use Restrictions.

29.7.2 Portions of the Convertible Space may be converted within the Project at different times without any limitations.

29.7.3 The undersigned shall have the right without further conveyance or documentation to have access to the Convertible Space through the easement areas as shown on the Condominium Plat. No Unit Owner or Owners shall not allow anything to be obstruct or interfere with said easement areas.

29.7.4 No assurances are made concerning:

29.7.4.1 The locations of any Commercial Unit or improvement that may be made on any portion of the Convertible Space within the Project.

29.7.4.2 The type, kind or nature of improvement which may be created on any portion of the Convertible Space, except that the common facilities, Buildings and Units will be comparable to the other Buildings, Units and facilities, and will be of a similar quality of materials and construction within the Project.

29.7.4.3 Whether any Units created on any portion of the Convertible Space will be substantially identical to those within the initial Project except that Units will be constructed of an equal or better quality of materials and construction than the other similar Units in the Project.

29.7.4.4 The type, size, or maximum number of Limited Common Areas which may be created within any portion of the Convertible Space within the Project.

29.8 Notwithstanding anything to the contrary which may be contained herein, the Amended Declaration is not intended, and shall not be construed so as to impose upon the undersigned any obligation respecting, or to restrict the undersigned in any way with regard to: (i) the conversion of any portion of the Convertible Space within the Project; (ii) the creation, construction, or addition to the Project of any additional Units; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Convertible Space within the Project.

29.9 Assuming all of the Convertible Space is converted, the maximum number of Residential Units or Commercial Units added would be \_\_\_\_\_, making that the total number of Residential Units or Commercial Units in the Project, and the minimum percentage of ownership interest of each Commercial and Residential Unit would be \_\_\_\_\_%; the maximum number of Parking Units added would be \_\_\_\_\_, making that the total number of Parking Units in the Project, and the minimum percentage of ownership interest of each Parking Unit would be \_\_\_\_\_%; the maximum number of Storage Units added would be \_\_\_\_\_, making that the total number of Storage Units in the Project, and the minimum percentage of ownership interest of each Storage Unit would be \_\_\_\_\_%; provided, however, the number of Units actually constructed and the actual undivided percentage of ownership interest of each Unit may actually be somewhere in between the numbers and percentages set forth above.

#### ARTICLE 30. ARCHITECTURAL AND DESIGN REVIEW

The following restrictions apply to Architectural and design review. The approvals required by the Declarant, Association or Architectural Review or Control Committees shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulations, the Canyons SPA documents, or any other governing recorded instrument.

30.1 Until 100% of the Maximum Number of Cabin Lots have been developed and conveyed to Owners, and Cabins constructed thereon, the Declarant, subject to the restrictions set forth in the SPA for The Canyons and the Design Guidelines adopted by the Cabin Design Review Committee, shall have exclusive authority to administer and enforce Architectural controls and to review and act upon all applications for original construction within the Project. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Declarant may assign its rights hereunder in whole or in part, at any time, to a Design Review Committee.

30.2 The Declarant may appoint a Cabin Design Review Committee (the "CRC") which shall consist of one and not more than three Persons. The CRC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing structures or on or to Cabin Lots (including, without limitation, the initial landscaping on a Lot), the adjacent open space, and Common Area; provided, however, any change to the Common Area shall require the approval of the Declarant as long as it owns any of the Property. The Declarant may also assign jurisdiction to CRC over original construction within the Project. As long as Declarant owns any property in the Project, the CRC shall notify the Declarant in writing of any action taken hereunder. During such time, the Declarant shall have the right in its sole and absolute discretion, to veto any action taken by the CRC; provided, the Declarant's right to veto must be exercised within 30 days of its receipt of notice of action taken by the CRC. The party submitting the Plans for approval shall not be notified of the CRC's approval or disapproval until after Declarant's right to veto has been exercised or has expired. CRC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Management Committee may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

30.3 The Declarant shall prepare Cabin Design Guidelines for the Project which shall apply to all construction activities within the Project. The Design Guidelines may contain general provisions applicable to all of the Project, as well as specific provisions which vary from one portion of the Project to another depending upon location, unique characteristics, intended use, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines shall not be the exclusive basis for decisions and shall not guarantee approval of any application. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines. The Design Guidelines may be amended to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. All structures and improvements constructed upon a Cabin Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved CRC, unless CRC has granted a variance in writing. So long as CRC has acted in good faith, and subject to the rights of the Declarant, its findings and conclusions

with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Declaration shall be final and conclusive. The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Project and all such Persons shall conduct their activities in accordance with such Design Guidelines.

30.4 Prior to commencing any construction, an Owner shall submit an application for approval of the proposed work to CRC. Such application shall be in the form required by CRC and shall include such information as required under the Design Guidelines, such as Plans showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedure and any additional information for submission of the Plans. Before the Owner may begin the proposed activity, the application must be approved by CRC.

30.5 In reviewing each submission, CRC may consider quality of workmanship and design, visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, and location in relation to surrounding structures and plant life. CRC may require relocation of native plants within the construction site, the installation of an irrigation system for the landscaping, or the inclusion of natural plant life on the Lot as a condition of approval of any submission. Approval by CRC shall not constitute approval of or waiver of approvals or reviews required by the Declarant, or any other governmental agency or entity having jurisdiction over architectural or construction matters. CRC shall not require permits or other approvals by local government entities other than those issued by such entities in the usual course of business. CRC shall, within the period specified in the Design Guidelines, advise the party submitting the plans, in writing, at an address specified by such party at the time of submission, of (1) the approval of Plans, or (2) the segments or features of the Plans which are deemed by CRC to be inconsistent or not in conformity with this Declaration and/or the Design Guidelines, the reasons for such finding, and suggestions, if appropriate, for the curing of such objections. In the event CRC fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice (for purposes of this Article only) shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prep aid, is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

30.6 CRC as part of the Plan approval may require that construction in accordance with approved Plans be commenced within a specified time period. In such event, if construction does not commence in a timely manner, then such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to CRC for reconsideration. If construction is not completed on a project for which Plans have been approved within the period, if any, set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Declaration.

30.7 Each Owner acknowledges that the members of CRC will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, Plans and Specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, Plans and Specifications, drawings, or other matters subsequently or additionally submitted for approval.

30.8 CRC may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated uses of adjoining Project. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the CRC may not authorize variances without the written consent of the Declarant, as long as it owns any of the Property or has a right to annex any Additional Property.

30.9 Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, Association, Management Committee or CRC, nor any of their members, officers, employees, agents or representatives shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, Association, Management Committee or CRC, nor any of their members, officers, employees, agents or representatives shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Cabin Lot. In all matters, the Declarant, Association, Management Committee or CRC, nor any of their members, officers, employees, agents or representatives shall be defended and indemnified by the Association as provided in the By-Laws.

30.10 Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Association, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the Association or restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Management Committee (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration. All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, the Association shall be



authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Bylaws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration. All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Project, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Declarant, the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

30.11 The following basic building restrictions shall be binding upon the construction of Improvement in or on the Property:

30.11.1 Each Cabin Lot shall be used solely for residential purposes.

30.11.2 The Plans and Specifications, including the location of all improvements must be approved in writing by The Ranches Homeowners Association Design Review Committee prior to commencement of any construction in accordance with and subject to this Declaration.

30.11.3 The elevation articulation ratio is intended to establish a measure of acceptable Architectural materials and massing for an elevation. This ratio shall be established for all elevations of a dwelling as well as averaged in order to meet the minimum requirements.

30.11.4 Any structures to be constructed on a Cabin Lot shall comply with the following minimum property line setbacks:

Front yard: 10 feet from back of sidewalk

Rear yard: 10 feet

Side yards: 15 feet

30.11.5 Each Cabin must be no more than 2-1/2 story. Each Cabin must contain at least 2500 square feet and no more than 4500 square feet.

30.11.6 All Exterior Surfaces of any building shall be of materials and of colors approved by CRC and in conformity with the Design Guidelines.

30.11.7 Roofs. All roofs shall be constructed in accordance with the Design Guidelines.

30.11.8 Roof Overhangs. All roof overhangs shall be constructed in accordance with the Design Guidelines.

30.11.9 No Cabin shall exceed 35 feet in height measured from the highest natural ground level adjacent to such Cabin to the highest point of the ridge line of such Cabin in accordance with the Design Guidelines.

30.11.10 All Cabin garages must meet the criteria of the Design Guidelines.

30.11.11 A minimum of 30 % window(s) on each elevation of a Cabin shall be required. Metal windows are prohibited. The specific criteria for windows are set forth in the Design Guidelines.

30.11.12 Decks. Decks shall be integrated with the architecture of the Cabin. Covered deck roof forms shall be consistent with the slope of the main roof on the Cabin. Deck supporting posts shall be 8 inches or greater. Exposed wood deck elements shall be painted or stained. Additional information is set forth in the Design Guidelines.

30.11.13 Construction must be commenced within 18 months of the closing on a Cabin Lot purchase and must be completed within 9 months thereafter.

30.11.14 All Cabins shall be of new construction. No other building (including but not limited to playhouses, and storage sheds) may be moved onto a Cabin Lot without the prior written approval of CRC.

30.11.15 No building materials shall be stored on any Cabin Lot except temporarily during construction of an improvement or its alteration, renovation or remodeling, and then only when a building permit is in force.

30.11.16 No Improvement or structure shall be occupied in the course of original construction until the appropriate governmental authorities have issued all required certificates of occupancy. All work of construction shall be prosecuted diligently and continuously from the time of commencement until completed.

30.11.17 No trailer, mobile home, tent, shack or other temporary building, improvement or structure shall be placed upon any property without the prior approval of The Ranches Master Homeowners Association Design Review Committee except that temporary structures necessary for storage of tools and equipment and for office space for architects, sales personnel, builders and foremen during actual construction may be maintained with the prior approval of the CRC, with such approval to include the nature, size and location of such structure.

30.11.18 This Declaration shall not be construed so as to unreasonably interfere with, or prevent normal construction of Improvements by any Owner, provided that when completed such Improvements shall in all ways conform to this Declaration. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs, or similar activities, provided that such construction is pursued to completion with reasonable diligence and is in compliance with applicable federal, state and local laws and

ordinances and any rules and regulations adopted pursuant thereto, and conforms to usual construction practices in the area. In the event of any dispute, a temporary waiver of the applicable provision, including but not limited to any provision prohibiting temporary structures, may be granted by the Design Review Committee, provided that such waiver shall be only for the reasonable period of such initial construction. Such waiver may, but need not, be recorded or in recordable form.

30.11.19 Driveways for dwellings shall be large enough to accommodate at least 2 parked automobiles. Hard surface driveways (e.g., concrete, brick pavers, etc.) are required and shall be properly maintained. No asphalt or gravel driveways are permitted.

30.11.20 Each Cabin Lot when improved shall have a Mail Box and post compatible with the architecture and materials of the Cabin and Neighborhood, and must be in compliance with the requirements of the Design Guidelines and CRC.

30.12 Each Cabin Lot and Owner shall be and is hereby made subject to all easements that now or in the future may be used for gas, electric, telephone, cable television, cable for computers and the Internet, water, sewer, and other lines present or in the future, as are necessary to provide utility services to said Cabin Lot, adjoining Lots, and the Improvements thereon. Each Owner by accepting a deed or other document of conveyance agrees to execute such further grant(s) or other instruments as may be required by any utility or other company or public governmental or quasi-governmental entity for such purposes. Subsequent to the date of the execution of this Declaration, any necessary electrical, telephone, gas, water, sewer, cable television, cable for computers or the Internet, and other utility conduits, lines and pipes on any Cabin Lot shall be placed underground. No transformer, or electric, power, gas, water or other meter or device of any type, or any other apparatus shall be located on any pole within the Property. All utility installations must be approved by the CRC or its designee in writing in advance. Each Owner shall abide by all applicable rules and regulations of all utility and other companies, governmental entities or quasi-governmental entities, who supply or provide utilities or related services to the Property. Street lights installed on the Property, or any portion thereof, including without limitation any Cabin Lot, shall be subject to and governed by the Design Guidelines, CRC and SPA for The Canyons.

30.13 No improvement, building, fence, wall or other structure shall be commenced, erected, repaired, altered, added to or maintained until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, exterior color scheme and location of such structure, and the grading plans and finished grade elevations of the Lot to be built upon have been submitted to and approved by the CRC. No landscaping on any Lot shall be done until a landscaping plan shall have been submitted to and approved by the CRC. The CRC shall have the right to refuse to approve any such plans or specifications, or grading or landscaping plans which are not suitable or desirable in the sole opinion of the CRC, for aesthetic or other reasons, and in so passing upon such plans, specifications, grading and landscaping plans, the CRC shall have the right to take into consideration the suitability of the proposed building or other improvement and of the materials of which it is to be built, to the Lot upon which it proposes to erect the same, the harmony thereof with the surroundings, the topography of the land and the effect of the building or other improvements as planned on the outlook from the adjacent or

neighboring Lots. All subsequent additions to or changes or alterations in any building, fence, or other improvement, including exterior color scheme and all subsequent additions to or changes or alterations in any grading or landscaping plans shall be subject to the prior approval of the CRC.

30.14 The initial members of the CRC are:

1. Donald E. Mullen – 333 W River Park Drive, Provo, Utah
2. Kim Asay – 333 W. River Park Drive, Provo, Utah
3. Krisel Travis – 333 W. River Park Drive, Provo, Utah

Each member of the Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed as provided herein.

30.15 The Management Committee shall have the right to appoint and remove all members of the CRC, except that during the period of Declarant's control, when the CRC members shall be appointed by the Declarant.

30.16 Whenever in this Declaration the approval of the CRC is required, it shall have the right to consider all of the plans and specifications for the improvement or proposal in question and all other facts, which in its sole discretion are relevant. Prior to commencement of any construction of any improvement on any Cabin Lot, the plans and specifications shall be submitted to the CRC, and construction thereof may not commence unless and until the CRC has approved such Plans and Specifications in writing. The CRC shall consider and act upon any and all plans and specifications submitted for its approval pursuant to this Declaration or as from time to time shall be assigned to it by the Association, including the inspection of construction in progress to assure its conformance with plans and specifications approved by the CRC. The CRC shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated, will not be detrimental to the surrounding area or Lots as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures. The CRC may condition its approval of plans and specifications or on other information prior to approving or disapproving the material submitted. The CRC may also issue rules or guidelines regarding anything relevant to its function, including but not limited to minimum standards and procedures for the submission of plans and specifications for approval. The CRC may require a fee to accompany each application for approval. The CRC may require such detail in plans and specifications submitted for its review and such other information, as it deems proper. Until receipt by the CRC of all required plans and specifications and other information, the CRC may postpone review of anything submitted for approval. All improvements must comply with the zoning, building codes and ordinances.

30.17 The CRC shall meet from time to time as necessary to perform its duties hereunder. The CRC may from time to time by resolution, unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the CRC. In the absence of such designation, the vote of a majority of all of the members of the

CRC, or the written consent of a majority of all of the members of the CRC taken without a meeting, shall constitute an act of the CRC.

30.18 The members of CRC shall be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for expenses incurred by them in the performance of their duties hereunder.

30.19 Inspection of completed work and correction of defects therein shall proceed as follows:

30.19.1 Upon the completion of any improvement for which approved plans and specifications are required under this Declaration, the Owner shall give written notice of completion to the CRC.

30.19.2 Within such reasonable time as the CRC may set but not to exceed fifteen (15) days thereafter, the CRC or its duly authorized representative may inspect such improvement. If the CRC finds that such work was not done in strict compliance with all approved plans and specifications submitted, or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within such period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

30.19.3 If upon the expiration of thirty (30) days from the date of such notification the Owner shall have failed to remedy such noncompliance; the CRC shall notify the Management Committee in writing of such failure. Upon Notice and Hearing, the Management Committee shall determine whether there is a noncompliance and if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Management Committee ruling. If the Owner does not comply with the Management Committee's ruling within such period, the Management Committee at its option, may either remove the non-complying improvement or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Management Committee shall levy an assessment against such Owner, the Improvement in question and the Cabin Lot upon which the same is situated for reimbursement, and the same shall constitute a lien upon such land and improvement and be enforced as provided in this Declaration.

30.19.4 If for any reason after receipt of said written notice of completion from the Owner the CRC fails to notify the Owner of any noncompliance within the period provided above, the improvement shall be deemed to be in accordance with said approved plans and specifications.

30.20 The CRC may inspect all work in progress and give notice of noncompliance as provided above. If the Owner denies that such noncompliance exists, the procedure set out above shall be followed, except that no further work shall be done, pending resolution of the

dispute, which would hamper correction of the noncompliance if the Management Committee shall find that such noncompliance exists.

30.21 Neither the Association, CRC, Management Committee nor any member thereof shall be liable to the Association or to any owner or to any other person for any loss, damage, or injury arising out or in any way connected with the performance of the CRC or the Management Committee respective duties under this Declaration unless due to the willful misconduct or bad faith of the Association, CRC or Management Committee or its members, as the case may be.

#### ARTICLE 31. COMBINATION OF UNITS.

3.1. An Owner of two or more adjoining Units shall have the right upon approval of the Management Committee and the mortgagees of said Units, to combine one or more adjoining Units or portions thereof and to alter or amend the Declaration and Plat to reflect such combination.

31.1 Such amendments may be accomplished by the Unit Owner recording an amendment or amendments to this Declaration, together with an amended Plat containing the same information with respect to the altered Units as required in the initial Declaration and Plat with respect to the initial Units. All costs and expenses required in such amendments shall be borne by the Unit Owner desiring such combination.

31.2 All such amendments to the declaration and Maps must be approved by attorneys employed by the Management Committee to insure the continuing legality of the Declaration and the Plat. The cost of such review by the attorneys shall be borne by the person wishing to combine the Units.

31.3 Any amendments of the Declaration or Maps pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the common areas and facilities which are appurtenant to the Units involved in the alterations. The remaining combined Unit, if two or more Units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the Units that are combined as set forth in Exhibit B. If a portion of one Unit is combined with another, the resulting Units shall acquire a proportionate percentage of the total undivided interest in the common areas and facilities of the Units involved in the combination on the basis of area remaining in the respective, combined Units. The percentage of undivided interest in the common areas and facilities appurtenant to all other Units shall not be changed. All such amendments must, in all instances, be consented to by the Management Committee and also all other persons holding interest in the Units affected. The consent of other Unit owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the common areas and facilities of the other Unit owners remain unchanged.

**ARTICLE 32. WAIVER OF HOMESTEAD EXEMPTION.**

To the fullest extent permitted by law, by acceptance of the deed or to his instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by the Utah Exemptions Act, U.C.A., Sections 78-23-1 through 78-23-14, as amended or supplemented from time to time, as the same may apply to a lien recorded to secure payment of an Assessment or Additional Charge.

**ARTICLE 33. FINES.**

33.1 Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. Pursuant to U.C.A., Section 57-8-37 (2001), a breach of these restrictive covenants and rules is subject to enforcement pursuant to the Declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

33.1.1 Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation. If a request for a hearing is not submitted to the Management Committee within thirty (30) days, the right to a hearing is waived, and the fine imposed will stand. A request for a hearing to appeal should be sent in writing to the Manager or Secretary of the Association.

33.1.2 Before assessing a fine under subsection (a), the Management Committee shall give notice to the Unit Owner of the violation and inform the owner that the fine will be imposed if the violation is not cured within the time provided in the Declaration, Bylaws, or rules, which shall be at least forty-eight (48) hours.

33.1.3 A fine assessed hereunder shall:

33.1.3.1 be made only for a violation of a restrictive covenant, rule or regulation;

33.1.3.2 be in the amount specifically provided for in the Declaration, Bylaws, or Rules for that specific type of violation, not to exceed \$500.00; and

33.1.3.3 accrue interest and late fees as provided in the Declaration, Bylaws, or Rules.

33.1.4 Cumulative fines for a continuing violation may not exceed \$500.00 per month.

33.1.5 An Owner who is assessed a fine under subsection (a) may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with standards of due process adopted by the Management Committee. No finance charge, default interest, or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

33.1.6 An Owner may appeal a fine issued under subsection (a) by initiating a civil action within one hundred and eighty (180) days after: (1) A hearing has been held and a final decision has been rendered by the Management Committee hereunder; or (2) The time to request an informal hearing hereunder has expired without Owner making such a request.

33.1.7 A fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses hereunder.

#### ARTICLE 34. TERMINATION OF COMMON UTILITIES AND RIGHT TO USE AMENITIES.

34.1 If an Owner fails or refuses to pay any assessment when due, the Management Committee may (1) terminate the Owner's right to receive utility services paid as a common expense; and (2) terminate the Owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard.

34.1.1 Before terminating utility services or right of access and use of recreational facilities, the manager or Management Committee shall give written notice to the Owner in the manner provided in the Declaration, Bylaws, or Rules. The notice shall state:

34.1.1.1 utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the Declaration, Bylaws, or Rules, which time shall be stated and be at least 48 hours;

34.1.1.2 the amount of the assessment due, including any interest or late payment fee; and

34.1.1.3 the right to request a hearing.

34.1.2 An Owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the Management Committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. Mail, postage prepaid, addressed to the Owner's last known address on the books and records of the Association

34.1.3 The hearing shall be conducted in accordance with the standards provided in the Declaration, Bylaws, or Rules.

34.1.4 If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

34.1.5 Upon payment of the assessment due, including any interest or late payment fee, the manager or Management Committee shall immediately take action to reinstate the terminated utility services to the Unit and right to use of recreational facilities.



ARTICLE 35. ASSIGNMENT OF RENTS.

35.1 If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Management Committee may demand the tenant to pay to the association all future lease payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or Management Committee must give the Owner written notice, in accordance with the Declaration, Bylaws, or Rules, of its intent to demand full payment from the tenant. This notice shall:

35.1.1 provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the Declaration, Bylaws, or Rules;

35.1.2 state the amount of the assessment due, including any interest or late payment fee;

35.1.3 state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due, and

35.1.4 provide the requirements and rights described herein.

35.2 If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Management Committee may deliver written notice to the tenant, in accordance with the Declaration, Bylaws, or Rules, that demands future payments due to the Owner be paid to the association pursuant hereto. A copy of the notice must be mailed to the Owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

35.2.1 that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Management Committee's intent to collect all lease payments due to the association pursuant hereto.

35.2.2 that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the association; and

35.2.3 payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this subsection, suit or other action may not be initiated by the Owner against the tenant for failure to pay.

35.3 All funds paid to the association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the Owner within five business days of payment in full to the association.

35.4 Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or Management Committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the Owner.

35.5 As used in this Article, the terms "lease" or "leasing" shall mean regular, exclusive occupancy of a Unit by any person or persons, other than the Owner, for which the Owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

#### ARTICLE 36. VOTING.

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

The number of votes appurtenant to each respective Unit shall be based on the ratio of the respective points of each Unit to all other Units as set forth in Exhibit "A". The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Amendment.

#### ARTICLE 37. EASEMENTS.

37.1 If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Condominium Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

37.2 Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.

37.3 It is contemplated that Declarant or another party may construct additional Buildings, as subsequent phases of the Project, which may encroach upon portions of the Common Areas and Facilities, and Declarant shall also have an easement over, across and within the Common Areas and Facilities for such purposes.

37.4 It is contemplated that portions of the Common Areas, Limited Common Areas or Commercial Unit may be used as a telecommunications facility. In order to facilitate such use,

Declarant hereby grants and/or reserves to the Owners and lessees of such facility a non-exclusive easement and right-of-way across, over, above, through, within and under such portions of the Project as may be reasonably necessary for the construction, installation, operation, repair and maintenance of the telecommunications facility and associated transmission lines and equipment.

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

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

37.7 The Declarant shall have a temporary construction easement over the Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing future phases of the Project including all future buildings and other physical improvements as well as all Units and Common Areas and Facilities. The Owners of Units which have been constructed in prior phases do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Areas and Facilities appurtenant thereto, and such Owners do hereby waive any right to object to such construction activity, provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners of Units in the Project. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the restrictions set forth herein.

37.8 All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be constructed to grant and reserve such easements as provided herein, even though no specific reference to such easements appears in any such conveyance.

#### ARTICLE 38. ASSUMPTION OF INHERENT RISKS.

38.1 Each Owner, by purchasing a Unit in the vicinity of any ski resort, lift, run or other recreational amenity, including any Private Amenity, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any amenity, including, without limitation: (1) skiing, as defined in U.C.A., Section 78-27-52, (2) noise from ski lifts, maintenance equipment, snow making equipment, skiers and so forth, (3) the use of ski lifts, maintenance equipment, snow making equipment and so forth, (4) reduction in privacy caused by ski traffic, (5) errant skiers or ski equipment, and (6) the design of the ski resort, lifts or runs. Each such Owner agrees that neither Declarant, the Association, nor any of Declarant's affiliates or agents shall be liable to Owner or any other Person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of the Owner's Unit to the ski resort, run, lift or equipment, including, without limitation, any

claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Association against any and all claims by Owner or his family members, guests or invitees.

38.2 Neither the Declarant nor the Association guarantees or represents that any Unit views will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the Association or the Declarant to prune or thin trees or other landscaping except as otherwise expressly provided herein. Each Owner acknowledges and agrees that trees and other landscaping may be added to the Common Area from time to time. In addition, the location, configuration, size, and elevation of the tees, lifts, runs or other amenities may be changed from time to time in the sole discretion of the owner or operator of the ski resort or Private Amenity, and that any such additions or changes may diminish or obstruct any view from or utility of the Unit, and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

#### ARTICLE 39. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Management Committee addressed to: by Morinda Properties Escala Lodges LC, a Utah limited liability company, 333 West River Park Drive, Provo, Utah 84604.

#### ARTICLE 40. NO WAIVER.

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

## ARTICLE 41. ENFORCEMENT.

41.1 All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, and the rules and regulations and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Management Committee to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Common Area Manager, the power and authority to carry out disciplinary actions duly imposed.

41.2 The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on an account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:

41.2.1 The judgment of a court; or

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

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

## ARTICLE 42. DECLARANT.

The term "Declarant" as used herein shall mean and include Declarant and any person or persons who might acquire title from it to all or some of the unsold Units, Convertible Space, Convertible Land or Additional Land through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure, or, in the situation where, any person purchases all, or some of the remaining Units, Convertible Space, Convertible Land or Additional Land in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and the Act.

## ARTICLE 43. SECURITY.

The Association may, but shall not be obligated to, maintain or support certain activities within the Project designed to make the Project safer than it otherwise might be. However, neither the Association nor the Committee shall in any way be considered insurers or guarantors of security

within the Project. Neither the Association nor the Management Committee shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, their guests and invitees, as applicable, acknowledge that neither the Association nor the Committee represent or warrant that any security measures undertaken will insure their safety. All Owners and residents, their guests and invitees, acknowledge and understand that the Association and Committee are not insurers of their safety and they hereby assume all risks for loss or damage to their person or property and further acknowledge that the Association and Committee have made no representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability or fitness for any particular purpose, relative to any security measures undertaken within the Project.

#### ARTICLE 44. AGENT FOR SERVICE OF PROCESS.

The agent for service of process under the Act until the expiration of the Additional Developmental Rights under Article 10 shall be Kim Asay of 333 West River Park Drive, Provo, Utah 84604. Thereafter, the agent for service of process shall be the Common Area Manager.

#### ARTICLE 45. SEVERABILITY.

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

#### ARTICLE 46. CAPTIONS.

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

#### ARTICLE 47. LAW CONTROLLING.

This Declaration and the Condominium Plat shall be construed and controlled by and under the laws of the State of Utah.

#### ARTICLE 48. USE OF NAME

No Person shall use the term "Escala Lodges" or any derivative thereof in any printed or promotional material without the express prior written consent of the Declarant.

#### ARTICLE 49. EFFECTIVE DATE.

This Declaration shall take effect when recorded.

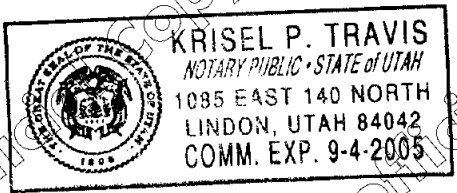
IN WITNESS WHEREOF, the undersigned hereby executes this document this 16 day of June 2005.

MORINDA PROPERTIES ESCALA LODGES LC

By: Donald E. Mullen  
Name: Donald E. Mullen  
Its: Member

STATE OF UTAH                    )  
  :ss.  
COUNTY OF UTAH                )

On the 16 day of June 2005, personally appeared before me Donald E. Mullen, the Member of Morinda Properties Escala Lodges LC, who acknowledged to me that he signed the above Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions.



NOTARY PUBLIC and SEAL

By: Krisel P. Travis  
Residing at:  
My commission expires:

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**PARCEL 1**

Commencing at the Northeast corner of Section 1, Township 2 South, Range 3 East, Salt Lake Base and Meridian; thence North 89°59'43" West 1,887.02 feet; thence South 0.89 feet to the Southerly right of way line of High Mountain Road and the Easterly line Lot 16 of the Park City West Plat No. 2, on file and of record in the office of the Summit County Recorder, said point being the POINT OF BEGINNING; thence South along the East line of said Lot 16, a distance of 193.48 feet; thence leaving said East line South 51°34'55" East, a distance of 185.07 feet; thence South, a distance of 215.00 feet to the centerline of Red Pine Road Right-Of-Way; thence along said centerline, West, a distance of 145.00 feet; thence leaving said centerline North, a distance of 44.87 feet to the Southwest corner of vacated Lot 14 of said subdivision; thence along the South line of said vacated Lot 14, West, a distance of 147.29 feet to the Southwest corner of said vacated Lot 14; thence leaving said vacated Lot 14 and along the boundary of said Park City West Plat No. 2 the following calls: South, a distance of 25.00 feet; thence West, a distance of 300.00 feet; thence North, a distance of 25.00 feet; thence West, a distance of 126.23 feet to the southwest corner of vacated Lot 13 of said subdivision; thence along the West line of said Lot, North, a distance of 479.50 feet to the Northwest corner of said vacated Lot 13; thence East along the said subdivision boundary, a distance of 406.23 feet to the vacated centerline of Brad Avenue of said Park City West Plat No. 2; thence along said centerline the following calls: South, a distance of 66.00 feet to a point of curve to the left having a radius of 60.00 feet and a central angle of 60°00'00"; thence Southeasterly along the arc a distance of 62.83 feet; thence South 60°00'00" East, a distance of 29.92 feet to the intersection of the centerline of vacated Jeannine Drive; thence along the centerline of the vacated Jeannine Drive North 30°00'00" East, a distance of 143.02 feet to the Southerly right of way line of said High Mountain Road and point of curvature of a 200 foot radius curve to the right, radius point bears South 17°24'57" East; thence along the arc of said curve and said right of way 40.77 feet through a central angle of 11°40'46" to the curves end and the POINT OF BEGINNING.

Containing 7.136 acres, more or less.

**PARCEL 2**

Together with a right-of-way for roadway purposes, as granted in that certain Warranty Deed recorded August 2, 1977 as Entry No. 139351 in Book M97 at Page 730 of the Official Records; being more particularly described as being fifty (50) feet in width, twenty-five (25) feet on either side of the following described centerline:

Beginning at a point on the South line of a county road which is 1253 feet North and 750 feet West from the Northeast corner of Section 1, Township 2 South, Range 3 East, Salt Lake Base and Meridian; and running thence South 680.6 feet; thence South 10°00' East 355 feet; thence 1112.96 feet along the arc of a 636.62 foot radius curve to the right; thence West 881 feet.

SUMMIT COUNTY, STATE OF UTAH



**EXHIBIT "B"**  
**BYLAWS**

**I. IDENTITY**

These are the By-Laws of the Escala Lodges and Escala Homeowners Association.

**II. REGISTERED AGENT AND OFFICE**

The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Kim Asay and the initial office of the Registered Agent is 333 West River Park Drive, Provo, Utah 84604.

**III. APPLICATION**

All present or future owners, tenants, of any other persons who might use the facilities at the Project in any manner are subject to the restrictions set forth in these By-Laws. The mere acquisitions or rental of any of the Units, or the mere act of occupancy or use of any of said Units or the Common Areas and Facilities will signify that these By-Laws are accepted, ratified, and will be complied with by said persons.

**IV. ASSOCIATION**

1. Members. The members of the Association shall consist of all persons owning a Unit at the Project, in fee simple as shown in the records of the County Recorder of Utah County, Utah. No mortgagee or a beneficiary or trustee under a deed of trust shall be a member unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The interest of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the member's Unit.

2. Place of Meetings. Meetings of the Association shall be held at such place within the State of Utah as the Management Committee may specify in the notice, except as herein otherwise specified.

3. Annual Meetings. The annual meeting of the Association shall be held at 7:00 p.m. on the second Wednesday of August of each year or at such other time and place determined by the Management Committee; provided, however, that whenever such date falls on a legal holiday, the meeting shall be held on the next succeeding business day, and further provided that the Management Committee may by resolution fix the date of the annual meeting on such date or at such other place as the Management Committee may deem appropriate.

4. Special Meetings. Special meetings of the Association may be called at any time by the Management Committee or by Owners who collectively hold at least thirty (30%) of the total vote. Such meeting shall be held at such place as the Management Committee may specify and the notice thereof shall state the date, time, and matters to be considered.

5. Notices. Written or printed notice stating the place, day and hour of all meetings of the Association and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) days before the date of the meeting, either personally or by mail to each Owner. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid

6. Quorum. At the meeting of the Association, the Owners of more than fifty (50%) percent in the aggregate of interest in the undivided ownership of the Common Areas and Facilities shall constitute a quorum for any and all purposes, except where express provisions of these By-Laws or the Declaration require a vote of more than fifty (50%) percent of the Association, in which event a quorum shall be the percentage of interest required for such vote. In the absence of a quorum, the President of the meeting may adjourn the meeting from time to time, without notice other than be announcement at the meeting, and those persons present, either in person or by proxy, at the reconvened meeting shall constitute a quorum. At any such reconvened meeting at which a quorum shall be present any business may be transacted which might have been transacted at the meeting as originally notified.

7. Voting. When a quorum is present at any meeting, the vote of the Owners representing more than fifty (50%) percent of the undivided interest present at the meeting either in person or represented by proxy, shall decide any question of business brought before such meeting, including the election of the Management Committee, unless the question is one upon which, by express provision of the Declaration and these By-Laws, a greater vote is required, in which case such express provision shall govern and control the decision of such question. All voters may be cast either in person or by proxy. All proxies shall be in writing, and in the case of proxies for the annual meeting, they shall be delivered to the Secretary at least five (5) days prior to said annual meeting. Proxies for special meetings must be of record with the Secretary at least two (2) days prior to said meeting. An Owner shall be deemed to be in good standing and entitled to vote at any annual or special meeting if, and only if, he shall have fully paid all due installments of assessments made or levied against him and his Unit by the Management Committee, together with all Additional Charges, if properly chargeable to him and against his Unit, at least three (3) days prior to the date fixed for such annual or special meeting.

8. Proxies. The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed or on behalf of the Owner, or, in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, or if it purports to be revocable without notice as aforesaid. The proxy of any person shall be void if not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Any proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. All proxies must be individual Owners or the legal representatives of an organizational Owner.

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

10. Conduct of Meetings. The President, or in his absence the Vice-President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a Minute Book all resolutions adopted by the meeting as well as a record of all transactions occurring thereat.

## V. MANAGEMENT COMMITTEE

1. Purposes and Powers. The business, property and affairs of the Association shall be managed and governed by the Management Committee consisting of at least three (3) and no more than nine (9) members. The Management Committee shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration, and may do all such acts and things as are not by the Act or by these By-Laws directed to be exercised and done by the Association. The Management Committee shall have the power from time to time to adopt any rules and regulations deemed necessary for the enjoyment of the Project provided such rules and regulations shall not be in conflict with the Act, the Declaration or these By-Laws. The President shall have the authority to act on behalf of the Management Committee on all matters relating to the duties of the Manager, if any, which might arise between meetings of the Management Committee.

## VI. OFFICERS

1. Designation and Election. The principal officers of the Association and Management Committee shall be a President, a vice President, a Secretary, and/or Treasurer, all of whom shall be elected by and from the Management Committee. The Management Committee may appoint an assistant Secretary and an assistant Treasurer and such other officers as in their judgment may be necessary or desirable. Such election or appointment shall regularly take place at the first meeting of the Management Committee immediately following the annual meeting of the Association of Owners; provided, however, that elections of officers may be held at any other meeting of the Management Committee.

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

3. Removal of Officers and Agents. All officers and agents shall be subject to removal, with or without cause, at any time by the affirmative vote of the majority of the then members of the Management Committee. A Member of the Management Committee removed as an officer remains a Member of the Management Committee unless his membership on the Management Committee is also terminated.

4. President. The President shall be the chief executive of the Management Committee, and shall exercise general supervision over its property and affairs. He shall sign on behalf of the Project all conveyances, mortgages and contracts relating to its business, and shall do and perform all acts and things which the Management Committee may require of him. He shall preside at all meetings of the Owners and the Management Committee. He shall have all the general powers and duties which are normally vested in the office of the President of the corporation, including, but not limited to, the power to appoint committees from among the

members (or otherwise) from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Project.

5. Vice President. The vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the vice President is able to act, the Management Committee shall appoint some other member thereof to do so on an interim basis. The vice President shall also perform such other duties as shall from time to time be prescribed by the Management Committee.

6. Secretary. The Secretary shall keep the minutes of all meetings of the Management Committee and of the Owners; he shall have charge of the books and papers as the Management Committee may direct; and he shall in general, perform all the duties incident to the office of Secretary.

7. Treasurer. The Treasurer shall have the responsibility for the funds and securities of the Management Committee and shall be responsible for keeping full and accurate accounts of all receipts of all disbursements in books belonging to the Management Committee. She shall be responsible for the deposit of all monies and all other valuable effects in the name, and to the credit of, the Management Committee in such depositories as may from time to time be designated by the Management Committee.

8. Compensation. No compensation shall be paid to the officers for their services as officers. No remuneration shall be paid for an officer for services performed by him for the Management Committee in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Management Committee before the services are undertaken.

9. Agreement, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Project for expenditures or obligations shall be executed by any two officers of the Committee or by such other person or persons as may be designated by the Management Committee except that the President shall be one of the signatories on all conveyances, mortgages and contracts.

## VII. ACCOUNTING

1. Books and Accounts. The books and accounts of the Management Committee shall be kept under the direction of the Treasurer and in accordance with the reasonable standards of accounting procedures.

2. Report. At the close of each accounting year, the books and records of the Management Committee shall be reviewed by a person or firm approved by the Owners. Report of such review shall be prepared and submitted to the Owners at or before the annual meeting of the Owners. Provided, however, a certified audit prepared by a certified public accountant approved by the Owners (not an Owner or Resident in the Project), shall be made if Owners representing at least seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities determine to require the same, or if the Project consists of fifty (50) or more Units, then the Association shall make an audited statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any

first mortgage that is secured by a Unit in the Project on submission of a written request for it, which audited financial statement shall be available within one hundred twenty (120) days of the Association's fiscal year-end. If the Project consists of fewer than fifty (50) Units and there is no audited statement available, then any mortgage holder may have an audited statement prepared at its own expense.

3. Inspection of Books. All books and records at the Association shall be available at the principal office of the Management Committee and may be inspected by any Owner, holders, insurers and guarantors or first mortgages that are secured by Units in the Project, their agent or attorney, for any proper purpose during reasonable business hours.

4. Fiscal Year. The fiscal year of the Association shall consist of the twelve month period commencing on January 1 or each year and terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Management Committee should it be deemed advisable or in the best interest of the Association.

### VIII. BUILDING RULES

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

### IX. AMENDMENT OF THE BY-LAWS

These By-Laws may be altered or amended in the same manner and subject to the same conditions as apply with respect to amendment of the Declaration; provided, however, so long as the Declarant controls the Association and until the occurrence of the Events, the By-Laws may not be amended without the prior written approval of the Secretary of Veterans Affairs.

### X. PERCENTAGE OF VOTES REQUIRED TO AMEND THE BY-LAWS

These By-Laws may be altered or amended by the members of the Association whenever the need arises. A vote to change or amend any part of the by laws must be approved by at least fifty-one percent (51.0%) of the Members of the Association.

### XI. OPERATIONS AND MAINTENANCE OF PROJECT

The Management Committee shall be responsible for the maintenance, control, operation and management of the Project in accordance with the provisions of the Act, the Declaration, these By-Laws and such rules and regulations as the Association of Owners may adopt from time to

time as herein provided, and all agreements and determinations lawfully made and entered into by the Association of Owners

## XII. RESTRICTIONS ON THE USE OF SMOKING TABACCO PRODUCTS

The use of smoking tobacco products is hereby confined to only the private areas deemed to be the Owner's private residence which may include a balcony or deck. The Owner is responsible for proper disposal of all ashes, butts, and other by-products of smoking tobacco product. All caution must be taken to avoid the risk of possible fire ignition in or around a Owner's private residential areas. At no time shall any member of the association smoke in any common areas of the project including the Clubhouse, swimming pool, parking lots or other areas designated as common area.

## XIII. NOTICE

1. Manner of Notice. All notices, demands, bills, statements or other communications provided for or required under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage prepaid, (a) if to an Owner, at the address of his Unit and at such other address as the Owner may have designated by notice in writing to the Secretary, or (b) if to the Management Committee, at the residence of the President or Secretary of the Association, or (c) if to the Manager, at the principal office of the Manager, or (d) at such other address as shall be designated and delivered by notice in writing in accordance herewith.

2. Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes, the Declaration or of these By-Laws, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time started therein, shall be deemed equivalent thereto, unless such waiver is ineffective under the provisions of the Act.

## XIV. COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

1. Compliance. These By-Laws are set forth in compliance with the requirements of the Act.

2. Conflict. These By-Laws are subordinate and subject to all provisions of the Declaration and to the provisions of the Act. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration or the Act. In the event of any conflict between these By-Laws and the Declaration, the provisions of the latter shall control; and in the event of any conflict between the Declaration and the Act, the provisions of the Act shall control.

3. Severability. These By-Laws are set forth to comply with the requirements of the State of Utah. In case any of the By-Laws are in conflict with the provisions of any of its statutes, the provisions of the statutes will apply. If any provisions of these By-Laws or any Article, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these By-Laws, shall not be affected thereby and to this end, the provisions hereof are declared to be severable.

4. Waiver. No restrictions, condition, obligation or provision of these By-Laws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

5. Captions. The captions contained in these By-Laws are for convenience only and are not part of these By-Laws and are not intended in any way to limit or enlarge the terms and provisions of these By-Laws.

6. Miscellaneous. Whenever in these By-Laws the context so requires, the singular number shall include the plural and converse; and the use of any gender shall be deemed to include all genders.

7. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Condominium Plat shall take effect upon its being filed for record in the office of the County Recorder of Summit County, Utah.

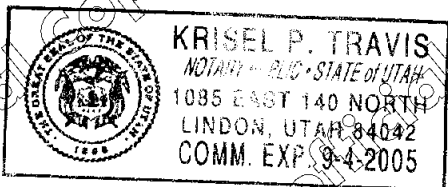
IN WITNESS WHEREOF, the undersigned hereby executes this document this 16 day of June 2005.

MORINDA PROPERTIES ESCALA LODGES LC

By: *Donald E. Mullen*  
Name: Donald E. Mullen  
Its: Member

STATE OF UTAH                     )  
  :SS.  
COUNTY OF UTAH                )

On the 16 day of June 2005, personally appeared before me Donald E. Mullen, the Member of Morinda Properties Escala Lodges LC, who acknowledged to me that he signed the above Declaration of Condominium and Declaration of Covenants, Conditions and Restrictions.



NOTARY PUBLIC and SEAL

By: *Krisel P. Travis*  
Residing at:  
My commission expires:

**EXHIBIT "C"**  
**PERCENTAGES OF OWNERSHIP INTEREST**

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1		LOT 2	17138	cabin	8.7185%
1		LOT 3	7375	cabin	3.7518%
1		LOT 4	4245	cabin	2.1595%
1		LOT 5	6141	cabin	3.1241%
			<b>34899</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	COM-1	4712	COM SP	2.3971%
1	1	COM-2	759	COM SP	0.3861%
1	1	COM-3	1558	COM SP	0.7926%
1	1	COM-4	341	COM SP	0.1735%
1	1	COM-5	886	COM SP	0.4406%
1	1	COM-6	742	COM SP	0.3775%
1	1	COM-7	858	COM SP	0.4365%
			<b>9836</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	201	1957	C-9	0.9956%
1	1	202	686	A-1	0.3490%
1	1	207	1258	B-3	0.6400%
1	1	209	1536	B-5	0.7814%
1	1	213	1259	B-4	0.6405%
1	1	219	1854	B-2	0.9432%
1	1	23A	1.75	SKI	0.0009%
1	1	23B	1.75	SKI	0.0009%
1	1	23C	1.75	SKI	0.0009%
1	1	23D	1.75	SKI	0.0009%
1	1	23E	1.75	SKI	0.0009%
1	1	23F	1.75	SKI	0.0009%
1	1	23G	1.75	SKI	0.0009%
1	1	23H	1.75	SKI	0.0009%
1	1	23I	1.75	SKI	0.0009%
1	1	23J	1.75	SKI	0.0009%
1	1	23K	1.75	SKI	0.0009%
1	1	23L	1.75	SKI	0.0009%
1	1	23M	1.75	SKI	0.0009%
1	1	23N	1.75	SKI	0.0009%
1	1	23O	1.75	SKI	0.0009%
1	1	23P	1.75	SKI	0.0009%
1	1	23Q	1.75	SKI	0.0009%
1	1	23R	1.75	SKI	0.0009%
1	1	23S	1.75	SKI	0.0009%
1	1	23T	1.75	SKI	0.0009%
1	1	23U	1.75	SKI	0.0009%
1	1	23V	1.75	SKI	0.0009%
1	1	23W	1.75	SKI	0.0009%
1	1	23Y	1.75	SKI	0.0009%
1	1	COM-23	4288	COM SP	2.1712%
			<b>12860</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	COM-18	103	COM SP	0.0524%
1	1	301	1957	C-9	0.9956%
1	1	302	687	A-1	0.3495%
1	1	304	1270	B-4	0.6461%
1	1	305/406	2209	C-4	1.1238%
1	1	306	2730	D-1	1.3886%
1	1	313	1531	B-5	0.7789%
1	1	316	1276	B-4	0.6491%
1	1	317/417	2220	C-1	1.1294%
1	1	318	1276	B-4	0.6491%
1	1	321	2030	C-9	1.0327%
1	1	322	697	A-1	0.3546%
			<b>17986</b>		



**EXHIBIT "C"**  
**PERCENTAGES OF OWNERSHIP INTEREST**  
**CONTINUED**

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	COM-20	109	COM SP	0.0555%
1	1	401	2030	C-9	1.0327%
1	1	402	686	A-1	0.3490%
1	1	404	1262	B-4	0.6420%
1	1	408	2713	D-1	1.3802%
1	1	413	1532	B-5	0.7794%
1	1	416	1259	B-4	0.6405%
1	1	418	1262	B-4	0.6420%
1	1	423	2744	D-2	1.3959%
			<b>13597</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	COM-21	110	COM SP	0.0560%
1	1	501	2807	D-2	1.4280%
1	1	504	1257	B-4	0.6395%
1	1	505/605	2209	C-4	1.1238%
1	1	508	2713	D-1	1.3802%
1	1	513/613	2745	C-3	1.3964%
1	1	516	1259	B-4	0.6405%
1	1	517/617	2209	C-1	1.1238%
1	1	518/618	2220	C-1	1.1294%
1	1	521	2817	D-2	1.4331%
			<b>20346</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	1	COM-22	110	COM SP	0.0560%
1	1	601	2469	C-2	1.2560%
1	1	604	1259	B-4	0.6405%
1	1	608	2713	D-1	1.3802%
1	1	616	1259	B-4	0.6405%
1	1	623	2469	C-2	1.2560%
			<b>10279</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	2	COM-8	1684	COM SP	0.8567%
1	2	COM-9	1357	COM SP	0.6903%
1	2	COM-10	127	COM SP	0.0646%
1	2	COM-11	143	COM SP	0.0727%
1	2	COM-12	149	COM SP	0.0768%
1	2	COM-13	133	COM SP	0.0677%
1	2	138	2130	C-8	1.0836%
			<b>5723</b>		
PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	2	COM-14	69	COM SP	0.0351%
1	2	225	2030	C-9	1.0327%
1	2	226	689	A-1	0.3505%
1	2	228	1504	B-8	0.7651%
1	2	231	1188	B-1	0.6044%
1	2	232/332	2220	C-1	1.1294%
1	2	233	1188	B-1	0.6044%
1	2	237	689	A-1	0.3505%
1	2	238	2030	C-9	1.0327%
			<b>11607</b>		

**EXHIBIT "C"**  
**PERCENTAGES OF OWNERSHIP INTEREST**  
**CONTINUED**

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	2	COM-18	70	COM SP	0.0356%
1	2	325	2477	C-2	1.2601%
1	2	328	1510	B-8	0.7682%
1	2	331	1197	B-1	0.6089%
1	2	333	1197	B-1	0.6089%
1	2	338	2485	C-2	1.2642%
			<b>8936</b>		

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	3	141	1730	B-6	0.8801%
1	3	142	697	A-1	0.3546%
1	3	144	1276	B-4	0.6491%
1	3	145/245	2220	C-1	1.1294%
1	3	148	944	A-2	0.4802%
1	3	149	2417	C-6	1.2296%
1	3	150	1691	B-9	0.8603%
1	3	154	2325	C-7	1.1828%
			<b>13300</b>		

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	3	COM-15	73	COM SP	0.0371%
1	3	241	2030	C-9	1.0327%
1	3	242	669	A-1	0.3505%
1	3	244	1276	B-4	0.6491%
1	3	248	941	C-1	0.4787%
1	3	250	1697	B-9	0.8633%
1	3	251	2412	C-6	1.2270%
1	3	252	689	A-1	0.3505%
1	3	254	2030	C-9	1.0327%
			<b>11837</b>		

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	3	COM-17	71	COM SP	0.0361%
1	3	341	1597	C-8	0.8124%
1	3	342	669	A-1	0.3505%
1	3	344	1270	B-4	0.6461%
1	3	347	1270	B-4	0.6461%
1	3	348	944	A-2	0.4802%
1	3	350	1686	A-3	0.8577%
1	3	351	887	B-9	0.4512%
1	3	353	1487	B-7	0.7565%
1	3	354	2827	D-2	1.4382%
			<b>12728</b>		

PHASE	Building No.	Unit No.	Sq. Ft.	Unit type	Percentage Ownership
1	3	COM-19	70	COM SP	0.0356%
1	3	441	2485	C-2	1.2642%
1	3	444	1270	B-4	0.6461%
1	3	447	1270	B-4	0.6461%
1	3	450	2639	D-3	1.3425%
1	3	451	2417	C-6	1.2296%
1	3	456	2485	C-2	1.2642%
			<b>12636</b>		<b>100.0000%</b>

**EXHIBIT "D"**  
**AMERICAN SKI EASEMENT**

As shown on the Escala Lodges Subdivision, Plat A.

**EXHIBIT "E"**  
**ACCESS EASEMENT AGREEMENT**

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE N.89°59'43"W. ALONG THE SECTION LINE 1947.97 FEET; THENCE SOUTH 45.57 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.30°00'00"W. 100.86 FEET; THENCE N.60°00'00"W. 29.92 FEET TO A POINT OF CURVATURE OF A 60.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY A DISTANCE OF 57.89 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 55°16'35", SUBTENDED BY A CHORD THAT BEARS N.32°21'51"W. 55.67 FEET TO A POINT OF CURVATURE OF A 55.57-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY A DISTANCE OF 55.19 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 56°53'50", SUBTENDED BY A CHORD THAT BEARS S.89°34'34"E. 52.95 FEET; THENCE S.62°57'02"E. 25.34 FEET; THENCE N.39°23'55"E. 48.25 FEET TO THE POINT OF BEGINNING. CONTAINING 3,589 SQ FT OR 0.08 ACRES OF LAND

**EXHIBIT "F"**  
**STORM SEWER EASEMENT**

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE N.89°59'43"W. ALONG THE SECTION LINE 1919.26 FEET TO THE REAL POINT OF BEGINNING;

THENCE N.90°00'00"W. 2.40 FEET; THENCE S.30°00'00"W. 92.73 FEET; THENCE S.39°47'23"W. 13.75 FEET; THENCE N.72°42'00"W. 81.15 FEET; THENCE N.00°00'46"W. 20.99 FEET; THENCE S.72°21'52"E. 27.67 FEET; THENCE S.72°49'13"E. 46.34 FEET; THENCE N.39°36'59"E. 35.40 FEET; THENCE N.28°24'29"E. 51.69 FEET; THENCE S.83°17'35"E. 17.67 FEET; THENCE S.06°12'31"W. 2.86 FEET TO THE POINT OF BEGINNING. CONTAINING 3,110 SQ FT OR 0.07 ACRES OF LAND

**EXHIBIT "G"**  
**UTILITY EASEMENT**

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE N.89°59'43"W. ALONG THE SECTION LINE 1947.97 FEET; THENCE SOUTH 45.57 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.30°00'00"W. 100.86 FEET; THENCE N.60°00'00"W. 29.92 FEET TO A POINT OF CURVATURE OF A 60.00-FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTHWESTERLY A DISTANCE OF 57.89 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 55°16'35", SUBTENDED BY A CHORD THAT BEARS N.32°21'51"W. 55.67 FEET TO A POINT OF CURVATURE OF A 55.57-FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY A DISTANCE OF 55.19 FEET ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 56°53'50", SUBTENDED BY A CHORD THAT BEARS S.89°34'34"E. 52.95 FEET; THENCE S.62°57'02"E. 25.34 FEET; THENCE N.39°23'55"E. 48.25 FEET TO THE POINT OF BEGINNING. CONTAINING 3,589 SQ FT OR 0.08 ACRES OF LAND

**EXHIBIT "H"**  
**WATER LINE EASEMENT**

COMMENCING AT A FOUND MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN; THENCE N.89°59'43"W. 1949.95 FEET TO THE REAL POINT OF BEGINNING;

THENCE S.59°10'48"W. 87.59 FEET; THENCE S.89°31'41"W. 29.14 FEET; THENCE N.00°00'00"E. 20.00 FEET; THENCE N.89°31'41"E. 23.55 FEET; THENCE N.59°10'48"E. 48.64 FEET; THENCE N.89°59'58"E. 39.04 FEET TO THE POINT OF BEGINNING.  
CONTAINING 1,889 SQ FT OR 0.04 ACRES OF LAND.

**EXHIBIT "I"**  
**LEGAL DESCRIPTION OF ADDITIONAL LAND**

COMMENCING AT A POINT ON THE NORTH SECTION LINE OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, S.L.B&M. WHICH IS WEST 1477.57 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 1; THENCE SOUTH 524.26 FEET TO A POINT OF A CENTERLINE OF A 50 FOOT RIGHT OF WAY EASEMENT; THENCE WEST 264.45 FEET TO THE SOUTHEAST CORNER OF THE FIVE CABIN PURCHASE AREA; THENCE NORTH ALONG THE EAST LINE OF SAID PURCHASE AREA 215.00 FEET TO THE NORTHEAST CORNER OF SAID PURCHASE AREA; THENCE N.51°34'55"W. ALONG THE NORTH LINE OF SAID PURCHASE AREA 185.07 FEET TO THE NORTHWEST CORNER OF SAID PURCHASE AREA AND THE EAST LINE OF LOT 16 OF PARK CITY WEST PLAT NO. 2; THENCE NORTH ALONG SAID LOT 16 194.26 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 1; THENCE EAST ALONG SAID NORTH LINE 409.45 FEET MORE OR LESS TO THE POINT OF BEGINNING.

TOGETHER WITH AN UNDIVIDED INTEREST IN A PERPETUAL RIGHT-OF-WAY AND EASEMENT FOR ROADWAY PURPOSES AND FOR THE CONSTRUCTION, ALTERATION, MAINTENANCE AND REPAIR OF UNDERGROUND UTILITIES INCLUDING WATER, ELECTRICAL POWER, TELEPHONE AND NATURAL GAS, FIFTY(50) FEET IN WIDTH, TWENTY-FIVE(25) FEET ON EITHER SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT IN THE SOUTH LINE OF A COUNTRY ROAD WHICH IS 1253 FEET NORTH AND 750 FEET WEST FROM THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 3 EAST, S.L.B&M AND RUNNING THENCE SOUTH 680.6 FEET; THENCE SOUTH 10°00' EAST 355 FEET; THENCE 1112.96 FEET ALONG THE ARC OF A 636.62 FOOT RADIUS CURVE TO THE RIGHT; THENCE WEST 881 FEET.



**EXHIBIT "J"**  
**LEGAL DESCRIPTION OF CONVERTIBLE LAND**

Undetermined at this time, as may be amended as set forth in this declaration.

**EXHIBIT "K"**  
**LEGAL DESCRIPTION OF CONVERTIBLE SPACE**

Undetermined at this time, as may be amended as set forth in this declaration.