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DECLARATION OF CONDOMINIUM  
OF  
POWDER CANYON CONDOMINIUM PROJECT

THIS DECLARATION OF CONDOMINIUM is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2008, by Powder Canyon, LLC, a Utah limited liability company (hereinafter referred to as the "Declarant"), pursuant to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated, Sections 57-8-1 through 57-8-36 (2000 Replacement), as amended (the "Act").

WITNESSETH:

WHEREAS, Declarant is the fee owner of that certain real property (hereinafter sometimes referred to as the "Subject Property") more particularly described in Article II hereof; and

WHEREAS, Declarant has constructed or is constructing upon the Subject Property various residential units and improvements which Declarant desires to organize as a Condominium Project, all of such construction having been performed or to be performed in accordance with the Condominium Plat and the terms and conditions contained herein; and

WHEREAS, Declarant intends by recording this Declaration and the Condominium Plat to submit the Subject Property, and all improvements now or hereafter constructed thereon, to the provisions of the Act as a Condominium Project and to impose upon the Subject Property mutually beneficial restrictions under a general plan of improvement for the benefit of all Units within said Condominium Project and the Owners thereof; and

WHEREAS, the Subject Property is located within the Wolf Creek Resort area and is therefore subject to the terms and conditions of that certain Master Declaration of Covenants, Conditions and Restrictions of Wolf Creek Resort; and

NOW, THEREFORE, the Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration, including the recitals hereto, the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, to the extent permitted by the context hereof, have the meaning ascribed by the Act.

1.1 "Act" shall mean and refer to the Utah Condominium Ownership Act, (Sections 57-8-1 through 57-8-36, Utah Code Annotated (2000 Replacement)), as the same may be amended from time to time.

1.2 "Additional Land" shall mean all or any portion of the real property designated on Exhibit C attached hereto and incorporated herein by reference.

1.3 "Assessment" means any charge imposed by the Association, as permitted by the Act, including but not limited to, a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article IX below.

1.4 "Association," "Association of Unit Owners," or "Owners Association" shall mean Powder Canyon Condominium Association, Inc., a Utah non-profit corporation, which Association is established as provided herein.

1.5 "Association Documents" means this Declaration, the Articles, the Bylaws and the rules and regulations adopted by the Association, as the same may be amended from time to time.

1.6 "Authorized User" means any family member, employee, agent, independent contractor, lessee, tenant, or invitee of a Unit Owner.

1.7 "Building" or "Buildings" shall mean and refer to a building containing Units and comprising a part of the Property.

1.8 "By-laws" shall mean and refer to the By-laws of the Association. The initial By-laws shall be in the form set forth in Exhibit B attached hereto and made a part hereof.

1.9 "Common Areas" shall mean, refer to, and include:

(a) The real property (Subject Property) and interests in real property which this Declaration submits to the provisions of the Act, but excluding Units.

(b) All Common Areas designated as such in the Plat.

(c) All Limited Common Areas designated as such in the Plat.

(d) All foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, and entrances and exits of any and all Buildings.

(e) All installations for any and all equipment connected with the furnishing of Project utility services such as electricity, gas, heating, air conditioning, water and sewer.

(f) All elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus, installations and facilities included within the Project and existing for common use.

(g) The outdoor lighting, fences, landscaping and walkways.

(h) All roadways and surface parking areas located on the Property that have not been specifically dedicated for public use.

(i) Any hot tub or spa located in portions of the Property not specifically included within the individual Units.

(j) All portions of the Project not specifically included within the individual Units.

(k) All common areas and facilities as defined in the Act, whether or not enumerated herein.

(l) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

1.10 "Common Expenses" shall mean and refer to all sums which are assessed against and expended on behalf of all Owners and all sums which are required by the Association to perform or exercise its functions, duties, or rights under the Act, this Declaration, the management agreement for the operation of the Project, if any, and such rules and regulations as the Association may from time to time make and adopt. By way of illustration, but not in limitation, Common Expenses shall include: (i) expenses of administration, maintenance, operation, repair and replacement of those components of the Common Areas that must be maintained and/or replaced on a periodic basis together with such reserves as may be from time to time established for the same by the Association; (ii) expenses agreed upon by the Association, or the Owners, and lawfully assessed against the Owners in accordance with the Declaration; (iii) expenses declared to be Common Expenses by the Act, this Declaration or the By-Laws; and (iv) any valid charge against the Project as a whole.

1.11 "Condominium Plat" and "Plat" shall mean and refer to the Condominium Plat recorded in the Official Records, recorded concurrently with this Declaration, consisting of six (6) sheets, prepared by Robert C. Shepherd, Utah Land Surveyor, a duly registered Utah Land Surveyor having Certificate No. 6740341, and all modifications, amendments and/or all supplements thereto recorded in accordance with the Act and this Declaration.

1.12 "Condominium Unit" and/or "Unit" shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a Building upon the Subject Property and the Percentage Interest appurtenant thereto. Each Unit consists of the space within the walls, floor and ceiling of that Unit. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit, as shall all decorated

interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of among other items, and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, and any structural members or any other property of any kind, including fixtures and appliances within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which such Unit is situated shall be considered part of the Unit. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are used for or which serve more than one Unit, and shall not include any load-bearing walls or floors comprising a part of a Building in which the Unit is located. Each Unit shall include its appurtenant Percentage Interest in the Common Areas.

1.13 "Declarant" shall mean and refer to Powder Canyon, LLC, a Utah limited liability company, and any successor and assign of Declarant which, either by operation of law, or through a voluntary conveyance, transfer, or assignment comes to stand in the same relation to the Project as did its predecessor.

1.14 "Declaration" shall mean and refer to this instrument and all modifications, amendments and/or supplements made in accordance with the Act and the provisions hereof.

1.15 "Default Assessment" has the meaning given to that term in Section 9.6 below.

1.16 "Garage" or "Garages" means one or more separately designated garage or garages on the Plat, or any amendment thereto assigned to a Unit as Limited Common Areas.

1.17 "General Assessment" has the meaning given to that term in Section 9.2 below.

1.18 "Limited Common Areas" shall mean and refer to those Common Areas designated herein or on the Plat for the exclusive use of one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, "Limited Common Areas" include, without limitation:

(a) balconies, Storage Spaces, Garages, and any other physical portion of the Condominium Project depicted on the Plat as Limited Common Areas;

(b) any shutters, awnings, window boxes, windows, doors, doorsteps, porches, balconies, patios, and other apparatus intended to serve a single Unit but located outside the boundaries of such Unit; and

(c) all installations for and all equipment connected with furnishing fewer than all of the Units with utility service, including, but not limited to, utility systems, mechanical systems and exhaust and ventilation systems;

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that



Unit is a Limited Common Area allocated solely to that Unit and any portion thereof serving more than one Unit shall be Limited Common Area allocated solely to those Units served. Nonstructural walls located wholly within a Unit are a part of the Unit in which they are located.

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

1.20 "Management Committee" or "Committee" shall mean the committee charged by this Declaration with and having the responsibility and authority on behalf of the Association to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property.

1.21 "Master Declaration" has the meaning given to that term in Section 2.2 below.

1.22 "Mortgage" shall mean and include a Mortgage, a deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

1.23 "Mortgagee" shall mean and include a mortgagee of a mortgage on any Unit, a beneficiary of a deed of trust on any Unit, or a secured party of any other security instrument by which a Unit or any part hereof is encumbered.

1.24 "Official Records" shall mean the official records of the Recorder of Weber County, Utah.

1.25 "Owner" or "Unit Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Unit in the Project, and an undivided interest in the fee simple estate of the Common Areas in the percentages specified herein. In the event a Unit is the subject of any executory contract of sale, the contract purchaser shall, unless the Seller and the purchaser have otherwise agreed and have informed the Association in writing of such agreement, be considered the Owner for purposes of voting. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Unit Owner or Owner shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.26 "Percentage Interest" shall mean and refer to the undivided percentage interest of each Unit Owner in the Common Areas of the Property. The Percentage Interest which is appurtenant to a Unit shall be equal to the ratio between the Size of such Unit and the aggregate Size of all Units in the Project. The Percentage Interest of each Unit is set forth in Exhibit A attached hereto and incorporated herein by reference. "Percentage Interests" shall be the sum total of each and every Percentage Interest and shall equal 100%.

1.27 "Person" shall mean an individual, corporation, partnership, association, limited liability company, trustee or other legal entity.

1.28 "Project" shall mean the Property submitted to the provisions of the Act by this Declaration and the Plat, sometimes referred to and known as "Powder Canyon Condominium Project".

1.29 "Property" shall mean and refer to the Subject Property, the Buildings, all improvements and structures on the Subject Property, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.30 "Size" shall mean and refer to the area of floor space within a Unit, in square feet, rounded off to a whole number as computed by reference to the Plat. Declarant's determination of the Size of a Unit, as set forth in this Declaration or in any amendment or supplement hereto pursuant to Article VI hereof shall be conclusive.

1.31 "Special Assessment" has the meaning given to that term in Section 9.5 below.

1.32 "Storage Spaces" means those Limited Common Areas designated on the Plat and which are assigned to a Unit.

1.33 "Subject Property" shall mean the real property upon which the Project is situated, as more particularly described in Article II of this Declaration.

1.34 "Unit Number" shall mean the number, letter or combination thereof designating a Unit within the Project.

## II. SUBMISSION TO THE ACT

2.1 Subject Property. Declarant hereby submits to the provisions of the Act, subject to the covenants, conditions and restrictions herein contained, the following real property ("Subject Property") situated in Weber County, State of Utah:

A part of the Southwest ¼ of Section 22, T7N, R1E, SLB&M; Beginning at the Northwest Corner of Moose Hollow Condominiums Phase 2, said point is on the Southerly right of way of Moose Hollow Drive, point being North 89°14'39" West 291.78 feet along the East-West ¼ Section line and South 2,068.73 feet from the center Quarter Corner of said Section 22 basis of bearing North 89°14'39" West from said Quarter Corner to the West Corner of said Section 22; thence as follows: South 45°18'01" West 180.35 feet (180.28 feet record) along said Moose Hollow Condominium Phase 2 boundary to Moose Hollow Phase 4 boundary; thence South 45°26'32" West 96.30 feet along said Moose Hollow 4 boundary; thence West 329.11 feet; thence North 48°01'23" West 86.51 feet; thence West 251.75 feet to the Easterly right of way of Wolf Creek Drive (SR-158) and along said right of way the following two courses: Northeasterly 253.31 feet along a non-tangent curve to the right (R=865.42', Delta=16°46'13", T=127.56', CHB=N40°47'55" E, CH=252.40') to a tangent line; thence North 49°11'02" East 114.94 feet along said line to the Southern right of way of Moose

Hollow Drive (3600 North) and along said right of way the following three courses: South  $41^{\circ}49'00''$  East 75.31 feet to a tangent curve to the left; thence Southeasterly 252.63 feet along said curve ( $R=280.00'$ ,  $\Delta=51^{\circ}41'44''$ ,  $T=135.65'$ ,  $CHB=S67^{\circ}39'51''$  E,  $CH=244.15'$ ) to a tangent line; thence North  $86^{\circ}29'18''$  East 314.62 feet to the point of beginning.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described real property (the real property).

ALL OF THE FOREGOING IS SUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; the terms, conditions, limitations and restrictions set forth in the Master Declaration; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the real property or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipeline, cable, wire, utility line, or similar facility which traverses or partially occupies the real property at such time as construction of all Project improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through and under the real property and any improvements now or hereafter constructed thereon as may be reasonable necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) an easement for ingress and egress for the benefit of the Additional Land, however developed or utilized, over the improved roads, driveways and parking areas of the Subject Property, whether or not the Additional Land, or portions thereof, is part of the Project; (ii) to construct and complete each of the Units in any Building and all of the other improvements described in this Declaration or in the Plat recorded concurrently herewith or in any supplemental declaration recorded pursuant to Article VI hereof, and to do all things reasonably necessary or proper in connection therewith; (iii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate; and (iv) to construct and complete each of the Units, Buildings and other improvements to be constructed upon any Additional Land or portion thereof intended to be included within the Project. If, pursuant to the foregoing reservations, the real property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements including the perpetual easement specified in (i) above, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire fifteen (15) years after the date on which this Declaration is filed for record in the Official Records.

2.2 Wolf Creek Master Association. The Property is subject to the terms and conditions of the Master Declaration of Covenants, Conditions and Restrictions for Wolf Creek Resort, which Master Declaration is dated May 15, 2002, and was recorded in the Official Records on October 18, 2002, as Entry No. 1882728, in Book 2275, beginning at page 460 (as amended from time to time, the "Master Declaration"). Under the terms and conditions of such Master Declaration, a Unit Owner in the Project shall also be subject to the applicable requirements of the Master Declaration and shall become personally liable for assessments made in accordance with the terms of such Master Declaration. Specific reference to the terms and conditions of the Master Declaration should be made. Each Unit Owner agrees to be bound by and shall comply with the terms and conditions of the Master Declaration including, but not limited to, Article XVI thereof relative to Private Amenities owned by the Declarant. Each Unit Owner and the Association expressly acknowledge and agree that they have no right, title, estate or interest in or to the Private Amenities (including any golf course or related facilities) by virtue of this Declaration or any other document or under theory of recovery, except to the extent such Unit Owner has entered into a written separate agreement with the Declarant for the specific use of such facilities.

### III. IMPROVEMENTS ON LAND

3.1 Description of Improvements. The improvements contained in the Project are now or will be located upon the Subject Property. The major improvements contained in the Project shall initially include two (2), three (3) story buildings (subject to expansion on the Additional Land as provided in Article VI) with Garages and uncovered parking spaces, with each such Building containing ten (10) Units. The location and configuration of said improvements are shown on the Plat. The Project also contains other improvements such as Garages, Storage Spaces, elevators, outdoor lighting, surface parking stalls, walkways, landscaping and fencing. The Plat shows the number of Buildings, the number of Units, Garages and Storage Spaces which are included in the Project and the general parking areas. Each Building is composed of the following principal building materials: exterior walls consisting of rock, hardy board and wood trim with a pitched roof; interior walls of stick lumber construction with wall finish of sheet rock according to applicable building codes.

3.2 Description and Legal Status of Units. The Plat shows each Unit Number, its location, dimensions from which its Size may be determined, the Common Areas to which it has immediate access and the Limited Common Areas, if any, reserved for each Unit. The undivided ownership interest in the Common Areas appurtenant to a Unit may not be partitioned from the balance of the Common Areas by an action pursuant to Chapter 39 of Title 78, Utah Code Annotated (2002 Replacement, as amended) or otherwise.

3.3 Contents of Exhibit A. Exhibit A to this Declaration contains the following information with respect to each Unit contained in the Project: (i) the Unit Number; (ii) its Size; and (iii) the Percentage Interest which is assigned to and appurtenant to the Unit.

## IV. NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

4.1 Estate of an Owner. The Project is hereby divided into Units, each consisting of a fee simple interest in a Unit and a Percentage Interest as set forth in the attached Exhibit A. The Percentage Interests set forth in Exhibit A are hereby declared to be appurtenant to the respective Units.

4.2 Title. Subject to Section 4.5 hereof, title to a Unit may be held or owned by any Person or more than one Person and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenants or tenancy in common.

4.3 Inseparability.

(a) No part of a Unit or the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of ownership prescribed herein, so that each Unit and the Percentage Interest appurtenant to such Unit shall always be conveyed, devised, encumbered, or otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

(b) Notwithstanding anything in this Declaration to the contrary, for as long as the Declarant owns a Unit, the Declarant shall have the right to (i) relocate the boundaries of and between two adjoining Units, (ii) physically combine a part of or combination of parts of the space of one Unit with a part of or combination of parts of the space within one or more adjoining Units, or (iii) subdivide a Unit or part of a Unit to create additional Units (in each case, provided either the affected Units are owned by the Declarant, or the Owners and any first Mortgages of such Units have consented in writing to the proposed action). Before exercising its rights, the Declarant must obtain all necessary approvals from any governmental authority having jurisdiction over the Property. The cost and expense incurred for legal, architectural and/or engineering fees and all other costs and expenses reasonably incurred by the Association in connection with the Declarant's exercise of rights under this subsection shall be borne by the Declarant. Any amendment to the Declaration effectuating the relocation of boundaries of, combination or subdivision, or re-designation of Unit(s) shall be executed and recorded in the Official Records. If the Declarant requires, whether for title purposes, governmental approvals or otherwise, the Management Committee shall ratify the action in connection with effectuating such relocation of boundaries, combination or subdivision, or re-designation of Unit(s), and take such necessary actions in connection therewith if the other requirements in this Section have been satisfied.

4.4 Computation of Percentage Interests. The Percentage Interest which is appurtenant to a Unit shall be equal to the ratio between the Size of such Unit and the aggregate Size of all Units in the Project. Declarant reserves the right to make minor adjustments in some or all of the Percentage Interests which result from the strict application thereof for the purpose, but only for the purpose, of assuring that the total of all Percentage Interests equals 100%.

Percentage Interests shall be for all purposes, including, without limitation, voting and participation in Common Expenses.

4.5 Timeshares, Partition Not Permitted. No Owner shall offer or sell any interest in any "timesharing" or "interval ownership" plan or similar plan whereby the use of the Unit rotates among participants in the plan on a fixed or floating time schedule over a period of years, including but not limited to, any Unit timeshare interest as defined in the Utah Timeshare and Camp Resort Act, Utah Code Ann. §57-19-1 et seq., as amended from time to time. The Common Areas shall be owned in common by all the Owners of Units, and no Owner may bring any action for partition thereof.

4.6 Owner's Rights to Common Areas. Subject to the limitations contained in this Declaration, any Owner shall have the non-exclusive right to use and enjoy the Common Areas and shall have the exclusive right to use and enjoy the Limited Common Areas designated herein for exclusive use by such Owner or Owners.

4.7 Owner's Rights with Respect to Interiors. Each Owner shall have the exclusive right at his sole cost and expense to maintain, repair, paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and all walls, ceilings, floors and doors within such boundaries. Each Unit Owner shall have the sole obligation to furnish its Unit with, and maintain in good condition and repair, all furniture, fixtures and other personal property.

4.8 Easement for Access to Units. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and to the Limited Common Areas, if any, designated for use in connection with his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

4.9 Easement for Encroachments. If any part of the Common Areas 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 hereby exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Plat, by settling, rising or shifting of the earth, or by change in position caused by repair or reconstruction of the Project or any part thereof.

4.10 Easement of Access for Repair, Maintenance and Emergencies. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Association (or its agent), as their agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas located therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Association shall also have such right independent of any agency

relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of the Association shall be an expense of the Association; provided, however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Association by Default Assessment pursuant to Article IX below.

4.11 Owner's Right to Support. Each Owner shall have the right to horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

4.12 Association's Right to Use of Common Areas. The Association shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and the functions which it is obligated or permitted to perform pursuant to this Declaration.

4.13 Easements Deemed Created. All conveyances of Units hereafter made, by whatever means, shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 4.8, 4.9, 4.10, 4.11, and 4.12, above, and Section 5.2 below, even though no specific reference to such easements or to those Sections appears in any such conveyance.

4.14 Easements and Special Rights Reserved to Declarant.

(a) Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

(i) any improvements shown on the Map; and

(ii) any other buildings, structures or improvements that Declarant desires to construct on the Subject Property, the Additional Property or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

(b) Development Rights. Declarant hereby reserves for itself, its successors and assigns the right to create easements, permits, licenses and other property rights and reservations as described in this Declaration.

(c) Sales Offices and Models. Notwithstanding anything in the Declaration to the contrary, subject to compliance with applicable law, Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant, including, but not limited to, the following:

(i) Declarant shall have the right to maintain four (4) or less sales offices or model Units. Such offices and/or model Units may be one or more Units (of any floor area and at any location) owned by it, one or more separate structures or facilities placed

on the Subject Property for the purpose of aiding Declarant's sales efforts, a room or rooms in the Common Area, or any combination of the foregoing. If one or more structures or facilities is so utilized by Declarant, each shall be reasonably located given the layout of the Project and each shall have an aggregate floor area not substantially in excess of the aggregate floor area of the largest Unit contained in the Project.

(ii) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or signs, banners, or similar devices at any place or places on the Subject Property, but any such device shall be of a size and in a location as is reasonable and customary.

(iii) Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Units, and/or signs, banners, or similar devices, but in connection with such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Declarant shall have the right to remove from the Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Subject Property for the purpose of aiding Declarant's sales efforts. Any signs, banners, or similar devices, and any separate structure or facility for aiding Declarant's sales efforts shall comply with applicable zoning ordinances.

(d) **Exercising Special Declarant Rights.** Declarant may exercise its rights under this Section 4.14 at any time prior to the date that is fifteen (15) years after the date on which this Declaration is recorded in the Official Records. Declarant may exercise such rights in any order, and no assurance is given as to the order in which Declarant will exercise its rights. If Declarant exercises any such right with respect to any portion of the Subject Property, Declarant may, but is not obligated to, exercise such right with respect to any other portion of the Subject Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any right described in this Section 4.14 and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

(e) **Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any rule or regulation that interferes with or diminishes any right reserved to Declarant hereunder, without Declarant's prior written consent. Any action taken in violation of this Section 4.14(e) shall be null and void and have no force or effect.

(f) **Rights Transferable.** Declarant may transfer any right reserved to it under this Section 4.14 or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

## V. UNITS AND LIMITED COMMON AREAS

5.1 **Conveyances.** Any deed, lease, mortgage, deed of trust, sales contract or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:



Unit No. \_\_\_\_\_ contained within the Powder Canyon Condominium Project as the same is identified in the Condominium Plat recorded in Weber County, State of Utah, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium of Powder Canyon Condominium Project recorded in Weber County, Utah, as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented).

TOGETHER WITH the undivided ownership interest in said Project's Common Areas which is appurtenant to said Unit.

Such description shall be construed to describe the Unit, together with the appurtenant Percentage Interest in the Common Areas and to incorporate all the rights incident to ownership of a Unit and all the limitations on such ownership as described in the Declaration, including the applicable appurtenant Percentage Interest.

5.2 Maintenance of Units. Each Unit, and all utility facilities, including but not limited to all electrical, plumbing, heating, air conditioning, water, sewer lines, ducts, and other such apparatus serving solely such Unit, and all fixtures, furniture and equipment located within such Unit, shall be maintained by the Owner thereof so as not to detract from the appearance of the Project and so as not to affect adversely the value or use of any other Unit or other portions of the Project. Each Owner shall keep the interior of his Unit, including without limitation, interior walls, doors, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, and all furniture located therein, in a clean and sanitary condition and in good state of repair. In the event that any such Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association and only upon the approval of the Management Committee, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair. The Association shall have the irrevocable right to have access to each Unit from time to time during such reasonable hours as may be necessary to insure each Owner's compliance with the provisions of this Section 5.2.

5.3 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the Percentage Interest therein appurtenant to his Unit. Any Mortgage or other encumbrance 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.

5.4 Taxation of Units. Each Unit within the Project, including each Unit's appurtenant Percentage Interest in the Common Areas, shall be deemed to be a parcel and shall

upon conveyance of any Unit by Declarant be assessed separately for all taxes, assessments, and other charges of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the Percentage Interests appurtenant to such Units. All such taxes, assessments, and other charges of each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

5.5 Limited Common Areas. The Limited Common Areas of the Project and the Units to which they are appurtenant are as follows: one balcony or patio, one or more Storage Spaces, and one or more Garages as assigned to each Unit as more particularly shown on the Plat or as subsequently assigned by Declarant to Units as evidenced by one or more Supplemental Declarations based upon needs and preferences of Unit Owners. The Owner of a Unit shall keep the Limited Common Areas designated for use in connection with his Unit, in a good, clean, sanitary and attractive condition; provided, however, the Association shall keep the same in a good state of repair, including without limitation all Garage doors (including the interior and exterior surfaces thereof). All such Garage doors shall be painted, maintained and/or replaced so as to be in conformity with all others located within the Property. In the event that an Owner fails to keep the Limited Common Areas appurtenant to his Unit, in a good, clean, sanitary and attractive condition, the Association may cause the same to occur, at the expense of the Owner, in accordance with the procedures set forth in Section 5.2 above.

NOTE: GARAGES ARE LOCATED WITHIN PARKING AREAS AND MAY FROM TIME TO TIME BE SUBJECTED TO WATER UPON FLOORS. OWNERS ARE ADVISED NOT TO STORE MATERIALS ON THE FLOORS OF ANY GARAGES.

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

## VI. EXPANDABLE CONDOMINIUM

6.1 Reservation to Expand. In accordance with the provisions of Section 57-8-10(4) of the Act, the Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and improvements to be constructed thereon, all in accordance with the provisions of this Article VI. All such expansion shall be conducted in accordance with applicable zoning and building codes, ordinances, statutes, and regulations.

6.2 Additional Land. The Project may be expanded by the addition of all or a portion of the real property designated on Exhibit C attached hereto and incorporated herein by

reference, such real property or portions thereof where applicable being referred to as "Additional Land".

6.3 No Limitations Upon Option. Expansion of the Project by the Declarant is without limitation and shall be effective without the prior approval of the Association and without the consent of any Owner.

6.4 Termination of Option. Declarant's right to expand the Project as provided in this Article VI shall expire seven (7) years from the date of recording of this Declaration (exclusive of any amendments or supplements) in the Official Records.

6.5 Order of Addition. The Additional Land may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof constituting Additional Land) may be added at any time within the period allowed for expansion of the Project. Any portion of the Additional Land added to the Project shall be restricted exclusively to residential use.

6.6 Improvements Upon Additional Land. All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. The maximum number of Units to be constructed upon the Additional Land shall be limited to forty (40) and the maximum number of units per acre that may be crated on any portion of the Additional Land added to the Project shall be 8.421 Units per acre. All of the additional Units to be constructed upon Additional Land will be constructed for or are to be designated exclusively for residential use.

6.7 Compatible Construction. All structures and improvements erected upon any Additional Land added to the Project will be compatible with the structures and improvements now upon or to be constructed upon the Subject Property, all such additional structures and improvements to be approximately equal or better in terms of quality of construction and materials to be used. Notwithstanding the above, no assurances can be made by the Declarant in every instance that such structures and improvements will be identical in all regards. Declarant specifically reserves the right to modify architectural style for structures and improvements to be erected upon Additional Land to be added to the Project.

6.8 Description of Improvements. Although Declarant intends to construct upon Additional Land additional Units which shall be part of one or more Buildings, no assurances can be made by the Declarant as to the description of improvements that will be made upon any Additional Land.

6.9 Description of Units. Declarant intends, as of the date hereof, that any Unit constructed within or part of a Building upon Additional Land will be similar to the Units presently contained within Buildings, or to be constructed upon the Property but the size of such Units may vary as the Declarant determines in its sole discretion. As of the date hereof, Declarant intends that Units consist of three different floor plans with differing square footages.

Therefore, no assurances can be made by the Declarant that any Units to be constructed upon Additional Land will be substantially identical or similar to the existing Units.

6.10 Declarant's Reserved Rights. Declarant hereby reserves the right with respect to any Additional Land, to create Limited Common Areas within any Additional Land added to the Project, and with respect thereto reserves the right to create such Common Areas in such types, sizes and numbers as the Declarant deems appropriate in its sole discretion. No assurances are made herein by Declarant with respect to the type, sizes or number of such areas, to be created, if any.

6.11 Supplemental Plat. The Declarant simultaneously with the submission of Additional Land to the Project shall prepare and record in the Official Records, a supplemental Plat pertaining to such Additional Land to be added to the Project, and showing the location and dimensions (the vertical and horizontal boundaries), of each Unit located within a Building created from and located upon such Additional Land, and the Unit designation of each Unit so created.

6.12 Supplemental Declaration. Simultaneously with the recording of said Supplemental Plat as required by the provisions of Section 6.11 above, the Declarant shall duly execute, acknowledge and record in the Official Records, a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the following: (i) a legal description by metes and bounds of the Additional Land added to the Project; (ii) the designation of each Unit and Building created from and included within the Additional Land; and (iii) the Percentage Interest allocated and appertaining to all Units within the Project.

6.13 Qualifications. Each expansion of the Project by the addition of Additional Land shall be subject to the following additional qualifications:

(a) The Percentage Interest appertaining to a Unit and each Unit shall be re-computed in accordance with the provisions of Section 4.4 taking into consideration the Units contained upon the Additional Land to be included within the Project. Such re-allocations shall be effective as of the date of recordation of the Supplemental Declaration.

(b) Following the addition to the Project of Additional Land, the total of the Percentage Interest appertaining to all Units shall in all event equal 100%.

(c) All improvements to be constructed upon portions of the Additional Land shall be substantially completed prior to the annexation to the Project.

6.14 Amendment to this Article. This Article VI shall not be amended without the written consent of the Declarant.

7.1 Association Membership. Every Owner shall be entitled and be required to be a member of the Association. If title to a Unit is held by more than one Person, the membership in the Association related to such Unit shall be shared by all such Persons in the same proportionate interests and by the same type of tenancy in which the title to such Unit is held. An Owner shall be entitled to one Association membership for each Unit owned by him. Each such Association membership shall be appurtenant to the Unit from which it is derived and shall be transferred automatically by conveyance of such Unit. No person or entity other than an Owner may be a member of the Association, and the By-laws of the Association shall so provide. Such By-laws shall in addition state that membership in the Association may not be transferred except by the transfer of a Unit; provided, however, that the rights of membership in the Association may be assigned to a Mortgagee as further security for a loan secured by a Mortgage on a Unit.

7.2 Management Committee. The Management Committee of the Association shall consist of at least three (3) members and one (1) alternate who may vote in the absence of a regular Committee member, provided, however, that until (i) the expiration of six (6) years from the date that this Declaration (exclusive of amendments or supplements) is recorded in the Official Records, or such shorter period as the Declarant may determine in its sole discretion, or (ii) four months after Units to which an aggregate of at least three-fourths (3/4) of the Percentage Interest then appurtenant to the Project have been conveyed by the Declarant to Unit purchasers, the Management Committee may consist of one (1) or more individuals selected by the Declarant. Any vacant seat on the Committee shall be filled with a member elected for a two (2) year term. Unit Owners, spouses of Unit Owners, Mortgagees (or designees of Mortgagees), partners of partnerships owning a Unit, directors or officers of corporations owning a Unit, Managers of limited liability companies owning a Unit, and Trustees of Trusts owning a Unit shall be eligible for membership on the Management Committee. The Management Committee shall always have an odd number of members.

Any Committee member who fails on three (3) successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least sixty percent (60%) of all Committee meetings (whether regular or special) held during any 12-month vacancy, the remaining Committee members shall elect a replacement to sit on the Committee until the expiration of the term for which the member being replaced was elected. Unless he or she forfeits or otherwise loses his or her seat as herein provided, a member shall serve on the Committee until his or her successor is elected and qualifies. Committee members shall be reimbursed for all expenses reasonably incurred in connection with Committee business. The Committee may fix such compensation for any member as may be reasonable in light of the Committee duties which that member is required to perform.

7.3 Votes and Voting. The number of votes appurtenant to each respective Unit shall be equal to the product of the Percentage Interest set forth in Exhibit A attached hereto (as the same may be revised as the result of minor adjustments as provided in Section 4.5 or a result of the additional of Additional Land as provided in Article VI) multiplied by One Hundred (100). The number of votes appurtenant to each Unit as set forth in said Exhibit A (subject to revisions the result of minor adjustments as provided in Section 4.4 or a result of the additional of

Additional Land as provided in Article VI) shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The number of votes appurtenant to each Unit may not be divided between multiple Owners of such Unit or between matters which require the vote of Owners.

### VIII. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1 Common Areas. The Association, subject to the rights of the Owners set forth in Article IV hereof, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including landscaping, ponds, trails, furnishings and equipment related thereto) and shall keep the same in good, clean, attractive and sanitary condition, order and repair; provided, however, that each Owner of a Unit shall keep the Limited Common Areas, if any, designated for use in connection with his Unit, in a good, clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of all Common Areas, including Limited Common Areas. The cost of such management, operation, maintenance and repair by the Association of the Common Areas shall be borne as provided in Article IX.

8.2 Miscellaneous Services. The Association may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel of the Association as it shall be determined to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain on behalf of the Association and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. The Association may arrange with others to furnish trash collection, snow removal, ground maintenance, and other common services to the Project. The cost of such services shall be borne as provided in Article IX. The Declarant may enter into one or more professional management contracts on behalf of the Association pursuant to the provisions hereof; provided the Association shall have the right to terminate any such contract, with or without cause on not less than thirty (30) days notice, at any time after transfer of control of the Association to Owners.

8.3 Personal Property for Common Use. The Association may acquire and hold for the use and benefit of the Association and all of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as each Owner's respective Percentage Interest. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, subject to rules and regulations adopted by the Association as provided herein, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

8.4 Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. In addition to the requirements set forth elsewhere in this Declaration, such rules and regulations may include, without limitation: (i) a requirement that draperies, shades, or other interior window coverings, including the interior surfaces of any window or door glass used in Units shall present a uniform appearance of type and color from the exterior of any Building or all Buildings and that the Association shall have the right to inspect and reinspect and approve all proposed draperies, shades, or other interior window coverings to insure compliance with such rules before installation thereof in a Unit, and (ii) that Limited Common Areas conform to standardized regulations regarding appearance, maintenance and modifications thereof. In furtherance of the above, and unless modified by the Declarant and a majority of the Owners, (i) no bed sheets, cardboard or paper of any kind may be used as a window covering (except as may be needed solely in connection with the painting of the interior of a Unit and not exceeding a period of 24 hours); and (ii) all exterior windows and sliding doors shall be treated with two (2) inch horizontal wood or aluminum blinds or shutters with wood stained to a light natural color matching interior cabinets and aluminum being an approved off-white color, except that sliding doors may be treated with vertical blinds of the same materials and colors. The Association may, in addition to its other rights and remedies, suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take judicial action against the Owner to enforce compliance with such rules, regulations or other obligations or to obtain damages for non-compliance, all to the extent permitted by law.

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

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

8.7 Maintenance of Project. The Association and the Owners bear the exclusive responsibility for inspection, maintenance and repair of the Project in accordance with the provisions of this Declaration. The Association shall at all times maintain an adequate reserve for such inspection, maintenance and repair of the Project and replacement of components of the Project, consistent with the usual and customary needs for preventative and curative repairs and maintenance of the Project. The Owners and Association shall abide by all applicable manufacturers' and builders' recommendations with respect to such matters and shall adopt and maintain a consistent program for such inspections, maintenance and repairs. Neither Declarant nor any of its managers, officers, contractors or design professionals, representatives or agents has made or will make any representation or warranty regarding the Project, or its design or

construction, except for any limited warranties that may be expressly set forth in writing in any agreement between Declarant and an Owner for the purchase of a Unit from Declarant. All other representations and warranties, whether express or implied, are hereby expressly disclaimed.

## IX. ASSESSMENTS

9.1 Agreement to Pay Assessments. Declarant, for each Unit owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association General Assessments made by the Association for the purposes provided in this Declaration, Special Assessments for capital improvements and other matters as provided in this Declaration, and Default Assessments as the same may be imposed. Such assessments shall be fixed, established and collected from time to time in the manner provided in this Article.

9.2 Amount of Total Annual General Assessments. The total annual general assessments ("General Assessments") against all Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates may include, among other things: expenses of management, grounds maintenance, taxes and special assessments, until the Units are separately assessed as provided herein; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; assessments by the Master Association; common lighting and heating expenses; water charges; trash collection charges; snow removal expenses; sewer service charges; repairs and maintenance expenses; wages for Association employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

9.3 Apportionment of General Assessments. Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Owners in proportion to their respective Percentage Interests.

9.4 Notice of General Assessments and Time for Payment Thereof. General Assessments shall be made on a calendar year basis. The Association shall give written notice to each Owner as to the amount of the General Assessment with respect to his Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Such assessment shall be due and payable in equal quarterly installments on the first day of the first month of each calendar quarter of each year; provided, however, that the first General Assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Project but not later than sixty (60) days after the conveyance of the first Unit. The first General Assessment shall be due and payable within thirty (30) days after written notice of the amount thereof shall have been given to the respective Owner of a Condominium Unit. Each quarterly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within



ten (10) days after it is due. In addition to the foregoing, the payment of any delinquent assessment shall be subject to the payment of a late fee as established by the Management Committee. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date ten (10) days after such notice shall have been given. At the option of the Management Committee, the assessments provided for in this Section 9.4 may be due and payable on a monthly basis in equal monthly installments on the first day of each calendar month during each year.

9.5 Special Assessments. In addition to the General Assessments authorized by this Article, the Association may levy in any assessment year a special assessment (a "Special Assessment"), payable over such period of time as the Association may determine, for the purpose of defraying, in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof which shall make specific reference to this Article. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective Percentage Interest.

Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

9.6 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by:

(1) the negligence or misconduct of a Unit Owner or a Unit Owner's Authorized User; or

(2) a violation of any covenant or condition of an Association Document by a Unit Owner or a Unit Owner's Authorized User (a "Violation") or

(3) failure to maintain Limited Common Areas (including but not limited to Storage Spaces and/or Garages), the Association may levy an Assessment for such Common Expense against such Unit Owner's Unit or a fine, penalty fee or other charge for each Violation. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon a Unit Owner for the Unit Owner's Violation are each referred to herein as a "Default Assessment".

(b) Default Assessments need not be shown on an annual budget or on an amendment to an annual budget adopted by the Committee pursuant to Section 9.2 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Unit Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice as provided in this Declaration and an opportunity to be heard in accordance with the procedures set forth in the rules and regulations of the Association and the Act. Unit Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association.

9.7 Lien for Assessments.

(a) All sums assessed to any Unit pursuant to this Article, together with interest thereon, as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only for: (a) valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and (b) encumbrances on the interest of the Unit Owner recorded in the official records of the Weber County Recorder prior to the date a notice (as provided herein) is recorded which by law would be a lien prior to subsequently recorded encumbrances, including all unpaid obligatory advances to be made pursuant to such encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument. All other Mortgagees and lienors shall be deemed to consent that such liens shall be inferior to future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

(b) To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by an officer of the Association and shall be recorded in the official records of the Office of the County Recorder of Weber County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by power of sale or judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. All such costs, expenses and fees 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. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Unit as the Owner thereof.

(c) A release of notice of lien shall be executed by an officer of the Association and recorded in the official records of the Office of the County Recorder of Weber County, State of Utah, upon payment of all sums secured by such lien which has been made the subject of a recorded notice of lien.

(d) Any Mortgagee or encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such Mortgagee or encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

(e) A lien for Assessments will not be affected by the transfer or conveyance of a Unit, unless such transfer is pursuant to a foreclosure of a mortgage with priority. In such event, the prior Owner shall nevertheless remain liable for the delinquent Assessments.

9.8 Personal Obligation of Owner. The amount of any Assessment against any Unit shall be the personal obligation of the Owner thereof 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 personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit. If the Owner of a Unit that is leasing a Unit fails to pay any Assessment for a period of more than sixty (60) days after it is due and payable, the Management Committee, upon compliance with the Act, may demand the tenant to pay to the Association all future lease payments due such Owner commencing with the next monthly or periodic payment, until the amount due to the Association is paid.

9.9 Statement of Account. Upon payment of a reasonable fee not to exceed Ten Dollars (\$10.00), or such higher amount as the Act may allow, and upon written request of any Owner or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to a Unit; the amount of the current yearly Assessment and the date that such Assessment becomes or became due; the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's share of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, or such longer period allowed by the Act, all unpaid Assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquires its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid Assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with by the Association within ten (10) days, and the purchaser subsequently acquires the Unit.

9.10 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 9.9 a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid Assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments.

9.11 Reserve for Replacements. As set forth in Section 15.4(b) of this Declaration, the Association shall be required to establish and maintain an adequate reserve fund for the cost of

reasonably predictable and necessary major repairs, maintenance and replacement of Common Areas, including Limited Common Areas. Such reserve shall be funded out of General Assessments. Any amount paid to this reserve shall not be considered as an advance payment of regular Assessments. This reserve fund shall be transferred to a segregated fund in the name of the Association upon transfer of control of the Association to the Owners. Upon transfer, the reserve account provided herein shall be maintained separate from the general operating and assessment account of the Association, but in the Association's name.

9.12 Remedies Non-Exclusive. The remedies provided in this Article IX, by law or in equity are not mutually exclusive.

## X. INSURANCE

10.1 Provided by Association. The Association shall secure and at all times maintain for the benefit of the Association and the Owners the following insurance coverages:

(a) Hazard Coverage. A multi-peril policy or policies of fire and other hazard insurance covering the entire Project (both Units and Common Areas), with extended coverage and all other coverages in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use, including the standard "All risk" endorsement, on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost) of the Project. Each such policy shall contain the standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of Mortgagees as their interests may appear. The assured shall be the Association as a trustee for the Unit Owners, or their authorized representatives. In addition, the Association should obtain, if available, an Inflation Guard Endorsement, a Building Ordinance or Law Endorsement and a Steam Boiler and Machinery Coverage Endorsement (with minimum liability of \$2,000,000 per accident) if the Project has central heating or cooling.

(b) Public Liability. A comprehensive policy of public liability insurance covering all of the Common Areas insuring the Association, the Management Committee and its members, the Manager, and the Unit Owners against any liability incident to the ownership, use, or operation of the Common Areas and public ways of the Project or of any Unit which may arise among themselves, to the public, or to any invitees, or tenants of the Project, or of the Unit Owners. Limits of liability under such insurance shall be not less than One Million Dollars (\$1,000,000.00) covering all claims for bodily injury and/or property damage arising out of a single occurrence, including protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, its committee members, its officers or other Unit Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for similar projects in location, construction and use.

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

(d) Fidelity Insurance or Bond. The Association shall purchase for the benefit of and on behalf of the Association, in amounts not less than three (3) months assessments for all Units, and in such forms as it deems appropriate, fidelity insurance or a bond to cover against dishonesty of Committee members, officers, employees and others who hold or administer funds, destruction or disappearance of money or securities, and forgery. The fidelity policy or bond shall name the Association as the insured.

10.2 Additional Provisions. The following additional provisions shall apply with respect to insurance.

(a) In addition to the insurance and bond coverage described above, the Association shall secure and at all times maintain for the benefit of and on behalf of the Association, insurance against such risks as are or hereafter may be customarily insured against in connection with all condominium projects similar to the Project in construction, nature and use.

(b) All insurance policies shall be written by a company holding an "A-" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Each insurer must be specifically licensed to transact business within the State of Utah. Policies are unacceptable where (i) under the terms of the carrier's charter, by-laws or policy, contributions or assessments may be made against the insured or a Mortgagee; or (ii) by the terms of the carrier's charter, by-laws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent a Mortgagee or the insured from collecting insurance proceeds.

(c) The Association, on behalf of all Owners, individually and collectively, shall have the authority to adjust losses with respect to insurance secured and maintained by the Association, to pursue claims, negotiate and settle claims, and to enter into agreements relative to the same, and each Owner shall be deemed to have appointed the Association as an attorney-in-fact for such purpose.

(d) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Unit Owners or their Mortgagees.

(e) Each policy of insurance obtained by the Association for the benefit of the Association shall provide: a standard mortgagee clause commonly accepted by private institutional mortgage investors in the area in which the Project is located; a waiver (if available) of the insurer's subrogation rights with respect to the Association, the trustees, officers of the Association, the Manager and its members, the Unit Owners, and their respective servants, agents and guests; that it cannot be cancelled, suspended or invalidated due to the conduct of any member, officer, or employee of the Association or of the Manager without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Unit Owners; and that a mortgagee clause endorsement which must provide that the insurance carrier shall notify in writing any and all insureds, including the servicers on behalf of Mortgagees thereof at least thirty (30) days in advance of the effective date of any substantial modification or cancellation of the policy.

(f) Any Unit Owner may obtain additional insurance at his own expense, so long as such additional insurance does not have the effect of decreasing the amount which may be realized under any policy maintained by the Association. Any Unit Owner who individually obtains insurance covering any portion of the Project shall supply the Committee with a copy of his policy within thirty (30) days after he acquires such insurance.

(g) Insurance coverage required by this Article must not be prejudiced by (i) any act or neglect of the Unit Owners when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Project over which the Association has no control.

(h) All policies of property insurance must provide that notwithstanding any provision affording the insurer the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any insurance trustee) or when in conflict with the provisions of any insurance trust agreement to which the insurance may be a party, or any requirement of law.

(i) The foregoing provisions of this Article IX 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, the Association may obtain such other insurance or additional insurance in such amounts and in such forms as the Association may deem proper from time to time.

(j) THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY REGARDING INSURANCE ON THE PERSONAL PROPERTY OF UNIT OWNERS. Each Owner shall acquire for his own protection, such insurance on his contents as he deems appropriate.

(k) The maximum deductible amount for policies covering Units and Common Areas shall be the lesser of \$10,000 or 1% of the policy face amount.

## XI. DAMAGE OR DESTRUCTION

11.1 Procedures. In the event of damage of or destruction of part or all of the improvements in the Project, the following procedures shall apply:

(a) Insurance Proceeds Sufficient to Repair or Reconstruct. If proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damage or destroyed improvement, such repair or reconstruction shall be carried out.

(b) Damage and Destruction less than 75%. If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all Owners shall be assessed for any deficiency on the basis of their respective Percentage Interest.

(c) Damage or Destruction Exceeds 75%. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and unless the Owners within 100 days after the destruction or damage by a vote of at least 75% elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.

(d) Substantial Damage or Destruction but Owners Elect Not to Repair or Reconstruct. If 75% or more of the Project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Association are insufficient to accomplish restoration, and if the Owners, within 100 days after the destruction, and by a vote of at least 75% elect not to repair or reconstruct the affected improvements, the Association shall promptly record in the Official Records a notice setting forth such facts. Upon the recording of such notice the provisions of the Act shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

11.2 Determination of Extent of Damage or Destruction. Any reconstruction or repair which is required to be carried out by this Article XI regarding the extent of damage to or destruction of Project improvements shall be made by three MAI appraisers selected by the Association. The decision of any two such appraisers shall be conclusive.

## XII. OBSOLESCENCE

12.1 Adoption of a Plan. The Owners representing an aggregate voting interest of eighty percent (80%) or more of the Project may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction, provided that such plan have the unanimous approval of all first Mortgagees of record at the time of the adoption of such plan and further provided that such plan comply with all applicable building and zoning codes, ordinances, statutes, and regulations of applicable governmental agencies. Written notice of adoption of such a plan shall be given to all Owners. Such plan shall be recorded in the Official Records.

12.2 Payment for Renewal and Reconstruction. The expenses of renewal or reconstruction shall be payable by all of the Owners as assessments against their respective Units. These assessments shall be levied in advance pursuant to Article IX hereof and shall be allocated and collected as provided in that Article. Further levies may be made in like manner if the amounts collected prove insufficient to complete the renewal and reconstruction.

12.3 Dissents from the Plan. An Owner not a party to such a plan for renewal or reconstruction may give written notice of dissent to the Association within fifteen (15) days after the recordation of such plan. The Association shall then give written notice of such dissents to all Owners within five (5) days after the expiration of such fifteen (15) day period. Within fifteen (15) days of receipt of such notice from the Association, the Owners representing an aggregate voting interest of more than twenty percent (20%) of the Project may cancel the plan by written instrument recorded in the Official Records. If the plan is not cancelled then the Units of each dissenter shall be purchased according to the following procedures. If the Owner and the Association can agree on the fair market value of such Owner's Unit, then such sale and conveyance shall be completed within sixty (60) days thereafter. If the parties are unable to agree on the fair market value of such Owner's Unit, the date when either party notifies the other that he or it is unable to agree with the other shall be the "commencement date" from which all periods of time mentioned herein shall be measured. Within ten (10) days following the commencement date, each party shall nominate a qualified appraiser by written nomination and shall give notice to the other of such nomination. In the event a party fails to nominate an appraiser, the appraiser nominated shall, within five (5) days after notice of the other party's failure to appoint an appraiser, appoint and associate with him another qualified appraiser. If the two appraisers designated by the parties, or selected pursuant hereto in the event of default of one party, are unable to agree, they shall appoint another qualified appraiser to be umpire between them, if they can agree on such person. If they are unable to agree upon such umpire, then each appraiser previously appointed shall nominate two qualified appraisers, and from the names of the four persons so nominated one shall be drawn by lot by a judge of any court of record in Utah, and the person whose name is so drawn shall be the umpire. The nominations from among which the name of the umpire is to be drawn by lot shall be submitted within ten (10) days of the failure of the two appraisers to agree, which, in any event, shall not be later than twenty (20) days, following the appointment of the second appraiser. The decision of the appraisers as to the fair market value, or in the case of their disagreement, the decision of such umpire shall be final and binding. The expenses and fees of such appraisers shall be borne equally by the Association and the Owner. The sale shall be consummated within sixty (60) days after decision of the appraisers, and the Association as attorney-in-fact shall disburse the proceeds first to Mortgagees and encumbrancers (including the Association) in the order of the priority of their liens and the balance remaining to the Owner. The obligation of the Association to make such purchase shall be conditioned on the fair market value of the Unit exceeding the obligations secured by Mortgages and liens on such Unit, and upon the marketability of the title of the Owner. An Owner shall furnish the Association an appropriate commitment for title insurance evidencing marketability of his title not less than fifteen (15) days prior to the date set forth completion of the sale.



The Association, pursuant to Article IX hereof, may levy a Special Assessment sufficient to provide funds to pay for other Units of the dissenters, provided that such assessments shall not apply to any of the Owners who are among the dissenters and shall not be liens against the Units of such Owners.

12.4 Sale of Obsolete Units. The Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Units may agree that the Units are obsolete and that the Project should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of record at the time such agreement is made. In such instance the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association the Project shall be sold by the Association as attorney-in-fact for all of the Owners free and clear of the provisions contained in this Declaration, the Plat and the Bylaws of the Association. The sale proceeds shall be apportioned among the Owners in proportion to the respective undivided interests in the Common Areas, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall remain in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to Mortgagees and encumbrancers (including the Association) in the order of the priority of their liens and the balance remaining to each respective Owners.

12.5 Distribution of Excess. In the event amounts collected pursuant to Section 12.2 are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Association by a distribution to each Owner in an amount proportionate to the respective amount collected from each such Owner.

### XIII. CONDEMNATION

13.1 Consequences of Condemnation. If at any time or times during the continuance of the condominium ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

13.2 Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association. The Association, on behalf of all Owners, individually and collectively, shall have the authority to represent the Association and all Owners and in such regard shall represent their interests in proceedings, negotiations, settlement and agreements, and each Owner shall be deemed to have appointed the Association as attorney-in-fact for such purpose.

13.3 Complete Taking. In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership pursuant thereto shall terminate. The Condemnation Award shall be apportioned among the Owners in proportion to the respective Percentage Interest in the Common Areas, provided that if a standard different from the value of the Project as a whole is employed to measure the

Condemnation Award in the negotiations, judicial decree, or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth in the last preceding paragraph, the Association shall soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided in Section 13.4 of this Declaration.

13.4 Partial Taking. In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the condominium ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: (a) as soon as practicable the Association shall, reasonably and in good faith, allocate the Condemnation Award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated to taking of or injury to the Common Areas among Owners in proportion to their respective Percentage Interests in the Common Areas, (b) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned, (c) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements an Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (d) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Owners and their respective Mortgagees and encumbrancers.

13.5 Reorganization. In the event a partial taking results in the taking of a complete Unit, the Owner thereof automatically shall cease to be a member of the Association. Thereafter the Association shall reallocate the ownership, voting rights, and assessment ratio determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and as required by the Act and shall submit such reallocation to the Owners of remaining Units for amendment of this Declaration as provided.

13.6 Reconstruction and Repair. Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article XI above.

#### XIV. USE OF UNITS AND COMMON AREAS

##### 14.1 Unit Use Restrictions.

(a) All Units within the Project shall be used exclusively for single family residential housing (as "family" is defined from time to time in the zoning ordinances of Weber County, Utah), primarily vacation housing, for an Owner and its Authorized Users, including but not limited to long or short term leases, month-to-month tenancies, or, if permitted under law,

nightly rentals and for no other purposes. In no event shall any Unit containing two (2) bedrooms be used as a residence for more than four natural Persons at any one time and in no event shall any Unit containing one (1) bedroom be used as a residence for more than two (2) natural Persons at any one time.

(b) Any lease, rental agreement, or nightly rental for a Unit must be in writing, shall require the lessee to comply with the terms and provisions of, and shall be subject to, the Declaration, Bylaws, rules and regulations, and other documentation of the Association. Such lease shall also provide that the failure of the lessee to comply with this Declaration and the Master Declaration constitutes a default under the terms of the lease. Each Owner shall, promptly following the execution of any such lease, forward a conformed copy thereof to the Manager or, if there is no Manager, to the Management Committee. Each Owner shall be deemed to have appointed the Association as its agent for purposes of enforcing against a tenant any default arising from violation of this Declaration and the Master Declaration. The foregoing provisions of this subsection shall not apply to the Declarant, or to a Mortgagee in possession of a Unit as a result of foreclosure or any proceeding in lieu of foreclosure, during the period of such Mortgagee's possession.

(c) No trade or business of any kind shall be carried on in a Unit. The lease or rental of such Unit for residential occupancy purposes shall not be considered to be carrying on a trade or business. No Unit shall be used for conducting the business of rental of other Units.

14.2 Use of Common Areas. There shall be no obstruction of the Common Areas by the Owners and/or their Authorized Users without the prior consent of the Association. The Association may by rules and regulations prohibit or limit the use of the Common Areas as may be reasonably necessary for the purpose of protecting the interests of all the Owners or protecting the Units or the Common Areas. Nothing shall be kept or stored on any part of the Common Areas (including Limited Common Areas) without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from, the Common Areas except upon the prior written consent of the Association. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and with the use restrictions applicable to the Units. Without limiting the breadth of the foregoing sentence: (i) No automobile or other vehicle shall be parked in front of a Garage, in front of a walkway, or at any location within the Project which impairs or tends to impair vehicular or pedestrian access within the Project or to and from its various parts; (ii) No radio or television antenna or any wiring for any purpose may be installed on the exterior of any Building without the prior written approval of the Management Committee; (iii) No sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted, or fixed by any Owner at any location within the Common Areas or at any location within each Unit visible from the Common Areas without the prior written consent of the Management Committee; (iv) No sidewalk, entrance, passage, vestibule, stairway, corridor or hall comprising a part of the Common Areas (other than Limited Common Areas) may be obstructed or encumbered or used for any purpose other than ingress and egress to and from Units; (v) No garments, rugs, other household items, or wash lines of any kind may be hung, erected or maintained outside of an Owner's Unit; (vi) No Unit Owner shall discard or permit to fall any items from the windows of

his Unit; and (vii) No articles belonging to Owners shall be kept within or upon Common Areas (other than Limited Common Areas associated with his Unit.

14.3 Prohibition of Damage and Certain Activities.

(a) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would result in the cancellation of the insurance on the Project or any part thereof or an increase of the rate of the 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 Association.

(b) Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(c) No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any Authorized User of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from such damage or waste caused by such Owner or its Authorized User; provided, however, that any invitee of the Declarant shall not be under any circumstances deemed to be an Authorized User of any other Owner.

(d) No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Areas or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other owner or to any person at any time lawfully occupying a Unit in the Project. No Owner or Authorized User shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Owners or occupants.

(e) To the fullest extent allowed by law, smoking is not permitted within any Unit or any interior area of a Building. Each Owner shall indemnify and hold Declarant and the Association harmless from and against any and all liabilities, obligations, claims, debts, demands, suits, costs, attorneys' fees, expenses, actions and causes of action of any kind or nature whatsoever, in law or equity, arising out of or in any way relating to such Owner's violation of the covenants, conditions and restrictions stated in this Article XIV.

(f) No solid-fuel burning devices, such as charcoal grills and wood burning stoves or fireplaces shall be used, kept or stored on the Subject Property.

14.4 Rules and Regulations. No Owner or Authorized User shall violate the rules and regulations for the use of the Units and of the Common Areas (including but not limited to Limited Common Areas) as adopted from time to time by the Association.

14.5 Structural Alterations. No structural alterations to any Unit shall be made, no other alterations to any Unit modifying the external appearance of any Unit and no plumbing,

electrical or similar work within the Common Areas (including but not limited to Limited Common Areas) shall be done, by any Owner without the prior written consent of the Association. Any such work shall also be completed in accordance with and subject to all applicable building codes, ordinances, statutes and regulations.

14.6 Restriction on Signs. No signs, flags, or advertising devices of any nature shall be erected, displayed or maintained on any part of the Project (including placement of signs within a Unit or other location of the Project which are visible from the Common Areas) without the prior written approval of the Association, except (i) as may be necessary temporarily to caution or warn of danger or to provide directions as required by law and (ii) such signs as Declarant may erect or maintain incident to sale or lease of Units. In further explanation of the foregoing, no "for sale", "for rent", or similar signs (private or of a real estate brokerage) shall be displayed within a Unit or within the Project unless approved by the Association, which approval may be withheld in the sole and absolute discretion of the Association. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

14.7 No Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept in or on the Properties including a pet of any kind.

14.8 Limited Common Storage Spaces. The Unit Owner of the Unit to which a Storage Space is assigned shall maintain and repair such Storage Space and any cabinets or other improvements located therein and may use the same in accordance with rules and regulations adopted by the Association. A Storage Space may not be used for any purpose other than storage; provided, however the storage of perishable foods and flammable materials is prohibited. The Association shall have no responsibility for the security of any such Storage Space. Failure to properly maintain a Storage Space may result in the levy of a Default Assessment.

14.9 Recreational Vehicles. No recreational vehicle (boats, campers, trailers, motor homes, or similar items) shall be kept or parked on any portion of the Common Areas except in Common Areas designated for such purposes by the Association or for immediate loading and unloading only.

14.10 Restrictions on Parking.

(a) No Unit Owner or its Authorized Users shall be allowed to park more than two motor vehicles within the Project, and no Unit Owner or its Authorized Users shall park more than one (1) vehicle outside of the Garage that is assigned to such Owner's Unit.

(b) All parking spaces located outside of a Garage are subject to availability on a first-come first-served basis. At no time may an Owner of a Unit or its Authorized Users use more than one parking space in the general Common Areas. The Association may reserve to itself, for the benefit of staff of the Association or its management company, one or more parking spaces and other parking spaces may be designated for handicap purposes. The Association may

make any of such designated parking spaces available to Unit Owners needing handicap parking in accordance with procedures adopted by the Association.

(c) The use of parking spaces and Garages shall be subject to rules and regulations (including but not limited to the implementation of fines) that the Association may adopt from time to time. In furtherance of such power, the Association (or its agents) may require Unit Owners or their Authorized Users to provide from time to time a list of license plate numbers of all automobiles owned or used by Unit Owners and its Authorized Users.

(d) No motor vehicle shall be assembled, repaired or serviced at the Project.

(e) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has by virtue of its ownership of a Unit (other than in connection with the sale, lease or other conveyance of such Owner's Unit).

14.11 Garages. Each Unit Owner shall ensure that the Garage that is a Limited Common Area to such Owner's Unit is capable of housing at least one (1) vehicle and that no items are stored in such Garage that would hinder or prevent such parking use. No Garage shall be utilized for other than the purpose of parking and storage of vehicles and other items normally stored in garages in first-class condominium projects. No Garage may be used for living space. No Unit Owner may make improvements or alterations to its Garage without the prior consent of the Management Committee. Nothing herein shall reduce or modify a Unit Owner's obligation to keep such Garage in a good, clean, sanitary and attractive condition as provided in Section 5.5. A Garage appurtenant to a Unit shall be deemed included within the lease of the Unit to those individuals who lease such Unit. The Association shall have no responsibility for the security of any such parking space or Garage.

14.12 No Overloading. No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to a Building. No Owner shall overload a floor or standard electrical circuits of his Unit. No Owner shall permit the use or operation in his Unit of any equipment or other device that will in any manner injure a Building or portions thereof.

14.13 Exemption of Declarant. The provisions of this Article XIV shall not apply to any improvement or structure constructed on the Subject Property by Declarant prior to the time that Units and appurtenant Percentage Interest are conveyed by Declarant to purchasers; and the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and sale of Units owned by Declarant. The Declarant also reserves the right to rent or lease unsold Units prior to sale.

14.14 Authorized Users. Each Unit Owner shall be responsible to ensure that its Authorized Users strictly comply with all restrictions, limitations, rules and regulations set forth in, or contemplated by, this Declaration or adopted by the Association from time to time pursuant to this Declaration. The Association shall have the right, but not the obligation, to enforce such restriction, limitations, rules and regulations directly against any such Authorized

Users and such Unit Owner shall be responsible for any damages, costs or expenses (including attorneys' fees) arising out of or related thereto.

## XV. MORTGAGEE PROTECTION

15.1 Notice to First Mortgagee. From and after the time a first Mortgagee (or an insurer or guarantor thereof) makes written request to the Association therefor, stating both its name and address and the Unit number or address of the Unit on which it has (or insures or guarantees) a Mortgage, the Association shall notify such first Mortgagee (or an insurer or guarantor thereof) in writing of the following: (i) in the event that the Owner of the Unit encumbered by the first Mortgage held by such first Mortgagee neglects for a period of sixty (60) of more days to cure any failure on his part to perform any of this obligations under this Declaration; (ii) any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its Mortgage; (iii) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of first Mortgagees.

15.2 Priority of Liens for Unpaid Assessments. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration or the Act shall be subordinate to a Mortgage affecting such Unit provided that such Mortgage was recorded prior to recording of such notice of lien or claim levied by the Association, and the 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 assessments or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the Mortgage, exercise of a power of sale available thereunder, or deed or assignment in lieu of fore-closure (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Units including the Unit in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not to burden a Mortgagee which comes into possession or which obtains title shall be collected or enforced by the Association from or against a Mortgagee, a successor in title to a Mortgagee, or the Unit affected or previously affected by the Mortgage concerned.

15.3 First Mortgagee Consents. Unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each Mortgage) of the individual Units subject to first Mortgages, the Association shall not be entitled, by act, omission, or otherwise:

- (a) To abandon or terminate the Project or to abandon or terminate the condominium arrangement which is established by this Declaration and the Plat;
- (b) To partition or subdivide any Unit;
- (c) To abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Areas (except for the granting of easements for utilities and similar purposes consistent with the intended use of the Common Areas);

(d) To use hazard insurance proceeds resulting from damage to any part of the Project (whether to Units or to the Common Areas) for purposes other than the repair, replacement or reconstruction of such improvements, except as provided in Article XI;

(e) To change the pro rata interests or obligations of any Unit which apply for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards and for (ii) determining the pro rata share of ownership of each Unit in the Common Areas, except as such changes may occur as a result of partial condemnation or the addition of all or any part of the Additional Land.

#### 15.4 Miscellaneous Mortgagee Rights.

(a) The Association shall not: (i) alter the provisions of Article X in such a way as to diminish the insurance protection required to be afforded to the parties designated to be protected thereby; or (ii) fail to maintain the insurance coverage described in said Article.

(b) Any first Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Association. After the commencement of sale of individual Units, the Association shall establish an adequate reserve to cover the cost of reasonably predictable and necessary major repairs, maintenance and replacement of the Common Areas and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by special assessments.

(c) From and after the time a first Mortgagee makes written request to the Association therefore, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or taking or anticipated condemnation of: (i) the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (ii) any Unit encumbered by the Mortgage held by such Mortgagee, if the amount involved in such damage, loss, or taking is in excess of, or reasonably estimated to be in excess of, Five Thousand Dollars (\$5,000.00). Said notice shall be given within ten (10) days after the Association learns of such damage, loss, taking or anticipated condemnation.

(d) No provision of this Declaration gives or may give a Unit Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for loss to or taking of Units and/or the Common Areas.

(e) In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article XV, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

(f) No amendment to this Declaration which has the effect of diminishing the rights, protection, or security afforded to first Mortgagees shall be accomplished or effected



unless fifty-one percent (51%) of the first Mortgagees of the individual Units have given their prior written approval to such amendment. Any amendment to this Article XV shall be accomplished by an instrument executed by the Association and filed for record in the Official Records. In any such instrument an officer of the Association shall certify that any prior written approval of first Mortgagees required by this Article XV, as a condition to amendment, has been obtained.

15.5 Implied Approval. In the event that the approval of a first Mortgagee is required pursuant to the provisions of this Article XV or elsewhere herein, in the event a first Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, approval will be deemed to have been given, provided notice was delivered to such Mortgagee by certified or registered mail, "return receipt" requested.

## XVI. AMENDMENT

16.1 Except as provided in and/or subject to the terms of items (a) through (c) below, the vote of Owners holding at least 67% of the Percentage Interests in the Common Areas shall be required to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Association. In such instrument an officer of the Association shall certify that the vote required by this Article for amendment has occurred. The foregoing right of amendment shall, however, be subject to the following:

(a) Any amendment to Article XV ("Mortgagee Protection") shall be subject to the requirements for amendment contained in such Article XV.

(b) Until the Declarant has sold all Units in the Project (as expanded from time to time pursuant to Article VI hereof), Declarant shall have the right unilaterally to amend and supplement this Declaration and the Plat to correct any technical errors or to clarify any provision to more fully express the intent of the Declarant for development and management of the Project.

(c) Until the Declarant has sold all Units which it intends to sell to purchasers, no amendment to the Plat or to any provisions of this Declaration which has or may have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant) herein shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by the Declarant.

(d) A change to the following provisions would require the vote of Members as provided in this Section 16.1 as well as the vote of first Mortgagees in accordance with the requirements of Section 15.4 (f) above:

- (i) voting rights;

- Common Areas;
- (ii) reductions in reserves for maintenance, repair, and replacement of
  - (iii) responsibility for maintenance and repairs;
  - (iv) reallocations of interests in the general or Limited Common Areas, or rights to their use, excluding, however, a change as a result of the addition of all or any portion of the Additional Land as provided in Article VI;
  - (v) redefinition of any Unit boundaries;
  - (vi) convertibility of Units into Common Areas or vice versa;
  - (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of Property to or from the Project, excluding however an expansion of the Project as a result of the addition of all or any portion of the Additional Land as provided in Article VI;
  - (viii) hazard or fidelity insurance requirements;
  - (ix) imposition of any restrictions on the leasing of Units;
  - (x) imposition of any restrictions on an Owner's right to sell or transfer his or her unit;
  - (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
  - (xii) any provisions that expressly benefit first Mortgagees, insurers, or guarantors.

## XVII. ENFORCEMENT AND REMEDIES

### 17.1 Enforcement.

(a) Each provision of this Declaration with respect to the Association or the Common Areas shall be enforceable by Declarant or by any Unit Owner by a proceeding for injunctive relief.

(b) Each provision of this Declaration with respect to a Unit Owner or a Unit shall be enforceable by Declarant or by the Association by:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or

(iii) in the discretion of the Association, for so long as any Unit Owner fails to comply with any such provisions, exclusion of such Unit Owner and its Authorized Users from the use of any Common Areas and from participation in any Association affairs, including but not limited to voting.

(c) In addition to the rights and remedies described in paragraph 17.1(b) above, if a Unit Owner fails to strictly perform or observe any covenant or condition to be performed or observed by such Unit Owner under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(i) The Association may, but is not obligated to, cure such failure to comply at the Unit Owner's sole cost and expense. If the Association cures any such failure to comply, the Unit Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty (30) days after the Unit Owner receives a written invoice therefor from the Association.

(ii) The Association may, after notice and an opportunity to be heard, fine the Unit Owner, as a Default Assessment, an amount not to exceed one month's installment of the General Assessment for each violation. The Unit Owner shall pay any such fine to the Association within thirty (30) days after the Unit Owner receives written invoice therefor from the Association.

(iii) With respect to a Unit Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) With respect to a Unit Owner's failure to pay one or more installment of any Assessment (including a General, Special or Default Assessment), the Association may publicly post at a location within the Project, the name of each Unit Owner that is delinquent and the amount of any such delinquency.

(v) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(d) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

17.2 Attorneys' Fees. In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

17.3 Interest. If a Unit Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Unit Owner shall pay to

the Association interest on such unpaid amount at the rate of eighteen percent (18%) per annum, or such other rate as the Committee may establish from time to time, from the due date of such unpaid amount until the date paid.

17.4 Right to Notice and Hearing. Whenever an Association Document requires that an action be taken after "notice and hearing," the following procedure shall be observed. The party proposing to take the action (e.g., the Committee or a committee or officer of the Association) shall give at least three (3) days' prior written notice of the proposed action to all Unit Owner whose interest(s) would be significantly affected by the proposed action, as reasonably determined by the proposing party. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the party proposing to take the action, and all affected Unit Owners may give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. Any affected Unit Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Unit Owner having a right to notice and hearing shall have the right to appeal to the Committee from a decision of a proposing party other than the Committee. Such right of appeal may be exercised within thirty (30) days after a Unit Owner receives notice of the decision, by filing a written notice of appeal with the Committee. Notices as provided in this Section 17.4 shall be given in accordance with the requirements of Section 19.6.

17.5 Non-Waiver. Failure by Declarant, the Association or any Unit Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

17.6 Waiver of Jury.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT AND THE ASSOCIATION AND EACH UNIT OWNER BY ACCEPTING A DEED TO A UNIT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, THE OWNERSHIP OF A UNIT, OR IN ANY WAY CONNECTED WITH, RELATED TO OR INCIDENTAL TO THE DEALINGS OF DECLARANT, ASSOCIATION AND A UNIT OWNER OR UNIT OWNERS WITH RESPECT TO THIS DECLARATION OR ANY OTHER ASSOCIATION DOCUMENTS, OR THE TRANSACTIONS RELATED HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, DECLARANT, ASSOCIATION AND EACH UNIT OWNER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT DECLARANT, ASSOCIATION, OR A UNIT OWNER MAY FILE AN EXECUTED

COPY OF THIS AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF DECLARANT, ASSOCIATION AND EACH UNIT OWNER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. DECLARANT, ASSOCIATION, OR AND UNIT OWNER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTER CLAIM OR OTHERWISE, ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

#### XVIII. CONSTRUCTION DEFECTS

18.1 Declarant's Right to Cure Alleged Defects. It is Declarant's intent that all improvements constructed or made by it in the Project be built or made in compliance with all applicable laws. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating quality, disputes may arise as to whether a defect exists and the Declarant's responsibility therefor. It is the Declarant's intent to resolve all disputes and claims regarding Alleged Defects (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association, the Manager, the Management Committee and all Owners shall be bound by the following claim resolution procedure:

(a) If the Association, Manager, the Management Committee or any Owner (collectively, "Claimant") claims, contends or alleges that any portion of the Project including, without limitation, any Unit or any improvements constructed on the Property, is defective or that the Declarant or its agents, consultants, contractors or subcontractors was negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), the Declarant hereby reserves the right to inspect, repair and/or replace the Alleged Defect as set forth herein.

(b) In the event that a Claimant discovers any Alleged Defect within one year of purchase of a Unit, the Claimant shall, within a reasonable time after discovery, notify the Declarant in writing, at the address specified for notices in this Declaration (or such other address at which the Declarant maintains its principal place of business) of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Within a reasonable time after the receipt by the Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Declarant, as part of the Declarant's reservation of right, the Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit and any improvements or other portion of the Project, for the purposes of inspecting and, if deemed necessary by the Declarant, repairing or replacing the Alleged Defect. In conducting such inspection, repairs and/or replacement, the Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against the Declarant alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal

property resulting from the Alleged Defect, or (iii) for any consequential damages resulting from the Alleged Defect, unless and until (1) the Claimant has delivered to Declarant a Notice of Alleged Defect and (2) the Declarant has, within 90 days after its receipt of the Notice of Alleged Defect, either (x) failed to repair or replace the Alleged Defect or (y) if the Alleged Defect cannot reasonably be repaired or replaced within the 90-day period, failed to commence repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion. The period of limitation on any proceeding or action asserting a breach of any obligation or duty in connection with any claim, contention or allegation that any portion of the Project including, without limitation, any Unit or any improvements constructed on the Property, is defective or that the Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading, construction or other development thereof shall be one (1) year after the date on which the initial construction of the Common Areas was substantially completed, subject to any limited warranty that Declarant may deliver to a particular Unit Owner in connection with the purchase of a Unit from Declarant.

(e) Nothing set forth in this Section shall be construed to impose any obligation on the Declarant to inspect, repair or replace any item or Alleged Defect for which the Declarant is not otherwise obligated to do under applicable law. The right of the Declarant to enter, inspect, repair, and replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Declarant in the Official Records.

(f) Notwithstanding anything to the contrary in this Section, the Declarant disclaims any representations and warranties in respect of, and shall have no continuing liability to any Owner for, any design or construction defects (whether known or unknown) relating to the Project, including latent defects.

(g) If any court should determine that the provisions of this Article XVIII are unenforceable, this Article XIII shall be severable and shall not affect the balance of this Declaration.

## XIX. GENERAL PROVISIONS

19.1 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

19.2 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. Failure to

comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. By acquiring any interest in a Unit or in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

19.3 Limitation on Association's and Declarant's Liability.

(a) The Association and Declarant shall not be liable for any failure of water service or other utility services to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or Person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any part of any Building or its drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority.

(b) The Project, including common areas, was initially designed and constructed to satisfy the requirements of the American's with Disabilities Act. As of the date of this Declaration, the Declarant was not required to make every Unit readily accessible and usable by individuals with disabilities, although a certain number of Units and all Common Areas located in the Project were designed accordingly. Consequently each Unit Owner, by his purchase of a Unit, acknowledges that his Unit may not be readily accessible and usable by individuals with disabilities, that claims to the contrary are disclaimed, and that the Association and Declarant shall not be liable for any claimed deficiencies in such regard.

19.4 Owner's Obligations Continue. All obligations of the Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may have leased or rented a Unit, but the Owner of a Unit shall have no obligation for expenses or other obligations accruing after the date of conveyance of the fee title to such Unit. In the event of the rental or lease of a Unit, an Owner shall be deemed to have granted a license to his tenant(s) of his right to use the Common Areas for the term of the lease or the period of rental and such Owner shall have no right to use the Common Areas during the term or period of such lease or rental.

19.5 Interpretation. To the extent the provisions of the Act are consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

19.6 Agent for Service of Process. Steven C. Roberts, whose address is 3923 North Wolf Creek Drive, Eden, Utah 84310, is the person to receive service of process in cases authorized by the Act. The Association shall, however, have the right to appoint a successor or substitute process agent. Such successor or substitute agent and his address shall be specified by an appropriate instrument filed in the Official Records.

19.7 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the Official Records.

19.8 Request for Notice. Pursuant to U.C.A. Section 57-1-26 (2000 Replacement), as amended, the Association hereby requests that a copy of any notice of default and a copy of notice of sale under any mortgages or deeds of trust filed for record against any Units be mailed to the Powder Canyon Condominium Association, Inc., at 3923 North Wolf Creek Drive, Eden, Utah 84310.

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**EXHIBIT A**  
to  
**Declaration of Condominium of**  
**Powder Canyon Condominium Project**  
  
(Percentage Interest)

Unit #	Unit Area (S.F.)	Percentage Interest
111	1,233	4.36%
112	1,537	5.43%
113	1,531	5.42%
114	1,537	5.43%
115	1,233	4.36%
121	1,233	4.36%
122	1,537	5.43%
123	1,531	5.42%
124	1,537	5.43%
125	1,233	4.36%
211	1,233	4.36%
212	1,537	5.43%
213	1,531	5.42%
214	1,537	5.43%
215	1,233	4.36%
221	1,233	4.36%
222	1,537	5.43%
223	1,531	5.42%
224	1,537	5.43%
225	1,233	4.36%

**EXHIBIT B**  
to  
**Declaration of Condominium of**  
**Powder Canyon Condominium Project**  
**(Bylaws)**

**BYLAWS  
OF  
POWDER CANYON CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I  
DEFINITIONS**

1.01 Declaration.

As used herein, "Declaration" means the Declaration of Condominium of Powder Canyon Condominium, recorded in the Official Records of Weber County, Utah.

1.02 Other Definitions.

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Declaration.

**ARTICLE II  
OFFICES**

The Association is a Utah nonprofit corporation, with its principal office located 3923 North Wolf Creek Drive, Eden, Utah 84310. The Association may also have offices and may carry on its purposes at such other places within and outside the State of Utah as the Management Committee may from time to time determine.

**ARTICLE III  
VOTING, QUORUM AND PROXIES**

3.01 Voting.

Votes shall be allocated as set forth in Article 7 of the Declaration.

3.02 Quorum.

Except as otherwise required by law or the Articles, the presence in person or by proxy of Owners entitled to vote more than 20 percent of the total votes of the Owners shall constitute a quorum.

3.03 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Owner or his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy.

### 3.04 Majority Vote.

At any meeting of the Owners, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Owners, unless the vote of a greater number is required by law, the Articles, the Declaration or these Bylaws.

## **ARTICLE IV ADMINISTRATION**

### 4.01 Annual Meeting.

The annual meeting of the Owners shall be held at a time designated by the Management Committee in the month of November in each year, or at such other date designated by the Management Committee, beginning with the year 2009 for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

### 4.02 Special Meetings.

Special meetings of the Owners, for any purpose, unless otherwise prescribed by statute, may be called by the president or by a majority of the Directors and shall be called by the president at the request of Owners entitled to vote 20 percent or more of the total votes of all Owners.

### 4.03 Place of Meeting.

The Management Committee may designate the Association's principal offices or any place within Weber County or Salt Lake County, Utah, as the place for any annual meeting or for any special meeting called by the Management Committee.

### 4.04 Notice of Meeting.

Written or printed notice of any meeting of the Owners, stating the place, day and hour of the meeting, and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each Owner entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Management Committee may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

#### 4.05 Informal Action by Owners.

Any action required or permitted to be taken at a meeting of the Owners may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, shall be 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 effective to the maximum extent provided in the Utah Revised Nonprofit Corporation Act, as amended from time to time (the "URNC Act"). Unless the written consents of all Owners entitled to vote have been obtained, notice of any Owner approval without a meeting shall be given at least ten (10) days before consummation of the transaction, action or event authorized by the Owners' action, as provided in the URNC Act.

### **ARTICLE V DECLARANT CONTROL**

Declarant shall be entitled to control the Association as set forth in Section 7.2 of the Declaration.

### **ARTICLE VI MANAGEMENT COMMITTEE**

#### 6.01 Number and Election of Members.

The Management Committee shall serve as the directors of the Association and shall be appointed, elected and removed as set forth in Article VII of the Declaration.

#### 6.02 Resignations; Vacancies.

Any Director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Other than with respect to a Director appointed by the Declarant as provided in Section 7.2 of the Declaration, any vacancy occurring on the Management Committee (by reason of resignation or death) may be filled by the affirmative vote of a majority of the Directors then in office though less than a quorum. A vacancy occurring on the Management Committee created by the resignation or death of a Director appointed by the Declarant, if Declarant remain in control of the Management Committee as provided in Section 7.2 of the Declaration shall be filled by the Declarant appointing a new Director. A Director elected to fill a vacancy shall hold office until the next annual meeting of the Owners and until his successor is duly elected and qualified.

#### 6.03 Regular Meetings.

Regular meetings of the Management Committee may be held without call or formal notice at such places within or outside the State of Utah, and at such times as the

Management Committee from time to time by vote may determine. Any business may be transacted at a regular meeting. The regular meeting of the Management Committee for the election of Officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Owners, or any special meeting of Owners at which an Management Committee is elected.

6.04 Special Meetings.

Special meetings of the Management Committee may be held at any place within the State of Utah, or by telephone; provided, that each Director can hear each other Director, at any time when called by the president, or by two or more Directors, upon the giving of at least three (3) days' prior notice of the time and place thereof to each Director by leaving such notice with such Director or at such Director's residence or usual place of business, or by mailing or telegraphing it prepaid, and addressed to such Director at such Director's post office address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the Directors shall be required.

6.05 Quorum.

A majority of the number of Directors fixed by these bylaws, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the Directors in attendance shall, except where a larger number is required by law, by the Articles or by these Bylaws, decide any question brought before such meeting.

6.06 Waiver of Notice.

Before, at or after any meeting of the Management Committee, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Management Committee shall be a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.07 Informal Action by Directors.

Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, shall be signed by the Directors having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Directors entitled to vote on the action were present and voted. Such consents shall be effective to the maximum extent provided in the URNC Act. Unless the written consents of all Directors entitled to vote have been obtained, notice of any Director approval without a meeting shall be given at least ten (10) days before consummation of the transaction, action or event authorized by the Directors' action, as provided in the URNC Act.

**ARTICLE VII**  
**OFFICERS AND AGENTS**

7.01 General.

The Officers of the Association shall be a president (who shall be chosen from among the Directors), one or more vice presidents, a secretary and a treasurer. The Management Committee may appoint such other officers, assistant officers, committees and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Management Committee. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent or employee are not prescribed by the Bylaws or by the Management Committee, such Officer, agent or employee shall follow the orders and instructions of the president.

7.02 Removal of Officers.

The Management Committee may remove any Officer, either with or without cause, and elect a successor at any regular meeting of the Management Committee, or at any special meeting of the Management Committee called for such purpose.

7.03 Vacancies.

A vacancy in any office, however occurring, shall be filled by the Management Committee for the unexpired portion of the term.

7.04 President.

The president shall be the chief officer of the Association. The president shall preside at all meetings of the Association and of the Management Committee. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents and employees. The president of the Association is designated as the Officer with the power to prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

7.05 Vice Presidents.

The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Management Committee. In the absence of the president, the vice president designated by the Management Committee or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made all vice presidents may exercise such powers and perform such duties.



**7.06 Secretary.**

The secretary shall:

(a) keep the minutes of the proceedings of the Owners and the Management Committee;

(b) see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration and as required by law;

(c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Management Committee;

(d) keep at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each Mortgagee; and

(e) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Management Committee. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

**7.07 Treasurer.**

The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness and other personal property of the Association and shall deposit the same in accordance with the instructions of the Management Committee. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Management Committee, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Management Committee, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Management Committee, conditioned upon the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Management Committee or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

**ARTICLE VIII**  
**EVIDENCE OF OWNERSHIP, REGISTRATION OF**  
**MAILING ADDRESS AND LIEN HOLDERS**

8.01 Proof of Ownership.

Except for those Owners who initially contracted to purchase a Unit from the Declarant, any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Unit. Such copy shall remain in the files of the Association. An Owner shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Owners unless this requirement is first satisfied.

8.02 Registration of Mailing Address.

If a Unit is owned by two or more Owners, such Owners shall designate one address as the registered address required by the Declaration. The registered address of an Owner or Owners shall be furnished to the secretary of the Association within ten days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit.

8.03 Liens.

Any Owner who mortgages or grants a deed of trust covering his Unit shall give the Association written notice of the name and address of the Mortgagee and shall file true, correct and complete copies of the note and security instrument with the Association.

8.04 Address of the Association.

The address of the Association shall be 3923 North Wolf Creek Drive, Eden, Utah 84310. Such address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

**ARTICLE IX**  
**SECURITY INTEREST IN MEMBERSHIP**

Owners shall have the right irrevocably to constitute and appoint a Mortgagee their true and lawful attorney-in-fact to vote their Membership in the Association at any and all meetings of the Association and to vest in the Mortgagee any and all rights, privileges and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by the Mortgagee with the secretary of the Association. A release of the Mortgage covering the subject Unit shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the Mortgagee the duties and obligations of an Owner.

**ARTICLE X**  
**AMENDMENTS**

10.01 By Directors.

Except as limited by law, the Articles, the Declaration or these Bylaws, the Management Committee shall have power to make, amend and repeal the Bylaws of the Association at any regular meeting of the Management Committee or at any special meeting called for that purpose at which a quorum is represented. If, however, the Owners shall make, amend or repeal any Bylaw the Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action.

10.02 Owners.

Subject to any rights conferred upon first Mortgagees in the Declaration, the Owners may, by the vote of the holders of at least 67 percent of the votes of the Owners, unless a greater percentage is expressly required by law, the Articles, the Declaration or these Bylaws, make, alter, amend or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

**ARTICLE XI**  
**MISCELLANEOUS**

11.01 Fiscal Year.

The fiscal year of the Association shall be such as may from time to time be established by the Management Committee.

11.02 Other Provisions.

The Declaration contains certain other provisions relating to the administration of the Condominium Project which provisions are hereby incorporated herein by reference.

(End)

EXHIBIT C  
to  
Declaration of Condominium of  
Powder Canyon Condominium Project

(Additional Land)

A part of the Northwest Quarter of Section 27, T7N, R1E and a part of the Southwest Quarter of Section 22, T7N, R1E, SLB&M, Beginning at the Northwest corner of Moose Hollow Condominiums Phase 2, said point is on the Southerly Right of Way of Moose Hollow Drive, point being South 2,064.88 feet and West 291.76 feet from the Center Quarter Corner of said Section 22 {Basis of Bearing North 89°14'39" West from said Quarter Corner to the West Corner of said Section 22}; thence as follows: S 45°18'01" W 180.35 feet along said Moose Hollow Condominium Phase 2 Boundary to Moose Hollow Phase 4 Boundary and along said Phase 4 Boundary the following three courses: S 45°26'32" W 119.26 feet; thence S 49°48'25" W 243.22 feet; thence S 35°29'01" W 123.17 feet; thence S 08°00'36" W 130.85 feet along said Phase 4 Boundary and an extension of said boundary to an existing fence; thence N 89°14'28" W 223.67 feet along an existing fence; thence N 85°28'50" W 149.48 feet along an existing fence to an existing wood fence; thence N 00°45'07" W 178.63 feet along an existing wood fence, not following the fence where the fence deviates around an existing ditch; thence N 82°25'13" W 89.91 feet along an existing wood fence to the Easterly Right of Way of SR 158 and along said Right of Way the following three courses: Northeasterly 78.46 feet along a non-tangent curve to the right (R=1159.60', D=3°52'35", T=39.24', CH=78.44', CHB=N 17°07'33" E) to a compound curve; thence Northeasterly 457.23 feet along said Right of Way which is a curve to the right (R=865.42', D=30°16'16", T=234.08', CH=451.93'); thence N 49°20'06" E 112.55 feet to the Southern Right of Way of Moose Hollow Drive and along said Right of Way the following three courses: S 41°49'00" E 75.71 feet (75.28' Record) to a tangent curve to the right; thence Southeasterly 252.63 feet (R=280.00', D=51°41'42", T=135.65', CH=244.15', CHB=S 67°39'51" E) to a tangent line; thence N 86°29'18" E 314.62 feet to the Point of Beginning.

LESS the following description which has been submitted to the Declaration pursuant to the provisions of Article II.

A part of the Southwest ¼ of Section 22, T7N, R1E, SLB&M; Beginning at the Northwest Corner of Moose Hollow Condominiums Phase 2, said point is on the Southerly right of way of Moose Hollow Drive, point being North 89°14'39" West 291.78 feet along the East-West ¼ Section line and South 2,068.73 feet from the center Quarter Corner of said Section 22 basis of bearing North 89°14'39" West from said Quarter Corner to the West Corner of said Section 22; thence as follows: South 45°18'01" West 180.35 feet (180.28 feet record) along

said Moose Hollow Condominium Phase 2 boundary to Moose Hollow Phase 4 boundary; thence South  $45^{\circ}26'32''$  West 96.30 feet along said Moose Hollow 4 boundary; thence West 329.11 feet; thence North  $48^{\circ}01'23''$  West 86.51 feet; thence West 251.75 feet to the Easterly right of way of Wolf Creek Drive (SR-158) and along said right of way the following two courses: Northeasterly 253.31 feet along a non-tangent curve to the right ( $R=865.42'$ ,  $\Delta=16^{\circ}46'13''$ ,  $T=127.56'$ ,  $CHB=N40^{\circ}47'55''$  E,  $CH=252.40'$ ) to a tangent line; thence North  $49^{\circ}11'02''$  East 114.94 feet along said line to the Southern right of way of Moose Hollow Drive (3600 North) and along said right of way the following three courses: South  $41^{\circ}49'00''$  East 75.31 feet to a tangent curve to the left; thence Southeasterly 252.63 feet along said curve ( $R=280.00'$ ,  $\Delta=51^{\circ}41'44''$ ,  $T=135.65'$ ,  $CHB=S67^{\circ}39'51''$  E,  $CH=244.15'$ ) to a tangent line; thence North  $86^{\circ}29'18''$  East 314.62 feet to the point of beginning.

AFTER RECORDING, RETURN TO:

Powder Canyon, LLC  
Attn: Steven C. Roberts  
3923 N. Wolf Creek Drive  
Eden, Utah 84310



\*W2334247\*

E# 2334247 PG 1 OF 62  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
11-APR-08 352 PM FEE \$151.00 DEP JPM  
REC FOR: POWDER CANYON LLC

DECLARATION OF CONDOMINIUM  
OF  
POWDER CANYON CONDOMINIUM PROJECT  
(An Expandable Condominium Project)