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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS**

**FOR**

**SANCTUARY BEACH HOUSE**

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**EXHIBIT "A" REAL PROPERTY LEGAL DESCRIPTION** **1**

**DECLARATION OF COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR  
SANCTUARY BEACH HOUSE**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SANCTUARY BEACH HOUSE ("Declaration"), dated as of \_\_\_\_\_, 2019, is made and executed by Sanctuary Beach House, LLC, a Utah limited liability corporation ("Declarant") for itself, its successors and assigns.

**PART ONE: INTRODUCTION TO THE SANCTUARY BEACH HOUSE**

*Sanctuary Beach House, LLC, as the developer of the Sanctuary Beach House, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the development, administration, maintenance and preservation of the Sanctuary Beach House property and shared ownership structure.*

*An integral part of the development plan is the creation of Sanctuary Beach House Owners Association, Inc., an association comprised of all owners of Shared Ownership Interests at the Sanctuary Beach House property, to operate and maintain the property, provide for harmonious and appealing landscaping improvements, and the establishment of an association to govern the Sanctuary Beach House. The Sanctuary Beach House is intended to be a unique and exclusive residential mountain home nestled in a quaint mountain community oriented for outdoor recreation and related uses.*

**PART TWO: GOVERNANCE AND ADMINISTRATION**

**RECITALS**

A. Declarant holds both legal and equitable title to all of the property governed by the Declaration, as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference (the "Property").

B. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits attached hereto and incorporated herein by this reference shall be enforceable equitable covenants and equitable servitudes and shall run with the land.

C. Declarant desires to form the Association as a non-profit corporation for the purpose of benefiting its Members (defined below), which non-profit corporation is authorized to operate, manage and maintain the Residence (defined below) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; and as the agent and representative of the Members of the Association, administer and enforce all provisions hereof and enforce use and other restrictions imposed on the Shared Ownership Program (defined below).

D. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, occupants or other holders of an interest in the Property, certain

easement rights and mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the Residence.

E. Declarant desires and intends that the Owners, Mortgagees, occupants or other persons hereafter acquiring any interest in, or otherwise utilizing the Property shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and shared aspects of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property.

F. Declarant therefore wishes to subject the Property to all of the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements hereinafter set forth.

G. In order to cause this Declaration to run with the land and to be binding upon the Property and the Owners thereof from and after the date this Declaration is Recorded, Declarant hereby makes all conveyances of the Property, whether or not so provided therein, subject to the covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth.

NOW, THEREFORE, DECLARANT, as the legal title holder of the Property being submitted to this Declaration, for the purposes set forth above, declares as follows:

## **ARTICLE 1 DEFINITIONS**

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

1.1. “Annual Assessment”

shall mean the charge levied and assessed each year against each Owner, pursuant to Section 7.2.

1.2. “Articles”

shall mean the Articles of Incorporation of Sanctuary Beach House Owners Association, Inc., a Utah nonprofit corporation, as the same may from time to time be amended or supplemented.

1.3. “Assessable Property”

shall mean the Property, except such part or parts thereof as may from time to time constitute Exempt Property.



1.4. “Assessment”

shall mean any Annual Assessment, Special Assessment, and/or Maintenance Charge imposed and levied by the Association.

1.5. “Assessment Lien”

shall mean the lien created and imposed by Article 8;

1.6. “Assessment Period”

shall mean the term set forth in 7.2.3.

1.7. “Association”

shall mean the Utah nonprofit corporation to be organized by Declarant to administer and enforce this Declaration and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association the “SANCTUARY BEACH HOUSE OWNERS ASSOCIATION, INC.”

1.8. “Board”

shall mean the Board of Directors of the Association.

1.9. “Bylaws”

shall mean the Bylaws of the Association, attached hereto as Exhibit “B” and incorporated herein by this reference, as the same may from time to time be amended or supplemented.

1.10. “Community Act”

shall mean the Utah Association Act (Title 57, Chapter 8a, Utah Code Annotated, as amended from time to time).

1.11. “Expense Fund”

shall mean and refer to the fund created pursuant to the provisions of Article 7 of this Declaration into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained thereunder, one for operating expenses and one for capital or reserve expenses, which together shall constitute the Expense Fund.

1.12. “Expenses”

shall mean and refer to those costs and expenses arising out of or connected with the maintenance and operation of the Shared Ownership Program and the Association as described in Article 7 and which determine the Assessments.

1.13. “Declarant”

shall mean Sanctuary Beach House, LLC, a Utah limited liability company and the successors and assigns of Declarant's rights and powers hereunder.

1.14. "Declarant Control Period"

means the period commencing on the date of the Recording of this Declaration and ending on the earlier of: 60 days after all Shared Ownership Interests are conveyed to Owners other than the Declarant; or the day the Declarant, after giving written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

1.15. "Declaration"

shall mean this DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS FOR SANCTUARY BEACH HOUSE, as amended from time to time.

1.16. "Deed"

shall mean a deed or other instrument conveying a fee simple fractional interest in the property.

1.17. "Eligible Mortgagee"

shall mean and refer to a Mortgagee which has requested notice of certain matters from the Association in accordance with Section 13.1 of this Declaration.

1.18. "Exempt Property"

shall mean that certain property described below which shall be exempt from Assessments and Membership in the Association (provided, however, the Declarant or a Declarant related entity shall remain a Member of the Association at all times as a Class B Member with voting rights, notwithstanding its temporary exemption status from required Assessment payments) and its associated privileges and responsibilities, but shall nevertheless be subject to all other provisions of this Declaration, including but not limited to, the use restrictions. Exempt Property shall include the following:

1.18.1. All land and Improvements owned by or dedicated to and accepted by the United States, the State of Utah, a Municipal Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;

1.18.2. All interests owned by Declarant or a Declarant-related entity until the acquisition of nine-twelfths (9/12<sup>ths</sup>) Shared Ownership Interests by an Owner(s) other than Declarant or a Declarant-related entity. Declarant or a Declarant-related entity may expressly waive its right to an exemption from Assessments as to some or all Exempt Properties of which it is then the Owner, by sending written notice to the Association.

1.19. "Furnishings"

shall mean all interior decor, furniture, furnishings, fixtures, appliances, moveable equipment, utensils, carpeting, accessories, and other personal property located within the Residence for the exclusive use and benefit of the Owner(s) utilizing the Residence.

1.20. "Governing Documents"

shall mean this Declaration and recorded amendments thereto, the Bylaws, the Articles, the Rules and Regulations, and the Board's resolutions.

1.21. "Improvement(s)"

shall mean any improvement now or hereafter constructed on the Property and includes anything which is a structure for purposes of applicable Municipal Authority law including but not limited to any building, structure, shed, covered patio, fountain, pool, radio or television antenna or receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence, mailbox, sign, newspaper vending and distribution machines, overnight delivery service drop boxes, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, 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.

1.22. "Landscaped Area(s)"

shall mean the area immediately adjacent to the Residence, which is improved with landscaping including but not limited to lawn, ground cover, shrubbery, trees and the like and which may be complimented with masonry, or similar materials, all harmoniously combined with other Improvements.

1.23. "Lease"

shall mean a written lease or sublease for the leasing or rental of the Residence.

1.24. "Maintenance Charges"

shall mean any and all costs assessed pursuant to Sections 9.3.

1.25. "Manager"

shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager for the Association shall carry out certain responsibilities of the Association as required herein.

1.26. "Member"

shall mean any person or entity holding a Membership in the Association pursuant to this Declaration.

1.27. "Membership"

shall mean a Membership in the Association and the rights granted to the Owners and Declarant pursuant to Article 6 to participate in the Association, together with all appurtenances thereto as provided herein.

1.28. "Mortgage"

shall mean any mortgage, deed of trust or other security instrument by which the Property is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering the Property.

1.29. "Mortgagee"

shall mean any person or entity named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage.

1.30. "Municipal Authority"

shall mean the applicable governmental entity or municipality which has jurisdiction over some part of the Property including without limitation, the town of Huntsville, Utah.

1.31. "Owner"

shall mean any Person who is record holder of legal, beneficial or equitable title to the fee simple, Shared Ownership Interest in the Property, but excluding others who hold an interest therein merely as security.

1.32. "Person"

shall mean a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.33. "Plat"

shall mean any subdivision plat recorded in the office of the County Recorder of Weber County, Utah, against any portion of the Property, as such may be amended from time to time.

1.34. "Property"

shall mean the subdivided lot of real property, as described in Exhibit A, upon which the Residence will be constructed and which the Shared Ownership Program is established on, and as designated on any Plat recorded or approved by Declarant.

1.35. "Recording" or "Record"

shall mean placing an instrument of public record in the office of the County Recorder of Weber County, Utah, and "Recorded" shall mean having been so placed of public record.

1.36. "Residence"

shall mean the single family home situated upon the Property and intended for shared ownership residential use and occupancy.

1.37. "Rules and Regulations"

shall mean the rules for the Shared Ownership Program adopted by the Board pursuant to Section 15.3.

1.38. "Shared Ownership Interest"

shall mean and shall include the following interests and rights, which are indivisible and inseparable; and which shall be exercised in accordance with the terms and provisions of this Declaration: an undivided one-twelfth (1/12<sup>th</sup>) fee simple interest in the Property; membership in the Association; and a recurring and exclusive right to the possession, use and occupancy of the Residence during the designated month of occupancy as set forth in the Deed.

1.39. "Shared Ownership Program"

shall mean the fractional ownership program created and established by this Declaration for Owners of Shared Ownership Interests as set forth in this Declaration.

1.40. "Special Assessment"

shall mean any assessment levied and assessed pursuant to Section 7.5.

## ARTICLE 2

### SUBMISSION OF PROPERTY TO DECLARATION AND GENERAL DEVELOPMENT

2.1. General Declaration Creating the Shared Ownership Program

Declarant, or its permitted assignee with respect to a portion or all of the Declarant rights ("Permitted Assignee") hereby declares that the Property, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration as amended or modified from time to time and hereby submits the Property to the Shared Ownership Program, whereby the right to exclusive use of the Property and the Residence thereon rotates among Shared Ownership Owners on a fixed, floating or reserved time basis over a period of years, as Declarant or its Permitted Assignee shall establish in its sole and exclusive discretion. No Owner, other than Declarant or a Permitted Assignee, shall have the right to create or operate such a program at the Property. Title to the Shared Ownership Interests may be separately held, conveyed, devised, encumbered and otherwise utilized to effectuate and implement such Shared Ownership Program. The owner of such Shared Ownership Interest may remove his or her interest from a lien against two or more fractional or Shared Ownership Interests 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 such owner's interest. This Declaration shall run with the land and shall be binding upon and

inure to the benefit of Declarant, the Association, all Owners and their successors in interest. The Property is not a cooperative under the Community Act.

## 2.2. Association Bound

. Upon issuance of a Certificate of Incorporation (or other documents evidencing valid existence) to the Association, this Declaration shall be binding upon and shall benefit the Association.

## 2.3. Legal Description of a Shared Ownership Interest

. A contract for sale of a Shared Ownership Interest may legally describe a Shared Ownership Interest by reference to the Property, the purchaser's Shared Ownership Interest in the Property and the purchaser's right to use and occupy the Residence during the designated month of occupancy identified in the vesting Deed, or by the following legal description:

An undivided one-twelfth (1/12) fee simple ownership interest as tenant in common in the Property, SANCTUARY BEACH HOUSE, according to the official plat thereof as recorded in the office of the Weber County Recorder, State of Utah, and subject to the Declaration of Covenants, Conditions, Easements and Restrictions for Sanctuary Beach House, recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ and the plat recorded on \_\_\_\_\_ as Entry No. \_\_\_\_\_ in the Office of the County Clerk of Weber County, Utah, together with the exclusive right to possess and occupy the Residence during the calendar month of \_\_\_\_\_ each and every calendar year.

Within this legal description, all months are calendar months, with the exception of December, wherein use and occupancy shall be from December 1 to January 2, and January, wherein use and occupancy shall be from January 2 through January 31. Any legal description substantially in the form provided above or which is otherwise sufficient to identify the Shared Ownership Interest shall be good and sufficient for all purposes to sell, convey, transfer and encumber or otherwise affect a Shared Ownership Interest and all easements appurtenant thereto.

## 2.4. Conveyance by Purchaser; No Subdivision of Shared Ownership Interests

. Each Shared Ownership Interest shall constitute an estate in real property separate and distinct from all other Shared Ownership Interests in the Shared Ownership Program, which estate may be separately conveyed and encumbered. A purchaser may acquire more than one Shared Ownership Interest and thereafter convey or encumber each Shared Ownership Interest so acquired separately. In no event, however, shall a Shared Ownership Owner convey or encumber less than a Shared Ownership Interest as defined herein, or attempt to subdivide a Shared Ownership Interest into lesser Shared Ownership Interests than the Shared Ownership Interest originally conveyed to such Owner. In the event all Shared Ownership Interests at the Property are acquired by one Owner, at such Owner's election and with the written consent of Declarant, the Property may be withdrawn from the Shared Ownership Program.

## 2.5. Special Service Districts

. One or more "Special Service Districts" may provide the Property with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, roads, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations and snowplowing. Subject to applicable law, the Special Service Districts shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within the Special Service Districts. The Special Service Districts will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates, assessments, and charges that enable the Special Service Districts to operate such facilities as are necessary to fulfill its purposes. It is possible that the Property will be part of one or more Special Service Districts and each Owner will be subject to all charges levied by them. Any such assessments, if and when imposed, will be levied against all Owners as part of the Annual Assessment.

#### 2.6. Zoning; Further Subdivision of the Property

. Declarant reserves for itself the unilateral right to apply for zoning, entitlements, and other land use approvals from the applicable Municipal Authority for the Property, provided that no such application shall have a materially adverse effect on the Shared Ownership Program. Each Owner hereby irrevocably constitutes and appoints the Declarant as each such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of signing any applications or other documents necessary for such approvals. Acceptance by any Owner of a deed or other instrument of conveyance shall constitute appointment of the attorney-in-fact as herein provided. All Owners hereby specifically acknowledge and agree that they shall cooperate with Declarant in all such applications. The Property shall not be further subdivided by any Owner without the prior written approval of Declarant, which approval must be evidenced on the Plat or other instrument creating or amending the subdivision. This provision shall not apply to transfers of a Shared Ownership Interest. No supplemental declaration or further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against the Property without the provisions thereof having been first approved in writing by the Declarant and any covenants, conditions, restrictions or easements recorded without such approval being evidenced thereon shall be null and void.

#### 2.7. Declarant's Disclaimer of Representations

. Nothing which may be represented to a purchaser by real estate brokers or salespersons representing the Declarant shall be deemed to create any covenants or restrictions, implied or express, with respect to the use of the Property. Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Property, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

#### 2.8. Development Plan

. Notwithstanding any other provision of this Declaration to the contrary, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to the Property in any way

which Declarant desires including, but not limited to, changing all or any portion of the property or changing the nature or extent of the uses to which such property may be devoted.

#### 2.9. Improvements

. Declarant, so long as Declarant owns a Shared Ownership Interest, reserves the unilateral right to construct Improvements on any area of the Property, in its sole and exclusive discretion. Such construction and relocation rights shall not be subject to the consent of the Owners, the Board, Mortgagees or any other Person. After the termination of Declarant's rights under this Declaration, the Board shall have the right to exercise such construction and relocation powers in connection with the Property. In furtherance of this right, Declarant reserves for itself, and others it may designate, the right to inspect, monitor, test, redesign, and correct any Improvement or condition that may exist on any portion of the Property, including the Residence, and a nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right.

#### 2.10. Other Service or Improvements Districts

. The Property is located within the boundaries of Weber County, Weber Basin Water Conservancy District, Weber County Mosquito Abatement District, Weber Fire District, Ogden Valley Park Service Area, Huntsville Hollow Sewer Improvement District, and the Weber Area Dispatch 911 and Emergency Services District, and is subject to any and all charges and assessments levied thereunder. Any and all charges that may be imposed against the property shall be assessed against all Owners as an Annual Assessment, based on the Owner's Shared Ownership Interest.

#### 2.11. Partition

. By acceptance of a Deed to a Shared Ownership Interest, each waives his or her right to bring a suit for partition except in accordance with the provisions of this Declaration.

### **ARTICLE 3 EASEMENTS AND RIGHTS OF ENJOYMENT IN THE PROPERTY**

#### 3.1. Easements of Enjoyment

. Every Owner shall have a right and easement of enjoyment in and to the Property which shall be appurtenant to and shall pass with the title to every Shared Ownership Interest, subject to the following provisions:

3.1.1. The right of the Association to suspend the voting rights and right to the use of the Property by any Owner for any period during which any Assessment against the Shared Ownership Interest remains delinquent; for a period not to exceed sixty (60) days for any infraction of this Declaration, or the Rules and Regulations, and for successive sixty (60)-day periods if any such infraction is not corrected during any prior sixty (60)-day suspension period.



3.1.2. The right of the Association to regulate the use of the Property through the Rules and Regulations. The Rules and Regulations shall be intended, in the absolute discretion of the Board, to enhance the Share Ownership Program and the Residence and the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners.

### 3.2. Easements for Utilities

. There is hereby created an easement at specific locations approved by Declarant upon, across, over and under the Property, and a blanket easement upon, across, over and under the Property, for reasonable ingress to, egress from, and the installation, replacement, repairing or maintenance of all utility and service lines and systems, including, but not limited to, gas, water, sewer, septic, telephone, fiber optic cable, cable television and electricity or communication lines and systems, etc., as such utilities and systems are installed in connection with the construction of the Residence or other Improvement thereon; provided, however, that such installation shall not unreasonably interfere with the use of the Residence or other Improvement on the Property. By virtue of this easement, it shall be expressly permissible for the providing utility company to install and maintain the necessary facilities and equipment on the property and affix and maintain wires, circuits and conduits on exterior walls of buildings on the Property. Notwithstanding anything to the contrary contained in this Section 3.2, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially programmed and approved by the Declarant.

### 3.3. Easements for Ingress and Egress

. There is hereby created an easement upon, across and over the Property for police, fire, medical and other emergency vehicles and personnel. The Board shall have the right to relocate and/or reconfigure any and all such easements from time to time as it sees fit without the consent of any Owners (but subject to any necessary approvals of Weber County or any other governmental body or agency having jurisdiction thereof including in particular, but without limitation, the easements granted herein for police, fire, medical and other emergency vehicles and personnel).

### 3.4. Easement for Development

. The Declarant hereby reserves an easement throughout the Property for the purpose of completing all Improvements contemplated by this Declaration.

### 3.5. Sales Program

. Declarant shall have the following rights in relation to any sales or promotional program Declarant institutes related to the Shared Ownership Program and have such easements over the Property as necessary to exercise such rights:

3.5.1. Declarant hereby reserves the right to maintain signs advertising the Shared Ownership Program. Declarant may relocate advertising signs and models to other locations within the Residence or on the Property at any time.

3.5.2. Declarant shall have the right to use the Property to facilitate sales.

### 3.6. Delegation of Use

. Each Member shall, in accordance with this Declaration and the Rules and Regulations and the limitations therein contained, be deemed to have delegated his or her right of enjoyment in the Residence and the Property to the members of his or her family, their lessees, guests and invitees, as well as to their guests or invitees.

### 3.7. Transfer of Title

. Declarant reserves the right to convey to the Association title to the Property and/or Shared Ownership Interest(s) therein, free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities) before the closing of the last sale of a Shared Ownership Interest. In the event Declarant exercises its right to convey any such property to the Association, then the Association shall be obligated to accept such conveyance.

## ARTICLE 4 PERMITTED USES AND RESTRICTIONS

### 4.1. Covenants Applicable to the Property

. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to the Property, the Owners and lessees thereof. The Rules and Regulations may further address, limit, or regulate any of the items addressed in this Section 4.1.

4.1.1. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a Residence, either temporary or permanent, without the consent of the Association.

4.1.2. Maintenance of Lawns and Landscaping. The Association shall keep all Landscaped Areas properly cultivated and free of trash, weeds and other unsightly material. The Association shall also cause to be maintained the Landscaped Areas. All sprinkler systems shall comply with state and local requirements, including those of the Utah Division of Drinking Water.

4.1.3. Nuisances; Construction Activities. No dead trees or plants, rubbish or debris of any kind shall be placed or permitted to accumulate upon the Landscaped Areas, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof. No other nuisance shall be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other property in the vicinity thereof. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction

activities and parking in connection with the building of Improvements on the Property shall not be considered a nuisance or otherwise prohibited by this Declaration, but the Property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate.

4.1.4. Diseases and Insects. No Owner shall permit any thing or condition to exist upon the Residence or Landscaped Areas which shall induce, breed or harbor infectious plant diseases or noxious insects.

4.1.5. Repair of Improvements. No Improvement shall be permitted to fall into disrepair and each such Improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Improvement is damaged or destroyed, such Improvement shall be immediately repaired, rebuilt or demolished.

4.1.6. Mineral Exploration. The Property shall not be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

4.1.7. Trash Containers and Collection. No garbage or trash shall be placed or kept on the Property, except in covered containers. All rubbish, trash and garbage shall be removed from the Property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on the Property.

4.1.8. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements; that which Declarant or the Association may require for the operation and maintenance of the Property; or that used for security purposes such as motion detecting lights, security cameras or other similar equipment.

4.1.9. Parking

Vehicles of all Owners and of their guests and invitees, are to be kept in designated parking areas, including within the garage. Recreational vehicles and boats shall be parked in covered garages except for limited periods in the driveway or other designated parking areas as determined by the Board and promulgated as part of the Rules and Regulations.

4.1.10. Roofs. No apparatus, structure or object, including any solar equipment, shall be placed on the roof of the Residence without the prior written consent of the Association.

4.1.11. Watering; Water Resource. The Association is expressly authorized to adopt temporary or permanent policies limiting the amount or time of watering, which policy may be separate from or supplemental to the Rules and Regulations. No Owner

shall build any pond or alter or interfere with any lake, river, spring, pond or other water feature constituting a part of a water resource.

4.1.12. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or occupant of the Property, any member of the Board or any authorized representative of either of them, shall have the right to enter upon and inspect the Property, and the Improvements thereon, except for the interior portions of the Residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.

4.1.13. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant or their duly authorized agents, of structures, Improvements or signs necessary or convenient to the development and sale of Property.

4.1.14. Incidental Uses. The Declarant or the Association may approve uses of property which are incidental to the full enjoyment by the Owners. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Declarant or Association may wish to impose, in its sole discretion, for the benefit of the Property as a whole.

4.1.15. Leases. Any Lease between an Owner and a lessee shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such Governing Documents shall be a default under the Lease. Specifically, all Leases shall require, without limitation, that lessee acknowledge receipt of a copy of the Governing Documents. The Lease shall also obligate the lessee to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the Lessee on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. In no event may an Owner lease or otherwise rent his, her or its Residence for nightly or short-term rental periods. Short-term rental periods means and includes any period less than thirty (30) consecutive nights.

4.1.16. Animals. Except as specifically permitted below, or by the Rules and Regulations, no animal, livestock, poultry, fowl or vicious dogs of any kind shall be kept, raised, bred, or boarded on the Property. Notwithstanding the foregoing, an Owner shall be entitled to a maximum of no more than two (2) dogs or cats and a reasonable number of other household pets, so long as such pets are not kept for any commercial purpose, are not kept in unreasonable numbers, or do not cause an unreasonable amount of noise or odor.

4.1.16.1. The Owner of a Shared Ownership Interest who brings a household pet to the Residence, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up necessitated by such pet.

4.1.16.2. The Board is hereby given the right and authority to determine, in its sole discretion, that household pets are being kept for commercial purposes, or are otherwise a nuisance, or that an Owner or occupant is otherwise in violation of this Section 4.1.16, and to take such action or actions as it deems reasonably necessary to remedy the violation.

4.1.17. Snow Removal. The Association shall be responsible for removal of snow from the driveway, including up to the garage door of the Residence, within the Property, and the expense thereof shall be an Expense.

4.1.18. Violations of Law. Any activity which violates local, state, or federal laws or regulations is prohibited; however, the Board shall have no obligation to take enforcement action in the event of a violation.

4.2. Additional Covenants

The following covenants, conditions, restrictions and reservations or easements and rights shall also apply:

4.2.1. General. Unless otherwise permitted by Declarant in writing or designated on a Plat or as described in this Declaration, no other structure whatsoever shall be erected, placed or permitted to remain on the Property.

4.2.2. Business Activities

Neither the Property nor the Residence shall be used for any business, trade or similar activity, including garage sale, moving sale, rummage sale, etc.

4.3. Architectural Control

Except as otherwise permitted with respect to Declarant rights, no building, fence, wall, sign or other structure or Improvement shall be commenced, erected or maintained, nor shall any exterior addition to or change or alteration thereof be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board, acting as the "Architectural Review Committee" for the Property, or its designated representative or representatives, in its or their sole and unfettered discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained on the Residence unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and unfettered discretion, or in accordance with applicable City, State or Federal Regulations.

4.4. Acceptance; Enforcement; Indemnification

By acceptance of a Deed to a Share of Ownership Interest, the Owner agrees to be bound by the terms and conditions of the Declaration. In addition to all remedies provided to the Association in this Declaration the Association shall also have the right, with respect to Owners who are in default under any documents governing the Shared Ownership Program, to withhold use or possession of the Residence during a Share Owner's designated use period.

All of the remedies granted by the Governing Documents, including the specific remedies provided for in this Article are cumulative, and the exercise of one right or remedy by the Association shall not impair the Association's right to exercise any other remedy. The Association shall not be limited to the remedies set forth herein and may invoke any other or additional remedies provided for or allowed at law or in equity. The Association may pursue any of the remedies provided for in whatever order is determined by the Association. The failure by the Association to insist in any one or more instances upon the strict compliance with any provision of the Governing Documents, to exercise any right or option contained therein, to serve any notice or to institute any action or proceeding, shall not be construed as a waiver or relinquishment of any such provision, option or right.

#### 4.5. Failure to Vacate Shared Ownership Residence

. In the event any Owner or guest fails to vacate the Residence after the end of his, her or its designated occupancy period or otherwise uses or occupies or prevents another Owner from using or occupying the Residence during another Owner's occupancy period, that Owner shall be in default hereunder and shall be subject to immediate removal, eviction or ejection from the Residence wrongfully occupied; shall be deemed to have waived any notices required by law with respect to any legal proceedings regarding the removal, eviction or ejection; and shall pay to the Owner entitled to use the Residence during such wrongful occupancy, as liquidated damages for the wrongful use of the Residence, a sum equal to two hundred percent (200%) of the estimated expense of providing the arriving Owner with equivalent lodging and amenities, as determined by the Association in its sole discretion for each day, or portion thereof, including the day of surrender, during which the Owner wrongfully occupies a Residence, plus all costs of enforcement which amounts may be collected by the Association in the manner provided herein for the collection of Assessments for Expenses.

#### 4.6. Transfers Void while in Default

. Except as to a transfer to a First Mortgagee by foreclosure or deed in lieu of foreclosure, no transfer of a Shared Ownership Interest shall be permitted unless and until the proposed transferor is current as to all Assessments due to the Association and is otherwise not in default under any other provision of the Declaration. Any purported transfer of a Shared Ownership Interest while an Owner is delinquent or is in default on any other obligation shall be null and void.

#### 4.7. Declarant Subsidy

. To the extent permitted by law, and as described in Section 7.13 below, Declarant may pay the Association an amount less than its proportionate share of Expenses or other permitted Assessments for which it owes; provided, however, Declarant has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Assessments paid by all other Owners, to enable the Association to timely pay all of the Assessments.

### **ARTICLE 5 ORGANIZATION, RIGHTS, POWERS, AND DUTIES OF ASSOCIATION**

#### 5.1. Formation of Association

. The Association shall be a Utah nonprofit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

### 5.2. Registration with the Department of Commerce

. The Association shall register with the Department of Commerce within ninety (90) days of the Recordation of this Declaration. Within ninety (90) days after a change of any information provided in the Association's registration with the Department of Commerce, the Board shall submit an updated registration in the manner established by the Department of Commerce and the Act.

### 5.3. Board of Directors and Officers

. The affairs of the Association shall be conducted by a Board of at least three (3) but no more than five (5) directors (odd numbered totals only) and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The Board may also appoint various committees and appoint a professional manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager. The Board's responsibilities shall include, but shall not be limited to, the following:

- 5.3.1. preparing and administering an operational budget;
- 5.3.2. establishing and administering an adequate reserve fund;
- 5.3.3. scheduling and conducting the annual meeting and other meetings of the Members;
- 5.3.4. collecting and enforcing the Assessments;
- 5.3.5. accounting functions and maintaining records;
- 5.3.6. engaging the services of a Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor;
- 5.3.7. determining and paying the Expenses;
- 5.3.8. entering into contracts, deeds, leases and/or other written instruments or documents and authorizing the execution and delivery thereof by the appropriate officers;
- 5.3.9. opening bank accounts on behalf of the Association and designating the signatories therefor;
- 5.3.10. purchasing, holding, selling, conveying, mortgaging or leasing a Shared Ownership Interest in the name of the Association or its designee;

5.3.11. bringing, prosecuting and settling litigation for itself, the Association and the Shared Ownership Program;

5.3.12. obtaining property insurance for covered causes of loss to the Property, Residence and Furnishings in an amount of insurance not less than the full insurable replacement cost of the insured property less applicable deductibles at the time the insurance is purchased and at each renewal date and containing the required provisions set forth in Article 10;

5.3.13. owning, purchasing or leasing, holding and selling or otherwise disposing 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 Board and to the operation of the Shared Ownership Program, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies;

5.3.14. pledging, hypothecating or otherwise encumbering current or future Assessments for any purpose permitted under this Declaration;

5.3.15. keeping adequate books and records and implementing the policies and procedures for the inspection of the books and records of the Shared Ownership Program by Owners in accordance with the terms of the Bylaws; and

5.3.16. performing all other duties imposed upon the Board pursuant to the Governing Documents; including enforcement thereof.

5.4. Additional Duties of the Association

Furthermore, by way of enumeration and without limitation in addition to the powers and duties of the Association, through its Board, described above, the Association shall also have the following specific powers and duties with respect to the Shared Ownership Program:

5.4.1. To cause the Property to be repaired and maintained in a first class manner and condition. No Shared Ownership Owner may construct, install, add, alter, repair, change or replace any Improvement located on the Property. The Association shall have the exclusive right and authority to maintain, repair, replace, construct, install, add, alter, repair, change or replace any portion of the Property including the Furnishings and the Landscaped Areas;

5.4.2. To manage the Shared Ownership Program and in connection therewith to implement and operate housekeeping, check out and departure services for the benefit of Owners;

5.4.3. To acquire and hold title to all Furnishings. The Association shall, on behalf of all Owners, hold title in its name to all Furnishings, and no Owner shall have any right, title, or claim thereto, and the Association shall have the right to deal with Furnishings for all purposes. Notwithstanding the foregoing, should an Owner purchase



all Shared Ownership Interests at the Property, the Association shall convey title of the Furnishings to such Owner;

5.4.4. To bill each Owner for the expenses incurred by an Owner during his or her occupancy which the Association determines to be the individual expenses of the particular Owner, including, but not limited to long-distance and other extraordinary telephone charges, extraordinary repairs or charges for damage to the Residence, its furniture, furnishings, equipment, fixtures, appliances, and carpeting caused by an Owner or his or her guest and other charges rendered by the Manager on behalf of the particular Owner;

5.4.5. To collect the Assessments provided for in Article 7;

5.4.6. To establish, subject to modification at any time, publish, and administer such rules and regulations as the Association deems necessary or desirable, specifically including but not limited to fines and restrictions on use and occupancy if an Owner is not current on Assessments or is otherwise in violation of the provisions of the Governing Documents

5.4.7. To enforce the remedies for non-payment of the Assessments set forth in this Article or elsewhere in this Declaration; and

5.4.8. To do and perform any and all other acts which may be either necessary for, or proper or incidental to, the exercise of any of the foregoing powers.

#### 5.5. Personal Liability

No director or member of any committee of the Association, no officer of the Association and no Manager or other employee of the Association shall be personally liable to any Member or to any other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, any representative or employee of the Association or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section 5.5 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

#### 5.6. Association's Rights of Enforcement of Provisions of This and Other Instruments

The Association, as the agent and representative of the Owners and Members shall have the right to enforce, by any proceeding at law or in equity, the covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which shall have been executed pursuant to, or subject to, the provisions of this Declaration, or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. In the event suit is brought or arbitration is instituted or an attorney is retained by the Association to enforce the terms of this Declaration or other document as described in this Section 5.6 and the Association prevails, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees,

court costs, costs of investigation and other related expenses incurred in connection therewith including but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses shall be the personal liability of the breaching Owner and shall also be secured by the Assessment Lien against said Owner's Shared Ownership Interest. If the Association should fail to act within a reasonable time, any Owner shall have the right to enforce the covenants set forth in this Declaration.

#### 5.7. Contracts with Others for Performance of Association's Duties

. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including the Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one or more Board members or officers of the Association are employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other Board members acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable. Any such Board member may be counted in determining the existence of a quorum at any meeting of the Board of which he or she is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he or she were not so interested.

#### 5.8. Purposes for Which Association's Funds May Be Used

. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Members by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any kind and all land, properties, Improvements, facilities, services, projects, programs, studies and systems, which may be necessary, desirable or beneficial to the general common interests of the Members. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members; maintenance of landscaping on the Property; recreation; insurance; communications; ownership and operation of vehicle storage areas; transportation; health; utilities; public services; safety and indemnification of officers and directors of the Association. The Association also may expend its funds as otherwise permitted under the Community Act and the laws of the State of Utah.

#### 5.9. Borrowing Power

. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as is necessary or appropriate as determined by the Board without a vote of the Members.

#### 5.10. Association's Rights in Spending Funds From Year to Year

. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

#### 5.11. Exchange Program

. Declarant or the Board is authorized to establish an exchange relationship for the Shared Ownership Owners with any bona fide exchange company or network, as permitted by local law.

#### 5.12. Implied Rights

. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Property, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members. In exercising the Association's rights and powers, making decisions on behalf of the Association, and conducting the Association's affairs, Board directors shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the Bylaws.

## ARTICLE 6 MEMBERSHIPS AND VOTING

#### 6.1. Membership in the Association

. Each Owner of a Shared Ownership Interest, including Declarant, shall be a member of the Association and shall remain a Member for the period of his or her ownership.

#### 6.2. Votes in the Association.

6.2.1. Each Owner of a Shared Ownership Interest, including the Declarant, shall be allocated one (1) vote, and a Shared Ownership Owner, upon becoming the owner of a Shared Ownership Interest, shall be a Member and shall remain a Member for the period of his or her ownership. Voting by proxy shall be permitted.

6.2.2. Until the expiration or termination of the Declarant Control Period: the Association shall be deemed to have two classes of Members, Class A and Class B; the Declarant shall be the Class B Member, and all votes held by the Declarant shall be

Class B votes; all Owners other than Declarant shall be Class A Members, and all votes held by such Owners shall be Class A votes. Following expiration or termination of the Declarant Control Period, the Association shall be deemed to have a single class of Members and votes. During the Declarant Control Period, all matters coming before the Association for vote shall be decided by the Declarant as the sole Class B Member. Following the Declarant Control Period, all Class B Memberships and all Class B votes shall cease to exist, and any issue put to a vote at a duly called meeting of Members at which a quorum is present shall be decided by a simple majority of all votes represented in person or by valid proxy at such meeting.

### 6.3. Voting Procedures

. A change in the ownership of a Shared Ownership Interest shall be effective for voting purposes from the time the deed or other instrument effecting such change is Recorded. The vote for each Shared Ownership Interest must be cast as a single vote, and fractional votes shall not be allowed. In the event that a Shared Ownership Interest is owned by more than one Person, such individuals or entities shall appoint and authorize one person or alternate persons to represent Shared Ownership Interest, and the vote cast will thereafter be conclusively presumed for all purposes that the Member was acting with the authority and consent of all other Owners of the Shared Ownership Interest unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote or votes for a Shared Ownership Interest, the vote or votes for that Shared Ownership Interest shall be deemed void and shall not be counted.

### 6.4. Transfer of Membership

. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of a Shared Ownership Interest, and then only to the transferee of ownership of the Shared Ownership Interest. A transfer of a Shared Ownership Interest may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Each purchaser of a Shared Ownership Interest shall notify the Association of its purchase of such Shared Ownership Interest.

## ARTICLE 7 COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

### 7.1. Obligation of Assessments and Maintenance Charges

. Except as otherwise provided in Section 7.12, each Owner, by acceptance of a Deed or other conveyance of a Shared Ownership Interest (whether or not it shall be so expressed in such Deed or conveyance) is deemed to covenant and agree, to pay to the Association the following assessments and charges: Annual Assessments established by this Article 7, Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article 7, and Maintenance Charges established by Section 9.3. All such Assessments shall be established and collected as hereinafter provided. The obligation to pay Assessments is a

separate and independent covenant on the part of each Owner and, accordingly, no diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws; inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association; or any action taken to comply with any law, ordinance, or with any order or directive of any Municipal Authority or other governmental authority. The Assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the Owner and shall be a continuing servitude and lien upon the Shared Ownership Interest against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Shared Ownership Interest at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. However, the lien for any unpaid Assessments existing at the time of transfer shall continue, notwithstanding such transfer, until the Assessments have been paid in full.

## 7.2. Annual Assessments

. Annual Assessments shall be computed and assessed against all Shared Ownership Interests as follows:

7.2.1. Property Expenses. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Shared Ownership Program and operation of the Association. Such estimated expenses may include, without limitation, the following: expenses of management; premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs, maintenance and replacement within the Residence or on the Property; wages of Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Members under or by reason of this Declaration. Such shall constitute the Expenses, and all funds received from assessments under this Section 7.2.1 shall be part of the Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses, periodic and regular maintenance, and repair of the Residence and for other routine operating expenses, and one for capital expenses and for replacement of Improvements on the Property that the Association may be obligated to maintain, repair and replace, which together shall constitute the Expense Fund. These two (2) funds shall be maintained out of Annual Assessments for Expenses. Real property taxes and any other governmental special assessments associated or levied with respect to the Property shall be considered an Expense, assessed by each Owner, in accordance with their respective interests.

7.2.2. Apportionment. Expenses shall be apportioned among and assessed to all Members in accordance with Section 7.3.

7.2.3. Annual Budget; Establishment of Annual Assessment Period. Annual Assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following (the "Assessment Period"), provided the first fiscal year shall commence upon the recording of this Declaration. On or before August 1 of each year thereafter, the Board shall cause to be prepared and furnish to each Member an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Shared Ownership Program shall be operated during such annual period. The Board in its sole discretion from time to time may change the Assessment Period by adopting a resolution specifying the new Assessment Period.

7.2.4. Budget Approval. The Board shall present the adopted budget to the Members for their approval at a meeting of the Association ("Budget Meeting"), which may be the same as the annual meeting of the Members. The budget may be disapproved by a vote of Members holding at least fifty-one percent (51%) of the voting interests taken at a special meeting of the Association held within forty-five (45) days of the date the Board distributed such budget to the Owners; provided, however, that during the Declarant Control Period, the Members may not disapprove the budget.

7.2.5. Inadequate Funds. In the event that the Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's Assessment, the Board may, on behalf of the Association, levy additional Special Assessments in accordance with the procedure set forth in Section 7.5 below, except that the vote therein specified shall be unnecessary.

### 7.3. Uniform Rate of Assessment

The amount of any Assessment against each Shared Ownership Interest shall be fixed at a uniform and equal rate per Membership; provided, however, the Declarant, during the Declarant Control Period, shall have the right to adjust the rate of Assessment levied against the Shared Ownership Interests based upon a formula or schedule, as exclusively determined by the Declarant, under which Assessments for Expenses against each Owner are equitably apportioned in accordance with operational and maintenance costs attributable to each type of Improvement constructed on the Property. The Assessment shall be paid by the Owner pursuant to a schedule established by the Association and levied against each Shared Ownership Interest. These Assessments shall be the personal and individual debt of the Owner and all sums assessed but unpaid shall constitute a lien on the Shared Ownership Interest. The Association shall have all of the rights in connection with the collection thereof as it has in connection with the collection of unpaid Assessments for Expenses.

### 7.4. Certain Owners Exempt from Annual Assessments and Special Assessments

Notwithstanding Section 7.3 above, Exempt Property shall not be subject to an obligation to pay any Annual Assessment or Special Assessment.

### 7.5. Special Assessments for Capital Improvements and Extraordinary Expenses

. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Property, including fixtures and personal property related thereto, or for the purpose of defraying other unanticipated expenses, including without limitation any shortfall caused by unpaid Assessments. During the Declarant Control Period, Special Assessments may be levied solely upon the written direction of the Declarant. Thereafter, any such Special Assessment must be approved by the affirmative vote of at least fifty-one percent (51%) of the votes of the Members. The provisions of this Section 7.5 are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes. Special Assessments shall be assessed and prorated among the Owners of the same basis as regular Assessments.

### 7.6. Notice and Quorum for Any Action Authorized Under Section 7.5

. Following the Declarant Control Period, written notice of any meeting called for the purpose of taking any action authorized under Section 7.5 shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called for the consideration of a Special Assessment, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of the Members shall constitute a quorum. With respect to the determination of a quorum for Class A Members, Members having the authority to cast thirty percent (30%) of the Class A votes shall constitute a quorum of the Class A Members. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In lieu of a meeting, approval of a Special Assessment may be obtained by written ballot or consent of the Members pursuant to the provisions described in the Bylaws.

### 7.7. Reserves

7.7.1. Use of Reserve Funds. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Property for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Furthermore, the Board shall not use money in a reserve fund for daily maintenance expenses, unless a majority of the Members of the Association vote to approve the use of the reserve fund money for that purpose. Upon the approval of a majority of the Members of the Association, the Board 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 Board 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 Property and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Assessment shall not be subject to the limitations set forth in Section 7.5.

7.7.2. Reserve Fund Line Item. The Association's budget shall include a reserve fund line item as determined by the Board, based on the reserve analysis and the amount the Board determines is prudent under the circumstances. Within forty five (45) days after the day on which the Association adopts its budget, the Owners may veto the reserve fund line item by a fifty one percent (51%) vote at a special meeting called by the Owners for the purpose of voting whether to veto the reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

#### 7.8. Reserve Study

7.8.1. The Board shall cause to be conducted at least once every six (6) years, a study of the reserves required to repair, replace and restore the Property, Residence and Furnishings. The Board shall thereafter review the results of that study at least every three (3) years to determine if those reserves are sufficient and shall make any adjustments it deems necessary to maintain the required reserves.

7.8.2. The study required by this Section 7.8.2, and covering the components described in Section 7.8.2 hereof, must be conducted by a person qualified by training and experience to conduct such a study, including a member of the Board, an Owner or the Manager of the Association who is so qualified. The study must include, without limitation:

7.8.2.1. Identification of the major components of the Property, Residence and Furnishings which have a use life of no fewer than three (3) years but not less than thirty (30) years that will reasonably require reserve funds;

7.8.2.2. An estimate of the probable remaining useful life of each major component identified pursuant to Section 7.8.2.1;

7.8.2.3. An estimate of the necessary cost to repair, replacement or restoration of each major component identified pursuant to Section 7.8.2.1;

7.8.2.4. An estimate of the total annual contribution that may be required to cover the cost of repairing, replacement or restoration the major components during and at the end of its useful life; and



7.8.2.5. A reserve funding plan that recommends how the Association may fund the annual contribution described in Section 7.8.2.4.

7.8.3. Providing Reserve Analysis to Owners. Each year the Association shall provide a summary of the most recent reserve analysis, including any updates, to each Owner. Owners may receive a complete copy of the reserve analysis upon a request submitted to the Board.

#### 7.9. Rules Regarding Billing and Collection Procedures

. The Board shall have the right to adopt written procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Assessments, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member, shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed or otherwise enforced in accordance with Section 8.3 below until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period; successor Owners of Shared Ownership Interests shall be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section 7.3 during the Assessment Period, he or she shall notify the Association, but his or her failure to notify the Association shall not relieve him or her of the liability for such amounts.

#### 7.10. Evidence of Payment of Assessments

. Upon receipt of a written request by a Member or any other Person, the Association within a reasonable period of time thereafter shall issue to such Member or other Person a written certificate stating that all Assessments (including interest, costs and attorneys' fees, if any, as provided in Section 7.2 above) have been paid with respect to any specified Shared Ownership Interest as of the date of such certificate, or if all Assessments have not been paid, the amount of such Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, in an amount not to exceed any limitations set forth in the Community Act, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser, or Mortgagee, of a Shared Ownership Interest.

#### 7.11. Providing Payoff Information

. The Association may charge a reasonable fee (to be paid after closing) for providing payoff information needed in connection with the closing of an Owner's financing, refinancing

or sale of a Shared Ownership Interest. Such fee shall not exceed the maximum amount (if any) set forth in the Community Act. The Board must provide payoff information within five (5) business days after the closing agent for a transaction requests such information. Such request shall include all information required by the Community Act and be delivered in accordance with the requirements set forth in the Community Act.

7.12. Property Exempted from Annual and Special Assessments and Assessment Lien

Exempt Property shall be exempt from the assessment of the Annual and Special Assessments, but such property shall not be exempt from the Maintenance Charges provided for in Section 9.3; attorneys' fees, costs and expenses as described in Section 5.6; or the Assessment Lien to secure said Maintenance Charges, attorneys' fees, costs and expenses. Provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments (prorated as of the date it became Assessable Property) and the Assessment Lien.

7.13. Declarant Right to Subsidize the Association

At the election of the Declarant, and upon the Declarant executing and delivering to the Association a written Subsidy Agreement incorporating the terms of this Section 7.13, the following provisions shall apply:

7.13.1. No Annual Assessments shall be levied against Exempt Property.

7.13.2. In lieu of paying Annual Assessments, and so long as the Subsidy Agreement is in effect, the Declarant shall subsidize the Association for the amount by which the cost of operating and administering the Association exceeds the total amount of Annual Assessments levied against Shared Ownership Interest owned by Owners other than the Declarant.

7.13.3. The subsidy may be in the form of cash or in the form of "in-kind" contributions of goods or services, or in any combination of the foregoing, and any subsidies made by Declarant in the form of "in-kind" contributions of goods or services shall be valued at the fair market value of the goods or services contributed.

7.13.4. Declarant shall make payments or contributions in respect of its subsidy obligations under this Section 7.13 at such times as the Board may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly).

7.13.5. At the end of each fiscal year of the Association, either: Declarant shall pay or contribute to the Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such fiscal year, to satisfy in full Declarant's subsidy obligations under this Section 7.13 for such fiscal year; or the Association shall pay to Declarant or credit against Declarant's subsidy obligation for the immediately following fiscal year, as Declarant may elect, the amount, if any, by which

the total of all payments or contributions paid or made by Declarant during such fiscal year exceeded the total subsidy obligation of Declarant for such fiscal year under this Section 7.13.

## ARTICLE 8 ENFORCEMENT OF ASSESSMENTS

### 8.1. Association as Enforcing Body

The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member, on behalf of the Members within the Shared Ownership Program, may enforce them at his or her own expense by any appropriate action, whether in law or in equity.

### 8.2. Assessment Lien

The Assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the Shared Ownership Interest and shall be a continuing servitude and lien upon the Shared Ownership Interest against which each such Assessment is made. There shall be a lien upon the applicable Shared Ownership Interest for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Community Act. The lien for unpaid Assessments and related charges shall be effective upon Recording a written notice of lien by the Board or the Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Shared Ownership Interest and a description of the Shared Ownership Interest. No notice of lien shall be recorded until there is a delinquency in payment of the Assessments.

### 8.3. Association's Remedies to Enforce Payment of Assessments

If any Member fails to pay any Assessment when due, the Association may enforce the payment of the Assessments and/or Assessment Lien by taking one or more of the following actions, concurrently or separately (and by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

8.3.1. Bring an action at law and recover judgment against the Member personally obligated to pay the Assessments;

8.3.2. Foreclose the Assessment Lien against a Shared Ownership Interest in accordance with then prevailing Utah law relating to the foreclosure of mortgages or deeds of trust (including the right to recover any deficiency), the method recognized under Utah law for the enforcement of a mechanic's lien which has been established in accordance with Chapter 1a, Title 38, Utah Code Annotated, as amended from time to time, or any other means permitted by law, and the Shared Ownership Interest may be redeemed after foreclosure sale if provided by law.

8.3.3. Notwithstanding subordination of an Assessment Lien as described in Section 8.5, the delinquent Member shall remain personally liable for the Assessments and related costs after his membership is terminated by foreclosure or deed in lieu of foreclosure or otherwise.

#### 8.4. Foreclosure

. Any foreclosure pursuant to Section 8.3.2 above shall be conducted in accordance with the following procedures:

8.4.1. Scope of Lien. In any foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Shared Ownership Interest which shall become due during the period of foreclosure, and all such amounts shall be secured by the lien being foreclosed.

8.4.2. Trustee. The Declarant, Association and each Owner hereby convey and warrant pursuant to Utah Code Annotated Sections 57-1-20 and 57-8a-302 to Cottonwood Title Insurance Agency, with power of sale of the Shared Ownership Interests for the purpose of securing payment of Assessments under the terms of this Declaration. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code Annotated. The Association may, through its duly authorized agents, bid on the Shared Ownership Interest at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The trustee appointed hereunder, and any successors, shall not have any other right, title or interest in the Shared Ownership Interest beyond those rights and interests necessary and appropriate to foreclose any liens against or Shared Ownership Interests arising pursuant hereto.

8.4.3. Nonjudicial Foreclosure. At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice ("Foreclosure Notice") to the Owner that is the intended subject of the nonjudicial foreclosure. The Foreclosure Notice shall: (i) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Shared Ownership Interest to enforce the Association's lien for unpaid assessments; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested and be included with other Association correspondence to the Owner; and (iv) be in substantially the following form:

**NOTICE OF NONJUDICIAL FORECLOSURE  
AND RIGHT TO DEMAND JUDICIAL  
FORECLOSURE**

Sanctuary Beach House Owners Association, Inc., a  
Utah corporation (the "Association"), the  
association for the project in which your shared

ownership interest is located, intends to foreclose upon your shared ownership interest and allocated interest in the Property using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the association's lien against your shared ownership interest and to collect the amount of an unpaid assessment against your shared ownership interest, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my shared ownership interest," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within 15 days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is: Sanctuary Beach House Owner's Association, P.O. Box 1660, Park City, Utah 84060.

#### 8.4.4. Demand for Judicial Foreclosure

The Association may not use a nonjudicial foreclosure to enforce a lien if an Owner mails the Association a written demand for judicial foreclosure: (i) by U.S. mail, certified with a return receipt requested; (ii) to the address stated in the Foreclosure Notice; and (iii) within 15 days after the date of the postmark on the envelope of the Foreclosure Notice.

#### 8.5. Subordination of Assessment Lien to First Mortgage: Priority of Lien

The Assessment Lien provided for herein shall be subordinate to any First Mortgage and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Shared Ownership Interest. Sale or transfer of a Shared Ownership Interest shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a First Mortgage to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage

foreclosure or deed of trust of sale, or any grantee taking by deed in lieu of foreclosure, shall take the Shared Ownership Interest free of the Assessment Lien for all Assessments that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; provided, however, that such First Mortgage foreclosure sale purchaser or grantee shall take subject to all Assessments and the Assessment Lien therefor accruing subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

#### 8.6. Termination of Delinquent Owner's Rights

The Board may terminate a Delinquent Owner's (defined below) right of access to and use of the Residence during the Owner's occupancy period (the "Owner's Rights"). Before terminating the Owner's Rights, the Board shall give the Delinquent Owner notice ("Notice of Delinquency") of such termination. The Notice of Delinquency shall state: that the Association will terminate any of the Owner's Rights, if the Association does not receive payment of the assessment owed to the Association within fourteen (14) days after the Delinquent Owner receives the Notice of Delinquency; the amount of the Assessments due, including any interest or late payment fee; and the Owner's right to request a hearing. A Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the amounts due. Such request shall be submitted within fourteen (14) days after the date the Delinquent Owner receives the Notice of Delinquency. The Board shall conduct the informal hearing in accordance with the standards provided in the Bylaws. If a Delinquent Owner requests a hearing, the Association may not terminate the Owner's Rights until after the Board conducts the hearing and enters a final decision. If the Association terminates the Owner's Rights, the Association shall take immediate action to reinstate the Owner's Rights following the Owner's payment of the Assessments, including any interest, late payment fee or other charges. As used in this section, "Delinquent Owner" means an Owner who fails to pay an Assessment or other amounts owed to the Association when due.

### ARTICLE 9 MAINTENANCE

#### 9.1. The Property and Public Right-of-Way

The Association, or its duly delegated representative, shall maintain and otherwise manage the Residence, including, but not limited to the interiors and exteriors thereof and any other structures located upon the Property. As applicable the Association shall maintain fire hydrants and fuel breaks, in accordance with Weber County requirements.

#### 9.2. Standard of Care

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Property and the Residence so the development will reflect a high grade of ownership. In this connection the Association may, subject to any applicable provisions on Special Assessments for capital Improvements, in the discretion of the Board:

9.2.1. Remove and replace, as appropriate, injured and diseased trees and other vegetation on the Landscaped Areas, and plant trees, shrubs and ground cover to the

extent that the Board deems necessary for the conservation of water and soil, maintaining fuel breaks and for aesthetic purposes; and

9.2.2. Do all such other and further acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration.

9.2.3. The Board shall be the sole judge as to the appropriate maintenance of the Property. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

### 9.3. Assessment of Certain Costs of Maintenance and Repair of Property

. In the event that the need for maintenance or repair of the Property maintained by the Association is caused through the willful or negligent act of any Owner, or any family, guests, invitees or tenants of such Persons, the cost of such maintenance or repairs shall be a separate expense and shall be added to and become a part of the Assessment to which such Owner is subject and shall be secured by the Assessment Lien.

## ARTICLE 10 INSURANCE AND FIDELITY BONDS

### 10.1. Property Insurance

. The Association shall at all times maintain in force insurance meeting the following requirements: A "master" or "blanket" type policy of property insurance shall be maintained, if reasonably available, covering all insurable Improvements, if any, on the Property; fixtures, building service equipment, personal property and supplies comprising a part of the Property 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. If blanket all-risk insurance is not reasonably available, then at a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Shared Ownership Program in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Property covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: 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 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). The maximum deductible amount for such policy shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount. The Board shall provide notice to Owners of the amount of the deductibles and any change in the amount of the deductibles.

## 10.2. Policy Requirements.

10.2.1. The name of the insured under each policy required to be maintained by the foregoing Section 10.1 shall be the Association for the use and benefit of the individual Owners. Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee (as hereinafter defined) with whom the Association has entered into an Insurance Trust Agreement (as hereinafter defined), 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 First Mortgagee. Each Owner and each such Owner's First Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and First Mortgagee upon request.

10.2.2. Each policy required to be maintained by the foregoing Section 10.1, shall contain the standard mortgagee clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Property is located. In addition, such mortgagee clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

10.2.3. Each policy required to be maintained by the foregoing Section 10.1, shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and the policy is primary in the event the Owner has other insurance covering the same loss.

10.2.4. Each policy required to be maintained by the foregoing (Section 10.1 shall also contain or provide the following: "Inflation Guard Endorsement", if available; "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, if appropriate, "Steam Boiler and Machinery Coverage Endorsement" 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 Improvements containing the boiler or machinery.

## 10.3. Fidelity Bonds or Insurance



. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds or insurance, including but not limited to, trustees and officers insurance for the benefit of all members of the Board, officers and members of committees and subcommittees appointed by the Board or otherwise established pursuant to the provisions of this Declaration, for all officers, agents, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Manager shall provide "blanket" fidelity bonds or insurance, with coverage shall be identical to such bonds required of the Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity 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 Manager, as the case may be, at any given time during the term of coverage. A lesser amount of fidelity insurance coverage is acceptable for the Property so long as the Association and the Manager adhere to the following financial controls: the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; the Manager maintains separate records and bank accounts for each Association that uses its services and the Manager does not have authority to draw checks on or to transfer funds from the Association's reserve account; or two trustees must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such fidelity coverage be less than the sum equal to three months' aggregate Assessments on all Shared Ownership Interest. The coverage required shall meet the following additional requirements: (1) the fidelity coverage shall name the Association as obligee or insured; (2) the bonds or insurance shall contain waivers by the issuers of the bonds or insurance of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds or insurance required herein for the Association (except for premiums on fidelity bonds or insurance maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Expenses; and (4) the bonds or insurance shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to the Association and to any Insurance Trustee.

#### 10.4. Liability Insurance

. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Property. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for projects similar to the Shared Ownership Program in construction, location, and use. Nevertheless, such coverage shall be for at least Three Million Dollars (\$3,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Property, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects

similar to the Shared Ownership Property 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 thirty (30) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

#### 10.5. Insurance Trustees and General Requirements Concerning Insurance

. 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. Each insurance policy maintained pursuant to this Declaration shall be written by insurance carriers which are licensed to transact business in the State of Utah and which have 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 are written by Lloyd's of London or which are otherwise approved by the Board. The provisions of this Article 10 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

#### 10.6. Annual Review of Policies and Coverage

. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Property and Improvements thereon which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration. In the event any of the insurance coverage provided for in this Article 10 is not available at a reasonable cost or is not reasonably necessary to provide the Property with adequate insurance protection, as determined by the Board, the Board shall have the right to obtain different insurance coverage or insurance coverage which does not meet all of the requirements of this Article 10 so long as, at all times, the Board maintains insurance coverage on a basis which is consistent with the types and amounts of insurance coverage

obtained for projects similar to the Shared Ownership Program. Additionally, the Board shall give Owners notice within seven (7) days if any such insurance is not reasonably available

## **ARTICLE 11 DAMAGE OR DESTRUCTION**

### 11.1. Association as Attorney in Fact

. Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Property upon damage or destruction as provided in this Article or a complete or partial taking as provided in Article 12 below. Acceptance by any grantee of a Deed or other instrument of conveyance from the Declarant or from any Owner shall constitute appointment of the 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, assignment, Deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact. All proceeds from the insurance required hereunder shall be payable to the Association except as otherwise provided in this Declaration.

### 11.2. Estimate of Damages or Destruction

. As soon as practical after an event causing damage to or destruction of any part of the Improvements, including of any part of the Residence, the Association shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part so damaged or destroyed. "Repair and reconstruction" as used in this Article 11 shall mean restoring the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction.

### 11.3. Repair and Reconstruction

. As soon as practical after obtaining estimates, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

### 11.4. Funds for Repair and Reconstruction

. The proceeds received by the Association from any hazard insurance shall be used for the purpose of repair, replacement, and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 7.5 above, levy, assess, and collect in advance from all Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be

made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

#### 11.5. Disbursement of Funds for Repair and Reconstruction

. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 7.5 above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be retained by the Association as an additional capital reserve.

#### 11.6. Decision Not to Rebuild

. If at least seventy-five percent (75%) of Members in the Association vote not to repair and reconstruct and no alternative Improvements are authorized, then and in that event the affected portion of the Property shall be restored to their natural state and maintained as an undeveloped portion of the Property by the Association in a neat and attractive condition, and any remaining insurance proceeds shall be retained by the Association as an additional capital reserve.

### ARTICLE 12 CONDEMNATION

#### 12.1. Rights of Owners

. Whenever all or any part of the Property shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice of the taking, but the Association shall act as attorney-in-fact for all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

#### 12.2. Complete Condemnation

. If all of the Property is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration shall terminate, and the condemnation award shall be distributed to Owners based upon the relative value of the Shared Ownership Interests (as applicable) prior to the condemnation.

### ARTICLE 13 MORTGAGEE REQUIREMENTS

#### 13.1. Notice of Action

. Upon written request made to the Association by a Mortgagee, or an insurer or governmental guarantor of a Mortgage, which written request shall identify the name and address of such Mortgagee, insurer or governmental guarantor and the Shared Ownership Interest or

address of the Residence, any such Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

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

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

13.1.3. Any lapse, cancellation or material modification of any insurance policy or fidelity bond or insurance maintained by the Association.

### 13.2. Availability of the Governing Documents and Financial Statements

. The Association shall maintain and have current copies of the Governing Documents and other rules concerning the Shared Ownership Property as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of Mortgages that are secured by Shared Ownership Interests. Generally, these documents shall be available during normal business hours.

### 13.3. Subordination of Lien

. The lien or claim against a Shared Ownership Interest for unpaid Assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Shared Ownership Interest, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Shared Ownership Interest 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 Shared Ownership Interest affected or previously affected by the First Mortgage concerned.

### 13.4. Payment of Taxes

. In the event any taxes or other charges which may or have become a lien on the Property are not timely paid, or in the event the required hazard insurance described in Section 10.1 lapses, is not maintained, or the premiums therefor are not paid when due, any First Mortgagee or any combination of First Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any First Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

### 13.5. Priority

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 Property.

## ARTICLE 14 TERM; AMENDMENTS; TERMINATION

### 14.1. Term; Method of Termination

This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of fifty (50) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of twenty (20) years each, unless there is an affirmative vote to terminate this Declaration by then Members casting eighty percent (80%) of the total votes cast at an election held for such purpose or otherwise approved in writing within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if eighty percent (80%) of the votes of the Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### 14.2. Amendments

This Declaration may be amended by Recording an Amendment to this Declaration, duly signed and acknowledged by and on behalf of the Association. The Amendment shall set forth in full the amendment adopted, and, except as provided in Sections 14.3 and 14.4 hereof or elsewhere in this Declaration, shall certify that at a meeting duly called and held pursuant to the provisions of the Articles and Bylaws or by separate written consent without a meeting, the Members casting at least sixty seven percent (67%) of the votes of the Members who are voting in person or by proxy at the election voted affirmatively for the adoption of the amendment or approved such amendment by separate written consent. Until Declarant no longer owns any Shared Ownership Interest, this Declaration may be amended or terminated only with the written approval of the Declarant.

### 14.3. Unilateral Amendments

The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Shared Ownership Interest. Notwithstanding anything contained in this Declaration to the contrary, so long as Declarant has any ownership rights under this Declaration, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, to make technical corrections or to fix mistakes or remove/clarify ambiguities; if

such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property; or if such amendment is necessary in connection with Declarant's exercise of any of its development rights under this Declaration. During the Declarant Control Period, Declarant also hereby reserves the right to unilaterally change the name of the Shared Ownership Program without the consent of any other Owner or of the Board. Further, so long as the Class B Membership exists, Declarant may unilaterally amend this Declaration for any other purpose so long as any such amendment shall not materially adversely affect title to any Shared Ownership Interests without the consent of the affected Owner.

14.4. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions

. Anything in this Article or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Utah Department of Real Estate (or similar agency) and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of a Shared Ownership Interest, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Shared Ownership Interest. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when Recorded, shall be binding upon all Owners. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Article 14 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

**ARTICLE 15  
DECLARANT'S RIGHTS**

15.1. Transfer

. Any or all of the special rights and obligations of the Declarant may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly Recorded. So long as Declarant continues to have rights under this paragraph, no person or entity shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting the Shared Ownership Program without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration or condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

## 15.2. Amendment

. This Article 15 may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article 15 shall terminate when Declarant no longer owns any Shared Ownership Interests.

## 15.3. The Rules and Regulations

. Declarant reserves for itself and its assigns the right to, from time to time, adopt, amend and repeal rules and regulations to be known as the Rules and Regulations. The Rules and Regulations may restrict and govern the use of any area by any Member, or by any invitee, or licensee of such Member; provided, however, that the Rules and Regulations shall not discriminate among Members and shall not be inconsistent with the Governing Documents.

15.3.1. Notwithstanding any provision in this Declaration to the contrary, no action of the Association or Board shall unreasonably impede Declarant's right to develop the Property or the Shared Ownership Program.

15.3.2. ALL OWNERS ARE GIVEN NOTICE THAT THE USE OF THEIR SHARED OWNERSHIP INTEREST IS LIMITED BY THE RULES AND REGULATIONS, AS MAY BE PROMULGATED, AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS, HER OR ITS SHARED OWNERSHIP INTEREST CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME SO LONG AS SUCH CHANGE DOES NOT MATERIALLY ADVERSELY AFFECT THE USE AND ENJOYMENT OF THE OWNERSHIP INTEREST. ALL PURCHASERS ARE ON NOTICE THAT THE DECLARANT MAY ADOPT CHANGES TO THE RULES AND REGULATIONS FROM TIME TO TIME. COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE ASSOCIATION.

15.3.3. Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules and Regulations, the Declarant shall give at least fifteen (15) days' notice to Owners, provide an open forum for Owners to be heard, and deliver a copy of the approved changes to the Owners.

## 15.4. Right of Repurchase

. The Shared Ownership Interests, and any and all rights and interests now or hereafter appurtenant to each of them, shall be subject to a right of first refusal to repurchase ("Repurchase Option") by Declarant if an Owner wants to or is required to sell, assign, or otherwise transfer its Shared Ownership Interest (not including a deed in lieu of foreclosure, transfer by trustee or sheriff's deed, or any transfer in connection with the merger, consolidation, liquidation or reorganization in Owner) (a "Transfer"). A Transfer shall not include the sale, assignment or other transfer of a First Mortgagee of its right or interest in a Shared Ownership Interest. Declarant shall have the right to exercise the Repurchase Option by giving written notice at any time within sixty (60) calendar days after the date upon which the Owner shall have given



written notice to Declarant of the potential Transfer, together with a copy of the proposed contract of sale or other document affecting the Transfer, which includes all material terms to the Transfer. If any such notice shall not be so given by Declarant to the Owner on or before the expiration of the respective 60 day period and if the Owner completes the Transfer to a third party, Declarant's right to exercise the Repurchase Option with regard to the Shared Ownership Interest shall thereupon cease and terminate. If the Owner does not complete the Transfer within ninety (90) days of giving written notice to Declarant, the Repurchase Option with regard to the Shared Ownership Interest shall not terminate and the Owner shall be required to provide a successive written notice(s) of a proposed Transfer.

15.4.1. The "Repurchase Option Price" shall mean the bona fide purchase price offered to an Owner with respect to a Shared Ownership Interest.

15.4.2. The Owner shall deliver title to the Shared Ownership Interest to Declarant at the closing of the Repurchase Option in the same condition as when delivered by Declarant to the Owner, except as to nondelinquent property taxes and assessments for the year of said closing, which taxes and assessments shall be prorated between Declarant and the Owner to the date of such closing, so that the Owner bears such taxes and assessments for the period of its ownership of the Shared Ownership Interest. The Owner agrees to pay all costs and expenses for such closing, including the premium for an standard owners title insurance policy in the amount of the Repurchase Option Price, insuring that title to the Shared Ownership Interest is vested in Declarant.

15.4.3. In the event Declarant fails to exercise the Repurchase Option within the time and in the manner set forth above, Declarant shall not have any further right to exercise the Repurchase Option with regard to such Shared Ownership Interest and Declarant agrees, upon the Owner's written request, to Record a duly executed and acknowledged release releasing Declarant's right to exercise the Repurchase Option with regard to such Shared Ownership Interest.

15.4.4. This Repurchase Option shall be subordinate and junior to the legal operation and effect of the security interests of First Mortgagees.

#### 15.5. Creation of Different Interests

. It is the intent of Declarant to convey undivided one-twelfth (1/12<sup>th</sup>) fee ownership interests. No other undivided fee ownership interests shall be created at any time, without the prior written consent of Declarant.

#### 15.6. Withdrawal of Property

. At any time before the sale of a Shared Ownership Interest, the Declarant shall have the unilateral right to withdraw the property from the Shared Ownership Program. The withdrawal of the Property from the Shared Ownership Program shall be effected by the Declarant Recording a written instrument. Upon the date any supplement contemplated above is Recorded, such property shall no longer be subject to any of the covenants, conditions and restrictions set forth in this Declaration.

**ARTICLE 16**  
**BINDING ARBITRATION AND ENFORCEMENT OF GOVERNING DOCUMENTS**

16.1. Opt-Out Right

IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, THE OWNER MUST SEND A LETTER TO DECLARANT, SIGNED BY THE OWNER (AND ANY CO-OWNER) AND ADDRESSED TO ATTN: SANCTUARY ARBITRATION OPT-OUT, C/O PAXTON R. GUYMON, 64085 SOUTH 3000 EAST, SUITE 150, SALT LAKE CITY, UTAH 84121. THE LETTER MUST BE SENT WITHIN THIRTY (30) DAYS AFTER THE DATE OF THE OWNER'S REAL ESTATE PURCHASE CONTRACT, AND MUST STATE THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS ARTICLE 16. ANY OPT OUT WILL RENDER THIS ARBITRATION PROVISION NULL AND VOID BUT WILL HAVE NO OTHER EFFECT ON THE OWNER'S RIGHTS.

16.2. Arbitration Terms Defined

In the arbitration provision described in this Article 16 ("Arbitration Provision"), the following capitalized words, phrases or terms have the meanings set forth below:

16.2.1. "Institutional Party" means Declarant; the Association during the Declarant Control Period; any third party that provides any product or service to a Consumer Party in connection with this Declaration, if and only if such third party is named as a co-party with another Institutional Party in a Claim asserted by a Consumer Party; their successors and assigns; and the agents, representatives, members, employees, officers and/or directors of the foregoing entities.

16.2.2. "Consumer Party" means the Owners, their heirs, successors and assigns and the Association after the Declarant Control Period.

16.2.3. "Bound Party" means any Institutional Party or Consumer Party who asserts a Claim or has a Claim asserted against such party.

16.2.4. "Claim" means any claim, dispute or controversy between an Institutional Party and a Consumer Party, other than an Exempt Claim, arising out of or relating in any way to this Declaration or any other Governing Documents, the Property, Residence, Improvements, including any such claim, dispute or controversy regarding or arising over the marketing and sale of Shared Ownership Interests; the terms of this Declaration or any other Governing Documents; the design, specifications, surveying, planning, supervision, testing, observation of construction or construction of any Improvements, or survey of the Property; or the maintenance or use of the Property. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or

common law; and disputes involving requests for declaratory relief, injunctions or other equitable relief.

16.2.5. “Exempt Claim” means any of the following Claims, which will not be subject to this Arbitration Provision: any individual action brought by a Consumer Party in small claims court or a relevant state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; any action to effect a judicial or non-judicial foreclosure; any eviction or other summary proceeding to secure possession of real property or an interest therein; any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; any action to quiet title; any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; any self-help remedy, such as the refusal of an Institutional Party to allow a Consumer Party to use the Property, or any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; and any dispute concerning the validity and effect of Section 16.8 below, the ban on class actions and certain other proceedings (the “Class Action Ban”). Notwithstanding the prior sentence, at the request of a Consumer Party, the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (b)–(f) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (b)–(f) above, the Consumer Party may assert in court on an individual basis any related defenses or Claims such Consumer Party may have.

16.2.6. “Administrator” means either of the following companies, to be selected by the Bound Party initiating the arbitration: JAMS (“JAMS”), 18881 Von Karman Ave., Suite 350, Irving, CA 92612, <https://www.jamsadr.com>, or the American Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, <http://www.adr.org>. However, if neither JAMS nor AAA may serve as Administrator, without the consent of all Bound Parties asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Ban.

### 16.3. Arbitration of Claims

. Unless a Consumer Party has opted out of this Arbitration Provision, upon the election of any Consumer Party or Institutional Party asserting or defending a Claim, such Claim shall be resolved by binding individual (and not class) arbitration. Notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

### 16.4. Fees

. If a Consumer Party cannot obtain a waiver of any fees of the Administrator or arbitrator, the Institutional Parties will consider in good faith any request for them to pay such fees for the Consumer Party. Each Bound Party shall bear the fees and expenses of that Bound Party's attorneys, experts, and witnesses, provided that the Institutional Parties will bear the reasonable fees and expenses incurred by a Consumer Party if the Consumer Party prevails on a Claim the Consumer Party has asserted against the Institutional Parties. Also, the Institutional Parties will pay any arbitration, attorneys' and/or other fees and expenses they are required to pay by applicable law or they are required to pay in order to enforce this Arbitration Provision. If a participatory arbitration hearing is requested, it will take place in Weber County, Utah or, if the Administrator determines that such location would be unfair to a Consumer Party, at a location reasonably convenient to such Consumer Party and the Institutional Parties.

#### 16.5. Governing Law

. This Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA") and not state arbitration laws, provided that Utah law shall govern to the extent that state law is relevant under the FAA in determining the enforceability of this Arbitration Provision. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any Claim. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. Upon the timely request of any Bound Party, the arbitrator shall write a brief explanation of the grounds for his or her decision. In addition to the Bound Parties' rights under the Administrator's rules to obtain information prior to the hearing, any Bound Party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other Bound Party the opportunity to object.

#### 16.6. Appeal of Arbitrator's Decision

. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$50,000, any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Fees and costs associated with an appeal shall be governed by Section 16.4 above.

#### 16.7. Jury Trial Waiver

. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM, NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

#### 16.8. Class Action Ban

. NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE. NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN ARBITRATION. NO CLAIMS BY OR AGAINST A BOUND PARTY MAY BE JOINED OR CONSOLIDATED WITH CLAIMS BY OR AGAINST ANY OTHER PERSON (EXCEPT FOR CLAIMS INVOLVING THE HEIRS AND SUCCESSORS OF SUCH CONSUMER PARTIES). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTI-PARTY ARBITRATION INCONSISTENT WITH THIS SECTION. Notwithstanding any language in this Arbitration Provision to the contrary, any dispute about the validity or effect of the above Class Action Ban shall be resolved by a court and not an arbitrator or the Administrator.

#### 16.9. Severability

. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the Class Action Ban) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If the Class Action Ban is held to be unenforceable in connection with any Claim subject to the Class Action Ban, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding, provided that the Institutional Party seeking to enforce the Class Action Ban shall have the right to appeal at the earliest possible time any holding that the Class Action Ban is unenforceable.

#### 16.10. Notice of Claim; Right to Address

. Prior to asserting a Claim, the Bound Party with the Claim (the "Claimant") shall give the Bound Party that is the subject of the Claim written notice of the Claim and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim. The Claimant's claim notice must include the Claimant's name, address and telephone number. Any claim notice must explain the nature of the Claim and the relief that is demanded. A Consumer Party may only submit a claim notice on his or her own behalf and not on behalf of any other party. The Claimant must reasonably cooperate in providing any information about the Claim that the other Bound Party reasonably requests. If: a Consumer Party submits a claim notice in accordance with this Section on his or her own behalf (and not on behalf of any other party); the Institutional Party refuses to provide the requested relief; and an arbitrator subsequently determines that the Consumer Party was entitled to such relief (or greater relief), the arbitrator shall award the Consumer Party at least \$7,500 (not including any arbitration fees and attorneys' fees and costs to which the Consumer Party may be entitled under this Arbitration Provision or applicable law).

### **ARTICLE 17 MISCELLANEOUS**

#### 17.1. Interpretation of Declaration

. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefited or bound by the covenants and provisions hereof.

#### 17.2. Severability

. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

#### 17.3. Change of Circumstances

. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

#### 17.4. Rules and Regulations

. In addition to the right to adopt the Rules and Regulations on the matters expressly mentioned elsewhere in this Declaration, the Association (through its Board) shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

#### 17.5. Declarant's Disclaimer of Representations

. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a Plat or other Recorded instrument, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Property can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, such use will continue in effect.

#### 17.6. References to Declaration in Deeds

. Deeds or any instruments affecting any Shared Owner Interest may contain the covenants herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the covenants set forth herein shall be binding upon the grantee-Owner or other person claiming through any instrument and his or her heirs, executors, administrators, successors and assigns.

#### 17.7. List of Owners and Eligible Members

. The Board shall maintain up-to-date records showing: the name of each Person who is an Owner, the address of such Person, and the Shared Ownership Interest which is owned by him

or her; the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Shared Ownership Interest which is encumbered by the Mortgage held by such person or entity; and the name of each person or entity who is an insurer or governmental guarantor together with the address of such person or entity. In the event of any transfer of a fee or undivided fee interest in a Shared Ownership Interest, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of Record. The Board may for all purposes act and rely on the information concerning Owners which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Shared Ownership Interest which is obtained from the office of the County Recorder of Weber County, Utah, as applicable. The address of an Owner shall be deemed to be the address of the Property unless the Board is otherwise advised. The list of Owners shall be made available by the Board to any Owner for noncommercial purposes upon such Owner's written request and such Owner's payment of any copying charges. The Association may, as a condition to permitting a Member to inspect the Membership register or to its furnishing information from the register, require that the Member agree in writing not to use, or allow the use of, information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Member's interest in the Association.

#### 17.8. General Obligations

. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Shared Ownership Interests, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Shared Ownership Interest.

#### 17.9. Rights of Action

. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of this Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

#### 17.10. Successors and Assigns of Declarant

. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder. Declarant may assign any or all of such rights by Recording an assignment of Declarant's rights.

#### 17.11. Gender and Number

. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

#### 17.12. Captions and Titles

. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

17.13. Notices

. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to such person at the address given by that person to the Association for the purpose of service of such notice. Such address may be changed from time to time by notice in writing received by the Association. Notice to the Board shall also be delivered or mailed to the Declarant or such other address as the Board may designate after the end of Declarant's control of the Board.

17.14. Security

. The Association may, but shall not be obligated to, maintain or support certain activities at the Property designed to make the Property safer than it otherwise might be. NEITHER THE ASSOCIATION, NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE RESIDENCE, HOWEVER, AND NEITHER THE ASSOCIATION, NOR THE DECLARANT 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, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT, THE ASSOCIATION AND ITS BOARD OF DIRECTORS DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, GUEST OR INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE DECLARANT, THE ASSOCIATION, AND ITS BOARD OF DIRECTORS ARE NOT INSURERS AND THAT EACH OWNER, GUEST AND INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO RESIDENCES AND TO THE CONTENTS OF RESIDENCES AND FURTHER ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, AND ITS BOARD OF DIRECTORS HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE RESIDENCE.



*[Signatures on Following Page]*

IN WITNESS WHEREOF, the Declarant has executed this Declaration as of the day first above written.

**DECLARANT:**

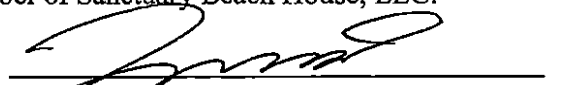
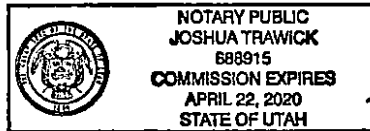
Sanctuary Beach House, LLC, a Utah limited liability company



By: Tim Charlwood  
Its: Managing Member

STATE OF UTAH )  
 )  
 ) :SS.  
COUNTY OF Summit )

The foregoing instrument was acknowledged before me this 03 day of MAY, 2019, by TIM CHARLWOOD, the Managing Member of Sanctuary Beach House, LLC.

  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 04/22/2020

**LENDER CONSENT, SUBORDINATION AND NON-DISTURBANCE**

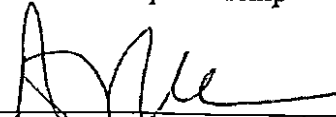
MOUNTAIN WEST DEBT FUND, LP ("Lender") is the beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing, executed by Sanctuary Ranch Utah, LLC, a Utah limited liability company and Timothy P. Charlwood, an individual (collectively the "Grantors") dated July 15, 2016 and recorded July 15, 2016, as Entry Number 2803929 in the Recorder's Office for Weber County, Utah, and which was modified by that certain Modification Agreement dated December 13, 2016, and recorded on December 13, 2016, as Entry Number 2831753 in the Recorder's Office for Weber County, Utah, and which was further modified by that certain Modification Agreement dated May 1, 2017, and recorded on May 1, 2017 as Entry Number 2854988 in the Recorder's Office for Weber County, Utah (collectively, the "Deed of Trust"), which Deed of Trust encumbers the real property (or a portion thereof) subject to and described in the attached Declaration of Covenants, Conditions, Easements and Restrictions of Sanctuary Beach House executed by Grantor and recorded in the official records of Weber County, Utah (the "Declaration").

NOW, THEREFORE, Lender hereby consents to all of the provisions contained in the attached Declaration, and covenants and agrees that the lien of the Deed of Trust and other related documents shall be junior, subordinate and subject to said Declaration, and that any foreclosure of the Deed of Trust and other related documents, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the Declaration. Any person acquiring property or interest therein, whether through Grantor, Mortgagee, their successors or assigns, shall take such property subject to the Declaration and the provisions contained therein.

IN WITNESS WHEREOF, Lender executes this Lender Consent, Subordination and Non-Disturbance as of April 25, 2019.

"LENDER"

MOUNTAIN WEST DEBT FUND, a  
Delaware limited partnership

By:   
Its: AUTHORIZED AGENT

**EXHIBIT "A"**

**REAL PROPERTY LEGAL DESCRIPTION**

Lot 2, SANCTUARY LAKESIDE SUBDIVISION, according to the official plat thereof, as recorded in the office of the Weber County Recorder, State of Utah. 20-169-0002 DB

BST