

38 + 48

**DECLARATION OF CONDOMINIUM
FOR
HOBBY CAVES CONDOMINIUMS**

This Declaration is made this 28th day of FEBRUARY, 2019, by JFRG Bluffdale, LLC, a Utah limited liability company ("**Declarant**"), pursuant to the provisions of the Utah Condominium Ownership Act.

RECITALS

A. Declarant is the owner of that certain real property situated in the City of Bluffdale, Salt Lake County, Utah, and more particularly described on Exhibit A attached hereto and by reference incorporated herein.

B. Declarant has constructed improvements and will continue to construct improvements and units upon said real property in accordance with the plans and drawings contained in the Condominium Plat filed with the Office of the Salt Lake County Recorder contemporaneously herewith, as amended from time to time (the "**Plat**").

C. Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Property and the interests therein. Declarant desires, by filing this Declaration and the Plat, to submit said real property and all improvements now or hereafter constructed hereon to the provisions of the Utah Condominium Ownership Act as a non-residential Condominium Project to be known as the Hobby Caves Condominiums (the "**Project**").

D. Declarant intends to sell to various purchasers the fee title to the Units contained in the Project, together with the undivided percentage ownership interest in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations and easements herein set forth.

DECLARATION

NOW THEREFORE, for the foregoing purposes, Declarant hereby declares and certifies as follows:

1. DEFINITIONS

Certain terms as used in this Declaration shall be defined pursuant to the Act and are more particularly defined as follows, unless the context clearly indicates a different meaning:

- 1.1 "**Act**" shall mean the Utah Condominium Ownership Act, U.C.A. 57-8-1, et seq., as amended from time to time.
- 1.2 "**Allocated Interests**" shall mean the undivided interest in the Common Elements, the Common Expense liability and votes in the Association allocated to each Unit.
- 1.3 "**Assessment**" shall mean all sums chargeable by the Association against a Unit including, without limitation: (a) regular and special assessments for Common Expenses, charges and fines imposed by the Association; (b) interest in late charges on a delinquent account; and (c)

12955482
 03/25/2019 01:10 PM #132 - 00
 Book - 10763 Pg - 3359-3396
 RASHELLE HOBBS
 RECORDER, SALT LAKE COUNTY, UTAH
 GARAGE CONCEPTS LLC
 PO BOX 951010
 SOUTH JORDAN UT 84095-1010
 BY: SSA, DEPUTY - MT 38 P.

cost of collection, including reasonable attorney's fees, incurred by the Association in connection with the collection of a delinquent Owner's account.

- 1.4 "**Association**" shall mean the Association of the Owners of the Units organized as a Utah non-profit corporation acting as the group pursuant to this Declaration, to the Bylaws for such Association and to the Act. The Association shall be called "Hobby Caves Condominiums Owners Association."
- 1.5 "**Board of Directors**" and "**Board**" shall mean the group of individuals appointed by Declarant during the Declarant Control Period or elected by the Association following the Declarant Control Period, who shall govern the Association and manage and administer the Association in accordance with this Declaration, the Bylaws and the Act.
- 1.6 "**Bylaws**" shall mean the Bylaws of the Association as initially adopted according to the Articles of Incorporation, and as amended from time to time by the Association in accordance with this Declaration, the Bylaws and the Act.
- 1.7 "**Common Elements**" or "**Common Areas**" shall mean all portions of the Association other than the Units, specifically as provided in Article 4 of this Declaration.
- 1.8 "**Common Expenses**" shall mean the expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.
- 1.9 "**Common Expense Liability**" shall mean the liability for Common Expenses allocated to each Unit pursuant to Article 10.
- 1.10 "**Conveyance**" shall mean any transfer of the ownership of a Unit, including a transfer by deed or by real estate contract, but shall not include a transfer solely for security purposes.
- 1.11 "**Declarant**" shall mean JFRG Bluffdale, LLC, a limited liability company organized under the laws of the State of Utah, or any successor or assignee thereof.
- 1.12 "**Declarant Control**" shall mean the right of Declarant, or persons designated by Declarant, to appoint and to remove officers and members of the Board of Directors pursuant to Article 9.
- 1.13 "**Declarant Control Period**" shall mean that period of time commencing on the date of the filing of this Declaration and ending on the date that is the earlier of (i) sixty (60) days following Declarant's conveyance of one hundred percent (100%) of all Units available for sale or included within the Association to owners other than Declarant, or (ii) Declarant's written relinquishment of its Class B Membership.
- 1.14 "**Declaration**" shall mean this instrument by which the land and buildings described on Exhibit A, including Owner improvements, are established as an Association under the Act, including any amendments hereto.

- 1.15 “**Development Rights**” shall mean any right or combination of rights hereinafter reserved by Declarant to (a) add real property or improvements to the Association; (b) remove real property or improvements from the Association; (c) create Units or Common Elements within the Real Property or within real property added to the Association; and (d) subdivide Units or convert Units into Common Elements.
- 1.16 “**Dispose**” or “**Disposition**” shall mean a voluntary transfer or conveyance to a purchaser of any legal or equitable interest in a Unit, but does not include a transfer or release of a security interest.
- 1.17 “**Eligible Mortgagee**” shall mean the holder of a mortgage on a Unit who has filed with the Secretary of the Association a written request that such mortgagee be provided with copies of notices of any action by the Association that requires the consent of mortgagees.
- 1.18 “**Foreclosure**” shall mean a forfeiture or judicial or non-judicial foreclosure of a real estate contract, mortgage or deed of trust, and shall include a deed given in lieu of a foreclosure.
- 1.19 “**Mortgage**” shall mean a recorded mortgage or deed of trust creating a lien against a Unit.
- 1.20 “**Mortgagee**” shall mean a bank, savings and loan association, a mortgage company or other entity chartered under federal or state laws and authorized to invest or loan money secured by an interest in real property, or any such federal or state entity or agency, or any other person or entity, holding a mortgage, or deed of trust.
- 1.21 “**Person**” shall mean a natural person, corporation, limited liability company, partnership, limited partnership, trust, governmental subdivision or agency or any other legal entity, including but not limited to joint tenancies or tenancies in common.
- 1.22 “**Plat**” shall have the definition set forth in the recitals above and shall include any amendments or supplements. The Plat shall also include any set of plans for buildings that have been submitted and approved by the City of Bluffdale, Salt Lake County, or the State of Utah.
- 1.23 “**Project**” shall have the definition set forth in the recitals above.
- 1.24 “**Purchaser**” shall mean any person, other than Declarant, who by means of a conveyance acquires a legal or equitable interest in a Unit.
- 1.25 “**Real Property**” shall mean the land, the buildings and all improvements and structures now or hereafter placed on the land described on Exhibit A of this Declaration, and all easements, rights and appurtenances belonging to same, all of which is held by Declarant in fee simple as of the date hereof.

- 1.26 **“Record”** shall mean to file for record with the office of the County Recorder, located in Salt Lake County, Utah, and/or such other place as this Declaration and the Plat are required to be filed.
- 1.27 **“Special Declarant Rights”** shall mean rights reserved for the benefit of Declarant to: complete improvements indicated on the Plat filed with this Declaration; (b) exercise any Development Rights as defined in this Declaration or by any amendment to the Declaration; (c) maintain sales offices, management offices, signs advertising Units in the Association for sale and model units; (d) use easements through the Common Elements for the purpose of making improvements within the Association, and (e) appoint or remove any officer of the Association or any member of the Board of Directors during the Declarant Control Period, as specified in Article 9.
- 1.28 **“Storage Purposes”** shall mean use of any non-residential Unit for the storage of any item of personal property, whether the same be held for personal or business use, as more fully described and limited in Article 6.
- 1.29 **“Unit”** or **“Condominium”** shall mean a physical portion of the Condominium designated for separate ownership for non-residential use by deed or other proper Conveyance, the boundaries of which are described in Article 4, each of which is also identified in the Plat. A Unit shall not include the subsurface right under the Unit or the airspace rights over and above the Unit.
- 1.30 **“Unit Owner”** shall mean any person, including Declarant, individually or collectively, who holds legal title to a Unit, but does not include a person who has an interest in a Unit solely as security for an obligation.

2. PROJECT, BUILDINGS AND SPECIAL DECLARANT RIGHTS

This Project is for individual condominiumized personal hobby garages and the condominium buildings and Units shall be set on the Property in compliance with this Declaration, the Plat and in accordance with the laws and ordinances of the State of Utah, County of Salt Lake and the City of Bluffdale.

- 2.1 **Improvements.** This Declaration, in combination with the Plat, identifies the Units and Common Elements which are subject to the provisions of the Act as of the recording of this Declaration and the Plat. There will be up to fifty- seven (57) total Units, as more fully identified in the Plat and this Declaration.
- 2.2 **Total Density.** The Real Property is permitted to be developed to a total maximum density of fifty-seven (57) Units.
- 2.3 **Completion of Improvements.** To the extent that any improvements within the Association, as described on the Plat recorded in conjunction herewith, are not completed upon the recording hereof and thereof, Declarant reserves the right to complete the construction of such incomplete improvements subsequent to the date of recording, for the benefit of Declarant and the Association as a whole.
- 2.4 **Sales and Residential Management Office, Model Unit and Signage.** Declarant reserves the

right to maintain a sales office and manager's office situated within the Association until such time as Declarant no longer owns any Unit within the Association. Furthermore, Declarant reserves the right to maintain and use certain Units as models to assist Declarant with its marketing purposes in any Unit owned by Declarant until all Units currently owned by Declarant in the Association are sold. Further, Declarant reserves the right to place signage within the Common Elements of the Association, advertising Units owned by Declarant for sale, until all Units currently owned by Declarant in the Association are sold.

- 2.5 Reservation of Easements. Pursuant to the provisions of Article 17 hereof, Declarant hereby reserves unto itself easements through the Common Elements and through the Real Property for the purpose of completing all improvements within the Association.
- 2.6 Control of Association and Board. Declarant shall have the sole right to appoint or remove any officer of the Association or any Board member for the Declarant Control Period as set forth herein and the Bylaws.
- 2.7 Additional Reserved Rights. Declarant reserves the Special Declarant Rights and the following additional rights for the maximum time limited allowed by law (or, to the extent no such time limit is fixed by law, for a period of 15 years after recordation of this Declaration unless a different period is specified below):
- 2.7.1 Amendment of Declaration. The right to amend the Declaration in connection with the qualification or continued qualification for loan guarantees, and for compliance with any lending or financing requirements or programs. Declarant shall also have the right to amend this Declaration to comply with the requirements of the Act in the event any provision contained in this Declaration does not comply with the Act.
- 2.7.2 Amendment of Plat. The right to supplement or amend the Plat.
- 2.7.3 Dedications. The right to establish, from time to time, by dedication or otherwise, utility and other easements over, across, and upon the Common Elements for purposes including, but not limited to, streets, paths, walkways, drainage, recreation areas, parking areas, utilities, and to create other reservations, exceptions, and exclusions over, across, and upon the Common Elements for the benefit of the Unit Owners or adjacent property owners.
- 2.7.4 Use Agreements. The right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair, maintenance, or regulation of Common Elements, for the benefit of the Unit Owners, as well as contracts and agreements for offsite parking facilities.
- 2.7.5 Other Rights. The right to exercise any reserved right created by any other provision of this Declaration.

3. DESCRIPTION OF UNITS, LOCATION, AREA AND SIZE

- 3.1 General Description. Each of the Units is of the size, expressed in square footage, and composition as identified in Exhibit B hereto and on the Plat. The expression of square footage

of each Unit on any of the exhibit attached hereto may not be precise or exact and should be considered an approximate expression. The exact square footage of each Unit, as compared to the expression of square footage identified on any of the exhibits shall not be used as basis to dispute the validity of a deed, conveyance or Mortgage otherwise lawfully granted, nor shall it be used to redefine the boundaries of the "Unit" as described below, nor shall it be used as a basis to dispute any assessment. Each Unit is identified by a number, with the exact location of each shown on the Plat recorded in conjunction herewith. Each Unit has in common vehicular and pedestrian access to 2700 West as shown on the Plat.

- 3.2 Unit Boundaries. Included within the boundary of each Unit shall be the airspace and all other fixtures and improvements lying within the doors and the studs of the walls, above the concrete floor and beneath the structural portions of the ceiling. As such, the boundary of each Unit shall be measured to the stud walls and to the structural portions of the floors and ceilings. Accordingly, a Unit shall include all metal liner panels and any other materials constituting any part of the finished surfaces of the walls, floors and ceilings. All other portions of the walls, floors and ceilings are a part of the Common Elements.

4. COMMON ELEMENTS

The Common Elements of the Association, the exact locations of which are identified on the Plat, consist of the following:

- 4.1 The land for each building located in and described in Exhibit A hereto, which has been included in this Association by this Declaration.
- 4.2 The foundations, columns, girders, studding, joists, beams, supports and all other structural parts of the buildings to the boundaries of each Unit as the boundaries are defined herein, and any replacements thereto.
- 4.3 Shared utilities shall be allocated equally among the buildings, and each Unit shall be allocated in proportion to its size/type within each building.
- 4.4 All systems for shared utilities such as electric power, heating, telephone, cable, and security, including all lines, sewer laterals, pipes, cables, conduit and accessories, but excluding: a) heating units contained within a Unit, and b) lighting fixtures and light bulbs to light a Unit. Irrespective of the designation of these shared utilities as Common Elements of the Association, Declarant and/or the Association have agreed only to provide water and sewer, which will be billed through the Association. Each Unit will be responsible for its own gas and electricity, which will be separately metered.
- 4.5 The tanks, pumps, motors, fans, compressors, ducts, if any, and, in general, all apparatus and installations existing for common use.
- 4.6 The areas which surround and provide access to the buildings, including all fencing and all paved or landscaped areas, to the extent the same be a portion of the land described on Exhibit A.

- 4.7 All other parts of the Real Property necessary or convenient to its existence, operation, maintenance and safety including the rights of access under easements referred to in this Declaration or set forth on the Plat.

5. ALLOCATED INTERESTS

The Allocated Interests assigned to each of the fifty-seven (57) Units within the Association is deemed to be equal to that of every other Unit. Accordingly, each Unit is assigned an identical amount of Allocated Interests. The aggregate of the Allocated Interests assigned to each Unit in the Association totals one hundred percent (100%). Each Unit's Allocated Interest is 1.75439%.

6. PERMISSIBLE USES AND REGULATION OF USES

- 6.1 Storage Purposes. The Units shall be used for only for non-residential purposes and for authorized Storage Purposes only, by the Owner thereof, or by those utilizing the Unit pursuant to a lease or rental agreement with the Owner or otherwise under a grant of authority from the Owner. Any such use of the Units and the Common Elements shall be carried on in strict compliance with the permissible uses authorized by this Declaration, and no activity shall be carried on which would constitute a violation of any term or condition of this Declaration, and no Unit shall be used for residential purposes. Authorized Storage Purposes shall mean that type of storage of personal property that is incidental to the Permissible Uses of a Unit, provided that the ownership of that personal property is lawful, and further providing that storage of that personal property is not an improper storage of a "hazardous material" as is defined under any applicable law of the State of Utah or the United States and further that the storage is not incidental to a Prohibited Use.

- 6.2 Other Permissible Uses. In conjunction with the passive activity of storage, it is also expressly provided that the following shall be deemed to be permissible uses of Units.

6.2.1 Maintenance. Any Owner or tenant may engage in routine maintenance on any boat, automobile, truck, recreational vehicle, other vehicle and/or other equipment which is stored within such Owner's Unit; provided, however, that no such routine maintenance shall be conducted in a manner which will pose any risk to any other Unit and/or to any portion of the Common Elements. Further no routine maintenance shall be conducted outside the Unit and all waste products or by-products of routine maintenance property conducted in the Unit, including but not limited to gasoline not fully placed in the storage container in the boat or vehicle or equipment, and all waste oils, waste anti-freeze, petroleum cleaning products, cleaning rags and containers shall be fully removed from the Unit by the Owner or tenant and shall be lawfully disposed of by the Owner or tenant at the end of each and every routine maintenance session.

6.2.2 Inventory Turnover and Assessment. Any Owner or tenant may utilize such Owner's Unit for the storage of any permissible item of inventory and/or supplies used in a lawful trade or business, may add to or withdraw from storage such inventory and/or supplies, or any part thereof, as and when required, and may take count of such inventory and/or supplies at all such times as may be deemed necessary.

6.2.3 Business and Personal Records. Any Owner or tenant may utilize its Unit for the storage of any business and personal records, and any Owner or tenant may conduct such reviews of such records as may be deemed to be required by such Owner or tenant at all such times as be deemed necessary.

6.2.4 Office Use. An office in any Unit is permissible when the office serves as an accessory use to the storage, warehousing and other approved business uses.

6.3 Prohibited Uses. It is the explicit purpose of the Association that it shall be used and maintained as a first-class storage facility for the mutual benefit of each of the Owners and any overnight or residential purposes are strictly prohibited. Any commercial or personal activity which creates waste, uncleanliness, continuous excess noise, unacceptable risks and/or public intrusion is prohibited. Accordingly, in addition to the foregoing prohibited uses, it is expressly provided that the following shall be deemed to be prohibited uses of Units, and any use of a Unit in violation of the provisions hereof shall permit Declarant, during the Declarant Control Period, and thereafter the Association, without notice to the Owner, to assess such Owner with such penalties as shall be adopted by Declarant and thereafter by the Board for a violation of the provisions hereof and to commence an action seeking injunctive relief and damages accruing as a consequence thereof:

6.3.1 Retail Outlet. No Owner or tenant may utilize its Unit as a retail outlet for the sale of goods or services to the general public, and no Owner or tenant may permit potential customers of such goods or services to enter the boundaries of the Association for such purpose. Notwithstanding the foregoing, nothing herein shall prohibit the owner of an item of personal property held for personal use, such as a boat, automobile, truck, recreational vehicle or other personal vehicle from showing such item for sale while in storage in a Unit on a casual basis only.

6.3.2 Noxious Activity. No Owner or tenant may utilize its Unit so as to cause an unacceptable level of noise, vibration, odor, garbage or other waste, the precise levels of which shall be determined by the Board, which may be more restrictive than levels established by the County of Salt Lake or the City of Bluffdale.

6.3.3 Storage of Hazardous Substances. No Owner or tenant may utilize its Unit for the storage of any substance or material defined or designated as hazardous, radioactive or toxic by any applicable federal, state or local statute, ordinance or regulation now in effect or hereafter promulgated; provided, however, that any fuels or other liquids contained within any boat, mobile home, motor home, automobile, truck, recreational vehicle, other vehicle and/or other equipment which is stored within a Unit shall be deemed permitted even if so defined, so long as such fuels or other liquids are necessary for the operation thereof and are lawfully contained within such item of personal property for such purpose.

6.3.4 High Piled Combustible Storage. No Owner or tenant shall store combustible materials within its Unit.

6.3.5 Residential Use. No Owner or tenant may utilize his Unit, or permit another to use such Unit, for residential purposes including using for overnight stays in the Unit.

6.3.6 Animals. No animals, livestock, poultry or insects, of any kind, will be raised, kept or boarded in a Unit or within the Association.

6.3.7 Marijuana. No Owner or tenant may utilize his/her Unit, or permit another to use such Unit, for the cultivation of marijuana, storage of marijuana, or any activities related thereto.

6.4 Unit Rental. The Owner of a Unit, including Declarant, a mortgagee in possession, or any successor in interest thereto, may lease or rent a Unit for a minimum period of three (3) months, or for a longer term, subject to the limitation that any such lease or rental agreement shall be in writing and by its terms shall provide that such lease or rental agreement is subject, in all respects, to the provisions of this Declaration, the Bylaws, any rules and regulations of the Association and any amendments thereto. Any such lease or rental agreement shall provide that any failure by a tenant to comply with the terms contained in said documents shall be a default under the terms of said lease or rental agreement and shall be a basis for termination thereof. Each Owner shall notify the Association in writing within five (5) business days following the execution of any lease or rental agreement covering a Unit of the identity, telephone numbers and addresses of each tenant and of the duration of the lease/rental agreement and provide the Association with a copy of the fully executed lease or rental agreement. The Owner of a Unit so leased or rented shall at all times be responsible for and liable to the Association for all acts or neglect of the tenant including but not limited to fines and assessments levied for violations caused by the tenant. The Owner shall see that the tenant has read and is fully informed of the Declarations, Bylaws, rules and regulations which govern the use of the Association, including but not limited to fines and assessments levied for Unit use violations caused by the tenant.

6.5 Vehicle Parking. Parking of any motor vehicle at any location within the Association, outside of the boundaries of a Unit or in a designated parking space, is subject to the absolute limitation that no such motor vehicle shall obstruct in any fashion the free passage of vehicles and/or pedestrians to and from every other Unit. Unit Owners, and their tenants and guests, may park their motor vehicles within their respective Units at any time without limitation and directly in front of the garage door of their respective Units. Any motor vehicle parked at any location within the Association other than inside a Unit shall be operable, shall be appropriately licensed in Utah or the state of registered ownership of said motor vehicle and shall not be stored in the Common Elements. A motor vehicle (including a boat, motorcycle, snowmobile and all forms of recreational equipment) is "stored" when it is left parked at any location within the Association, outside the boundaries of a Unit, for more than two (2) consecutive hours unless it is parked directly in front of that Unit Owner's respective Unit, for allowed Unit uses, and in a manner that does not otherwise encumber or limit other Unit Owners' access to their respective Unit and to general ingress and egress to 2700 West.

6.6 Removal by Board. The Board may require the immediate removal of any inoperable, improperly stored or unsightly vehicle left outside of a Unit and/or any other item of personal property improperly stored within the Association, whether or not contained within a Unit. If the same not be removed by the responsible Unit Owner, the Board may cause removal thereof

at the risk and expense of the Unit Owner thereof.

- 6.7 Driving Area and Walkways. Driving areas, walkways and corridors within the Common Elements shall be used exclusively for normal transit, other than during the process of entering or leaving a Unit, and no obstructions shall be placed within the Common Elements except by express written consent of the Association.
- 6.8 Effect on Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of, or cause the cancellation of, insurance for the Association.
- 6.9 Signs. No sign of any kind advertising a business or business organization shall be displayed or visible from the exterior of any Unit or from the Common Elements without the prior written consent of Declarant during the Declarant Control Period and thereafter by the Board, pursuant to the rules and regulations adopted thereby.
- 6.10 Unit Activity. No offensive or noxious activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done which may be or become an annoyance or nuisance to others using the buildings or to the public. Nothing shall be altered or constructed in the Common Elements except upon the prior written consent of the Association. Nothing shall be done or carried on in a Unit or within the Association which is in violation of any applicable law, ordinance or regulation.
- 6.11 Commit No Waste. No Owner of a Unit shall commit or permit waste of such Unit and/or of the Common Elements and the liability in the event of such occurring shall be at the sole cost and expense of the responsible Unit Owner. This section shall not be construed to permit any interference with or damage to the structural integrity of the buildings or interference with the use and enjoyment by others of the Common Elements and/or other Units, nor shall it be construed to limit the powers or obligations of Declarant or of the Association.
- 6.12 Exterior Appearance. No Unit Owner shall be permitted to alter, in any fashion, the Common Elements, including the exterior finish of the exterior surfaces of the walls surrounding a Unit, which are Common Elements.
- 6.13 Rules and Regulations. The Declarant, during the Declarant Control Period, or thereafter, the Association may adopt in written form reasonable rules and regulations of the Association as necessary or advisable to insure compliance with, and to supplement, the foregoing provisions, and each Unit Owner shall comply in all respects therewith; provided, however, that no rule or regulation may be adopted which may or shall, if implemented, result in restrictions imposed upon the permissible uses of Units expressly granted herein. Whenever rules and regulations are adopted by the Association, they shall be deemed effective when adopted by the Board and a copy is sent to each Owner by first class mail.

7. UNIT MAINTENANCE AND ALTERATIONS

- 7.1 Unit Maintenance. The Owner of each Unit shall, at the sole expense of such Unit Owner, have the duty to keep the interior of such Owner's Unit and the equipment and appurtenances within such Unit in good order, condition and repair and shall perform all interior maintenance necessary to maintain the good appearance and condition of such Unit. The Owner of each Unit shall be responsible for the maintenance, repair or replacement of any heaters, electrical

fixtures and lights which may be in or connected with the Owner's Unit, unless the same have been defined as Common Elements. Additionally, Unit Owners are solely responsible for the maintenance and repair of the concrete floors and the maintenance and repair or replacement of the Unit Door(s) including the openers and/or accessories. The bollards (the post anchored in the ground to limit the direction of a motor vehicle and/or to protect the Units from collision damage by a motor vehicle) located adjacent to each Owner's Unit shall be deemed to be part of the Owner's Unit, and those bollards shall be maintained solely by each respective Unit Owner. Unit Owners are responsible for all maintenance of the concrete flatwork, including but not limited to any damages to the radiant heat system in the floor of the Unit, if any. Unit Owners cannot drill, cut into or damage the slab. Any damages to the flatwork caused by a Unit Owner will be repaired at the Unit Owner's expense. Any changes, repairs, or other issues regarding the concrete floors must be referred to the Association.

- 7.2 Unit Alterations. It is the concurrent responsibility of Declarant, the Association and each Unit Owner to insure the continuing structural integrity of each of the buildings within the Association. The construction characteristics of the buildings do not permit the addition of loads. It is also anticipated, however, that individual Unit Owners may elect, at the Unit Owner's sole expense, to erect storage lofts within their Units. Accordingly, it shall be permissible for a Unit Owner to make alterations to the interior of such Owner's Unit that do not adversely affect the continuing structural integrity of each of the buildings within the Association; provided, however, that such alterations shall be absolutely subject to the limitation that no alteration shall be allowed which causes an adverse effect upon the Common Elements or affect the structural integrity, building systems, or utility systems of a building within the Association or of any Unit; and further provided that the Unit Owner requests and receives prior approval from Declarant and/or the Board. Accordingly, Declarant and the Board shall provide to each Owner the specifications concerning permissible interior alterations to Units, and no such alterations shall be made except which are in compliance with such specifications. Any Unit Owner who makes alterations to its Unit shall be liable for any consequential and direct damages caused to any other Unit, the building, or to any Common Elements.
- 7.3 Garbage and Trash. All trash and trash collection from a Unit shall be the responsibility of the Unit Owner, and no trash shall be permitted to be stored outside of the Unit(s) at any time or inside of the Unit for more than one (1) week. There is a Common Area trash collection center in the Association, and all trash produced by the Unit Owner from permitted uses within the Unit, shall be promptly and properly disposed of by the Unit Owner.
- 7.4 Life Safety Concerns. In an effort to maintain a safe environment for the mutual benefit of each of the Owners, Association safety measures will include the following items:
- (a) Emergency Contacts. The Association will provide, and update at least annually, a list of the names and emergency contact information of individuals associated with the Association including the Property Management Company, Property Manager(s), and Board Members, to the Police and Fire Departments serving the Association;

- (b) Master Keying. The Association will ensure that all Unit Owners maintain the integrity of the Association's master-key system, which ensures emergency access by the area Police and Fire Departments. The addition of new locks will conform to the current master key scheme, and, in the event nonconforming locks are installed: the affected Unit Owners will be liable for any damage caused to the Association as a result of necessary forcible entry by the Police or Fire Departments.
- (c) Annual Inspection. The Association will advise all Unit Owners that the Fire Department serving the Association will conduct an inspection on each and every Unit in the Association on an annual basis if requested by the Fire Department.

8. UNIT OWNERS ASSOCIATION

In order to provide for administration of the Association, an entity shall be created which shall be called "Hobby Caves Condominium Owners Association" in accordance with the following terms and conditions:

- 8.1 Form of Association. The Association shall be organized as a nonprofit corporation in accordance with the provisions of the Utah Revised Nonprofit Corporation Act, not later than the date the first Unit in the Association is conveyed to a Purchaser.
- 8.2 Membership Qualification. Each Unit Owner (including Declarant) shall be a member of the Association and shall be entitled to one membership for each Unit so owned. Ownership of a Unit shall be the sole qualification for membership in the Association. A Unit Owner may not elect out of membership in the Association, nor elect out of the duty to pay assessments, fines or obligations duly incurred as a Unit Owner.
- 8.3 Transfer of Membership. Association membership of each Unit Owner (including Declarant) shall be appurtenant to the ownership of a Unit and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to said Unit and then only to the Purchaser of such Unit. Any attempt to make a prohibited transfer shall be void. Any disposition of a Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Unit Owner thereof and may be subject to a transfer fee pursuant to the rules and regulations promulgated by the Association.
- 8.4 Classes of Membership. The Association shall have two (2) classes of voting membership as follows:
 - 8.4.1 Class A Membership. Class A Membership shall be held by each Owner of a Unit other than Declarant. Each Class A Member shall be entitled to one (1) vote for each Unit owned by such Class A Member located on the Property.
 - 8.4.2 Class B Membership. The Class B Membership shall be held solely by Declarant, and Declarant shall be entitled to ten (10) votes for each Unit owned by Declarant. The Class B Membership shall cease and be converted to Class A Membership at the conclusion of the Declarant Control Period.

8.4.3 Additional Classes of Membership. If the Association desires to add additional classes of membership, it may do so through the Bylaws. Nothing in this Declaration shall prohibit the institution of additional classes.

8.5 Voting. There shall be one (1) voting representative for each Unit. Declarant shall be considered a "Unit Owner", as that term is used herein, and shall be the voting representative with respect to each Unit owned by Declarant. In the event that the Association is the Owner of any Unit, the Association shall not be entitled to cast the votes allocated to such Unit. If a Unit Owner (including Declarant) owns more than one Unit, such Unit Owner shall have the votes for each Unit so owned. The voting representative shall be designated by the Owner or Owners of each Unit by written notice to the Board and need not be a Unit Owner. The designation of a voting representative shall be revocable at any time by written notice to the Board from the Owner of the Unit, by actual notice to the Board of the death of the Unit Owner or of the voting representative, by written notice from the lawful holder of a power of attorney of a Unit Owner or by the guardian of any judicially-declared incompetent Unit Owner. This power of designation and revocation may be exercised by the guardian of a Unit Owner and by the administrator or executor of a Unit Owner's estate. Where no designation is made, or where a designation has been made but is revoked and no new designation has been made prior to any meeting, no vote may be cast for such Unit other than by the Unit Owner thereof.

8.6 Joint Unit Owner Disputes. When more than one person has an interest in any Unit ("co-owner"), all such co-owners shall be members and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time designate in writing one of their number to vote. The vote of a Unit must be cast as a single lot, and fractional votes of such Unit's allocated vote shall not be allowed. In the event that joint Owners of a Unit are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. In the event more than one vote is cast for a particular Unit, none of said votes shall be counted and said votes shall be deemed void. Unless the Board receives a written objection from a co-owner, it shall be presumed that the voting co-owner is acting with the consent of his or her co-owners. The non-voting co-owner or co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

8.7 Meetings, Audits, Notices of Meetings.

8.7.1 Annual Meeting. There shall be an annual meeting of the Unit Owners in the first quarter of each fiscal year of the Association at such reasonable place and time as may be designated by written notice from the Board delivered personally or by first class mail, postage prepaid, to all Unit Owners not less than ten (10) days nor more than sixty (60) days prior to the date fixed for said meeting. The notice concerning such annual meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the Unit Owners, including the general nature of any proposed amendment

to this Declaration or the Bylaws or any proposal to remove a Director or an Officer. At the annual meeting, there shall be presented a report of the financial condition of the Association, itemizing the total receipts and disbursements for the just expired fiscal year, the allocation thereof to each Unit, and the estimated Common Expenses and required assessments, including the allocation thereof to each Unit, for the fiscal year commencing.

8.7.2 Special Meetings. Special meetings of the Unit Owners may be called at any time for the purpose of considering matters which by the terms of the Act, of this Declaration, of the Articles of Incorporation or the Bylaws require the approval of all or some of the Unit Owners or for any other reasonable purpose. Such meetings shall be called by written notice from the President of the Association upon the decision of the President, or after written request signed by a majority of the Board, or by written request signed by the Unit Owners having at least twenty percent (20%) of the total votes, which notice shall be delivered not less than ten (10) days nor more than sixty (60) days prior to the date fixed for said meeting. The notice shall specify the date, time and place of the meeting and shall include an agenda of the matters to be considered, including but not limited to the general nature of any proposed amendment to the Declaration or to the Bylaws, changes in the previously approved budget that result in a change in assessment obligations and any proposal to remove a director or officer.

8.8 Audits. The Board at any time, or by written request of Unit Owners having at least a majority of the total votes of the Association, may require the Association books and records be presented for review and audit at any special meeting. A Unit Owner, at such Owner's own expense, may at any reasonable time make an audit of the books and records of the Board and the Association.

9. MANAGEMENT OF THE ASSOCIATION

9.1 Powers of the Association. The Association shall be empowered to:

9.1.1 Adopt and amend the Declaration, Articles of Incorporation, Bylaws, and the rules and regulations.

9.1.2 Adopt and amend budgets for revenues, expenditures and reserves and impose and collect regular and special assessments for Common Expenses from Unit Owners.

9.1.3 Hire, discharge or contract with managing agents or other employees, agents and independent contractors.

9.1.4 Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Unit Owners on matters affecting the Association.

9.1.5 Make contracts and incur liabilities.

9.1.6 Provide for the use, maintenance, repair, replacement and modification of

Common Elements.

9.1.7 Cause additional improvements to be made as part of the Common Elements.

9.1.8 Acquire, hold, encumber, lease and convey in its own name any right, title or interest to real or personal property; provided, however, that Common Elements may be conveyed or subjected to a security interest only if the Owners of Units to which at least sixty (60%) percent of votes in the Association are allocated, including sixty (60%) percent of the votes allocated to Units not owned by Declarant or an affiliate thereof, agree to that action. Proceeds of any such sale or financing shall be an asset of the Association.

9.1.9 Grant easements, rights of way, leases, licenses and concessions through or over the Common Elements.

9.1.10 Impose and collect any assessments, fees or charges for the use, maintenance, rental or operation of the Common Elements and for services provided to individual Unit Owners.

9.1.11 Impose and collect charges for late payment of assessments as hereinafter provided and, after notice and an opportunity to be heard by the Board and in accordance with such procedures as provided herein, in the Bylaws and/or rules and regulations adopted by the Board, levy reasonable fines for violations of this Declaration, the Bylaws and/or the rules and regulations of the Association in accordance with the previously established schedule thereof adopted by the Board and furnished to the Unit Owners.

9.1.12 Impose and collect charges for use of any Unit for residential or overnight use by an Owner of a Unit or any other individual's use of an Owner's Unit for such prohibited Use and restrict such Unit Owner's right to vote or make use of the Common Elements. The Prohibited Use of any Unit may also be subject to penalties or other remedies pursuant to violations of any local, state or other rules and regulations.

9.1.13 Impose and collect reasonable charges for the preparation and recording of amendments to this Declaration and the Plat, for the preparation and delivery of statements of delinquent assessments and the preparation and delivery of any other documents required of the Association incident to the sale, lease or rental of any Unit.

9.1.14 Provide for the indemnification of its officers and the members of its Board and to maintain directors' and officers' liability insurance.

9.1.15 Assign its right to future income, including the right to receive common expense assessments, except as otherwise limited herein.

9.1.16 Exercise any other powers conferred by the Act, this Declaration or the Bylaws.

9.1.17 Exercise any other powers granted by the State of Utah to a nonprofit corporation consistent with the provisions hereof.

9.1.18 Exercise any other powers necessary and proper for the governance and operation of the Association.

- 9.2 Management by the Board. Administrative power and authority of the Association shall vest in a Board of Directors. The number of directors shall be specified in the Bylaws and shall be sufficient to handle adequately the affairs of the Association. The Board may delegate all or any portion of its administrative duties to a manager, managing agent and/or officer of the Association, in such manner as provided in the Bylaws. The Board shall elect a president, vice-president, secretary and treasurer, together with such other officers as shall be deemed to be required from time to time, each of whom shall perform such duties as are required of them as provided in the Bylaws of the Association.
- 9.3 Election of the Initial Board. Declarant shall appoint and shall remove the members of the Board and the officers from the time of creation of the Board until the conclusion of the Declarant Control Period at which time all steps shall commence leading to the complete transfer of control to the Association of Unit Owners as set forth hereafter and further as required in Utah law, as presently in force or as hereafter amended.
- 9.4 Election of the Board following Declarant Control Period. Within thirty (30) days after the termination of the Declarant Control Period, the Unit Owners shall elect the Board, which shall consist of at least three (3) members and each of whom shall take office upon election. The Board shall elect its Officers, each of whom shall also take office upon election.
- 9.5 Authority of the Board. The Board, for the benefit of the Association and the Unit Owners, shall enforce the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the rules and regulations of the Association, shall have all powers and authority permitted to the Board under the Act, other applicable law and this Declaration, and shall acquire and shall pay for, out of the common expense fund hereinafter provided for, all goods and services requisite for the proper functioning of the Association, including, but not limited to, the following:
- 9.5.1 Utilities. Electrical, water, sewer and garbage receptacles for the entire Association and access to obtain electrical, telephone, cable, internet and any other necessary utility service as required for the Common Areas.
- 9.5.2 Insurance. Policies of insurance or bonds providing coverage for fire and other hazards, liability for personal injury and property damage, and for fidelity of Association officers, directors and other employees, as the same are more fully required hereafter or in the Bylaws.
- 9.5.3 Property Taxes. Payment of property taxes for the Real Property shall be allocated to Units pursuant to Section 21.5.
- 9.5.4 Management Services. The service of persons or firms as required to manage properly the affairs of the Association to the extent deemed advisable by the Board, as well as such other personnel as the Board shall determine are necessary or proper for the operation and maintenance of the Common Elements, whether such personnel are employed directly by the Board or are furnished by the designated manager or management firm or agent.
- 9.5.5 Legal and Accounting Services. Legal and accounting services necessary or

proper in the operation of the Association affairs, administration of the Common Elements or the enforcement of this Declaration.

9.5.6 Maintenance. Painting, maintenance, repair and improvements of the Common Elements, including, without limitation, maintenance and repair of the sewer laterals, the common walls and such accessories and equipment for the Common Elements as the Board shall determine are necessary and proper, and the Board shall have the exclusive right and duty to acquire the same for the Common Elements. With respect to the sewer laterals, the Board shall provide such maintenance and repair required in connection with any backup. For each building, the Association is responsible for all structural components of the buildings, except for those items defined in Section 3.2 as the "Unit", which are the responsibility of the Unit Owner.

9.5.7 Other Items. Any other materials, supplies, labor, services, maintenance, repairs, structural alterations and/or insurance which the Board is required to secure by law, or which in its opinion shall be necessary or proper for the operation of the Common Elements and for the enforcement of this Declaration; provided, that if for any reason such materials, supplies, labor, services, maintenance, repairs, structural alterations and/or insurance are provided for particular Units or their Unit Owners, the cost thereof shall be specifically charged to the Owners of such Units.

9.5.8 Maintenance of Units if Unit Owner Fails to Maintain. Maintenance and repair of any Unit, its appurtenances and appliances, if such maintenance or repair is reasonably necessary in the discretion of the Board to protect the Common Elements or preserve the appearance and value of the Association, if the Owner of said Unit has failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered by the Board to the Unit Owner; provided, that the Board shall levy a special charge against the Unit Owner and the Unit for the cost of such maintenance and repair.

9.5.9 Discharge Liens if Necessary. The Board may also pay any amount necessary to discharge any lien or encumbrance levied against the Association or any part thereof which is claimed to, or which may, in the opinion of the Board, constitute a lien against the Association or against the Common Elements, rather than merely against the interest therein of particular Unit Owners. Where one or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs and expenses (including court costs and attorneys' fees) incurred by the Association by reason of such lien or liens shall be specially charged against the Unit Owners and the Units responsible to the extent of their responsibility.

9.5.10 Common Expense Fund. The Board's powers hereinabove enumerated are limited to the extent that the Board shall have no authority to acquire and pay for out of the common expense fund capital additions and improvements (other than for purposes of restoring, repairing or replacing portions of the Common Elements) having a total cost in excess of Two Thousand Dollars (\$3,500.00), without first obtaining the affirmative vote of the Unit Owners holding a majority of the voting power present or represented at a meeting called for such purpose, or if no such meeting is held, then the written consent of voting Unit Owners having a majority of the voting power; provided that any

expenditure or contract for each capital addition or improvement in excess of Ten Thousand Dollars (\$10,000.00) must be approved by Unit Owners having not less than two-thirds of the total voting power present or represented at a meeting called for such purpose.

9.5.11 Exception. Nothing herein contained shall be construed to give the Board authority to conduct an active business for profit on behalf of all the Unit Owners or any of them, which is expressly prohibited.

9.5.12 Contracts. The Board shall have the exclusive right to contract for all goods and services, payment of which is to be made from the common expense fund. The Board may delegate such powers subject to the terms hereof.

9.5.13 Acquire Property. The Board may, from common expense fund of the Association, acquire and hold in the name of the Association, for the benefit of the Unit Owners, tangible and intangible personal property and real property, or any interest therein, and may dispose of the same by sale or otherwise; and the beneficial interest in such property shall be owned by the Unit Owners in the same proportion as their respective interests in the Common Elements, and such property shall thereafter be held, sold, leased, rented, mortgaged or otherwise dealt with for the benefit of the Association as the Board may direct. The Board shall not, however, in any case acquire by lease or purchase real or personal property for a price in excess of Five Thousand Dollars (\$5,000.00), without first obtaining the affirmative vote of the Unit Owners holding a majority of the voting power present or represented at a meeting called for such purpose, or if no such meeting is held, then the written consent of voting Unit Owners having a majority of the voting power; provided, that any lease or purchase of real or personal property for a price in excess of Ten Thousand Dollars (\$10,000.00) must be approved by Unit Owners having not less than two-thirds of the total voting power present or represented at a meeting called for such purpose.

9.5.14 Emergency Access to Units. The Board and its agents or employees may enter any Unit when necessary in connection with any maintenance, repair and construction for which the Board is responsible or in the event of an emergency. Such entry shall be made with as little inconvenience to the Unit Owner or tenant as practicable and upon prior notice if circumstances permit. Any damage caused thereby shall be repaired by the Board out of the common expense fund if the entry was due to an emergency or for the purpose of maintenance or repairs to Units where the repairs were undertaken by or under the direction or authority of the Board (unless the emergency or maintenance was caused or necessitated, directly or indirectly, by the Owner of the Unit entered, in which case the cost shall be specially charged to the Unit Owner whose Unit is entered).

9.5.15 Attorney-in-Fact. Each Unit Owner, by the mere act of becoming an Owner of a Unit, shall irrevocably appoint the Board as such Owner's attorney-in-fact, with full power of substitution, to take such action as is reasonably necessary to perform promptly the duties of the Association and Board hereunder, including but not limited to the duties to maintain, repair and improve the Common Elements to deal with a Unit upon damage or destruction and to secure insurance proceeds.

9.5.16 Borrow Funds. In the discharge of its duties and in the exercise of its powers as set forth herein, but subject to the limitations also set forth therein, the Board may borrow funds on behalf of the Association and in order to secure the repayment thereof may encumber, subject to the limitations set forth in this Declaration, the Common Elements, Association funds and the Allocated Interests of each Unit Owner therein.

10. MAINTENANCE, COMMON EXPENSE, COMMON EXPENSE LIABILITY, SPECIAL ASSESSMENTS

- 10.1 Common Expenses. Common Expenses include those expenses defined in the Act and in Section 1.8 hereof, specifically those expenses incurred by the Association in the Operation, management, maintenance, and administration of the Association pursuant to the provisions hereof or as otherwise required or permitted by the provisions of this Declaration or the Bylaws.
- 10.2 Creation of Reserve Fund. Upon the initial sale of each Unit, the Association shall collect from each buyer an amount equal to three (3) months assessments to fund the initial reserve fund. Use of the funds deposited into the reserve fund shall be governed by the Association's Reserve Policy.
- 10.3 Annual Budget of Common Expenses. Prior to the annual meeting of Unit Owners each fiscal year, and within 90 days after adoption of any proposed budget, the Board shall estimate the Common Expenses which it anticipates will be incurred during the fiscal year commencing and determine the regular assessments and any special assessments required to be paid to the Association for such fiscal year; shall make provision for creating, funding and maintaining reasonable reserves for contingencies, operations, repairs, replacement and acquisition of Common Elements; and shall take into account any expected income and any surplus available from the expired fiscal year's operations. The Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Unit Owners and shall set a date for a meeting of the Unit Owners to consider the budget. Such meeting shall occur within a reasonable time after mailing or other delivery of the summary, or as allowed for in the Bylaws. The proposed budget does not require approval from the Unit Owners and it will be deemed to be approved by the Unit Owners in the absence of a veto by a majority of each class of the voting Membership, whether or not a quorum is present at the noticed meeting. The determination and collection of assessments for the first year of operation of the Association shall be made by Declarant.
- 10.4 Special Assessments. The Board may also, from time to time, impose such special assessments as may be determined to be necessary by the Board, subject to the restrictions set forth herein and/or in the Bylaws, and subject to an affirmative vote of a majority of the Unit Owners.
- 10.5 Payment by Unit Owners. Each Unit Owner shall pay assessments made pursuant to this Article to the Treasurer of the Association, or as designated by the Treasurer, at such intervals as the Board shall designate. All assessments are considered past due unless paid within ten (10) days of the due date. Any unpaid assessments shall bear interest at 18% per annum from the due date until paid.
- 10.6 Purpose. All funds collected hereunder shall be expended for the purposes designated in or permitted by this Declaration, the Bylaws or the Act.

- 10.7 Separate Accounts. The Association shall maintain separate accounts for current operations, reserves and a special insurance reserve account for payment of insurance and bond premiums, if any. Upon receipt of payments for assessments, the Treasurer shall first deposit to the insurance reserve account that portion of the common expense assessments necessary to pay the total cost of premiums of all of the insurance and bond coverage then in effect required to be paid from such periodic assessments, and such insurance reserve account shall be held separately and inviolate until utilized for payment of such premiums. The remainder of the assessments collected may be utilized for payment of other Common Expenses or deposited or credited to other accounts. All such assessments and other Association revenues shall be collected and held in trust for, and administered and expended for the benefit of, the Association.
- 10.8 Based on Percentage. Except for certain special assessments which may be levied against particular Units under the provisions of the Declaration, all assessments for Common Expenses shall be assessed to Units on the basis of the percentages of each Unit's square footage to the total area of all units in each building, as set forth in this Declaration of Hobby Caves Condominium Owners Association Exhibit B, for each building, and any amendments thereto.
- 10.9 Failure to Determine Assessments. The failure of the Association to fix assessments for the fiscal year commencing at the annual meeting shall not be deemed to constitute a waiver or modification in any respect of the provisions of this Declaration or release any Unit Owner from the obligation to pay the assessment or any installment thereof, but the amount of assessment fixed for the preceding year shall continue in force until a new assessment is fixed. Following the determination being made regarding the amount of assessments for such fiscal year, each Unit Owner shall, as a portion of such Owner's first payment of the monthly or periodic assessments to the Association, include therein such sums equal to the difference between the amount of assessments previously paid for such fiscal year and the actual amount determined to be required by the Association.
- 10.10 Limited Purpose Common Expenses.
- 10.10.1 Limited Units Benefit. Any Common Expense which benefits only some, but not all, of the Units shall be assessed only against such benefited Units in the same proportion as is set forth above in this section.
- 10.10.2 Judgments. If a judgment is entered against the Association at any time, assessments for the payment of such judgment shall be made against only those Units which were a part of this Association at the date of entry of such judgment.
- 10.10.3 Limited Cause. If the Board determines that a common expense is incurred by the Association as the result of any one or more Units Owners, but not all of the Unit Owners, the assessments to pay such Common Expense may be allocated only to the Units owned by such Owners who are determined by the Board to be responsible and not to Units owned by Owners who are determined not to be responsible.
- 10.11 Records. The Board shall cause to be kept complete and accurate books and records of all receipts and expenditures, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred, together with any additional

information which may from time to time, be determined to be required by the Board. Such books and records, together with vouchers authorizing payments, shall be available for examination by the Unit Owners, and by their mortgagees, attorneys or agents; at any reasonable times upon reasonable notice and the payment of any required audit cost. All books and records shall be kept in accordance with generally accepted accounting principles.

- 10.12 Lien Indebtedness. All assessments shall be joint and several personal debts and obligations of each and every Owner of any Unit against which the same are assessed as of the time the assessment is made and shall be collectible as such. The amount of any assessment, whether regular or special, assessed to any Unit and to the Owner thereof, plus interest equal to the lesser of (i) the maximum rate allowed by applicable law; or (ii) eighteen percent (18%) per annum, from the due date until paid, and the costs, including reasonable attorney's fees incurred by the Association, shall be a lien upon such Unit and the Allocated Interests in the Common Elements thereof. Such lien arising from the nonpayment of such assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except as such priority is limited by the provisions of applicable law and this Declaration. Irrespective of the existence of such lien, a suit by the Association to recover a money judgment against any Unit Owner or Unit Owners arising from such unpaid assessments may be maintained without foreclosure of such lien and without waiving the future enforceability of such lien.
- 10.13 Certificate of Assessment. A certificate executed and acknowledged by the Treasurer or by the President of the Association, or by the authorized agent thereof, stating the amount of such indebtedness for assessments, or the lack thereof, attributable to any Unit shall be conclusive upon the Association as to the amount of such indebtedness on the date of such certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished to any Unit Owner or to any Mortgagee of a Unit within a reasonable time after request, in recordable form, subject to a reasonable fee for the preparation thereof. Unless otherwise prohibited by law, any Mortgagee of a Unit may pay any unpaid assessments payable with respect to such Unit, and upon such payment such mortgagee shall have a lien on such Unit for the amount so paid of the same priority as the lien of the mortgage of such mortgagee.
- 10.14 Foreclosure of Assessment Lien. The Association may commence an action to foreclose the lien of any delinquent assessments in accordance with the provisions of the Act or otherwise provided by law. If the subject Unit be rented or leased by the Unit Owner to a third party, the Association in such foreclosure action shall be entitled, upon application therefore and due notice thereof, to the appointment of a receiver to collect the periodic rent, which receiver may, if said rental not be paid, obtain possession of the Unit, refurbish it for rental to a reasonable standard for rental units in this type of condominium, and then rent the Unit or permit its rental to others. Rental income collected therefrom shall be applied as follows: First to the payment of expenses of the receivership (including reasonable attorney's fees incurred therein); second to reimburse the cost of refurbishing the Unit; third to costs, attorney's fees and charges incurred by the plaintiff in the foreclosure action; and fourth to the payment of the delinquent assessments and any interest accrued thereon. Any judgment rendered against a Unit Owner in such foreclosure proceeding, receivership proceeding or any other action required to collect such delinquent assessments, shall include a reasonable sum for attorney's fees and all other costs and expenses reasonably incurred in preparation for or in prosecution of said action, in addition to taxable costs permitted by law.

- 10.15 Remedies Cumulative. The remedies provided herein are cumulative, and the Board, on behalf of the Association, may pursue them concurrently. In addition, the Association shall have such other and further remedies as may be provided by law, although the same not be expressed herein.

11. INSURANCE

There shall be maintained as a Common Expense a policy or policies of insurance, and bonds as required, to provide, to the extent that the same be available, the following coverages:

- 11.1 Real Property Insurance. A “blanket” policy of property insurance in an amount equal to the full replacement value of the Association property, including all building service equipment and any fixtures or equipment within the Units; such insurance to afford protection against at least loss or damage by fire and other hazards covered by a standard extended coverage endorsement, including debris removal costs, costs of demolition, vandalism, malicious mischief, windstorm and water damage.
- 11.2 Liability Coverage. A comprehensive policy of public liability insurance covering all of the Common Elements with provisions which preclude the insurance carrier from denying the claims of a Unit Owner because of the negligent acts of the Association or any other Unit Owner, with such limits as may be determined to be necessary; such coverage to include protection against water damage liability, liability for non-owned or hired automobiles, liability for personal injury, including medical payments, death and damage to property of others.
- 11.3 Other Coverage. Additional coverage may also be obtained for such other risks as shall, in the sole determination of the Board, customarily be required with respect to projects similar
- in construction, location and use, or as may be required to facilitate lending by mortgagees, or as may be required pursuant to law or other applicable governmental requirements.
- 11.4 Additional Policy Provisions. Any insurance obtained pursuant to the provisions hereof shall be subject to the following provisions and limitations if, and to the extent, the Board is able to purchase policies and endorsements affecting such provisions and limitations.

11.4.1 Named Insured. The named insured under any such policies shall be the Association, as trustee for the Unit Owners, and each of the Unit Owners each in accordance with the percentages established in this Declaration with respect to liability arising out of each Unit Owner’s Allocated Interests in the Common Elements and/or membership in the Association. The Association shall have exclusive authority to negotiate settlement of losses under said policies.

11.4.2 Contribution. In no event shall the insurance coverage obtained and maintained pursuant to the provisions hereof be brought into contribution with insurance purchased by Unit Owners or by their mortgagees.

11.4.3 Absence of Association Control. Such policies of insurance shall provide that coverage shall not be prejudiced by (a) any act or neglect of Unit Owners when and/or if such act or neglect is not within the control of Declarant or the Association nor unless

such Unit Owners are acting within the scope of such Unit Owners' authority on behalf of the Association, or (b) by failure of Declarant or the Association to comply with any warranty or condition with regard to any portion of the premises over which Declarant or the Association has control.

11.4.4 Cancellation. All policies shall provide that coverage may not be canceled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named therein, including mortgagees or their servicing agents.

11.4.5 Waiver of Subrogation, Co-Insurance and Acts of Insured. All such policies shall contain a waiver of subrogation by the insured as to any and all claims against Declarant, in its capacity as a Unit Owner, against the Association, or any Unit Owner, Unit Owners and/or their respective agents, mortgagees, employees or tenants, and of any defenses based on co-insurance or upon invalidity arising from the acts of the insured.

11.4.6 Primary Insurance. If at the time of an insured loss, there is other insurance in force in the name of a Unit Owner covering the same loss, the Association's policy shall provide primary insurance.

11.4.7 Unit Contents. Nothing contained in this Declaration shall be deemed to require Declarant or the Association to purchase a policy of casualty insurance to cover the loss, theft or damage to personal property of a Unit Owner, including improvements to the Unit, and each Unit Owner is specifically advised to purchase, at said Unit Owner's sole expense, such insurance and coverage as they deem necessary and prudent to cover the risk of loss or damage to the Unit Owner's (including tenants, if any) personal property or improvements.

11.5 Mortgagee Clause. Each applicable policy of insurance shall contain a standard mortgagee clause which shall:

11.5.1 Define Mortgagee. Provide that any reference to a mortgagee in such policy shall mean and include all holders of a mortgage on a Unit, or a lease or sublease thereof, in their respective order and preference, whether or not named therein.

11.5.2 Protect Mortgagee. Provide that such insurance as to the interest of any mortgagee shall not be invalidated by any act or neglect by the Board, the Unit Owners, the Association or any persons acting under authority of any of them.

11.5.3 Waive Certain Requirements. Waive any provision invalidating such mortgagee clause by reason of the failure of any mortgagee to notify the insurer of any hazardous use or vacancy of a Unit, any requirement that the mortgagee pay any premium thereon and any contribution clause.

11.5.4 Reconcile Named Insured. Provide that, without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable as required herein.

11.6 Fidelity Bond Coverage. The Association may, at the option of the Board, maintain fidelity

coverage to protect against dishonest acts on the part of its Officers, Directors, agents and employees and all others who handle, or are responsible for handling, funds of the Association. If obtained, such fidelity coverage shall, to the extent reasonably obtainable, meet the following requirements:

11.6.1 Obligee. All fidelity bonds shall name the Association as the obligee.

11.6.2 Amount. Such fidelity bonds shall be written in an amount equal to at least fifty percent (50%) of the estimated annual operating expenses of the Association, including reserves.

11.6.3 Waiver of Defense. Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar terms.

11.6.4 Cancellation. Such bonds shall provide that they shall not be canceled or substantially modified without at least thirty (30) days prior written notice to any affected mortgagee or its servicing agent.

11.6.5 Obligation to Purchase Fidelity Insurance Coverage. If any Unit Owner (other than Declarant) or employee of the Association owns thirty (30) or more Units controls or disburses funds of the Association, the Association must obtain and maintain, to the extent reasonably available, fidelity insurance. Coverage shall not be less in aggregate than three months' current assessments plus reserves, as calculated from the current budget of the Association.

11.7 Insurance Proceeds. Insurance proceeds payable for damage or destruction to any part of the Association shall be paid to the Association as trustee for the Unit Owners, Mortgagees of the Units and/or of the Association. The Association, acting through its Board, shall have the authority to settle and compromise any claim under insurance obtained by the Association, and the insurer may accept a release and discharge of liability from the Board on behalf of the named insureds under the policy and any affected mortgagee. No provision of this Declaration shall entitle the Owner of any Unit, or any third party, to priority over the Mortgagee of a Unit with respect to the distribution of any insurance proceeds.

11.8 Unit Owners' Policies. Any Unit Owner may obtain additional insurance respecting its Unit, to the extent permitted by law, at such Unit Owner's own expense. Each Unit Owner is required to notify the Board of all improvements by the Unit Owner to such Owner's Unit which cost in excess of \$2,500.00. Any Unit Owner who obtains an individual insurance policy covering any portion of the Association, other than personal property belonging such Unit Owner, is required to file a copy of such policy or policies with the Board within thirty (30) days following the purchase thereof, and the Board shall review the effect of such policy with the Board's insurance agent and direct changes to the extent that such a policy adversely impacts the Association's policies or insurance costs. Each Unit Owner shall be responsible for maintaining insurance on the contents of such Owner's Unit, any additions and improvements to such Unit, the personal property therein maintained and the personal property of the Unit Owner situated at any other location within the Association.

12. DAMAGE OR DESTRUCTION; RECONSTRUCTION

- 12.1 Determination by the Association. In the event of damage or destruction to any part of the Association, the Association, through the Board or through its authorized agent, shall promptly, and in any event within thirty (30) days after the date of damage or destruction, make the following determinations with respect to such damage or destruction, employing such advice as deemed available:
- 12.1.1 The nature and extent of the damage or destruction, together with an inventory of the improvements and property directly affected;
 - 12.1.2 A reasonably reliable estimate of the cost to repair and restore the damage and destruction, which estimate shall, if reasonably practicable, be based upon two or more firm bids obtained from responsible licensed parties;
 - 12.1.3 The anticipated insurance proceeds, if any, to be available from insurance covering the loss based on the amount paid or initially offered by the insurer;
 - 12.1.4 The amount, if any, that the estimated cost of repair and restoration exceeds the anticipated insurance proceeds; and
 - 12.1.5 Whether the Board or its authorized agent recommends that such damage or destruction shall be repaired or restored.
- 12.2 Notice of Damage or Destruction. The Board shall promptly, and in all events within forty-five (45) days after the date of damage or destruction, provide Unit Owners and each affected mortgagee with a written notice summarizing the initial determination made pursuant to 14.1 above. If the Board fails to so do within forty-five (45) days, then the Unit Owners or any affected mortgagees, or both, if applicable, may make the determination required pursuant to this 12.2.
- 12.3 Definitions; Restoration; Emergency Work. (1)
- 12.3.1 As used in this Article, the words “repair”, “reconstruct”, “rebuild” or “restore” shall mean restoring the improvements to substantially the same condition in which they existed prior to the damage or destruction, with each Unit and the Common Elements having substantially the same vertical and horizontal boundaries as before. Modifications to conform to any applicable governmental rules and regulations or available means of construction may be made.
 - 12.3.2 As used in this Article, the term “emergency work” shall mean that work which the Association deems reasonably necessary to avoid further damage, destruction or substantial diminution in value to the improvements and reasonably necessary to protect Unit Owners and the Association from liability because of the condition of the site.
- 12.4 Restoration by the Association.
- 12.4.1 The Association shall promptly repair and restore the damage and destruction,

use available insurance proceeds for same, and pay for the actual cost of repair and restoration in excess of insurance proceeds received as a common expense. All insurance proceeds available for such repair and restoration shall be used for such purpose until all such proceeds are exhausted, and such insurance proceeds shall not be paid to others or applied for other purposes until payment for all repair and restoration expenses has been made in full. Excess insurance proceeds may be distributed to Unit Owners and affected mortgagees as their interests may appear.

12.4.2 The Association shall have the authority to employ architects and attorneys, to advertise for bids, to enter into contracts with contractors and others, and to take such other action as is reasonably necessary to effectuate the repair and restoration. Contracts for such repair and restoration shall be awarded when the Association, by means of insurance proceeds and sufficient assessments, has provided, for the total cost thereof.

12.4.3 The Association may enter into a written agreement in recordable form with any reputable financial institution or trust or escrow company or such similar firm or institution to act as an insurance trustee to adjust and settle any claim for loss or for such firm or institution to collect the insurance proceeds and carry out the provisions of this Article.

- 12.5 Decision Not to Restore; Disposition. Any damage or destruction to the Association, or any portion thereof, shall be repaired or restored promptly by the Association unless: (1) the Association is terminated; (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (3) eighty (80%) percent of the Unit Owners, including every Owner of a Unit which will not be rebuilt, vote not to rebuild. If all of the damaged or destroyed portions of the Association are not repaired or replaced: (a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Association; (b) the insurance proceeds attributable to Units which are not rebuilt shall be distributed to the Owners of those Units, or to mortgagees as their interests may appear; and (c) the remainder of the insurance proceeds shall be distributed to all of the Unit Owners or mortgagees as their interests may appear, in proportion to the Allocated Interests assigned to each such Unit. In the event any Unit Owner votes not to rebuild any Unit, that Unit's Allocated Interests shall be automatically reallocated as if the Unit had been condemned under Article 13 hereof, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Notwithstanding any other provision hereof, in the event that the Association is terminated, the distribution of insurance proceeds shall be governed by the provisions of Utah law.

13. CONDEMNATION

- 13.1 Consequences of Condemnation; Notices. If at any time during the continuance of the Association pursuant to this Declaration, all or any part of the Association shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in advance of such taking, the provisions of this Article shall apply, and notice of the proceeding or proposed acquisition shall promptly be given to each Unit Owner and to each mortgagee.
- 13.2 Proceeds. All compensation, damages or other proceeds from such taking, the sum of which is

called in this Declaration the "condemnation award," shall be payable proportionately to Unit Owners.

13.3 **Complete Taking.** In the event that the entire Association is taken or condemned, or is sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium form of ownership pursuant hereto shall terminate. The condemnation award shall be apportioned among the Unit Owners in proportion to their respective Allocated Interests in the Common Elements; provided, that if a standard different from the value of the Association as a whole is employed to measure the condemnation award in negotiations, judicial decree or otherwise, then in determining such apportionment the same standard shall be employed to the extent it is relevant and applicable. Any such condemnation award shall, before it is distributed to Unit Owners in accordance with their respective percentage of Allocated Interests in the Common Elements, be used first to pay all mortgages and liens on the Association and on the Units, for which the Association or the Unit Owners as a whole are responsible, then be used to pay all mortgages and liens on each Unit within the Association to the extent of the pro rata portion of the award otherwise distributable to the Unit Owner to which such mortgage or lien attaches.

13.3.1 **Partial Taking.** In the event that less than the entire Association is taken or condemned, or is sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium form of ownership hereunder shall not terminate. The Unit Owners shall be entitled to a share of the condemnation award to be determined in the following manner:

13.3.2 As soon as practicable, the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages and other proceeds.

13.3.3 The Association shall first apportion the amounts so allocated to the taking of, or injury to, the Common Elements, which in turn shall be apportioned between the Unit Owners in proportion to the Unit Owners' respective Allocated Interests in the Common Elements.

13.3.4 The total amount allocated to severance damages shall then be apportioned to the Units which were not taken or condemned.

13.3.5 The respective amounts allocated specifically to the taking of, or injury to, any Unit and/or improvements the Unit Owner had made within such Unit shall be allocated to such Unit.

13.3.6 The amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances.

13.3.7 If an allocation of the condemnation award is already established in negotiations, judicial decree or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable.

13.3.8 Distribution of apportioned proceeds shall be made to the Unit Owners and the Unit Owners' respective mortgagees in the manner provided in Section 15.3 of this

Article.

13.4 Reductions of Units Upon Partial Taking. In the event that (a) a partial taking occurs which, pursuant to Section 13.3 of this Article, does not result in a termination of Association hereunder, and (b) at least one (1) Unit is taken or condemned and (c) the condemning authority elects not to hold, use and own said Unit subject to and in accordance with this Declaration, then the provisions of this Section 13.4 shall take effect immediately upon the condemning authority taking possession of the Unit or Units so taken or condemned:

13.4.1 The Units subject to this Declaration shall be reduced in number to those which were not so taken or condemned.

13.4.2 The Common Elements subject to this Declaration shall be reduced to the remaining Common Elements not so taken or condemned.

13.4.3 The percentage of Allocated Interests in the Common Elements shall be recalculated so that the adjusted Allocated Interests assigned to each Unit not so taken or condemned shall retain the same percentage of undivided interest in the Common Elements in relation to the other remaining Units, but the percentage of each remaining Unit should be recalculated in order that the total of such percentages shall equal one hundred percent (100%).

13.4.4 Except with respect to the share of proceeds apportioned pursuant to Section 13.3 of this Article, no Unit Owner or Mortgagee of any Unit so taken or condemned shall have any right, title, interest, privilege, duty or obligation in, to or with respect to the Association or all, or any portion of, the Association which remains subject to this Declaration and which is not so taken or condemned.

13.4.5 Except as otherwise expressly provided in this Section, the rights, title, interests, privileges, duties and obligations of Unit Owners and Mortgagees of the Units not so taken or condemned (and in, to or with respect to the Association and the Common Elements) shall continue in full force and effect as provided in this Declaration.

13.4.6 The provisions of this Section 13.4 shall be binding upon and inure to the benefit of the Unit Owners and all Mortgagees of (and other persons having or claiming to have any interest in) any Unit. All such Unit Owners, mortgagees and other persons covenant to execute and deliver any documents, agreements or instruments (including, but not limited to, appropriate amendments to the Declaration and/or Plat) as are reasonably necessary to effectuate the provisions of this Section.

13.5 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by procedures specified in Article 12; provided, however, the Association may retain and apply such portion of the condemnation award as is necessary to discharge any liability for any special assessment arising from the operation of such Article.

14. LIMITATION OF LIABILITY

14.1 Liability for Utility Failure and Certain Personal and Real Property Damage. Except to the

extent covered by insurance pursuant to Article 11, neither Declarant, the Board, the Association or the Unit Owners shall be liable for injury or damage to persons or property caused by the elements or other events of nature, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any common pipes, drains, conduit, appliances or equipment, or from any other place, or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of assessments shall be claimed or allowed for such injury or damage or for such inconvenience or discomfort. This Section shall not be interpreted to impose any form of liability by implication upon any Unit Owners.

- 14.2 No Personal Liability. If the Unit Owners, the Association, the Board, their agents and/or Declarant have acted in good faith, without willful or intentional misconduct, upon the basis of such information as may be possessed by such person or entity, then such persons or entities shall not be liable to any Unit Owners or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of such person; provided, that this section shall not apply where the consequences of such act, omission, error or negligence are actually and fully covered by insurance obtained pursuant to Article 11, nor shall it apply to the extent prohibited by the Act.
- 14.3 Indemnification. Each Officer, Director or other person or committee member duly authorized by the Association, by the Board or by Declarant to manage this Association, when exercising the powers and duties of the Board and/or of an officer, shall be indemnified by the Unit Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed in connection with any proceeding to which he or it may be a party, or in which he or it may become involved, by reason of holding or having held such position, whether or not he or it holds such position at the time such expenses or liabilities are incurred, except in such cases wherein such person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or its duties; provided, that in the event of a settlement, the indemnification shall apply only when the Unit Owners approve such settlement before it becomes binding upon the party being indemnified hereunder.

15. MORTGAGEE PROTECTION

- 15.1 Priority of Mortgages. Notwithstanding all other provisions of this Declaration and except as limited by the provisions of the Act, the liens created under this Declaration upon each Unit for assessments shall be subject to and subordinate to any real property tax liens attaching to such Unit and against the first mortgage which was given in good faith and for value against the Unit. When such mortgagee or other purchaser obtains possession of the Unit as a result of mortgage foreclosure, such mortgagee or other purchaser shall not be liable for the Common Expense Liability chargeable to the Unit which became due prior to the date on which such foreclosing mortgagee was legally entitled to complete such foreclosure and take possession of the Unit, but shall be liable for the Common Expense Liability relating thereto accruing after such date. For the purposes of this Article, the term "mortgages" shall not include real estate contracts; and the term "mortgagee" shall not include a real estate contract vendor or the assignee of a vendor of a real estate contract regarding such Unit.

- 15.2 Abandonment of Condominium Status. Except when acting pursuant to the provisions of the Act involving damage, destruction or condemnation, or as otherwise provided in Utah law, no Unit Owner shall, without the prior written consent of the first mortgagee of the Unit, seek to abandon the condominium status of the Project.
- 15.3 Partitions, Subdivisions and Combinations. No Unit Owner shall partition, subdivide or combine a Unit, or abandon, partition, subdivide, encumber or sell any Common Elements, or accept any proposal to do so, without the unanimous approval of the first mortgagees of the affected Unit(s).
- 15.4 Change in Percentages. Except as provided in Article 18, the Unit Owners shall not amend the Declaration to materially change the percentage of Allocated Interests assigned to any Unit, without the prior written approval of all first Mortgagees of the Units affected by such change or amendment.
- 15.5 Copies of Notices. In the event the Association gives a Unit Owner any notice that such Unit Owner has for more than thirty (30) days failed to meet any obligation under the Association documents, including the obligation to pay assessments, the Association shall also give a copy of such notice to any Mortgagee of such Unit who has requested to be so notified.
- 15.6 Effect of Declaration Amendments. No amendment of this Declaration shall be effective to modify, change, limit or alter the rights expressly conferred upon mortgagees in this instrument with respect to any unsatisfied mortgage duly recorded, unless the amendment shall be approved in writing by the affected mortgagee, except for those amendments which relate to a merger of the Association with other parcels and those amendments relating to the conformance of Plat with actual construction. Any provision of this Declaration conferring rights upon mortgagees which is inconsistent with any other provision of this Declaration or the Bylaws shall control over such other inconsistent provisions.
- 15.7 Insurance. The Mortgagee of a Unit has the right to demand, by written request, the following:
- 15.7.1 That a copy of any insurance policy or evidence thereof which is intended to cover the Unit on which such mortgagee has a lien be provided by the Association.
- 15.7.2 That any insurance carrier give the Association and any and all insureds (including such mortgagees) at least thirty (30) days' written notice before canceling, reducing the coverage or limits of or otherwise substantially modifying, any insurance with respect to such property on which such mortgagee has a lien (including cancellation for a premium nonpayment).
- 15.7.3 That written notice be provided by the Association of any loss or condemnation affecting Common Elements, if such loss or condemnation exceeds Ten Thousand Dollars (\$10,000.00).
- 15.7.4 That written notice be provided by the Association of any loss, damage or condemnation affecting the Unit in which such mortgagee has an interest, if such loss, damage or condemnation exceeds One Thousand Dollars (\$1,000.00).

- 15.8 Inspection of Books. A Mortgagee of a Unit shall be entitled upon reasonable notice to inspect at reasonable hours during weekdays all of the books and records of the Association, and, upon request, to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association.

16. MORTGAGEE'S RIGHT AFTER FORECLOSURE

- 16.1 In the event any Units are conveyed to the Mortgagee of the Association in lieu of foreclosure, or the Mortgagee of the Association obtains possessory rights or legal title to the Units and interests appurtenant thereto not sold by Declarant, then said mortgagee will be liable for only that portion of any assessment against such Units so owned by the mortgagee for which Declarant would be liable; provided, that in no event will the mortgagee be liable for any past due assessments which accrued or became due prior to the time the mortgagee obtained possession by foreclosure or by deed in lieu of foreclosure and provided, further, that if at any time the Mortgagee of the Association grants, rents or leases such Units or any

portion thereof, the Mortgagee of the Association shall be liable only for the Common Expense Liability for Units or the portions thereof that the mortgagee grants, rents or leases.

17. EASEMENTS

- 17.1 Declarant's Easement. Declarant is hereby granted an easement through and upon the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations and exercising Special Declarant Rights. In particular, Declarant reserves the right to perform construction work and store materials on the Common Elements, the right to control such construction work, and the right of access to the work until its completion. Declarant's easement includes, but is not limited to, the right to construct utility lines, pipes, wires, ducts, conduits, storm drainage improvements, and other facilities in the Association for the purpose of furnishing utility and other services to the Association or the Units. Declarant's easement also includes the right to grant easements to public utility companies and to convey improvements within those easements.
- 17.2 General. In addition to rights under the Act, each Unit is hereby granted an easement in and through each of the other Units and all of the Common Elements. for all support elements and utility, wiring, conduit, heat, sewer, storm drainage, water and service elements, and for reasonable access to same, as required to effectuate and continue proper operation of the Association, without limiting the foregoing, each of the Units and all Common Elements are specifically subject to an easement for the mutual benefit of each other for all duct work or ventilation stacks. In addition, each of the Units and all the Common Elements are specifically subject to easements as required for any electrical system, electrical wiring, plumbing, heating systems, telephone and cable lines and systems, sewer systems, storm drainage systems, fire alarms, water distribution systems, and all other similar equipment for the benefit of each Unit and the entire Association. The specific mention or reservation of any easement in this Declaration does not limit or negate the general easement for the benefit of Declarant as reserved by the Act.

- 17.3 Easements and Rights Reserved. Declarant hereby reserves non-exclusive easements over, across and through the real property described in Exhibit A for the benefit of itself, its successors and assigns and the Association. The reserved easements are for ingress to and egress from the Units and for access to, over and under the Common Elements of the Association in order to collect and utilize any water, sanitary sewer, storm sewer, conduit, electricity, telephone and/or cable systems, fire pumps, bollards, drainage systems, and other utility lines now established or hereafter to be built in the Association. Such reservations in favor of Declarant are expressly for the purpose of allowing the completion of the balance of the improvements, but are not limited to such purposes. The easements reserved hereby shall not be exercised in a manner that will overload or materially impair the use and enjoyment of any Unit in the Association. Declarant further reserves an easement over, under, across and through the Common Elements for the benefit of itself, its successors and assigns and the Association for the purpose of remodeling, refurbishing or construction of other improvements, reserving to Declarant and to such others the right to create all reasonable noise, clutter, dirt and debris as may be necessary in completing said construction, subject to the obligations to remove the same upon completion.
- 17.4 Encroachments. Each Unit and all Common Elements are hereby declared to have an easement over all other Units and all of the Common Elements for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings or any other similar cause, and any encroachment due to building overhang or projection. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Unit Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of any Unit Owner if said encroachment occurred due to the willful act or acts of such Unit Owner or his agent. In the event any Unit or Common Elements are partially or totally destroyed, and then repaired or rebuilt, the adjacent Unit Owners agree to grant an easement for changes in the structure required by law at the time of such repair or rebuilding. The foregoing encroachments shall not be construed to be encumbrances affecting the marketability of title to any Unit.

18. AMENDMENT OF DECLARATION, SURVEY PLAT, PLANS

- 18.1 Declaration Amendment. Except in cases of amendments that may be executed by Declarant or by the District Court for any county that includes all or any portion of the Association, amendments to the Declaration shall be made by an instrument in writing entitled "Amendment to Declaration of Hobby Caves Condominiums", which instrument shall set forth the entire amendment. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit. Prior to the expiration of the Declarant Control Period, Declarant may unilaterally amend this Declaration for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Unit Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Unit Owner. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by the Association. Amendments shall be adopted at a meeting of such Unit Owners and first Mortgagees of Units only if approved unanimously by Unit Owners particularly affected, by such other Unit Owner necessary to aggregate fifty-one (51%) percent of the Allocated Interests in the Association, and by all of the affected first Mortgagees

of Units, as set forth in Article 15, or without a meeting if all Unit Owners and such mortgagees have been notified and the above-stated percentages of the Unit Owners and mortgagees consent in writing to such amendment. An amendment when adopted shall bear the signature of the President of the Association and shall be attested to by the Secretary of the Association, each of whose signatures shall be acknowledged. Amendments shall be effective upon recording. Any decision changing the Allocated Interests of any Unit, except as provided herein, shall require the approval of all Owners of that Unit, and any such amendment affecting the Allocated Interests shall be by unanimous consent of all Unit Owners actually affected by such change. Any amendment to this Declaration will be completely effective to amend any or all of the covenants, conditions, restrictions or reservations contained herein which are intended to be affected, unless otherwise specifically provided in the section being amended or the amendment itself.

- 18.2 **Plat Amendment.** Except as otherwise provided herein, the Plat may be amended by completion of revised versions or revised portions thereof, such amendment having been approved as a part of any amendment to the Declaration as provided for herein. Such amendment to the Plat shall be effective upon recording in conjunction with the Declaration amendment.
- 18.3 **Discontinuance of Association.** Any decision or failure to act by the Unit Owners under this Declaration or any applicable provision of law which intends or requires discontinuance of this Association or removal of the Real Property from the provisions of the Act, shall, if such decision or failure to act is sufficient with respect to the Act, also terminate and discontinue the effect of any and all of the covenants, conditions, restrictions and reservations set forth herein, and all provisions of the flat, unless other specific provision is made by recorded amendments to the Declaration and, if required, to the Plat; provided, however, that no such termination shall be sought or accomplished other than with full compliance with the provisions of the Act, as presently adopted or as hereafter amended.

19. COMPLIANCE WITH DECLARATION

- 19.1 **Enforcement.** Unit Owners shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted by the Association, all as the same may be lawfully amended from time to time, together with all decisions adopted pursuant to this Declaration, the Bylaws and such rules and regulations. Failure to comply shall be grounds for relief, which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of a lien, or any combination of same.
- 19.2 **No Waiver of Strict Compliance.** The failure of any Unit Owner or of the Association in any one or more instances to insist upon strict compliance with any of the terms, covenants, conditions or restrictions of this Declaration, the Bylaws or with any rules and regulations adopted, or to exercise any right or option contained in such documents, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but the same shall remain in full force and effect. The receipt and acceptance by the Association of any payment of an assessment from a Unit Owner, with knowledge of any such breach by such Unit Owner, shall not be deemed a waiver of such breach, and no waiver by the Association or the Unit Owners of any provision in this Declaration shall be deemed to have been made unless expressed in writing and signed by the Board, on behalf of the Association, or by all of the affected Unit Owners. This section

shall also extend to the managing and authorized agents of the Association and of any Unit Owners exercising the power of their respective principals.

- 19.3 Cost and Attorney Fees. In any proceeding arising because of an alleged default by any Unit Owner with respect to any provision of this Declaration, the prevailing party shall be entitled to recover the cost of the proceeding, the cost of title search, if any, and all other related costs and reasonable attorney's fees incurred in such proceedings and in any appeals taken therefrom.

20. INTERPRETATION

- 20.1 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for development, construction and operation of this Association pursuant to the laws of the State of Utah and in accordance with the other provisions of this Declaration.
- 20.2 Consistent with Act. The terms such as, but not limited to, "Unit", "Unit Owners", "Association", "Building", "Common Elements", "Common Expenses", and "Real Property", used in this Declaration are intended to have the same meaning given in the Act unless the context clearly requires otherwise.
- 20.3 Covenant Running With Land. This Declaration shall be operative as a set of covenants running with the land and/or as equitable servitudes, supplementing and interpreting the Act, and operating independently of the Act should the Act be, in any respect, inapplicable.
- 20.4 Unit and Building Boundaries. For interpreting the Plat, the existing physical boundaries of the buildings and each Unit, as constructed, shall be conclusively presumed to be their respective boundaries.
- 20.5 "Person". When interpreting the term "person" in this Declaration, the singular may include the plural and the masculine may include the feminine, or vice versa, where the context so permits or requires.
- 20.6 Declarant-Original Unit Owners. Declarant is the original Owner of the Units and will continue to be deemed the Unit Owner except as conveyances or documents changing such ownership are filed for record with appropriate authorities.

21. MISCELLANEOUS

- 21.1 Declarant Rights and Interest. Declarant hereby exclusively reserves for the sole use and benefit of Declarant, all right and interest in and to all marks, trademarks, copyrights, logos, art work, and most specifically the name, "Hobby Caves" and neither the Association, the Unit Owners nor any successor nor assign shall acquire any interest in and to said intellectual property which shall at times remain in the ownership of Declarant. Declarant further states that any and all signage or other use of the logos, marks, trademarks, copyrights or art work by the Association shall not be made except with the express written permission of Declarant, and Declarant shall reserve the right to remove from the Property any signage or other visible marks which bear the logos, marks, trademarks, copyrights or art work associated with "Hobby Caves", at the sole discretion of Declarant. For this purpose, Declarant reserves a right of access

through over and across any and all of the subject Property for the sole and limited purpose of removing such signage should Declarant deem the same to be in Declarant's best interest.

- 21.2 Ownership of Plans and Specifications. Declarant is the sole owner of the complete plans and specifications for the Units and the improvements on the Property. Said plans and specifications are the stock and trade of Declarant and neither the Association nor any Unit Owners shall be entitled to use, transmit or make available information contained in or concerning the plans and specifications to builders or other third parties without prior written consent of Declarant, which Declarant may withhold in its sole discretion. Any consent given by Declarant shall be only for the specific request received from the Association or Unit Owner and they must request Declarant's consent each time they desire to transmit such information.
- 21.3 Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof, if the remainder complies with the Act or as covenants affect the common plan.
- 21.4 Effective Date. This Declaration shall take effect upon recording.
- 21.5 Taxation. Each Unit will be assessed separately for all taxes, assessments and other charges of the State of Utah, any political subdivision thereof, any special improvement district and any other taxing or assessing authority, in accordance with the Act and each Unit Owner shall be responsible for the payment of such taxes. For the purpose of such assessments, the valuation of the Common Elements will be apportioned among the Units in proportion to the Allocated Interests. The Association will furnish to the tax assessor of the County of Salt Lake, and to all other appropriate Persons and authorities, all necessary information with respect to such apportionment. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges will divest or in any way affect the title to any other Unit.
- 21.6 Appointment of Trustee. Jeffrey E. Matson, an active member of the Utah State Bar, shall be appointed as trustee pursuant to Utah Code Ann. § 57-8-10(e)(i). Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-45 to Jeffrey E. Matson, with power of sale, the Real Property for the purpose of security payment of assessments under the terms of this Declaration.

[END]

IN WITNESS WHEREOF, the Declarant executes this Declaration of Condominium for Hobby Caves Condominiums as of the date first above written.

JFRG BLUFFDALE, LLC,
a Utah limited liability company

By: [Signature]
Name: Ronald Cunnell
Title: Manager

State of UTAH)
 :SS
County of SALT LAKE)

The foregoing instrument was acknowledged before me on the 28th day of February 2019, by Ronald Cunnell, the Manager of JFRG Bluffdale, LLC a Utah limited liability company.

[Signature]
NotaryPublic
Residing

My Commission Expires

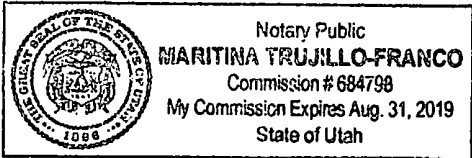


EXHIBIT A

REAL PROPERTY

LOT 2 OF THE SADDLEBACK POINTE SUBDIVISION, RECORDED IN THE SALT LAKE COUNTY RECORDERS OFFICE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE CENTER OF SECTION 4, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN; THENCE SOUTH 00°20'01" WEST 282.98 FEET; THENCE SOUTH 89°40'00" EAST 671.22 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89°40'00" EAST 475.82 FEET TO A POINT ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 588.01 FEET, A CENTRAL ANGLE OF 14°09'16" AND A CHORD THAT BEARS SOUTH 11°43'31" WEST 144.90 FEET, SAID POINT BEING THE WESTERN LINE OF FITZGERALD MEADOWS SUBDIVISION, RECORDED AS ENTRY NO. 8774241, IN THE SALT LAKE COUNTY RECORDERS OFFICE, SAID POINT ALSO BEING ON THE WEST LINE OF THE UTAH & SALT LAKE CANAL;; THENCE ALONG SAID CURVE SOUTHERLY AN ARC DISTANCE OF 145.26 FEET, ALONG SAID CANAL; THENCE SOUTH 04°38'50" WEST 141.34 FEET; THENCE NORTH 89°40'00" WEST 434.72 FEET; THENCE NORTH 00°02'21" WEST 282.99 FEET TO THE POINT OF BEGINNING. Contains 127,138 square feet or 2.92 acres, more or less.

EXHIBIT B

Building "A"

Unit 101 – 1,250 sq ft
Unit 102 – 1,250 sq ft
Unit 103 – 1,250 sq ft
Unit 104 – 1,200 sq ft
Unit 105 – 1,200 sq ft
Unit 106 – 1,200 sq ft
Unit 107 – 1,250 sq ft
Unit 108 – 1,250 sq ft
Unit 109 – 1,250 sq ft
Unit 110 – 1,200 sq ft
Unit 111 – 1,200 sq ft
Unit 112 – 1,200 sq ft
Unit 113 – 1,250 sq ft
Unit 114 – 1,250 sq ft
Unit 115 – 1,250 sq ft
Unit 116 – 1,200 sq ft

Building "B"

Unit 201 – 1,200 sq ft
Unit 202 – 1,200 sq ft
Unit 203 – 1,200 sq ft
Unit 204 – 1,250 sq ft
Unit 205 – 1,250 sq ft
Unit 206 – 1,250 sq ft
Unit 207 – 1,200 sq ft
Unit 208 – 1,200 sq ft
Unit 209 – 1,200 sq ft
Unit 210 – 1,250 sq ft
Unit 211 – 1,250 sq ft
Unit 212 – 1,250 sq ft
Unit 213 – 1,250 sq ft
Unit 214 – 1,250 sq ft
Unit 215 – 1,250 sq ft
Unit 216 – 1,250 sq ft
Unit 217 – 1,250 sq ft
Unit 218 – 1,200 sq ft
Unit 219 – 1,200 sq ft
Unit 220 – 1,200 sq ft
Unit 221 – 1,250 sq ft
Unit 222 – 1,250 sq ft
Unit 223 – 1,250 sq ft
Unit 224 – 1,200 sq ft
Unit 225 – 1,200 sq ft
Unit 226 – 1,200 sq ft

Building "C"

Unit 301 – 1,250 sq ft
Unit 302 – 1,250 sq ft
Unit 303 – 1,250 sq ft
Unit 304 – 1,200 sq ft
Unit 305 – 1,200 sq ft
Unit 306 – 1,200 sq ft
Unit 307 – 1,250 sq ft
Unit 308 – 1,250 sq ft
Unit 309 – 1,250 sq ft
Unit 310 – 1,200 sq ft
Unit 311 – 1,200 sq ft
Unit 312 – 1,200 sq ft
Unit 313 – 1,250 sq ft
Unit 314 – 1,250 sq ft
Unit 315 – 1,250 sq ft