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MARY ANN TRUSSELL, SUMMIT COUNTY RECORDER

FEE 136.00 BY PARK CITY TITLE COMPANY



**DECLARATION OF CONDOMINIUM**

**692 MAIN STREET CONDOMINIUMS**

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**DECLARATION OF CONDOMINIUM**

**692 MAIN STREET CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM – 692 MAIN STREET CONDOMINIUMS. ("Declaration") is made and executed by 692 MAIN STREET INVESTORS, LLC, a Utah limited liability company, ("Declarant"), for itself, its successors and assigns, pursuant to the provisions of Title 57, Chapter 8, Utah Code Ann., as amended (the "Act").

**RECITALS**

A. Declarant holds both legal and equitable title to certain real property located in Summit County, Utah, described in Exhibit "A" attached hereto and incorporated herein by this reference, upon which Declarant desires to develop a condominium project. The Project shall be known as 692 Main Street Condominiums and is intended to be a condominium project pursuant to the Act.

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

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

D. Declarant has prepared or is preparing the necessary documents for the incorporation and organization of the Association, which Association will maintain the Common Areas and Facilities within the Project as hereinafter described, provide for the management and operation of the Common Areas and Facilities, levy and collect Assessments, and administer and enforce the terms of this Declaration.

E. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows that each of the Recitals A through E is incorporated into and made a part of this Declaration for all purposes and further declares, covenants and agrees as follows:

**ARTICLE I**

**DEFINITIONS**

Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article I. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1 Act means the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann., as amended).

1.2 Amendment means any amendment to this Declaration made in accordance with the Declaration and the Act.

1.3 Assessments include the Common Assessments, the Residential Assessments, and the Commercial Assessments.

1.4 Building means the building constructed as part of the Project, as described in Section 2.2.

1.5 City means Park City Municipal Corporation.

1.6 Commercial Assessments means assessments charged to the Owner of the Commercial Unit to pay the Commercial Expenses, as provided in Article XVIII.

1.7 Commercial Expenses means those expenses incurred by the Association for the exclusive benefit of the Commercial Units.

1.8 Commercial Units means those portions of the main floor and basement space designated as Commercial or Commercial/Retail on the Condominium Plat.

1.9 Common Area Manager means the person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas and Facilities. The Common Area Manager may also be designated by the Management Committee to serve as the Rental Manager.

1.10 Common Areas and Facilities means all portions of the Project other than the Units, including but not limited to the hallways, elevator, stairs, and mechanical spaces, as described in Article IV below. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is described in Section 4.2 hereof and is set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

1.11 Common Assessments means those assessments described in Article XVIII to fund the Common Condominium Expenses, and include Regular Common Assessments and Special Common Assessments levied by the Association.

1.12 Common Assessment Fund means one or more deposit or investment accounts of the Association into which are deposited the Assessments. The Common Assessment Fund shall consist of one operating fund for daily operating expenses and one capital fund for reserve and replacement expenses, with accounting sufficient to track and separately delineate the assessment, collection, and disbursements of the Common Assessments, the Commercial Assessments, and the Residential Assessments, and the reserves attributable to each.

1.13 Common Condominium Expenses means all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities, all premiums for insurance obtained by the Association for the benefit of the Project, and all other expenses denominated as Common Condominium Expenses by this Declaration or by the Act, but not including Commercial Expenses or Residential Expenses.

1.14 Condominium Articles or Articles means the Articles of Incorporation of 692 Main Street Condominiums as amended from time to time.

1.15 Condominium Association or Association means 692 Main Street Condominiums, a Utah non-profit corporation, and its successors and assigns, organized for the purposes set forth in this Declaration.

1.16 Condominium Association Member means any Person who is a member of the Condominium Association as provided in Article X.

1.17 Condominium Association Membership means a membership in the Condominium Association and the rights granted to the Condominium Association Members, including Declarant, pursuant to Article X to participate in the Condominium Association.

1.18 Condominium Association Rules means the rules for the Condominium Association as they may be adopted by the Management Committee pursuant to this Declaration, and as amended from time to time.

1.19 Condominium Bylaws or Bylaws means the Bylaws of the Association, a copy of which is attached hereto as Exhibit "C" attached hereto and incorporated herein by this reference, as they may be amended from time to time.

1.20 Condominium Declaration or Declaration means this Declaration of Condominium for 692 Main Street Condominiums, and all Amendments, modifications and supplements hereto.

1.21 Condominium Documents means this Condominium Declaration, the Condominium Plat, the Condominium Articles, the Condominium Bylaws, and the Condominium Association Rules, as each document may be amended from time to time.

1.22 Condominium Plat or Plat means the 692 Main Street Condominiums Plat Recorded in the Office of the Summit County Recorder, State of Utah, as it may be amended from time to time pursuant to this Declaration and the Act. The initial Plat may be amended at such time as the Building is completed in the event there are material changes in the Building or Unit boundaries or elevations as constructed. Such an amendment to the Plat is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners.

1.23 County means Summit County, Utah.

1.24 Declarant means 692 Main Street Investors, LLC, a Utah corporation, or any successor in interest, as provided in the Act and in Article XXIV below.

1.25 Declarant Affiliate means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder or any third party that acquires title to the entire Project as successor in interest to Declarant.

1.26 Declarant Control Period means the period of Declarant control of the Association described in Section 8.3 below.

1.27 Developmental Rights means the exercise of any of the rights set forth in Articles II and VIII below, and the exercise of any other right reserved by Declarant pursuant to this Condominium Declaration and the Act.

1.28 Eligible Mortgagee means and refers to a First Mortgagee that has requested notice of certain matters from the Association in accordance with Section 16.1 below.

1.29 Exempt Property means any Unit owned by Declarant or Declarant Affiliate.



1.30 Improvement(s) means any improvement now or hereafter constructed at the Project and includes anything which is a structure and appurtenances thereto of every type and kind, including but not limited to any (a) residence, building, or accessory building, guest facility, screening wall, or fence; (b) walkway, garage, road, driveway, or parking area; (c) mailbox, sign, balcony, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation, or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a lot); (d) radio or television antenna or receiving dish; (e) paving, exterior lights, curbing, trees, shrubs hedges, grass, windbreak, or other landscaping improvements of every type and kind; (f) anything which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash, or drainage channel, and related fixtures and equipment; and (g) any other structure of any kind or nature.

1.31 Limited Common Areas and Facilities means a portion of the Common Areas and Facilities designated by the Declaration or the Act, and as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units, which may include, without limitation, certain patios, and balconies.

1.32 Management Committee means the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

1.33 Maximum Gross Building Area(s) means the maximum building area assigned to the Project as shown on the Condominium Plat measured in Square Feet constructed above finished grade.

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

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

1.36 Municipal Authority means the applicable governmental entity or municipality which has jurisdiction over all or some part of the Project including without limitation Park City Municipal Corporation.

1.37 Owner means any person or entity, including Declarant, at any time owning a Unit within the Project, or any portion thereof or interest therein (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

1.38 Penthouse Unit. The Residential Unit located on the fourth floor of the Project.

1.39 Person means a natural person, corporation, business trust, estate, trust, partnership, association, limited liability company, limited liability partnership, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.40 Plat means the Condominium Plat for the Project Recorded in the office of the Summit County Recorder and any amendments made thereto.

1.41 Project means the Property, the Units, the Common Areas and Facilities and all Improvements submitted by this Declaration to the provisions of the Act.

1.42 Property means that certain real property situated in Park City, Utah, more particularly described in Section 2.1 below, on which the Units and other Improvements are located.

1.43 Record, Recording, Recorded and Recordation means placing or having placed an instrument of public record in the official records of Summit County, Utah.

1.44 Regular Common Assessments means the annual assessments levied by the Association to pay the budgeted Common Condominium Expenses.

1.45 Residential Assessments means assessments charged to the Owners of the Residential Units to pay the Residential Expenses, as provided in Article XVIII.

1.46 Residential Expenses means those expenses incurred by the Association for the exclusive benefit of the Residential Units.

1.47 Residential Unit means those Units intended for overnight occupancy by Owners, guests, and tenants, as identified as Private Residential Units on the Plat.

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

1.49 Square Feet means the square footage of the units as shown on the Plat.

1.50 Supplemental Plat means any amendment to the Plat made in accordance with this Declaration and the Act.

1.51 Total Votes of the Association means the total number of votes appertaining to all Units, as described in Article XIX hereof.

1.52 Unit means and refers to an individual portion of the Project designated as a Private Residential Unit or as Commercial or Commercial/Retail space on the Plat and designed for separate ownership and occupancy as described in Article III hereof.

1.53 Unit Number means the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

## ARTICLE II

### **DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS AND SUBMISSION TO THE ACT**

2.1 **Description of the Property.** The Property on which the Units and Improvements are located is situated in Summit County, Utah and more particularly described as follows:  
[See Exhibit "A" attached hereto and incorporated herein by this reference.]

2.2 **Initial Improvements.** The initial improvements will consist of one freestanding residential Building with three to five stories, containing both commercial spaces and residential units. The Buildings will be of wood frame or concrete construction. The roofs will not be sloped. Exteriors will be of natural stone, wood, brick, and/or plaster siding. The Buildings will be supplied with telephone, cable television, electricity, natural gas, water, and sewer service.

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

2.4 **Density.** Pursuant to the Plat, the Project has been assigned 10,879 Square Feet of Maximum Gross Building Area for accommodation areas. Declarant hereby reserves for itself, its successors and assigns, the unilateral right to transfer the Square Feet between and among Units owned by Declarant at the Project in the event Declarant or Declarant Affiliate does not utilize all of the Square Feet assigned to a Unit in the development of such Units ("Transfer"), provided that such Transfer does not enlarge the total Maximum Gross Building Areas at the Project beyond 10,879 Square Feet. Declarant reserves the right to unilaterally accomplish any such Transfer without the approval or the vote of the Condominium Association Members and the Owners by Recording a Supplemental Plat and an amendment to this Condominium Declaration identifying the Transfer, the subject Units, the Square Feet transferred, and the allocation of Square Feet with respect to the subject Units both before and after the Transfer's effective date.

2.5 **Parking and Access.** According to the Parking Easement that was recorded on August 5, 1993, as Entry No. 00384600 in Book 743 at Page 166 in the Official Records of the Office of the Summit County Recorder, and then the First Amendment to Parking Easement that was recorded on March 21, 2006, as Entry No. 00772151 in Book 01778 at Page 1225 in the Official Records of the Office of the Summit County Recorder (collectively "the Parking Easement"), each Residential Unit shall have a beneficial right of access to parking as described in the Parking Easement to the degree required by Section 15-3-6 of the Park City Land Management Code at the time of the recording of this

Declaration. The combined Residential Units have a right of access to eight (8) of the twenty-three (23) parking space rights that are currently expressed in the Parking Easements. The Commercial unit or its invitees has the right to the remaining fifteen (15) parking spaces. The Declarant, as Owner of a Residential or Commercial unit, may use that unit's parking space for the benefit of that unit. The Condominium Association shall be responsible for any cost, fee, or assessment that is levied for the maintenance and/or operating expenses associated with the underground parking rights described in the Parking Easements.

### ARTICLE III

#### DESCRIPTION OF UNITS

3.1 Description of the Units. The boundary lines of each Unit are as set forth on the Plat and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting part of the finished surface of a wall, floor, or ceiling. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior finished surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Plat and/or Exhibit "B" hereto contain the Unit Number of each Unit in the Project.

3.2 Practical Application. Notwithstanding the description of Units described in Section 3.1 above, for the purposes of interpreting this Declaration and the Condominium Plat, the boundaries of all Units constructed in substantial accordance with the Condominium Plat and this Declaration shall be conclusively presumed to be the actual boundaries rather than the description and depiction of the Units set forth on the Condominium Plat, regardless of the settling or lateral movement of the Units and Buildings and regardless of minor variances between boundaries shown on the Condominium Plat and the constructed boundaries of the Units or Buildings.

### ARTICLE IV

#### DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

4.1 Description of Common Areas and Facilities. The Common Areas and Facilities means and includes the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation: the foundation, columns, girders, beams, supports, perimeter and supporting walls, roofs, halls, corridors, stairs, stairways, elevator, fire escapes, patios, decks, balconies, vestibules, the mechanical installations of the Buildings consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating, refrigeration, central air-conditioning and incinerating which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith; trash rooms; the yards, sidewalks, walkways, paths, grass, trees, planters, driveways, roadways, landscaping and related facilities upon the Property; the elevators, pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the Buildings existing for use of one or more of the Owners; and, in general, all other parts of the Project designated by Declarant as Common Areas and

Facilities and existing for the use of one or more of the Owners. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control.

4.2 Calculation of Undivided Interests. The undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be allocated in accordance with the Square Feet of each Unit in the Project. The undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be a fraction, the numerator of which is the Square Feet of the particular Unit, and the denominator of which is the total Square Feet of all Units in the Project, as set forth on attached Exhibit "B." Alternatively, such fraction may be expressed as a decimal number or percentage. Except as otherwise provided by this Declaration or the Act, or by Transfer, the undivided interest appurtenant to each Unit shall have a permanent character and (except during the Declarant Control Period), shall not be altered without the consent of two-thirds of the units owners expressed in a duly Recorded Amendment. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent (100%) (or one, if stated as fractions). Declarant is authorized to round the undivided interest of one or more Units in order to cause the vote total to equal one hundred percent (100%) (or one, if stated as fractions).

## **ARTICLE V**

### **DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES**

Limited Common Areas and Facilities means those parts of the Common Areas and Facilities which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Areas and Facilities shall include any balcony, deck, patio, or entryway adjacent to a Unit, storage spaces, including ski lockers, outside Units and designated as Limited Common Areas and Facilities serving those particular Units, parking spaces (but only if they are designated as Limited Common Areas and Facilities for particular Units on the Plat), and any individual fireplace chimneys and flues in the Buildings, and individual water and sewer service lines, and any plumbing or other installation servicing a Unit, including, but not limited to, all such items designated as Limited Common Areas and Facilities on the Plat or as provided for by the Act. The deck, balcony or patio and the fireplace chimneys which are accessible from, associated with, and which adjoin a particular Unit, without further reference thereto, shall be used in connection with such Unit to the exclusion of the use thereof by the other Owners, except by invitation. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Plat or as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest. Notwithstanding, Declarant hereby reserves the right and grants to the Association the right to reallocate Limited Common Areas and Facilities to the fullest extent permitted under the Act.

## **ARTICLE VI**

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

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

6.2 Use of Property. Subject to the limitations contained in this Declaration, and subject to any rules and regulations adopted by Declarant or the Association, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and

use his or her Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners.

6.3 Use as Primary Residence. All Owners and occupants hereby agree and acknowledge that a primary purpose of the Project is to provide overnight occupancy accommodations in support of resort and mountain recreational related activities under a single coordinated rental program, with the possibility of marketing rentals at the Project under a national brand. While no Owner is required to make the Unit owned by such Owner available for rent, all Owners and occupants understand that there may be persons occupying the Units within the project as temporary, commercial overnight accommodations and nothing in the Declaration shall limit the rights of Declarant or any other Owner to operate the Units owned by it for transient rental purposes. Accordingly, based upon the purposes for which the Project was approved, each Owner hereby agrees and acknowledges that even if he/she desires to occupy his/her Unit within the Project as a full time residence, such Unit may not be eligible for the primary residential tax exemption allowed under Utah Code Ann. § 59-2-103(2) (as amended), and said Unit shall likely be assessed at the secondary residential tax rate.

6.4 Alteration of Interiors. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his or her Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of his or her Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, and in light of the rental nature of the Units, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity. Owners of adjoining Units may not reallocate or change the boundaries of such Units. No Owner may subdivide their Unit except as otherwise provided herein.

6.5 Rentals. Nothing in this Declaration shall limit the rights of Declarant or any other Owner to operate the Unit(s) owned by it for transient rental purposes. Short-term rentals (i.e., shorter than 30 consecutive days) shall be administered under a coordinated rental program; longer term rentals shall be by lease under Section 9.15 of this Declaration.

## ARTICLE VII

### TITLE TO UNITS

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

7.2 Title Inseparable. Except as otherwise provided herein, title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas and Facilities appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all

appurtenant rights created by law and by this Declaration, including appurtenant Condominium Association Membership as herein set forth.

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

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

7.5 Labor and Services; Indemnification. Except in emergency situations, as determined by the Management Committee, no construction deliveries and construction services shall be scheduled during the ski season, being defined for purposes of this paragraph as the days in which the Park City Mountain Resort or successor is in operation. Notwithstanding the foregoing, no labor performed or services or materials furnished with the authorized or unauthorized consent of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner (including interest in any portion of the Common Areas and Facilities). Labor performed or services or materials furnished for the Common Areas and Facilities, if authorized by the Association and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner and may be the basis for the filing of a lien against each of the Units. In the event a lien against two or more Units or any part thereof becomes effective, the Owner may remove his or her Unit from the lien by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his or her Unit. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanics' lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Areas and Facilities, or any part thereof.

7.6 Enforcement. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 7.5 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 7.6, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with Article XVIII below.

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

**ARTICLE VIII**

**CERTAIN ADDITIONAL DEVELOPMENTAL RIGHTS**

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

8.1 **Reservation of Easement.** Declarant hereby reserves an easement throughout the Project for the purpose of completing all Improvements contemplated by the Declaration and the Plat.

8.2 **Sales and Management Offices.** Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project and models in the Commercial Unit, and Declarant may utilize a Residential Unit as a sales model for prospective buyers. All signage shall comply with City regulations as the same may be amended from time to time.

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

- (a) three (3) years after the first Unit is conveyed to an Owner, or
- (b) after Units to which three-fourths (3/4) of the undivided interest in the Common Areas and Facilities appertain have been conveyed to Owners.

**ARTICLE IX**

**RESTRICTIONS ON USE**

The following covenants, conditions, restrictions and rights shall apply to all Units and all other Improvements, the Owners and lessees thereof, all residents and all Occupants, except as otherwise permitted in writing by the Management Committee:

9.1 **Architectural Control.** All Improvements (whether temporary or permanent), alterations, repairs, or other work which in any way alters the exterior appearance of any Unit are subject to the prior written approval of the Management Committee.

9.2 **No Commercial Use.** No Residential Unit shall be used for commercial purposes (participation in the rental program not being considered a commercial purpose); provided, however, that nothing in this Subsection 9.2 shall prevent (a) Declarant or an affiliated entity or a duly authorized agent from using any Unit owned or leased by Declarant as sales offices and model Units or a property management office as provided in Section 8.2 hereof, or (b) any Owner, including Declarant, or his or her duly authorized agent from renting or assigning the use of his or her Unit from time to time.

9.3 **Owner's Obligation to Maintain Property.** All Units shall be kept and maintained by the Owner thereof in a clean, safe and attractive condition and in good repair so as not to detract from the appearance of the Project, and so as not to adversely affect the value or use of any other Unit or Improvement. In the event any portion of any Unit or Improvement is so maintained as to (i) present a public or private nuisance, (ii) substantially detract from the appearance or quality of the Project or (iii) violate the Condominium Documents, the Management Committee may give notice to the offending Owner that unless corrective action is taken within thirty (30) days, the Management Committee may cause such action to be taken at such Owner's cost; provided, however, that in the event of an emergency or unsafe situation, such corrective action must be taken within a shorter time period as the Management



Committee may reasonably determine under the circumstances. If at the expiration of such time period the requisite corrective action has not been taken, the Management Committee may cause such action to be taken. The cost of any corrective action by the Condominium Association shall be added to and become a part of the Common Assessments to which the offending Unit Owner is subject and shall be secured by a lien as provided in Article XVIII.

9.4 Prohibition of Hazardous Activities. No activities shall be conducted, or Improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

9.5 Prohibition of Signs. No signs, flags or advertising devices of any nature, including, without limitation, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger, except as may be used by Declarant as part of its sales program or as otherwise allowed by applicable law.

9.6 Animals. The rules and regulations of the Condominium Association will regulate the kind and number of pets, if any, allowed by Owners.

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

9.8 Subdivision of Units. Except as otherwise provided in this Declaration, no Unit, or portions thereof, may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership) and no Unit, whether leased or owned, shall be used for the operation of a timeshare/fractional program.

9.9 Restriction on Alterations. No Owner shall, without the prior written consent of the Management Committee, make or permit to be made any exterior alteration, Improvement or addition in or to any Unit. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities (including Limited Common Areas and Facilities).

9.10 Antennas and Satellite Dishes. To the extent enforceable under applicable law, antennas and satellite dishes are prohibited at the Project, unless approved in advance and in writing by the Management Committee.

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

9.12 Safety. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association but for such activity, would pay, without the prior written

consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or her or his or her guests, lessees, licensees or invitees.

9.13 No Smoking. Consistent with the findings of the Utah Legislature made in the Utah Clean Air Act, Utah Code Ann. §26-38-1 et seq. and elsewhere, that environmental tobacco smoke is a carcinogen and a nuisance, and that standard construction practices are not effective to prevent the drift of tobacco smoke generated in a Unit to another Unit or to Common Areas and Facilities, the Project is a non-smoking area in its entirety and smoking of tobacco products and the use of E-cigarettes (as defined by Utah law) are prohibited anywhere within the Units and the Common Areas and Facilities, including parking areas and within 25 feet of any entrance to the Project.

9.14 Compliance with Rules and Regulations. No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by Declarant or the Management Committee.

9.15 Leases. Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of the Condominium Documents and the Condominium Documents, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his or her Unit. An Owner shall be responsible and liable for any damage to the Project caused by his, her or its tenants.

9.16 Compliance with Condominium Documents. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in the Condominium Documents, each and all of which are declared and agreed to be for the benefit of the Project; further, each and all of the provisions of the Condominium Documents, shall be deemed to run with the land and shall be a burden and a benefit to Declarant, the successors and assigns of said Declarant, and any person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sub lessees, heirs, executors, administrators, devisees and successors. Each Owner, by accepting a deed to a Unit, recognizes that (a) the Project is subject to the Condominium Documents, and (b) by virtue of his ownership, he has become a member of the Association. Each Owner, by accepting a deed to a Unit, acknowledges that he has received copies of the Condominium Documents. The Owner agrees to perform all of his or her obligations as a member of the Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Declaration and other governing documents of the Association.

9.17 Enforcement Power. The Management Committee shall have the power to enforce the covenants and restrictions contained in the Condominium Documents, but only as said covenants and restrictions relate to the Project, and to collect assessments on behalf of the Association.

9.18 Recreation Area Risks. The Project is located in a mountain area with certain inherent risks and inconveniences, all of which are assumed by the Owners and tenants of Units and their invitees. In addition, the Project is adjacent to a public skiing facility and recreation area which may generate an unpredictable amount of disturbances.

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

9.20 Use of Elevator. The elevator is part of the Common Areas and Facilities of the Project. However, because the Penthouse Unit on the fourth level of the Project is designed for the elevator to open directly to the interior of the Penthouse Unit, the Owner of the Penthouse Unit shall have the exclusive right to secure the elevator so that access to the Penthouse Unit from the elevator is limited exclusively to the Owner of the Penthouse Unit, its guests and invitees. The Owner of the Penthouse Unit shall have the exclusive right, at such Owner's expense, to install and maintain any equipment necessary, in such Owner's discretion, to control access from the elevator into the Penthouse Unit, subject to all applicable public safety regulations and codes and provided that the changes or modifications to the elevator do not void or diminish the manufacturer's warranty. Any changes or modifications to the elevator require the prior written approval of the Declarant, which approval shall not be unreasonably withheld or delayed. The Owner of the Penthouse Unit shall have sole authority and discretion to authorize individuals to exit the elevator into the Penthouse Unit. Declarant and all Owners of Units other than the Penthouse Unit, by acceptance of a deed to a Unit, hereby waive any right to utilize the elevator above the third floor and any right to exit from the elevator onto the fourth floor. The foregoing limitations on the use and access of the elevator above the third floor shall not restrict access above the third floor by employees and contractors of the Association for the sole purpose of maintaining, repairing or replacing the elevator or any of its components, provided that such use shall not include any right of access to the interior of the Penthouse Unit, except in case of emergency.

## ARTICLE X

### ASSOCIATION AND MANAGEMENT COMMITTEE

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

10.1.1 Management Committee. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of three (3) natural persons as provided in the Bylaws. The Management Committee shall serve as the Board of Directors of the Association and shall be elected as provided in this Declaration and in the Bylaws.

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

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

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

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

10.1.2.4 Expenses. To determine and pay the Common Condominium expenses.

10.1.2.5 To assess and collect the Commercial Assessments, the Residential Assessments, and the proportionate share of Common Condominium Expenses from the Owners, as provided in Article XVIII hereinafter.

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

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

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

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

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

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

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

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

10.1.2.14 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

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

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

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

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

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

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

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

10.1.7 Common Area Manager. The Association acting through the Management Committee may enter into a contract with a Common Area Manager for the management of the Project. Pursuant to such management contract the Management Committee may delegate to a Common Area Manager some or all of the duties, powers, and responsibilities referred to in Section 10.1.2 above. The Common Area Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself.

10.2 No Liability for Latent Defects. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE XIII,

THE CONDOMINIUM ASSOCIATION AND THE MANAGEMENT COMMITTEE SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY CONSTRUCTION DEFECT OR LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY WEATHER CONDITIONS OR OTHER OWNERS OR PERSONS.

## ARTICLE XI

### MAINTENANCE, ALTERATION AND IMPROVEMENT

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

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

11.3 Responsibility for Interior Maintenance. Notwithstanding anything in this Declaration to the contrary, the Owner at the Owner's expense shall maintain and keep in repair the interior of the Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Units or the Common Areas and Facilities. All fixtures, equipment, and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair any entry door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the Improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Building, or impair any easement or hereditament. Except as otherwise provided in this Declaration, an Owner shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Areas and Facilities at such Owner's expense. Except as otherwise set forth in Section 6.4, no Owner shall alter any Common Areas and Facilities without the prior written consent of the Association.

11.4 Failure to Maintain. In the event that portions of a Unit or other Improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such Improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed Improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the

Management Committee, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other Improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article XVIII of this Declaration.

**11.5 Combination of Adjacent Units.** Upon written notice to the Management Committee, two or more Units may be utilized by the Owner(s) thereof as if they were one Unit. Any walls, floors or other structural separations between any two such Units may, for as long as the two Units are utilized as one Unit, be utilized and/or removed by the Owner(s) of the adjoining Units as Limited Common Areas and Facilities, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for the joint utilization of the two Units, would have been occupied by the structural separation, shall be closed at the equal expense of the Owner(s) of each of the two Units and the structural separations between the two Units shall thereupon become Common Areas and Facilities.

**11.6 Procedure for Combination of Adjacent Units.** Units may be combined as set forth in the following paragraphs:

**11.6.1 Notice Required.** No Unit or Units shall be combined either by agreement or legal proceedings, except as provided in this Section 11.6. An Owner or Owners may combine Units by giving notice in writing to the Management Committee, the Mortgagee(s) of the Unit(s) to be combined and, if required by local law, to the Municipal Authority. The notice must include complete plans and specifications for accomplishing the combination and proposed amendments of this Declaration and the Condominium Plat, if necessary or required.

**11.6.2 Approvals.** The combination of a Unit will be accepted only if approved in writing by the Mortgagee(s) of the Unit(s) to be combined, if required by their Mortgages, and by the Municipal Authority, to the extent required by applicable law. The Management Committee may approve the subdivision only as to form and legal sufficiency. The Municipal Authority, if required, may approve the proposal as to applicable planning and zoning requirements.

**11.6.3 Common Areas and Facilities.** A combination of Units shall provide for reallocation of the percentage ownership in the Common Areas and Facilities among the resulting Unit(s) on the basis of Square Feet, consistent with the provisions of Section 4.2, so that the combined percentages of ownership of the resulting Unit(s) are identical with the combined percentage ownerships of the Unit(s) prior to combination.

**11.6.4 Liability for Costs.** The Owner(s) of the Unit(s) to be subdivided or combined shall be responsible for all costs associated with its implementation including but not limited to costs of amendment and Recording of the Amendment and Supplemental Map to effect the proposal, if necessary or required; review of the documents for form, including reasonable attorneys' fees incurred by the Management Committee; and the cost of any modifications to the Project to implement the proposal.

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

## ARTICLE XII

### INSURANCE

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

12.1.1 Blanket Insurance. A "master" type policy of property insurance shall be maintained covering the entire Project (excluding those portions of the interiors of the Units which must be insured under the Owner insurance provisions described in Section 12.8 below), including: Common Areas and Facilities; Limited Common Areas and Facilities; the Building including all Units and any fixture, improvement, or betterment installed at any time to a Unit; fixtures, machinery, building service equipment, personal property and supplies comprising a part of the Common Areas and Facilities maintained for the service of the Project or owned by the Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage as modified herein. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage.

12.1.2 Replacement Endorsements; Deductibles. If the Management Committee deems such advisable and as long as it is available at a reasonable cost, the insurance policy described in Section 12.1.1 shall include a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance) to assure full insurable value replacement cost coverage. Unless the Management Committee otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be Ten Thousand Dollars (\$10,000) and for losses related to individual Units that are covered by such a policy, the deductible related to each individual Unit shall be Ten Thousand Dollars (\$10,000.00). The Association shall set aside and include in the Association's operating reserve account an amount equal to the amount of the Association's property insurance deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000, subject to the Management Committee's right to recover such deductible amounts from persons or Owners whose gross negligence gave rise to the damages and claims under a policy covering the Common Areas and Facilities.



12.1.3 General Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association's supervision, and any commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least Three Million Dollars (\$3,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Alternatively, the Association may obtain an umbrella policy for such general liability coverage as determined by the Management Committee in its sole and exclusive discretion. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, and Building exteriors. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, contractual and all-written contract insurance, workers' compensation and employer's liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least thirty (30) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

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

12.1.5 Designation of Insured. The name of the insured under each policy required to be maintained by Section 12.1 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name if required by law.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner shall be a beneficiary of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

12.2 Required Endorsements. Each policy required to be maintained by Section 12.1 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

12.3 Additional Provisions. Each policy required to be maintained by Section 12.1 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually and any person residing with the Owner, if the Owner resides in the Unit; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

12.4 Management Committee Duties. In contracting for the policies of insurance required to be maintained by Section 12.1, the Management Committee shall make reasonable efforts to secure (where economically feasible and reasonably available) coverage commonly required by private mortgage investors for projects similar in construction, location and use.

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

12.6 Insurance Provider Performance Requirements. Each insurance policy maintained pursuant to the foregoing Sections 12.1.1, 12.1.3, and 12.1.4 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has an A or better general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this Article XIII shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

12.7 Annual Review. All insurance policies shall be reviewed at least annually by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed.

In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

12.8 Owner to Insure. Notwithstanding anything in this Article XII to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's interior portions of his, her or its Unit and personal property and furnishings. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Upon reasonable request by the Management Committee, or the Common Area Manager on its behalf, each Owner shall cause an insurer which has issued an insurance policy under this Section to issue a certificate or a memorandum of insurance to the Association or the Common Area Manager evidencing that the Owner has procured the appropriate insurance coverage for his, her or its Unit as required by this Declaration. Any insurance obtained pursuant to this Section shall not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association and the Common Area Manager. In the event an Owner does not provide evidence of insurance within a reasonable time period as determined by the Management Committee, or the Common Area Manager on its behalf, then the Association may procure such physical damage insurance coverage on behalf of the Owner as required by this Section and the Association shall be entitled to collect the amount of such insurance premium from the Owner as if the amount were a default Assessment, with the understanding that the Management Committee on behalf of the Association may impose and foreclose a lien for the payment due.

12.9 Notice. The Association shall provide each Owner written notice of the Owner's obligation under this Article XII for the Association's policy deductible(s) and of any change in the amount of the deductible(s).

### **ARTICLE XIII**

#### **DESTRUCTION OR DAMAGE**

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

13.2 Repair and Reconstruction. Repair and reconstruction of the Improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the

damage or destruction, with each Unit and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

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

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

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

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

13.3.4 Insufficient Proceeds; Repair and Replacement. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 18.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

13.3.5 Insufficient Proceeds; Vote to Repair or Replace. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least sixty-seven percent (67%) of the votes of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least sixty-seven percent (67%) of the votes of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall Record in the office of the Office of the Summit County Recorder, State of Utah, a notice setting forth such facts. Upon the Recording of such notice, the following shall occur:

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

13.3.5.2 Each Owner shall own an undivided interest in the Project equal to his or her percentage ownership interest in the Common Areas and Facilities;

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

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

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

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

13.5 Repair Fund. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Special Common Assessments made pursuant to Section 18.1.3 hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds, if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in accordance with their undivided percentage interest in the Common Areas and Facilities.

13.6 Restrictions on Amendment. This Article XIII shall not be amended unless Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and Recorded in accordance with the provisions of this Declaration.

## ARTICLE XIV

### TERMINATION

14.1 Termination; Vote Required. Except as otherwise provided in Article XII and Article XIII, the Project may be terminated only by the affirmative vote of Owners holding at least 67% of the Total Votes of the Association at a meeting of the Owners duly called for such purpose.

14.2 Removal from the Act. The Owners may remove the Project from the provisions of the Act by an instrument duly Recorded to that effect, provided that the holders of all liens affecting any of

the Units consent or agree by instruments duly Recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of the Act.

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

14.4 Sale of Property Following Termination. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the Owners respective undivided interest in the Common Areas and Facilities. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all Common Assessments and other obligations imposed on Owners by this Declaration.

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

## ARTICLE XV

### EMINENT DOMAIN

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

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

15.3 Condemnation of Unit(s). With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to Article XIII above and shall be deposited with the Management Committee as

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

15.4 Removal from Act. In the event the Project is removed from the provisions of the Act pursuant to Article XIV above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities.

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

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

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

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

## ARTICLE XVI

### MORTGAGEE PROTECTION

16.1 Roster of Eligible Mortgagees; Notice. The Management Committee shall maintain a roster containing the name and address of each Eligible Mortgagee of a Unit as such term is defined herein. To be considered an Eligible Mortgagee, a First Mortgagee shall provide the Management Committee with a copy of its Recorded First Mortgage and the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage together with a written request that it receive notice of the matters and actions described below. The Management Committee shall strike the Eligible Mortgagee from the roster upon such Eligible Mortgagee's request or upon the Management Committee's receipt of a copy of a Recorded full release or satisfaction of the Eligible Mortgage. The Management Committee shall give notice of such removal to the Eligible Mortgagee unless the Eligible Mortgagee requested the removal. Upon the Management Committee's receipt of such written request, an Eligible Mortgagee shall be entitled to timely written notice of:

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

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

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

16.2 Notice of Default. The Management Committee shall give to any Eligible Mortgagee on the roster written notification of any default by the mortgagor of the respective Owners in the performance of such mortgagor's obligations under this Declaration which is not cured within thirty (30) days.

16.3 Subordination of Lien. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was Recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned. All taxes, Common Assessments and charges that may become liens prior to the First Mortgage under Utah law relate only to the individual Units and not to the Project as a whole.

16.4 Restrictions on Amendment. No amendment to this Article XVI shall materially adversely affect the rights of an Eligible Mortgagee under Section 16.1 above who has Recorded a valid First Mortgage prior to the Recordation of any such Amendment.

## **ARTICLE XVII**

### **AMENDMENT**

17.1 Amendment by Association. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Plat shall require the affirmative vote of 67% of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Article shall be accomplished through the Recordation in the Office of the Summit County Recorder of an instrument executed by the Association. In such instrument an officer or trustee of the Association shall certify that the vote required by this Article for amendment has occurred.

17.2 Amendment by Declarant. This Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such Amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify



ambiguities; or (c) if such Amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Unit. Further, prior to the expiration of the Declarant's Control Period, Declarant may unilaterally amend this Declaration to make technical or clerical corrections or to conform with applicable law, so long as any such Amendment does not materially or adversely affect title to any property without the consent of the affected Owner.

17.3 Amendment to Comply with Law. Anything in this Article or Declaration to the contrary notwithstanding, Declarant also reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an Amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the Recordation by Declarant of an Amendment duly signed by Declarant, specifying the nature of the qualifying reason for such amendment pursuant to this Section 17.3. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when Recorded, shall be binding upon all Units and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Article deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

17.4 Declarant's Reserved Right to Amend. Notwithstanding anything contained in this Declaration to the contrary, because the Plat has been Recorded prior to completion of the construction of the Units, Declarant reserves the right to unilaterally amend the Plat at any time and from time to time by Declarant if such amendment is necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct clerical or drafting mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Plat.

17.5 No Violation of Condominium Documents. Notwithstanding the foregoing, no amendment to this Declaration may be Recorded that would render the Project in violation of the Condominium Documents without the prior written consent of the City and County, as applicable or necessary.

## **ARTICLE XVIII**

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

18.1 Assessments. The making and collection of Assessments by the Association from Owners of Units for their share of Condominium Expenses shall be pursuant to the Bylaws and subject to the following provisions:

18.1.1 Liability for Payment. Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Condominium Expenses, such share being the same as the ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him or her. Each Owner of a Residential Unit, including Declarant, for each unit which it owns, shall also be liable for a proportionate share of the Residential expenses. The Residential Owner's proportionate share of the Residential expenses shall be a fraction, the numerator of which is the Square Feet of the Owner's Unit, and the denominator of which is the total Square Feet of all Residential Units in the Project. The Owner of the Commercial Unit shall also be liable for the payment of all Commercial expenses. Two separate and distinct funds shall

be created and maintained hereunder, one for operating expenses and one for capital reserve expenses with accounting sufficient to track and separately delineate the assessment, collection, and disbursements of the Common Assessments, the Commercial Assessments, and the Residential Assessments, and the reserves attributable to each. Until the Association makes an assessment for Common Condominium Expenses, Declarant shall pay all Common Condominium Expenses. After an assessment has been made by the Association, Regular Common Assessments, Residential Assessments and Commercial Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments and, depending on the nature of the Unit, either Residential Assessments or Commercial Assessments shall be levied against each separate Unit. No Owner who is delinquent in the payment of any Regular Common Assessment, Special Common Assessment, Residential Assessment, Commercial Assessment, interest, late fee, or any other financial obligation to the Association shall be entitled to participate in meeting of the Association or to vote on any matter brought before the Association.

18.1.2 Annual Increase. The Association may not impose a Regular Common Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Regular Common Assessment, without first obtaining the affirmative vote the Owners holding a majority of the Total Votes of the Association, cast at a meeting of the Association at which a quorum is present. The Association shall provide notice, by first class mail to all Owners, of any change in the Regular Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

18.1.3 Special Common Assessments. In addition to the Regular Common Assessments, the Association may levy in any calendar year Special Common Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment against an Owner is a remedy utilized by the Management Committee to reimburse the Association for costs incurred in bringing the Owner and/or his or her Unit into compliance with the provisions of the Condominium Documents. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

18.1.4 Interest; Late Fees. All Assessments shall be due as determined pursuant to the Bylaws. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Assessments when due shall be subject to a reasonable late fee, established by the Management Committee from time to time. All payments of Assessments shall be first applied to accrued interest and late fees, costs of collection, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Condominium Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively

against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Condominium Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

**18.1.5 Lien for Assessments.** There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon Recordation in the Office of the Summit County Recorder of a written notice of lien by the Management Committee or the Common Area Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be Recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure by the Management Committee or Common Area Manager conducted in accordance with the provisions of the Act. The Association and each Owner hereby appoint Joe Wrona as trustee for the purpose of exercising the power of sale in connection with any non-judicial foreclosures as provided in the Act; provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in the Act. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, for the purpose of securing each Owner's obligations under the Declaration and Act, including but not limited to the obligation to pay all Common Assessments. At least 30 calendar days before initiating a non-judicial foreclosure, the Association shall provide notice to the Owner of the intended non-judicial foreclosure in the form and as required by Section 57-8-46 the Act, as the same may be amended or superseded from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. Owners have the right to demand judicial foreclosure in the place of non-judicial foreclosure as provided in the Act. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances Recorded before Recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 18.3 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

**18.1.6 Liability Upon Transfer.** In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her Assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement shall be furnished within ten (10) business days after receipt of the request and upon payment of a reasonable fee (not to exceed Ten Dollars (\$10.00) unless otherwise allowed by the Act) and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith. The grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement furnished under this Section 18.1.6.

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

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

18.2 Capital Improvements. The Association through the Management Committee shall include in the Common Assessments amounts representing sums to be used for the replacement of or additions to capital items or Improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section 18.2. Upon the transfer of a Unit, the capital reserves previously paid by the transferring Owner shall remain the property of the Association, for the use and benefit of the Association in making future repairs, replacements, Improvements and capital additions to the Project.

18.3 Use of Reserve Funds. The Management Committee shall cause a reserve analysis to be conducted no less frequently than every six years, and reviewed no less frequently than every three years, as required by Section 57-8-7.5 of the Act, as the same may be amended or superseded from time to time. The Management Committee shall not expend funds that have been designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 18.1.3 hereof.

18.4 Working Capital Fund. A working capital fund equal to three (3) monthly installments of the annual assessment for each Unit shall be established and maintained for the Project. Each Unit's share of the working capital fund shall be collected from the purchaser of a Unit and transferred to the Association at the time of the closing of sale of that Unit. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire

additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any Assessment.

**18.5 Leased Units.** If an Owner shall at any time lease his or her Unit and shall default in the payment of Assessments for a period of more than sixty (60) days after due and payable, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid by giving the notice and following the procedure established in Section 57-8-53 of the Act, as the same may be amended or superseded from time to time. This Section 18.5 may be incorporated by reference into every lease agreement entered into by and between an Owner and his or her tenant, whether or not this Section is expressly referenced therein. The Management Committee or Common Area Manager must give the Unit Owner written notice of its intent to demand full payment from the tenant.

**18.6 Reinvestment Fee.** Upon the transfer of a Unit, each Purchaser or Transferee of the Unit shall notify the Condominium Association of the transfer. Except in connection with the initial sale or transfer of each Unit by the Declarant, the Condominium Association may require the Purchaser or Transferee of a Unit to pay to the Condominium Association a reinvestment fee in the amount of 0.5% of the value of the transferred property. For purposes of this paragraph, value is defined to be the purchase price or the tax valuation set by Summit County, whichever is higher. The Condominium Association shall use the reinvestment fee for payment of common expenses and reserves to benefit the burdened property, including payment for Condominium Association expenses and common planning, facilities, and infrastructure, as the Condominium Association may determine in its sole and exclusive discretion. The reinvestment fee shall be secured by the lien for unpaid Assessments and the Condominium Association shall have the right to collect and enforce the payment of the reinvestment fee in the same manner as enforcement and collection of unpaid Assessments. The burden of the reinvestment fee is intended perpetually to run with the land and to bind the Condominium Association's successors-in-interest and assigns. A separate notice of the reinvestment fee required by this paragraph has been or shall be recorded in the official records of Summit County, Utah. For purposes of this paragraph, a "transfer" shall mean, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any portion of a Unit, including but not limited to (1) the conveyance of fee simple title to any portion of a Unit, (2) the transfer of more than fifty percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns a portion of a Unit, and (3) the transfer of more than fifty percent of the interest in net profits or net losses of any partnership, joint venture, or other entity which, directly or indirectly, owns a portion of a Unit. No reinvestment fee shall be payable and a "transfer" shall not have occurred with respect to (1) the creation of a trust deed or mortgage, (2) an involuntary transfer, (3) a transfer that results from a court order, (4) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity to the Condominium Association, (5) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution, and (6) the transfer of burdened property by a financial institution. The Condominium Association shall have the right to determine in its sole and exclusive discretion whether a "transfer" has occurred for the purposes of levying a reinvestment fee.

**18.7 Extension of Lien Rights.** To the extent any Owner fails to pay Assessments, all of the lien rights and other remedies contained in this Article XVIII shall be available to the Condominium Association in order to cause collection of Assessments.

**18.8 Declarant Subsidy.** Notwithstanding any other provision of this Declaration to the contrary, no Assessments shall be levied against Exempt Property owned by Declarant or Declarant

Affiliate. However, for as long as Declarant or a Declarant Affiliate owns any Exempt Property, Declarant shall subsidize the Condominium Association for the amount by which (a) the actual cost and expense of operating and administering the Condominium Association and maintaining reasonable reserves for maintenance, replacement and repairs and for contingencies, all as provided in this Declaration, exceeds (b) the total amount of Common Assessments levied against and collected from Condominium Association Members. The subsidy required of Declarant under this Section may be in the form of cash or in the form of "in kind" contributions of goods or services, or in any combination of the foregoing, provided that "in kind" contributions of goods or services must directly reduce the Condominium Association's costs and expenses for which an Assessment is being levied as set forth in the Condominium Association's budget, with such goods or services being valued at the amount the budgeted costs and expenses of the Condominium Association are so reduced. Declarant shall make payments or contributions in respect to its subsidy obligations under this Section at such time as the Management Committee may reasonably request from time to time as necessary to insure that there are sufficient funds available for payment of Condominium Association costs and expenses and accumulation of adequate reserves (but in any event not more often than monthly); provided, however, that Declarant's subsidy obligation shall in no event exceed the amount of Common Assessments that would be levied against the Exempt Property were such property not exempt. Within thirty (30) days of the end of each assessment period, the Management Committee shall make an accounting of Declarant's subsidy obligations for that period, what amounts have been paid by Declarant (whether in cash, goods or services) with respect to such obligations, and what amounts are due. A copy of the accounting shall be sent to Declarant and to each Condominium Association Member. Declarant shall make payments or contributions in respect of its subsidy obligations under this Section at such times as the Management Committee may reasonably request from time to time (but shall not be required to make such payments or contributions more often than monthly); at the end of each assessment period, either (i) Declarant shall pay or contribute to the Condominium Association such additional funds, goods or services (or any combination thereof) as may be necessary, when added to all other funds, goods and services paid or contributed by Declarant during such assessment period; or (ii) the Management Committee shall credit against Declarant's subsidy obligation for the immediately following assessment period the amount, if any, by which the total of all payments or contributions paid or made by Declarant during such assessment period exceeded the total subsidy obligation of Declarant for such assessment period under this Section.

## ARTICLE XIX

### VOTING

19.1 Voting Rights. At any meeting of the Association, each Owner of a Unit, including Declarant, either in person or by proxy as set forth in the Association bylaws, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in Exhibit "B," so long as the Owner is current in the payment of all assessments and other financial obligations to the Association. The voting rights appurtenant to each Unit shall vest upon execution and Recording of this Declaration.

19.2 Character of Voting Right. The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the consent of two-thirds of the Unit Owners expressed in a duly Recorded Amendment.

**ARTICLE XX**

**EASEMENTS**

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

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

20.3 **Common Areas and Facilities.** In the event Declarant or another party may construct additional Buildings, which may encroach upon portions of the Common Areas and Facilities, and Declarant shall also have an easement over, across and within the Common Areas and Facilities for such purposes.

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

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

20.6 **Construction Easement.** Declarant shall have a temporary construction easement over the Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing future phases of the Project including any future buildings and other physical Improvements as well as all Units and Common Areas and Facilities. The Owners of Units which have been constructed in prior phases do hereby acknowledge and agree that there will be construction activities, traffic, noises, dust, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Areas and Facilities appurtenant thereto, and such Owners do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the restrictions set forth in Article IX hereof.

20.7 **Easement for Infrastructure.** Declarant, for itself and its successors and assigns, including Owners, retains a right and easement in and about the Building for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common

Areas and Facilities in connection with the improvement or alteration of any Unit, including the right of access to such portions of the Common Areas and Facilities as is reasonably necessary to accomplish such Improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Section, the decision of the Management Committee shall be final.

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

20.9 Telecommunications Easement. Declarant reserves a non-exclusive easement for itself and its assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities within the Project. Declarant further reserves a right of access to such facilities over, across, and through all other Common Areas and Facilities of the Project in order to access the telecommunications facilities to exercise the rights established herein. Declarant may transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of the rights under this Section 20.9 without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to Declarant, and any assignee of its rights hereunder.

20.10 Utility Easement. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, data transmission and other communication services to erect and maintain the necessary equipment on or beneath the Property and to affix and maintain electrical, communications and telephone wires, circuits and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without unduly disturbing the uses of the Owners, the Association and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Management Committee shall have, and are hereby given, the right and authority to grant such easement upon, across, over or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 20.10 shall in no way affect, avoid, extinguish or modify any other Recorded easement on the Property. Notwithstanding the foregoing grant of blanket utility easements, Declarant reserves the right to Record an instrument which narrows and limits such grant of utility easement to the normal easement width of the utility in those specific areas of the Project which actually contain the utility facilities as described in such instrument and for the purposes described therein. Such reserved right is subject to the utility companies' rights then located under the real property depicted on the Plat.

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

20.12 Declarant Reserved Rights. Declarant reserves the right to enter into, establish, execute, amend, and otherwise deal with contracts and agreements for the use, lease, repair maintenance or regulation of parking or recreational facilities, which may or may not be a part of the Property, for the benefit of the Owners or the Association.



**ARTICLE XXI**

**NOTICES**

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

Management Committee  
692 Main Street Condominiums  
P.O. Box 683300  
Park City, Utah 84068

**ARTICLE XXII**

**NO WAIVER**

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

**ARTICLE XXIII**

**ENFORCEMENT**

23.1 **Compliance with Condominium Documents.** All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Condominium Documents and the Condominium Documents, and the rules and regulations and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Project Documents, the Condominium Documents or the decisions of the Association. Owners shall have a similar right or action against the Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Management Committee to impose monetary penalties, temporary suspension of an Owner's right to the use of the Common Areas and Facilities, or other appropriate discipline so long as the Owner has been given notice and has had the opportunity to

request a hearing in accordance with the Bylaws. The Management Committee may delegate to the Common Area Manager, the power and authority to carry out disciplinary actions duly imposed.

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

23.2.1 The judgment of a court of competent jurisdiction; or

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

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

23.4 Power of Enforcement. The Association shall have the power to enforce the covenants and restrictions contained in the Condominium Documents.

#### **ARTICLE XXIV**

##### **DECLARANT**

The term "Declarant" as used herein means and includes Declarant and any person or persons who might acquire title from it to all or some of the unsold Units through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all or some of the remaining Units in a sale in the nature of a bulk sale. The person acquiring any of such property from Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and the Act. Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and Recorded in the Office of the Summit County Recorder, State of Utah. Upon such Recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

#### **ARTICLE XXV**

##### **ENFORCEMENT OF CONDOMINIUM DOCUMENTS**

25.1 Dispute Resolution. The Association, the Declarant, and the Owners and successors and assigns shall meet and confer in a good faith effort to resolve any dispute about the interpretation or enforcement of this Declaration before proceeding with more formal methods of dispute resolution. Should negotiations prove unsuccessful in resolving the dispute, the parties to the dispute may agree in writing to submit the dispute to arbitration. In the event the parties to a dispute do not agree to submit the dispute to arbitration and the dispute is not resolved by the meet and confer process, the matter shall be resolved by the Third Judicial District Court of the State of Utah.

**ARTICLE XXVI**

**AGENT FOR SERVICE OF PROCESS**

The agent for service of process under the Act until the expiration of the period of Declarant control under Section 8.3 shall be Joseph Wrona, and the registered agent's street address where it maintains an office for service of process is 1745 Sidewinder Drive, Park City, Utah 84060. Thereafter, the agent for service of process shall be the individual or entity designated by the Association on the records of the Division of Corporations of the Utah State Department of Commerce.

**ARTICLE XXVII**

**SEVERABILITY**

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

**ARTICLE XXVIII**

**CONFLICT**

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

**ARTICLE XXIX**

**CAPTIONS**

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

**ARTICLE XXX**

**LAW CONTROLLING**

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

**ARTICLE XXXI**

**EFFECTIVE DATE**

This Declaration shall take effect when Recorded in the Office of the Summit County Recorder, State of Utah.

IN WITNESS WHEREOF, the undersigned has executed this instrument this 17 day of February, 2015.

692 MAIN STREET INVESTORS, LLC, a Utah limited liability company

By: [Signature]  
Ken Abdalla  
Manager  
692 Main Street Investors, LLC

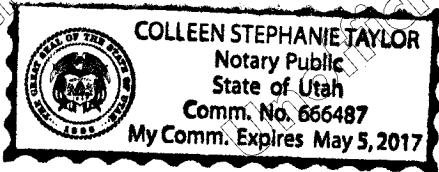
STATE OF UTAH

COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this 17 day of February, 2015 by, Kenneth Abdalla, who appeared before me and acknowledged that he is the Manager of 692 Main Street Investors, LLC, a Utah limited liability company.

By: [Signature]  
NOTARY PUBLIC

My Commission Expires: May 5, 2017



**EXHIBIT A**

**PROJECT LEGAL DESCRIPTION**

All of Lot A-1, The Town Lift Site, Phase A, First Amended Subdivision Plat, according to the official plat thereof on file and of record in the Office of the Summit County Recorder, said parcel being more particularly described as follows:

Beginning at a point on the westerly boundary of Lot A-1, said point being South 33°25'00" East 29.54 feet and North 56°35'00" East 23.50 feet from a brass cap in a metal casting at the intersection of 7<sup>th</sup> Street and Main Street, said point being on a curve to the right having a radius of 7.50 feet, of which the radius point bears North 56°35'00" East; thence along the arc of said curve 13.00 feet through a central angle of 99°21'00"; thence North 65°56'00" East 88.52 feet to a point on a curve to the right having a radius of 17.50 feet, of which the radius point bears South 24°04'00" East; thence along the arc of said curve 8.31 feet through a central angle of 27°12'10"; thence South 24°04'00" East 44.32 feet; thence South 65°56'00" West 20.98 feet; thence South 58°02'07" West 75.77 feet; thence North 33°25'00" West 48.60 feet to the point of beginning.

Description contains 0.12 acres.

Together with the easements of record that are described on the Plat.

**EXHIBIT B**

**SCHEDULE OF UNITS, SQUARE FEET, VOTES, and UNDIVIDED INTERESTS IN COMMON AREAS**

Unit #	Unit Type	Unit SF	Undivided Interest Per Unit	# Votes per Unit
A	Residential	1,892	17.391%	17
B	Residential	774	7.115%	7
C	Residential	1,892	17.391%	17
D	Residential	774	7.115%	7
PH	Residential	2,099	19.294%	20
<b>Subtotal</b>		<b>7,431</b>	<b>68.306%</b>	<b>68</b>
C-1	Commercial	3,448	31.694%	32
<b>Subtotal</b>		<b>3,448</b>	<b>31.694%</b>	<b>32</b>
<b>TOTALS</b>		<b>10,879</b>	<b>100.0%</b>	<b>100</b>

**EXHIBIT C**  
**ASSOCIATION BYLAWS**

**[See Attached]**

## BYLAWS

### 692 MAIN STREET CONDOMINIUMS

The administration of the 692 Main Street Condominiums (the "Association") shall be governed by the Declaration of Condominium for the 692 Main Street Condominiums recorded in the Office of the Summit County Recorder, State of Utah (the "Declaration"), the Articles of Incorporation of 692 Main Street Condominiums, a Utah non-profit corporation (the "Articles"), these Bylaws, the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann., as amended from time to time) (the "Act") and the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Ann., as amended from time to time), (the "Nonprofit Act"). Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meanings set forth in Article I of the Declaration, unless the context clearly indicates otherwise.

1. Application of Bylaws. All present and future Owners, Mortgagees, lessees and occupants of Units and their employees and guests, and any other persons who may use the facilities of the 692 Main Street Condominiums (the "Project") in any manner are subject to the Declaration, the Articles, these Bylaws and all rules and regulations made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit, or the occupancy of any Unit, shall constitute an acceptance and ratification of and an agreement to comply with the provisions of the Declaration, the Articles and these Bylaws, and any rules and regulations made pursuant hereto, as they may be amended from time to time.

2. Management Committee.

2.1. Administration of Association. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Management Committee consisting of three (3) natural persons all of whom, except for members appointed by Declarant, shall be Owners. The Management Committee shall constitute the Board of Directors of the Association for all purposes and shall have all of the powers accorded to a Board of Directors under Utah law. The number of members of the Management Committee shall be three (3) unless otherwise determined by the vote or written assent of Owners holding a majority of the total votes present in person or by proxy at any meeting of the Association where a quorum is present.

2.2. Declarant Control Period. The Declaration establishes a Declarant Control Period, during which period the Declarant or persons designated by it have authority to appoint and remove the members of the Management Committee and officers of the Association. The Declarant Control Period shall terminate no later than the earlier of:

2.2.1. three (3) years after the first Unit is conveyed to an Owner; or

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

2.3. Initial Management Committee Members. The initial members of the Management Committee appointed by Declarant shall be the following persons: Brenda Nagle, President; Ken Abdalla, Vice President; and Kitty Stoneburner, Secretary/Treasurer.



2.4. **Composition.** Within ninety (90) days following the termination of the Declarant Control Period, the Owners shall elect a Management Committee of not less than three (3) nor more than five (5) members. Candidates for positions on the Management Committee must be present in person at the meeting where the election is held in order to qualify for office. The members and officers of the Management Committee shall take office upon election. Thereafter, at the annual meetings, the Association shall elect the members of the Management Committee to fill any positions becoming vacant at such meeting, pursuant to the terms of this Section 2.

2.5. **Nominating Committee; Nominations.** The Management Committee may nominate candidates to stand for election to the Management Committee or may, in its discretion, appoint from the Owners a nominating committee of not less than three (3) members at least ninety (90) days prior to the annual meeting of the Association. If appointed by the Management Committee, the nominating committee shall recommend to the Association at least one nominee for each position on the Management Committee to be filled at that particular annual meeting at least sixty (60) days prior to the annual meeting. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. Nominations for positions on the Management Committee may also be made by petition filed with the Secretary of the Association and the nominating committee at least sixty (60) days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Management Committee, if elected.

2.6. **Voting for the Management Committee.** Voting for the Management Committee shall be by secret written ballot. At any meeting of the Association, each Owner, either in person or by proxy, shall be entitled to cast for each vacancy the number of votes set forth in the Declaration for each Unit. Cumulative voting shall not be allowed.

2.7. **Term.** Members of the Management Committee shall serve for terms of three (3) years beginning immediately upon their election by the Association; provided, however, that the members of the Management Committee elected at the first annual meeting following the termination of the Declarant Control Period shall be elected to initial terms as follows: one (1) member shall serve for an initial term of one (1) year, one (1) member shall serve for an initial term of two (2) years, and the third member shall serve for an initial term of three (3) years. Thereafter, all members of the Management Committee elected shall serve for five-year terms. The members of the Management Committee shall serve until their respective successors are elected, or until death, resignation, or removal.

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

2.9. **Removal.** During the Declarant Control Period, the Declarant may appoint and remove members of the Management Committee in his or her discretion. Thereafter, a member of the Management Committee may be removed from office with or without cause by a majority

vote of the Management Committee. Following the Declarant Control Period, the Owners, representing at least two-thirds (2/3) of the Total Votes of the Association present in person or by proxy at any meeting of the Owners called and noticed for that specific purpose may also remove any member of the Management Committee elected by the Owners with or without cause.

2.10. Vacancies. If vacancies shall occur in the Management Committee by reason of the death or resignation of a Management Committee member, or by removal by a majority vote of the Management Committee, the Management Committee members then in office shall continue to act, and such vacancies shall be filled for the unexpired term of such member by a vote of the Management Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by vote of the Owners may be filled by election at the meeting at which such Management Committee member is removed or any subsequent regular or special meeting of the Association. A vacancy resulting from a removal by vote of the Owners shall only be filled by the vote of Owners holding a majority of the Total Votes of the Association present in person or by proxy at a meeting of the Association where a quorum is present.

2.11. Compensation. The members of the Management Committee shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the Total Votes of the Association; provided, however, that members of the Management Committee may be reimbursed by the Association for reasonable expenses actually incurred on behalf of the Association upon approval of a majority of the other Management Committee members. Any member of the Management Committee may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all members of the Management Committee not including the member to be employed.

2.12. Powers. The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Condominium Documents. The Management Committee is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective ten (10) days after adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Condominium Documents.

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

2.14. Special Meetings of the Management Committee. Special meetings of the Management Committee may be called by written notice signed by any two (2) members of the Management Committee. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project

or some other reasonable location in Summit County unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the members of the Management Committee. To the extent permitted by Utah law, special meetings of the Management Committee may be held by telephonic conference or other means as described in Section 2.13 above.

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

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

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

2.18. Action Without a Meeting. Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if one or more written consents, setting forth the action so taken, are signed by all of the Management Committee members and such signed consents are filed with the records of the Association. The consents of the Management Committee members may be sent by electronically transmitted facsimile, e-mail, or other form of wire or wireless communication providing a complete copy of the document.

2.19. Fiscal Year. The fiscal year shall be set by resolution of the Management Committee. In the absence of a Management Committee resolution, the fiscal year shall be the calendar year.

2.20. Liability of Management Committee Members. When a member of the Management Committee is sued for liability for actions undertaken in his or her role as a member of the Management Committee, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no

longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may only be recovered from persons whose willful activity gave rise to the damages.

2.21. Eligibility for Membership of Management Committee. An officer, employee, agent or director of a corporate Owner of a Unit, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member of a limited liability company that owns a Unit, and a fiduciary of an estate that owns a Unit may be considered an Owner for the purpose of determining eligibility for membership of the Management Committee. In all events where the person serving or offering to serve as an officer or member of the Management Committee is not the record Owner, he or she shall file proof of authority in the records of the Association.

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

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

### 3. Membership, Voting and Meetings of the Association.

3.1. Annual Association Meetings. The first meeting of the Association shall be held within one (1) year after the closing of the sale of the first Unit sold in the Project. Thereafter, there shall be an annual meeting of the Association at the date and time fixed in accordance with a resolution of the Management Committee at a reasonable place in the Project or some other location that is readily accessible at reasonable cost to the largest possible number of Owners as determined by resolution of the Management Committee.

3.2. Special Meetings of the Association. Special meetings of the Association may be called by the Declarant, the President, a majority of the Management Committee, or if the Association receives one or more written demands for a meeting that (a) state the purpose for which the special meeting is to be held and (b) are signed and dated by Owners representing at least thirty percent (30%) or more of the Total Votes of the Association. Special meetings of the Association may be held at a reasonable place in the Project or some other location that is readily accessible at reasonable cost to the largest possible number of Owners as determined by resolution of the Management Committee. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners.

3.3. Notice of Meetings of the Association. Notice of the annual meeting of the Association and of any special meetings of the Association shall be hand delivered or sent by first-class or certified mail, no fewer than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting to each Owner entitled to vote at such meeting at such Owner's address as

shown in the records of the Association or to any other mailing address designated in writing by the Owner. Such notice shall specify the place, date and hour of the meeting and a description of any matters that must be approved by the Owners for which the Owners' approval is sought at such meeting. The notice of a special meeting shall also include a description of the purposes for which the meeting is called. If any annual or special meeting of the Owners is adjourned to a different date, time or place, notice need not be given of the new date, time and place if the new date, time and place are announced at the meeting before adjournment. Notwithstanding the foregoing sentence, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed pursuant to Section 3.5 of these Bylaws or applicable law, notice of the adjourned meeting must be given pursuant to the requirements of this Section 3.3 to Owners entitled to vote at the meeting.

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

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

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

3.7. Action by Written Ballot. Any action that may be taken at any annual or special meeting of the Owners may be taken without a meeting if the Association delivers a written ballot to every Owner entitled to vote on the matter. The written ballot shall set forth each proposed action; and provide an opportunity to vote for or against each proposed action. All solicitations for votes by written ballot shall (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of members of the Management Committee; (c) specify the time by which a ballot must be received by the Association in order to be counted; and (d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter. Approval by written ballot pursuant to this Section 3.7 shall be valid only when:

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

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

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

3.9. Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy. The right to vote by proxy shall exist only where a notarized appointment form satisfying the requirements of Utah Code Ann. §16-6a-712 shall have been executed by the Owner or by its attorney thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered, at or prior to the beginning of the meeting, to the Secretary of the Association, or such other officer or person who may be acting as the secretary at the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.10. Exercise of Voting. In the event that a Unit is owned by more than one Owner, then by the majority written agreement of all Owners after the initial conveyance of such Unit, one Owner shall be appointed as the designated owner ("Designated Owner") for the Unit for the purposes of voting on Association matters and for billing purposes. This Designated Owner may be changed at any time by delivering to the Association written notification of such change signed by all the Owners of the Unit. If more than one of the Owners of a Unit is present at a meeting of the Unit, the vote allocated to that Unit may be cast only by the Designated Owner.

3.11. Association Membership. As set forth in the Declaration, all Owners shall be members of the Association.

4. Officers.

4.1. Designation. So long as there are three (3) members of the Management Committee, one of the member officers shall be designated by the Management Committee to serve as President, one as Vice President, and one as Secretary-Treasurer. The Management Committee may appoint additional Vice Presidents and such other assistant officers as the Management Committee may deem necessary. No officer shall receive compensation for serving as such. All officers and employees of the Association shall serve at the will of the Management Committee. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee.

4.2. Fidelity Bond. The Management Committee shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.3. President. The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an

association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He or she shall sign, and the Secretary shall witness, on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. He or she shall do and perform all acts which the Management Committee may require.

4.4. Vice President. The Vice President shall perform the functions of the President in his or her absence or inability to serve.

4.5. Secretary. The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Management Committee.

4.6. Treasurer. The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to the Common Area Manager.

4.7. Execution of Amendments. Any officer may prepare, execute, certify and Record approved amendments to the Declaration, Articles, and Bylaws on behalf of the Association.

5. Common Expenses; Assessments.

5.1. Common Assessments. All Common Expenses shall be assessed in accordance with the Declaration.

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

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

5.4. Assessment Records. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Management Committee in assessing Common Expenses against the Units, the Treasurer shall keep an accurate record of such Common Assessments and of the payments thereof by each Owner.

5.5. Personal Obligation. All Common Assessments shall be a separate, distinct and personal liability of the Owners at the time each Common Assessment is made. The Management Committee shall have the rights and remedies contained in the Act and in the Declaration to enforce the collection of Common Assessments.

5.6. Statements for Purchasers. Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly,

quarterly, annual or other periodic Common Assessments and the amount of unpaid Common Assessments charged against such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid Common Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Common Assessments shown thereon, provided that the former Owner shall remain so liable. Any such excess which cannot be promptly collected from the former Owner-grantor may be reassessed by the Management Committee as a Common Expense to be collected from all Owners, including without limitation the purchaser of such Unit, his or her successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Common Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Management Committee for which the Common Assessment is made relate in whole or in part to any period prior to that date. The Management Committee is authorized to require a reasonable fee not to exceed \$50.00, unless otherwise authorized by the Act, for furnishing such statements.

5.7. Statements for Owners and Mortgagees. In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days' prior written request therefor, provide to any Owner and to any Mortgagee, on request at reasonable intervals, a current statement of unpaid Common Assessments for Common Expenses, capital contributions, and for any expenses of and advances by the Management Committee with respect to a Unit. The Management Committee is authorized to require a reasonable fee not to exceed \$25.00, unless otherwise authorized by the Act, for furnishing such statements.

5.8. Collection. In all cases where all or part of any Common Assessments for Common Expenses and capital contributions and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefor under the Declaration or these Bylaws, the Management Committee may reassess the same as a Common Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Common Assessments.

## 6. Litigation.

6.1. Expenses. If arbitration is instituted or any action is brought by the Management Committee or by a member of the Management Committee on behalf of the Association, the expenses of suit, including reasonable attorneys' fees, shall be a Common Expense. Except as otherwise provided by the Declaration or applicable Utah law, if any action is brought against the Management Committee or the officers, employees or agents thereof in their capacities as such, the expenses of arbitration or suit, including attorneys' fees, shall be a Common Expense.

6.2. Defense. Except as otherwise provided by applicable Utah law, any action or arbitration proceeding brought by or against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee.

## 7. Enforcement.

7.1. Abatement and Enjoinment of Violations by Owners. The violation of any rules or regulations adopted by the Management Committee, the breach of any provision contained



herein or the breach of any provision of the Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

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

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

7.2. Monetary Fines. The Management Committee may assess a fine against an Owner for violations of the Condominium Documents provided that the Management Committee shall give notice to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within the time designated by the Management Committee, which shall be at least 48 hours. The Management Committee may only levy fines in the amounts and for the specific violations provided in these bylaws or the Association rules, as they may be amended from time to time. An Owner who is assessed a fine may protest the fine and request that the Management Committee hold an informal hearing to consider a protest or dispute of the fine, provided that such protest and request are made in writing to the Management Committee no later than thirty (30) days from the date the fine is assessed. Cumulative fines for continuing violations may not exceed \$500.00 per month.

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

## 8. Accounting.

8.1. Accounting and Recordkeeping. The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer. The Association shall maintain financial records, records of Assessments as required by Section 5.4 above and such other records as required by the Declaration or by law. The cost of any audit shall be a Common Expense unless otherwise provided in the Declaration.

8.2. Financial Statements. At the close of each fiscal year, the books and records of the Association shall be prepared by an independent public accountant approved by the Management Committee, and financial statements shall be prepared by said accountant and distributed to all Owners.

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

8.4. Maintenance and Inspection of Records. The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project maintained by the Association, Common Area Manager or managing company shall be made available for inspection and copying by any member of the

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

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

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

8.4.3. Payment of the cost of reproducing copies of documents requested by an Owner, Every member of the Management Committee shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Management Committee member agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes not reasonably related to the business of the Association and the Management Committee member's interest in such Association.

## 9 Rental or Lease of Units by Owners.

9.1. Rental Agreement. Short-term rentals shall be coordinated by the Rental Manager, if designated by the Management Committee, using a Rental Management Agreement as provided by the Rental Manager. Any Owner who utilizes a different form of agreement or who rents or leases his or her Unit for thirty (30) days or more in duration shall file with the Management Committee or the common Area Manager a copy of the rental or lease agreement.

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

9.3. Violations. If an Owner fails to correct violations by tenants within seventy-two (72) hours of such notice, the Management Committee or Common Area Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within thirty (30) days of Common Assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Declaration.

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

9.5. Collection and Application of Rents. As provided for in Section 19.5 of the Declaration, if an Owner shall at any time lease his or her Unit and shall default in the payment of Common Assessments for a period of more than sixty (60) days after due and payable, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such Common Assessments to the extent of the amount so paid. This Section 9.5 shall be incorporated by reference into every lease agreement entered into by and between an Owner and his or her tenant, whether or not this Section is expressly referenced therein.

10. Amendment of Bylaws.

Except as otherwise provided in the Declaration, these Bylaws, or by applicable law, the Bylaws may be amended by the vote or written assent of Owners holding a majority of the Total Votes of the Association present in person or by proxy at a meeting duly called for such purpose. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws, setting forth the fact of the required affirmative vote of the Owners, and the amendment shall be effective upon recording in the Office of the Summit County Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant during the Declarant Control Period, shall have the right to unilaterally amend these Bylaws without the vote or consent of the Management Committee or any Owner, subject to the unilateral amendment procedures and limitations described in Section 17.2 of the Declaration.

11. Miscellaneous.

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

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

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

11.4. Effective Date. These Bylaws shall take effect as of the date of the Declaration, having been duly adopted by the Management Committee.

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

EXECUTED the 10 day of February, 2015.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am a duly appointed President of the 692 Main Street Condominiums Association, a Utah nonprofit corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Management Committee thereof held on the 17 day of February, 2015.

Certified to be the Bylaws adopted by the Management Committee of the 692 Main Street Condominiums, a Utah nonprofit corporation, dated February 17, 2015.

By: B Nagle  
Brenda Nagle  
President  
692 Main Street Condominiums Association

STATE OF UTAH

COUNTY OF SUMMIT

The foregoing instrument was acknowledged before me this 17th day of FEBRUARY, 2015 by Brenda Nagle, who appeared before me and acknowledged that she is the President of 692 Main Street Condominiums, a Utah non-profit Corporation.

By: [Signature]  
NOTARY PUBLIC

My Commission Expires: May 5, 2017

