

WHEN RECORDED, RETURN TO:

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ALAN SPRIGGS, SUMMIT CO RECORDER  
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REQUEST: ASSOCIATED TITLE

**SECOND AMENDED DECLARATION OF CONDOMINIUM**

**FOR**

**FOX POINT AT  
REDSTONE**

**(A Utah Expandable Condominium Project)**

THIS SECOND AMENDED DECLARATION OF CONDOMINIUM FOR FOX POINT AT REDSTONE (this "Declaration") is made by SGD-EquiMark, L.L.C., a Utah limited liability company ("Declarant"), and amends the First Amended Declaration of Condominium dated May 31, 2002 and recorded June 5, 2002, as Entry No. 621108, in Book 1453, at Pages 889-927 of the Summit County Recorder's Office.

**Recitals**

A. Declarant is the owner of certain real property located in Summit County, Utah and more particularly described in Exhibit A attached hereto (the "Land").

B. The Land is subject to (i) that certain Declaration of Covenants, Conditions and Restrictions, dated as of February 2, 2001, and recorded in the office of the Summit County Recorder as Entry No. 00581758, in Book 01352, at pages 608-631 (the "Master Declaration"); (ii) that certain Declaration of Easement, dated as of February 2, 2001, and recorded in the office of the Summit County Recorder as Entry No. 00581760, in Book 01352 at pages 658-663 (the "Easement"); and (iii) that certain Red Stone Village Air Rights Declaration, dated as of February 2, 2001, and recorded in the Office of the Summit County Recorder as Entry No. 00581759, in Book 01352, at pages 632-657 (the "Air Rights Declaration").

C. Subject to the Master Declaration, the Easement, the Air Rights Declaration, and any other items of record, Declarant desires to submit the Land to the Utah Condominium Ownership Act, thereby creating certain a condominium project within the Land (the "Condominiums"), and determining the rights and obligations of the owners of the Land and the Condominiums.

NOW THEREFORE, the Declarant does hereby declare and provide as follows:

ARTICLE I  
DEFINITIONS

1.01. Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02. "Association" shall mean the Fox Point at Redstone Association, Inc., a Utah nonprofit corporation, organized to be the Association of the Unit Owners of the Condominiums.

1.03. "Board of Trustees" shall mean the governing board of the Association, appointed or elected in accordance with this Declaration and the Articles of Incorporation and By-laws of the Association.

1.04. "Buildings" shall mean those certain condominium buildings that have been or will be constructed on the Land, as such condominium buildings are shown on the Map.

1.05. "Common Areas" shall have the meaning set forth in Article IV.

1.06. "Common Expenses" means (i) all sums lawfully assessed against the Unit Owners, (ii) expenses of administration, maintenance, repair, or replacement of the Common Areas and Limited Common Areas, (iii) expenses agreed upon as common expenses by the Association, (iv) expenses declared common expenses by the Act, or by the Declaration or the Bylaws, and (v) expenses allocated to the Property by reason of the Master Declaration or the Residential Declaration.

1.07. "Common Facilities" shall mean all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all Owners and all other property (real, personal, or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.08. "Condominium" shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit B hereto.

1.09. "Condominium Act" shall mean the Utah Condominium Ownership Act and amendments thereto. (Title 57, Chapter 8, Utah Code Annotated).

1.10. "Declarant" shall mean SGD-EquiMark, L.L.C., a Utah limited liability company.

1.11. "Land" shall mean the real property described in Exhibit A.

1.12. "Limited Common Areas" shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section

8.03 hereof. Any balconies, porches, private yards, private patios, portions of decks or storage facilities that are identified on the Map with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation.

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

1.14. "Map" shall mean that certain instrument entitled "A Record of Survey Map of Fox Point at Redstone, A Utah Condominium Project," pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Summit County, State of Utah.

1.15. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

1.16. "Mortgagee" shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.

1.17. "Owner" shall mean the person or persons, including the Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Summit County, State of Utah and shall be deemed to be a "Unit Owner." The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.18. "Project" shall mean the Land, the Buildings, and all improvements submitted by this Declaration and the Map to the provisions of the Condominium Act.

1.19. "Property" shall mean the Land, the Buildings, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.20. "Total Votes of the Association" shall mean the total number of votes appertaining to all Condominiums in the Project, as shown in Exhibit B attached hereto.

1.21. "Unit" shall mean a unit of the Condominiums.

## ARTICLE II SUBMISSION AND DIVISION OF PROJECT

2.01. Submission to Condominium. The Declarant, as record fee simple owner of the Land, hereby submits the Land, the Buildings, and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act as an expandable condominium project. All of said property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as Fox Point at

Redstone. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, in the Master Declaration, the Easement, and the Air Rights Declaration, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, and to any person acquiring, leasing, or owning an interest in the real property and improvements comprising the Project, and to its respective personal representatives, heirs, successors, and assigns. In the event another provision or clause of this Declaration contradicts or conflicts with any provision or clause of the Master Declaration, the Easement, or the Air Rights Declaration, the Master Declaration, the Easement, or the Air Rights Declaration, as the case may be, shall govern.

2.02. Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas.

2.03. Covenants to Run With the Land. This Declaration contains covenants, conditions and restrictions relating to the Project which are and shall be enforceable equitable servitudes which shall run with the Land and be binding upon Declarant, its successors and assigns and upon all Unit Owners, their grantees, mortgagees, successors, heirs, personal representatives, devisees and assigns.

### ARTICLE III IMPROVEMENTS

3.01. General Description of Buildings and the Project. The Project shall contain thirty-four (34) Buildings. Seven (7) Buildings are described as "Terrace" Buildings, each of which shall have six (6) Units. Eight (8) Buildings are described as "Terrace" Buildings, each of which shall have eight (8) Units. Eighteen (18) Buildings are described as "Courtyard" Buildings, each of which shall have six (6) Units. And one (1) Building is described as a "Courtyard" Building, which shall have five (5) Units. The principal materials of which the Buildings will be constructed are stone, brick, cedar, hardi-board siding and concrete. In addition to the Buildings, the Project shall consist of Common Areas, including (but not limited to) roadways, parking, walkways and landscaping, and Limited Common Areas.

3.02 General Description, Location and Designation of Units. The Condominium Project consists of a total of two hundred nineteen (219) Units located upon the Land, which shall be developed in phases. There are eleven (11) types of Units, which range in size from approximately 974 square feet to approximately 1467 square feet, as shown on Exhibit B attached hereto and incorporated herein by this reference. The dimensions, designation and location of each Unit are shown on the Map, which is made a part of this Declaration as if fully set forth herein.

3.03 Boundaries of Units. Each Unit shall be bounded by the interior surfaces of its perimeter and bearing walls, floors, ceilings, windows and window frames, exterior doors and door frames, and trim. The Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of its finished surfaces and the exterior surfaces so described. All other portions of the walls, floors

or ceilings shall be a part of the Common Areas. In addition, each Unit shall include the following: (i) all spaces, nonbearing interior partitions, interior doors and door frames and all other fixtures and improvements within the boundaries of the Unit; and (ii) all outlets of utility and communications service lines, including but not limited to power, light, gas, hot and cold water, heating, refrigeration, security, cable television and telephone, within the boundaries of the Unit, but shall not include any part of such lines or ducts themselves. The physical boundaries of a Unit constructed in substantial accordance with the original Map become its boundaries rather than the metes and bounds expressed in the Map, regardless of settling or lateral movements of a Building or minor variances between boundaries shown on the Map and those of a Building. This Section does not relieve a Declarant or any other Person of liability for failure to adhere to the Map in all material respects.

#### ARTICLE IV COMMON AREAS

Except as otherwise provided in this Declaration, the Common Areas shall constitute in general all of the parts of the Property except the Units and the Limited Common Areas. Without limiting the generality of the foregoing, the Common Areas shall include the following, whether located within the bounds of a Unit or not:

- (a) The Land.
- (b) All structural part of the Buildings including, without limitation, the foundations, columns, girders, beams, supports, main walls, fire escapes, entrances, and exits of the Buildings.
- (c) The roadways, pathways, driveways, fences, grounds, landscaping, lawns, shrubs, trees, gardens, parking areas, and storage spaces.
- (d) Installations of central services such as power, light, gas and water including, but not limited to, any utility pipe or line or system servicing more than a single Unit, and all ducts, wires, conduits, and other accessories used therewith.
- (e) In general, all structures, apparatus and installations existing for common use.
- (f) All other areas of the Buildings and the Project necessary or convenient to their existence, maintenance and safety, or normally in common use, except as may be expressly designated in this Declaration as part of a Unit or a Limited Common Area.

#### ARTICLE V LIMITED COMMON AREAS

Unit Owners in each Building shall be entitled to the exclusive use and occupancy of the limited common areas in such Building as set forth in the Map, subject, however, to the same restrictions on use which apply generally to the Common Areas. In addition, Unit Owners shall be entitled to the exclusive use and occupancy of the limited common parking areas as set forth

in the Map, subject, however, to the same restrictions on use which apply generally to the Common Areas. The limited common areas in the Buildings and the limited common parking areas are referred to herein as the "Limited Common Areas". Such right to use the Limited Common Areas shall be appurtenant to and contingent upon ownership of the Unit or Units associated therewith, and even though not specifically mentioned in the instrument of transfer, shall automatically pass to the grantee or transferee of such Unit or Units. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived or abandoned.

ARTICLE VI  
UNDIVIDED INTERESTS IN COMMON AREAS; VOTING RIGHTS;  
COMMON EXPENSES

6.01. Allocation of Undivided Interests. Each Unit will be entitled to an undivided ownership interest in the Common Areas and Limited Common Areas. Each Unit's interest in the Common Areas and Limited Common Areas shall be inseparable from the Unit and any conveyance, encumbrance, judicial sale, or other transfer, voluntary or involuntary, of an undivided interest in the Common Areas and Limited Common Areas shall be void unless the Unit to which that interest is allocated is also transferred. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit B attached hereto and by this reference made a part hereof. Except as otherwise provided in this Declaration or in the Condominium Act, the percentages appurtenant to each Unit as shown in said Exhibit B shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment as to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Association or the terms of any lease or other agreement with any other party with respect to any portion of the Common Areas. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy any Limited Common Areas that may be designated for exclusive use by such Owner. The Board of Trustees on behalf of the Association may enter into leases, management agreements or operating agreements with other parties with respect to the Common Areas on such terms as it may elect that are not otherwise inconsistent with the provisions of this Declaration.

6.02 Allocation of Voting Rights. Each Unit Owner shall be entitled to vote in the affairs of the Association and for the purposes of this Declaration and the Bylaws based on, and in proportion to, each Unit's percentage interest in the Common Areas. For purposes of this Section 6.02 and the voting rights of Unit Owners set forth in this Declaration and the Bylaws, the Units shall include all of the Units covered by the Declaration including Units which have not been constructed or completed. Furthermore, the Common Areas may be modified from time to time by the construction of additional Units or the expansion of additional Units upon the Additional Land. The method of voting shall be as specified in the Bylaws.

6.03 Allocation of Common Expenses. The Common Expenses of the Condominium Project shall be allocated to the Owner of each constructed and completed Unit according to the allocation of undivided interest of such Unit in the Common Areas.

ARTICLE VII  
NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP

7.01. Interior of Units. Subject to the right of the Association to approve the proposed decoration of the interior of the Units, each Owner shall have the right to paint, repair, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of his Unit and the surfaces of all walls, ceilings, floors, and doors within such boundaries.

7.02. Maintenance of Units. Each Owner shall keep the interior of his Unit, including without limitation, interior walls, ceilings, floors, and permanent fixtures and appurtenances thereto, together with all doors and windows separating his Unit from Common Areas or from the exterior of the Building and any decks and all Limited Common Areas appurtenant to his Unit in a clean and sanitary condition and in a state of good repair. In the event that any such Unit, Limited Common Areas, doors, windows, or other improvements shall develop an unsanitary or unclean 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 within seven (7) days following written notice from the Association, 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.

7.03. Title. Title to a Condominium within the Project may be held or owned by any person or entity or any combination thereof 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 tenancy or tenancy in common.

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

7.05. No Subdivision. No Unit or portion thereof may be divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership. Under no circumstances shall interests in a Unit be divided into, leased, sold, conveyed or used as time periods of intervals or sold or conveyed to owners or holders for use on a time share basis. No Unit shall be owned by a partnership or corporation or unincorporated association for the purposes of creating a fraction or divided ownership arrangement or facilitating a time share arrangement among three or more unrelated individuals.

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

7.07. Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Except as provided in Article XIX hereof, any mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

7.08. Separate Taxation. Each Condominium within the Project, including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or 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 undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominium.

7.09. Mechanics Liens. No labor performed or material furnished for use 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 statement 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 undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

7.10. Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership as described in this Declaration and/or the Articles of Incorporation and Bylaws of the Association.

## ARTICLE VIII EASEMENTS

8.01. Easements for Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or any part of a Unit shall hereafter encroach on real property now owned by the Declarant outside the boundaries of the Property, an easement for such encroachment shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to,



encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration.

8.02. Easements for Maintenance, Cleaning, and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, the Association or its agents may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

8.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be appurtenant to and pass with title to each Condominium.

8.04. Association's Right to Use Common Areas. The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

8.05. Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein as shown on the Map, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage.

8.06. Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE IX  
RESTRICTIONS ON USE

9.01. No Commercial Use. The Units within the Project shall be used exclusively for residential purposes. No Unit shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agents from using any Unit, for so long as such Unit is owned by Declarant, as sales models or property management offices, whether or not relating to the Project, or (b) any Owner or his duly authorized agent from freely renting or leasing his Unit from time to time.

9.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

9.03. Restrictions on Signs, Satellite Equipment and Window Coverings. No signs, neon lighting, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project without the prior inspection and written approval of the Association, except as may be temporarily necessary to caution or warn of danger or as used by the Declarant in connection with any Unit sales campaign. If the Association consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Association. No satellite dishes or other satellite equipment shall be erected or maintained on any part of the Project by individual Unit Owners, or their agents. All blinds shall be white, off-white, or a light crème in color, or shall be a light-colored wood with a natural or dark stain and varnish. Drapes and curtains may be any color, but if they are not white, off-white, or light crème in color, they shall be lined with a material which is white, off-white, or light crème in color so that the only color visible from the exterior of any windows is the white, off-white, or light crème color of the lining of the drapes or curtains.

9.04. Restriction on Animals. No animals shall be brought or allowed to remain in or upon any part of the Project, unless and until written authorization is obtained from the Association. The Association, in the sole discretion of its Board of Trustees, shall have the right to revoke such authorization at any time.

9.05. No Alterations. No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or modification, alteration or improvement of any type to the Common Areas or Limited Common Areas. No Owner of a Unit shall install in any windows in the main living area of such Unit any window covering other than the window coverings approved by the Association. No Owner shall, without the prior written consent of the Association, install a hot tub on the deck or of his Unit. No Owner shall, without the prior written consent of the Association, do any act that would impair the structural soundness or integrity of, or alter the exterior appearance of, the Building or the safety of property or impair any easement or hereditament appurtenant to the Project.

9.06. No Obstructions. There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association.

9.07. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Association, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or his guests, lessees, licensees, or invitees.

9.08. Parking. Owners shall have the right to use and occupy Common Areas dedicated for parking of vehicles only in connection with the actual occupancy of a Unit. No such areas shall be used for storage of a vehicle while the Unit is not being occupied. The Association shall have the right from time to time to require that vehicles be temporarily removed from any and all parking areas for maintenance or snow removal purposes.

9.09. Rules and Regulations. The Owners shall comply with each and all of the rules and regulations governing use of the Units and/or Common Areas, as such rules and regulations may from time to time be adopted, amended, or revised by the Association, in the sole discretion of its Board of Trustees.

9.10. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any of said provisions, covenants, conditions, or restrictions upon completion of the construction.

9.11. Restrictions on Leasing Units. Any lease or rental agreement affecting any Unit shall be in writing and shall be subject to the requirements of this Declaration and any rules promulgated by the Association.

## ARTICLE X THE ASSOCIATION

10.01. Membership. Each Owner shall be entitled and required to be a member of the Association; membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interests and by the

same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one membership for each Condominium owned by him. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Condominium shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium.

10.02. Votes. The number of votes appurtenant to each respective Condominium shall be allocated on the basis of the undivided interest in the Common Areas appurtenant to each Unit, and shall be as set forth in Exhibit B attached hereto and by this reference made a part hereof. The number of votes appurtenant to each Condominium as set forth in said Exhibit B shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded.

10.03. Amplification. The provisions of this Article X may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

10.04. Declarant's Authority to Appoint Trustees. Notwithstanding anything contained in the Articles of Incorporation or Bylaws of the Association to the contrary, the Declarant is hereby authorized to appoint and remove all members of the Board of Trustees; provided, however, that such authorization granted to the Declarant by this Section 10.04 shall expire and shall be of no further force or effect upon the first to occur of the following:

(a) The tenth anniversary of the date hereof; or

(b) The conveyance of Units to which three-fourths of the undivided interest in the Common Areas appertain, including for this purposes all units planned with the Additional Land.

10.05. Amendment of Article. This Article X shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

## ARTICLE XI CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

11.01. Common Areas. Subject to the rights and duties of the Owners as set forth in this Declaration, the Association shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Building

and the grounds, including without limitation painting, repair and replacement of exterior trim and roofs, and maintenance of landscape, walkways, and driveways. The Association shall also be responsible for maintenance, repair and replacement of Common Areas within the Building, including, without limitation, hallways, elevators, utility lines, and all Common Facilities, improvements, and other items located within or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

11.02. Manager. The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

11.03. Miscellaneous Goods and Services. The Association may obtain and pay for the services of such personnel as the Association shall determine 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 with which it contracts. Such services may include Building security and onsite check -in and maintenance services. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Association may acquire, and pay for out of the Common Expense Fund, water, sewer, garbage collection, electrical, gas, cable television and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), and insurance, bonds, and other goods and services common to the Units.

11.04. Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use and benefit of all of the Owners and may dispose of such property by sale or otherwise. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such Fund.

11.05. Rules and Regulations. The Association may make reasonable rules and regulations governing the use of the Units, the Common Areas, and the Limited Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, from the offending Owner.

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

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

11.08 Master Declaration, Easement and Air Rights Declaration. The Association shall have such obligations as are imposed on it by the Master Declaration, the Easement, and the Air Rights Declaration and shall have such powers as may be necessary to comply with such obligations.

## ARTICLE XII ASSESSMENT

12.01. Agreement to Pay Assessments. Declarant, for each Condominium 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 Condominium by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article XII.

12.02. Annual Assessments. Annual Assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Common Expense. Annual Assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the Master Declaration, the Easement, and the Air Rights Declaration, the maintenance and operation of the Common Areas and Common Facilities and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, among other things, the following: Expenses of management; taxes and special assessments (until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance, wages for Association employees, including fees for and out-of-pocket expenditures of a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; 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 all of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessment under this Section 12.02 shall be part of the Common Expense Fund. Any costs incurred by the Association for maintenance or repair of doors or windows between the Unit and the exterior of the Building or Common Areas, or Limited Common Areas or improvements thereon, shall be charged by the Association directly to the owner of the Unit adjacent to said doors or windows or to which the Limited Common Areas repaired or maintained is appurtenant and shall not be deemed Common Expense.

(b) Apportionment. Expenses attributable to the common expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their

respective undivided interests in the Common Areas. Expenses attributable to the other than to common expense or to the Project as a whole shall be apportioned among and assessed to all Owners who are reasonably allocated such expenses in proportion to their respective undivided interests in the Common Areas. Declarant shall be liable for the amount of any assessments against completed Condominiums owned by it.

(c) Annual Budget. Annual Assessments shall be determined on a January 1 through December 31 fiscal year basis. On or before October 31 each year, the Association shall prepare or cause to be prepared an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of common expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Annual Assessments shall be made on a January 1 through December 31 fiscal year basis. The Association shall furnish to each Owner a copy of the budget and notify each Owner as to the amount of the Annual Assessment with respect to his Condominium on or before November 15 each year for the fiscal year commencing on January 1 next following such date. Each Annual Assessment shall be payable in twelve (12) equal monthly installments due on the first day of each calendar month during the fiscal year to which the assessment relates or at the discretion of the Board of Trustees in quarterly and/or unequal installments; provided, however, that the first Annual Assessment shall be based upon and shall be payable in installments during the balance of the fiscal year remaining after the date hereof. All unpaid installments of any Annual Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date each such installment is due until paid. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 12.03 below, except that the vote therein specified shall be unnecessary.

12.03. Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods 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 expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). 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 or

Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of one and one-half percent (1-1/2%) per month (or at such lesser rate equal to the maximum interest rate allowed by applicable law) from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

12.04. Lien for Assessments. All sums assessed to Owners of any Condominium with the Project pursuant to the provisions of this Article XII, together with interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article XII, the Association may 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 Condominium, and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Summit 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 judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium. The rights of the Association under this Section 12.04 shall be in addition to any other rights provided by law with respect to liens for and collection of unpaid assessments.

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

12.06. Statement of Account. Upon payment of a reasonable fee set by the Association and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium, the Association shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current Annual Assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.



12.07. Annual Financial Statements. Promptly following the close of each fiscal year of the Association, the Association shall be caused to be prepared and provided to each Owner financial statements containing a balance sheet of the Association as of the last day of the fiscal year and reasonable detail as to the income and expenses of the Association during said fiscal year.

12.08. Amendment of Article. This Article XII shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

### ARTICLE XIII INSURANCE

13.01. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah, where such coverages are reasonably available.

(a) Fire and Casualty Insurance. The Association shall obtain a policy or policies of insurance on the Project in such amounts as shall provide for replacement thereof in the event of damage or destruction from the casualty against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained by other condominium projects similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice. The Association shall have no responsibility to insure the personal property of anyone located within any Unit but may provide such coverage from time to time at the option of the Association.

(b) Public Liability and Property Damage Insurance. The Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage; provided, however, that in no event shall the single combined liability limit of such insurance coverage be less than One Million Dollars (\$1,000,000). Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the Project including Common Areas.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain workmen's 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 Bond. The Association shall obtain and maintain a fidelity bond indemnifying the Association and the Board of Trustees from and against any loss of money or other personal property belonging to the Association or for which the Association is legally

liable, occasioned by any dishonest or fraudulent acts committed by the officers, trustees, or employees of the Association. When a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain such fidelity bond coverage. The fidelity bond shall name the Association as a obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds. The bond shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions. The premiums on all bonds required herein, except those maintained by the management agent, shall be paid by the Association as a Common Expense. The bond shall provide that they may not be canceled or subsequently modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association. The bonds shall provide that first mortgagees, upon request, shall receive notice of cancellation or modification.

13.02. Form of Insurance. Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) Casualty Insurance. Casualty insurance shall be carried in a form or forms naming the Association as the insured, as trustee for the Owners and for the Declarant (for so long as Declarant holds an interest in the Project whether or not Declarant is an Owner), and such policy or policies shall specify the interest of each Owner (Owner's name, Unit number, and the appurtenant undivided interest in the Common Areas). Each policy shall provide a standard, noncontributory mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. Each policy also shall provide that it cannot be canceled either by the insured or by the insurance company until after fifteen (15) days prior written notice is first given to each Owner, to the Declarant, and to each Mortgagee which has requested such notice in writing. The Association shall furnish to each Owner, and to each Mortgagee requesting the same, a certificate of coverage, including an identification of the Owner's interest.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name the Association as the insured, as trustee for each Owner and for the Declarant (for so long as Declarant holds an interest in the Project whether or not Declarant is an Owner), and shall protect the Association, each Owner, and the Declarant against liability for acts or omissions of the Association and all other persons and entities in connection with the ownership, operation, maintenance, or other use of the Project. Each such policy shall provide that it cannot be canceled either by the insured or by the insurance company until after fifteen (15) days prior written notice to the Association, to each Owner, and to the Declarant.

(c) Policies. All insurance policies obtained by the Association pursuant to this Declaration shall be issued by an insurance company or companies licensed to do business in the State of Utah which has or have a general policy holders rating of B+ or better and a financial category rating of Class XII or better in Best's Insurance Guide. The Association shall secure the insurance policies that will provide for the following:

(i) The insurer shall waive subrogation as to any claims against the Association, the Declarant, the Manager, the Owners, and their respective servants, agents, and guests;

(ii) The policy or policies on the Project cannot be canceled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

(iii) The policy or policies on the Project cannot be canceled, invalidated, or suspended on account of the conduct of any trustee, officer, or employee of the Association, without a prior demand in writing that the Association cure the defect; and

(iv) Any "no other insurance" clause in the policy or policies on the Project shall exclude individual Owners' policies from consideration.

13.03. Additional Coverage. The provisions of this Declaration 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 by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

13.04. Adjustment and Contribution. Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

13.05. Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. All such insurance of the Owner's Condominium shall waive the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners, and their respective servants, agents, and guests, if such insurance can be obtained pursuant to industry practice without additional premium charge for the waiver of subrogation rights.

13.06. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or by such other qualified appraisers as the Association may select.

#### ARTICLE XIV DAMAGE OR DESTRUCTION

14.01. Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an

appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

14.02. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

14.03. Procedures. In the event any part of the Project is damaged or destroyed, the Association shall proceed as follows:

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

(b) Sufficient Insurance. If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out. The proceeds of all insurance collected or maintained by the Association shall be available to the Association to pay the costs of such repair and reconstruction. If the proceeds of such insurance are insufficient to pay the actual costs of such repair and reconstruction, the Association shall levy a Special Assessment sufficient to provide funds to pay such actual costs of repair and reconstruction. Such Special Assessment shall be allocated and collected as provided in Section 12.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(c) Insufficient Insurance -- Less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Building is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The proceeds of all insurance collected or maintained by the Association shall be available to the Association to pay the costs of such repair and reconstruction. The Association shall levy a Special Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Assessment shall be allocated and collected as provided in Section 12.03 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(d) Insufficient Insurance -- 75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Building is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 14.03(c) hereof if, but only if, within one hundred (100)

days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association and the Eligible Mortgage Holders holding at least fifty-one (51%) of the votes of Units which have Eligible Mortgage Holders shall consent to carry out such repair and reconstruction. If, however, the Owners shall not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction or if the Eligible Mortgage Holders holding at least fifty-one percent (51%) of the votes of Units which have Eligible Mortgage holders do not consent to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Summit County, State of Utah, a notice setting forth such facts and such other documents as are necessary to dissolve the condominium. Upon the recording of such notice and other documents, the following shall occur:

- (i) The Project shall be deemed to be owned in common by the Owners;
- (ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas;
- (iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
- (iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit B hereto, after first paying out of the respective shares of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

14.04. Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before.

14.05. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and any amounts received from assessments made pursuant to Sections 14.03(b), (c) and (d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance

after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

14.06. Sale of Condominium Project. Notwithstanding all other provisions hereof, the Owners may, by an affirmative vote of at least seventy-five percent (75%) of the Total Votes of the Association, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners and it shall thereupon become the duty of each and every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect such sale. The proceeds of any such sale shall be divided among all Owners in proportion to the undivided interest in the Common Areas owned by each respective Owner, as set forth in Exhibit B hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the interest of such Owner in the Project.

14.07. Amendment of Article. This Article XIV shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by instruments duly recorded.

#### ARTICLE XV CONDEMNATION

15.01. Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Declaration all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain.

15.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Association as herein provided.

15.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

15.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Association shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; and

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a member of the Association. The Association shall reallocate the voting rights and the undivided interest in the Common Areas appurtenant to such Unit in accordance with the Condominium Act.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XIV hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

15.05. Amendment of Article. This Article XV shall not be amended unless the Owners of all Condominiums in the Project shall unanimously consent and agree to such amendment by duly recorded instruments.

## ARTICLE XVI COMPLIANCE WITH DECLARATION AND BYLAWS

16.01. Compliance. Each Owner shall comply strictly with the provisions of the Master Declaration, the Easement, the Air Rights Declaration, this Declaration, the Articles of Incorporation and the Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by an aggrieved Owner.

16.02. Enforcement and Remedies. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration,

with respect to the Association or Condominiums within the Project shall be enforceable by the Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or Amended Declaration, with respect to a person or entity or property of a person or entity other than the Association or the Declarant shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

## ARTICLE XVII OPTION TO EXPAND

17.01. Expandable Condominium Project; Additional Land. The Condominium Project is an "Expandable Condominium" as that term is defined in the Act, subject to all provisions of the Act governing expandable condominiums. Declarant hereby reserves the right and option, together with the power and authority, in its sole discretion, but without any obligation to do so, to expand the Condominium Project without the prior or subsequent consent of any Unit Owner or Mortgagee, at any time not later than ten (10) years after the recordation of this Declaration, by adding to the Condominium Project in one or more (but not more than thirteen (13)) phases, all or any part of the parcel of real property described by metes and bounds on Exhibit A attached hereto and by this reference made a part of this Declaration, together with all improvements heretofore or hereafter constructed thereon (hereinafter referred to collectively as the "Additional Land"), in accordance with and subject to the Act and this Article XVII. The Additional Land, or any part thereof, if and when added to the Condominium Project, shall be considered to be a part of the Condominium Project and shall be subject to all of the covenants, conditions and restrictions contained in this Declaration. In addition to other limitations contained herein, Declarant's option to expand shall be limited by the requirement that all owners, mortgagees and lessees holding any interest of record in and to the Additional Land must join in or expressly consent in writing to the exercise of such option. Except as specifically provided in this Article XVII, there are no limitations on the rights of Declarant to add all or any part of the Additional Land to the Condominium Project.

17.02. Exercise. Declarant's option to expand may be exercised in one or more (but not more than thirteen (13)) phases at the sole option and discretion of Declarant. Each such exercise shall be effected by filing with the Summit County Recorder's Office the following:

(a) A Supplemental Record of Survey Map containing the information required by the Act when adding additional land to an expandable condominium project including, but not limited to, a description of the additional land being added, the location and dimensions of the units to be created thereon, such other information concerning the new units as was required on the Map with respect to the original Units, a description of the common areas and facilities to be created thereon, and the portions of the common areas and facilities which are to be limited common areas.

(b) An Amended Declaration, duly executed and acknowledged by Declarant and all owners, mortgagees and lessees of the Additional Property, containing the information and amendments required by the Act and this Declaration. The Amended Declaration shall



contain a legal description by metes and bounds of the real property to be added and shall reallocate undivided interests in the Common Areas in accordance with the Act and this Declaration.

17.03. Improvements. There are no substantial improvements existing on the Additional Land as of the date of filing hereof. Declarant presently intends that any Units created on any part of the Additional Land which is added to the Condominium Project pursuant to this Article XVII shall be compatible with Units created by this Declaration in terms of quality of construction, principal materials used and architectural style. However, no assurances are made in this regard. Expansion may be performed in up to three (3) phases, and the entire Condominium Project, as expanded, may contain up to thirteen (13) phases and up to 251 Units, including up to 32 Units on the Additional Land. Phasing shall be totally determined by election of Declarant and Declarant shall not be bound to expand in any order. Expansions may include the entire Additional Land or any portion thereof. All improvements intended for a particular phase will be substantially completed prior to annexation. Declarant reserves the right to create limited common areas and facilities within any portion of the Additional Land, similar to the Limited Common Areas created by this Declaration and the Map. Other than the foregoing, no assurances are made in regard to the locations or kinds of improvements that may be made on any portion of the Additional Land subsequent to its addition to the Condominium Project. All of the Additional Land and improvements thereon when added to the Condominium Project shall be subject to the provisions or restrictions on use contained in this Declaration.

17.04. Reallocation of Common Areas. In the event Declarant exercises its option to expand hereunder, each Amended Declaration shall, among other things, reallocate to each Unit in the Condominium Project an undivided interest in and to the Common Areas of the Condominium Project, as expanded. No such reallocation shall be effective unless and until a Supplemental Record of Survey Map is filed with the Summit County Recorder's Office depicting the Additional Land, or portion thereof covered by such Amended Declaration, and the Units created thereon.

17.05 Definitions to Apply. In the event Declarant exercises its option to expand hereunder, the definitions in this Declaration shall automatically be expanded to encompass and refer to the Condominium Project as so expanded. All conveyances of Units after each and every such expansion shall be effective to transfer rights in the Condominium Project, as expanded. The recordation in the Summit County Recorder's Office of a Supplemental Record of Survey Map and Amended Declaration shall operate automatically to grant, transfer and convey pro tanto to the Unit Owners in the Condominium Project as it exists before such expansion the respective undivided interests in the new Common Areas added to the Condominium Project as a result of such expansion, and to reduce pro tanto their respective undivided interests in the aggregate Common Areas following such expansion. Such recordation shall also operate (i) to vest in any then Mortgagee of a Unit such interest so acquired by the Unit Owner, thus encumbering the new Common Areas added to the Condominium Project to the extent of such Unit Owner's interest therein, and (ii) to conform the undivided interests of both Unit Owners and Mortgagees to the interests set forth in the Amended Declaration, for all purposes, including but not limited to, voting and assessment of Common Expenses. The Additional Land added to the Condominium Project, and all Units created thereon and the Owners of such Units, shall by operation of law be subject to the covenants, conditions and restrictions contained in the

Declaration, as amended, from the date of recordation of each Amended Declaration and Supplemental Record of Survey Map.

Prior to recordation of a Supplemental Record of Survey Map and an Amended Declaration, any deed for a Unit shall be delivered subject to a conditional limitation that the fractional undivided interest in the Common Areas which is appurtenant to such Unit shall be automatically reallocated pro tanto on the recording of such documents, whether or not explicitly stated in such deed.

17.06 Power of Attorney. There is hereby reserved unto Declarant an irrevocable Power of Attorney, coupled with an interest, for the purpose of reallocating undivided interests in the Common Areas of the Condominium Project, as expanded, and to execute, acknowledge and deliver such further instruments as may from time to time be required in order to accomplish the purposes of this Article XVII. Each Unit Owner and each Mortgagee shall be deemed to have acquiesced in each Amended Declaration and each Supplemental Record of Survey Map filed in accordance with and for the purposes set forth in this Article XVII, and shall be deemed to have granted unto Declarant an irrevocable Power of Attorney, coupled with an interest, to effectuate, execute, acknowledge, deliver and record any such document; and each such Owner and Mortgagee shall be deemed to have agreed and covenanted to execute such further instruments, if any, as may be required by Declarant, its successors or assigns, to accomplish such expansion of the Condominium Project in accordance with this Article XVII.

#### ARTICLE XVIII GENERAL PROVISIONS

18.01. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

18.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the Condominium Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise require, 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 Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

18.03. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid,

addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. Mail, postage prepaid, addressed to the Association at its offices at the Project, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed given when personally served or when deposited in the U.S. Mail, postage prepaid, and in the form provided for in this Section, as the case may be.

18.04. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

18.05. Amendment. Except as otherwise provided herein, this Declaration may be amended in the following manner:

- (a) Amendments of a material nature ("Material Amendments") shall require the following:
  - (i) The consent of the Owners holding at least seventy-five percent (75%) of the Total Votes in the Association, and
  - (ii) The consent of the Eligible Mortgage Holders (as that term is defined in Section 19.02 below) holding at least fifty-one percent (51%) of the votes of Units which have Eligible Mortgage Holders, and
  - (iii) The consent of the Declarant, except that the Declarant's consent shall no longer be required on the latter to occur of: (A) the annexation of the last of the Additional Land to be annexed, and (B) at least eighty percent (80%) of the Total Votes in the Association are held by Owners other than the Declarant. Amendments shall be reflected by instruments duly recorded in the office of the County Recorder of Summit County, State of Utah. No such amendment shall be in violation of the Master Declaration, the Easement, or the Air Rights Declaration.
  
- (b) A change to any of the provisions governing the following would be considered Material Amendments:
  - (i) voting rights
  - (ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessments liens
  - (iii) reductions in reserves for maintenance, repair, and replacement of common elements
  - (iv) responsibility for maintenance and repairs
  - (v) reallocation of interests in the general or limited Common Areas, or rights to their use
  - (vi) redefinition of any Unit boundary
  - (vii) convertibility of Units into Common Areas or vice versa

- (viii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of Property to or from the Project
  - (ix) hazard or fidelity insurance requirements
  - (x) imposition of any restrictions on the leasing of Units
  - (xi) imposition of any restrictions on a unit owner's right to sell or transfer his or her Unit
  - (xii) a decision by the Association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the Declaration or by an Eligible Mortgage Holder
  - (xiii) restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the Declaration
  - (xiv) any provisions that expressly benefit mortgage or deed of trust holders, insurers, or guarantors
  - (xv) any action to terminate the legal status of the Project
- (c) Amendments which are not Material Amendments shall require the following:
- (i) The consent of the Owners holding at least seventy-five percent (75%) of the Total Votes in the Association.
  - (ii) The consent of the Declarant, except that the Declarant's consent shall no longer be required on the latter to occur of: (A) the annexation of the last of the Additional Land to be annexed, and (B) at least eighty percent (80%) of the Total Votes in the Association are held by Owners other than the Declarant.
- (d) Amendments shall be reflected by instruments duly recorded in the office of the County Recorder of Summit County, state of Utah. No such amendments shall be in violation of the Master Declaration, the Easement, or the Air Rights Declaration.

18.06. Effective Date. This Declaration shall take effect upon recording.

18.07. Agent for Service. The agent for service of process under the Condominium Act shall initially be Craig Burton at 349 South 200 East, Suite 400, Salt Lake City, Utah 84111. The Association shall have the right to change said agent for service of process at any time in which event the Association shall cause such agent's name and address to be listed in an appropriate instrument filed with the Utah State Department of Commerce.

18.08. Owner's Obligations. All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium.

18.09. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the

Association hereunder, or for injury to or damage of any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances, conduits, 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 assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements in or maintaining the Project or any part thereof, or from any action taken to comply with the laws, ordinances, regulations, rules, or orders of any governmental authority.

ARTICLE XIX  
MORTGAGEE AND ELIGIBLE MORTGAGE HOLDER PROTECTION

19.01. Request for Notice. From and after the time an Eligible Mortgage Holder makes written request to the Board of Trustees or the Association therefor, the Board of Trustees or the Association shall notify such Eligible Mortgage Holder in writing in the event of the following:

- (a) The Owner of the Unit encumbered by the mortgage held, insured or guaranteed by such Eligible Mortgage Holder neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration, including but not limited to the payment of assessments and charges.
- (b) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage or deed of trust.
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.
- (d) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

19.02 Eligible Mortgage Holders. Those holders of a first mortgage or deed of trust on a Unit, and those who insure or guarantee such mortgages or deeds of trust, who have submitted a written request to the Association shall be deemed to be an "Eligible Mortgage Holder" which shall permit such holders to participate in certain amendments to this Declaration in accordance with the provisions of Article 18.05 above. The written request for notice shall set forth the nature of the interest held, the Unit affected by the interest, and the name and address to which notice should be given. However, if an Eligible Mortgage Holder fails to submit a response to a proposed amendment within 30 days after notice of such proposed amendment is properly sent to the address for notice provided by the Eligible Mortgage Holder, then the consent of such Eligible Mortgage Holder shall be implied. Notice to the Eligible Mortgage Holder shall be sent by certified or registered mail, with a "return receipt" requested.

19.02. Priority of Mortgages as to Assessments. The lien or claim against a Unit for unpaid assessments or charges levied by the Board of Trustees or by the Association pursuant to this Declaration or the Act shall be subordinate to any mortgage or deed of trust which is

recorded prior to the recording of such lien or claim. A Mortgagee who obtains title to a Unit pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall not be liable for such Unit's unpaid assessments which accrue prior to the acquisition of title to such Unit by the Mortgagee and 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 the acquisition of title to such Unit by Mortgagee (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 a burden to a Mortgagee coming into possession pursuant to his Mortgage or a deed or assignment in lieu of foreclosure shall be collected or enforced by either the Board of Trustees or 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 (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgagee's interest in such Unit).

19.04. Abandonment or Modification of Project. Without the approval of each Mortgagee neither the Board of Trustees nor the Association shall be entitled, by act, omission, or otherwise:

(a) to seek to abandon or terminate the Project or to abandon or terminate the arrangement which is established by this Declaration and the Record of Survey Map (except as provided in Article XIV hereof in the event of certain destruction or damage);

(b) to partition or subdivide any Unit;

(c) to seek to abandon, partition, subdivide, encumber, sell or transfer all or any of the Common Areas and Facilities (except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas and Facilities except as provided in Article XIV hereof in the event of certain destruction or damage);

(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 by statute in the event of substantial loss to the Units and/or Common Areas and Common Facilities;

(e) to change the pro rata interests or obligations of any Unit which apply for (1) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for (2) determining the pro rata share of ownership of each Unit in the Common Areas and Common Facilities; or

(f) to alter the provisions of Article XIII hereof in such a way as to diminish the insurance protection required to be afforded to the parties designed to be protected thereby, or to fail to maintain the insurance coverage described therein.

19.05. Right to Examine Books and Records. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Board of Trustees, or the Association, or of the Project. From and after the time a Mortgagee makes

written request to the Board of Trustees or the Association therefor, the Board of Trustees or the Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Project as may be prepared for distribution to or use by the Board of Trustees, the Association, or the Unit Owners.

19.06. Reserve Funds. The Board of Trustees and the Association shall establish an adequate reserve fund to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Common Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Units rather than by Special Assessments.

19.07. Damage, Loss or Condemnation. From and after the time a Mortgagee makes written request to the Board of Trustees or the Association therefor, the Board of Trustees or the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or any taking or anticipated condemnation of: (a) the Common Areas and Common Facilities involving an amount in excess of, or reasonably estimated to be in excess of, Fifty Thousand Dollars (\$50,000); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of, Fifty Thousand Dollars (\$50,000). Said notice shall be given within ten (10) days after the Board of Trustees or said Association learns of such damage, loss, taking or anticipated condemnation.

19.08. Priority of Mortgages as to Insurance or Condemnation Awards. Nothing contained in this Declaration shall give a Unit Owner, or any other party, priority over any rights of a first Mortgagee pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium Units and/or Common Areas and Common Facilities.

19.09. Conflicting Provisions. In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or claims of this Article, 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 Board of Trustees and Association with respect to the subject concerned.

19.10. Restrictions on Amendment of Articles. Any amendment to this Article shall be accomplished by an instrument executed by the Board of Trustees and filed for record in the office of the County Recorder of the county where the Project is located. In any such instrument an officer of the Board of Trustees shall certify that any prior written approval of the Eligible Mortgage Holders required by this Article and Article 18.05 as a condition to amendment has

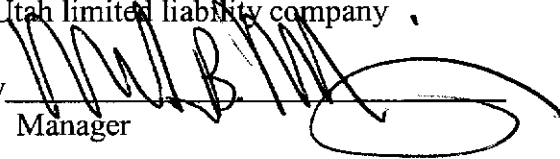
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been obtained.

IN WITNESS WHEREOF, the undersigned has executed this Second Amended Declaration this 30 day of July, 2002.

SGD-EQUIMARK, L.L.C.,  
a Utah limited liability company ,

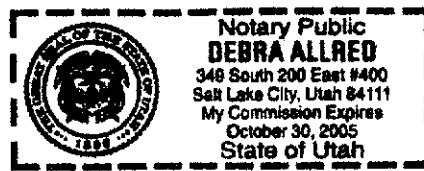
By \_\_\_\_\_  
Its Manager



STATE OF UTAH                                    )  
  : ss.  
COUNTY OF SALT LAKE                    )

The foregoing instrument was acknowledged before me this 30 day of July, 2002 by Mark B. Millburn, the Manager of SGD-EquiMark, L.L.C., a Utah limited liability company.

Debra Allred  
Notary Public





## EXHIBIT A

### LAND

A TRACT OF LAND LOCATED IN SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH, BEING A PORTION OF LOT 7 OF THE VILLAGE OF KIMBALL JUNCTION, AS RECORDED AS ENTRY #355411 OF SUMMIT COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS N 0°16'14"W 1145.57 FEET ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 206.07 FEET FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE N 31°25'02" E 127.14 FEET; THENCE S 58°34'58" E 29.67 FEET; THENCE N 89°43'46" E 114.04 FEET; THENCE S 00°16'14" E 331.24 FEET; S 60°10'50" W 379.24 FEET; THENCE N 58°34'58" W 467.70 FEET; THENCE S 31°25'15" W 323.60 FEET; THENCE S 67°09'15" W 154.43 FEET; THENCE N 89°23'22" W 90.22 FEET; THENCE N 38°02'57" W 42.24 FEET; THENCE N 00°36'38" E 108.13 FEET; THENCE N 58°34'58" W 153.33 FEET; THENCE N 00°27'00" E 105.79 FEET; THENCE N 31°25'02" E 136.12 FEET; THENCE N 00°26'38" E 332.59 FEET; THENCE N 58°34'58" W 64.59 FEET; THENCE N 00°27'00" E 105.72 FEET; THENCE N 31°25'02" E 127.81 FEET; THENCE S 58°34'58" E 191.33 FEET; THENCE S 31°25'02" W 33.35 FEET; THENCE S 58°34'58" E 21.15 FEET; THENCE S 31°25'02" W 17.61 FEET; THENCE S 58°34'58" E 81.60 FEET; THENCE N 31°25'02"E 79.23 FEET; THENCE N 76°25'02" E 55.53 FEET; THENCE S 58°34'58" E 45.91 FEET; THENCE S 31°25'02" W 18.24 FEET; THENCE S 58°34'59"E 93.19 FEET; THENCE S 39°08'56" E 30.49 FEET; THENCE S 58°34'58" E 108.85 FEET; THENCE S 58°34'58" E 103.15 FEET; THENCE N 82°54'36" E 71.88 FEET; THENCE S 58°41'43" E 96.98 FEET; THENCE S 58°37'39" E 243.65 FEET TO THE POINT OF BEGINNING. CONTAINING 730,910 SQ. FEET OR 16.779 ACRES

## EXHIBIT A

### ADDITIONAL LAND

A TRACT OF LAND LOCATED IN SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH, BEING A PORTION OF LOT 7 OF THE VILLAGE OF KIMBALL JUNCTION, AS RECORDED AS ENTRY #355411 OF SUMMIT COUNTY RECORDS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS N 0°16'14"W 1178.12 FEET ALONG THE EAST LINE OF SAID LOT 7 AND S 89°43'46" W 185.98 FEET FROM THE SOUTH EAST CORNER OF SAID LOT 7; THENCE N 58°34'58" W 52.87 FEET; THENCE S 31°25'02" W 5.00 FEET; THENCE N 58°34'58" W 88.00 FEET; THENCE N 31°25'02" E 5.00 FEET; THENCE N 58°34'58"W 215.00 FEET; THENCE S 31°25'02" W 13.55 FEET; THENCE N 58°34'58"W 44.00 FEET; THENCE S 31°25'02" W 31.50 FEET; THENCE N 58°34'38"W 206.00 FEET; THENCE N 31°25'02" E 17.50 FEET; THENCE N 58°34'58" W 44.00 FEET; THENCE N 31°25'02"E 21.00 FEET; THENCE N 58°34'58" W 80.94 FEET; THENCE S 31°25'02"W 66.68 FEET; THENCE S 58°34'59"E 93.19 FEET; THENCE S 39°08'56" E 30.49 FEET; THENCE S 58°34'58" E 212.00 FEET; THENCE N 82°54'36" E 71.88 FEET; THENCE S 58°41'43" E 96.98 FEET; THENCE S 58°37'39" E 243.65; THENCE N 31°25'02" E 38.25 FEET TO THE POINT OF BEGINNING. CONTAINING 31,202 SQ. FEET OR 0.716 ACRE

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
1	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
2	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
3	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
4	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		H (Primrose)	974	0.35%
5	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
6	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
7	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
8	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
9	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
10	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
11	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
12	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
13	Terrace 6-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
14	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
15	Terrace 8-plex	A (Hawk)	1056	0.38%
		B (Falcon)	1278	0.46%
		C (Eagle)	1026	0.37%
		D (Heron)	1261	0.45%
		E (Crane)	1042	0.37%
		F (Quail)	1258	0.45%
		G (Yarrow)	1302	0.46%
		H (Primrose)	974	0.35%
16	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
17	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

Building	Type	Floor Plan	Size	% Ownership in Common Area and Voting Right Per Unit
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
18	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
19	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
20	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
21	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
22	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
23	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
24	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
25	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
26	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
27	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%



**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
28	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
29	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
30	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
31	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
32	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%

**EXHIBIT "B"**  
**Fox Point at Redstone**  
**Summary of Buildings/Floor Plans**

<b>Building</b>	<b>Type</b>	<b>Floor Plan</b>	<b>Size</b>	<b>% Ownership in Common Area and Voting Right Per Unit</b>
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
33	Courtyard 6-plex	A-1 (Wolf)	1299	0.46%
		A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
34	Courtyard 6-plex	A-2 (Wolf)	1299	0.46%
		B-1 (Elk)	1447	0.52%
		B-2 (Elk)	1447	0.52%
		C-1 (Fox)	1467	0.52%
		C-2 (Fox)	1467	0.52%
<b>TOTAL</b>		219 units	280,818	100.00%