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**DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT RED MOUNTAIN,
A Condominium Development**

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The Villas at Red Mountain,
A Condominium Development

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**DECLARATION OF CONDOMINIUM
FOR
THE VILLAS AT RED MOUNTAIN
A CONDOMINIUM DEVELOPMENT**

[A Utah Expandable Condominium Project]

Washington County, Utah

THIS DECLARATION OF CONDOMINIUM FOR VILLAS AT RED MOUNTAIN, A CONDOMINIUM DEVELOPMENT ("Declaration") is made and executed by Pivotal Mark II, L.L.C., an Arizona limited liability company (hereinafter referred to as "Declarant"), pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended.

**ARTICLE 1
RECITALS**

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

1.2 Purpose of Declaration. Declarant proposes to create an expandable Condominium Project to be known as The Villas at Red Mountain, A Condominium Development. The purpose of this Declaration is to submit The Villas at Red Mountain to the condominium form of ownership and use in the manner provided by the Utah Condominium Ownership Act.

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

**ARTICLE 2
DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article 2.

2.1 "Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code, as amended).

2.2 "Additional Land" shall mean the land described on Exhibit B attached hereto that may be added to the Project in accordance with the provisions of Article 8.

2.3 "Amendment" shall mean any amendment to this Declaration made in accordance with this Declaration and the Act.

2.4 "Articles" shall mean the Articles of Incorporation of the Condominium Association.

2.5 "Balcony" means a portion of the Common Areas and Facilities designated as a balcony on the Map.

2.6 "Buildings" shall mean the buildings constructed as part of the Project, as described in Section 3.2.

2.7 "Bylaws" shall mean the Bylaws of the Condominium Association, a copy of which is attached hereto as Exhibit C, as amended from time to time.

2.8 "Common Areas and Facilities" shall mean all portions of the Project other than the Units, as described in Section 6.1, including the Limited Common Areas and Facilities. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is based upon the par value of such Unit as described in Section 6.2.

2.9 "Common Assessments" shall mean those Assessments described in Article 22 to fund the Common Expenses, and include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Condominium Association.

2.10 "Common Expenses" shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

2.11 "Common Expense Fund" shall mean one or more deposit or investment accounts of the Condominium Association into which are deposited the Common Assessments.

2.12 "Condominium Association" shall mean The Villas at Red Mountain Owner Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

2.13 "Cost of Living Index" shall mean the Consumer Price Index, all Urban Consumers -- U.S. City Average -- All Items (1982-84 = 100) Declarant may select any other comparable index which measures changes in the cost of living.

2.14 "Declarant" shall mean Pivotal Mark II, L.L.C., an Arizona limited liability company, or any successor in interest as defined by the Act and any person or persons who might acquire title from it to all or substantially all unsold Units in a bulk sale or through foreclosure or deed in lieu of foreclosure.

2.15 "Declaration" shall mean this Declaration of Condominium, and all amendments, modifications and supplements hereto.

2.16 "Developmental Rights" shall mean the right under the Act to (a) convert a portion of the Project into one or more Units, Common Areas and Facilities, or Limited Common Areas and

Facilities, (b) add real estate to the Project pursuant to Article 8, and (c) exercise any of the rights granted to or reserved by the Declarant in this Declaration or by the Act.

2.17 "Furnishings" shall mean all furniture, furnishings, utensils, equipment, facilities and personal property within Units.

2.18 "Invitee" means any person whose presence within the Project is approved by or is at the request of a particular Owner or Occupant, including, without limitation, family members, guests, employees and contractors.

2.19 "Limited Common Areas and Facilities" shall mean a portion of the Common Areas and Facilities allocated by this Declaration or the Act, and as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

2.20 "Management Committee" shall mean the Board of Directors of the Condominium Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.21 "Manager" shall mean the person, firm or company designated by the Condominium Association to manage, in whole or in part, the affairs of the Condominium Association and the Project.

2.22 "Map" shall mean the Record of Survey Map of the Property, recorded in the office of the County Recorder for Washington County, State of Utah, a reduced copy of which is attached hereto as Exhibit D, as it may be amended from time to time pursuant to this Declaration and the Act. It is contemplated that the initial Map may be amended at such time as the Buildings are constructed in the event there are material changes in the Building's boundaries or elevations as constructed. Such an amendment to the Map is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners.

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

2.24 "Mortgagee" shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller's interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A "First Mortgagee" shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

2.25 "Occupant" means a person, other than an Owner, in possession of a Unit at the request of or with the consent of the Owner.

2.26 "Owner" shall mean any person or entity, including Declarant, at any time owning a Unit or an interest in a Unit within the Project. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.27 "Par Value" shall mean the number of points assigned to each Unit as described herein and in the Act. In accordance with the provisions of the Act, the statement of par value should not be considered to reflect or control the sales price or fair market value of any Unit.

2.28. "Patio" shall mean a portion of the Common Areas designated as a patio on the Map.

2.29 "Parking Space" shall mean a portion of the Common Areas and Facilities intended for the parking of a single motor vehicle designated on the Map as a parking space.

2.30 "Period of Declarant Control" shall mean the period established by Section 12.3 during which the Declarant or persons designated by it have the right to appoint and remove the Condominium Association's officers and members of the Management Committee.

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

2.32 "Project" shall mean the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act.

2.33 "Property" shall mean that certain real property situated in the County of Washington, State of Utah, more particularly described in Article 3, on which the Units and other improvements are located.

2.34 "Regular Common Assessments" shall mean the annual assessments levied by the Condominium Association to pay the budgeted Common Expenses.

2.35 "Rules and Regulations" means the rules and regulations governing the use of the Common Areas and Facilities adopted by the Management Committee.

2.36 "Special Common Assessments" shall mean assessments that the Condominium Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

2.37 "Supplemental Map" shall mean any amendment to the Map made in accordance with this Declaration and the Act.

2.38 "Total Votes of the Condominium Association" shall mean the total number of votes appertaining to all Units, as described in Article 10.

2.39 "Unit" shall mean a physical portion of the Project designed for separate ownership and residential occupancy as described in Article 5.

2.40 "Unit Number" shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

ARTICLE 3 DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS

3.1 Description of Property. The Property on which the Units and improvements are located is situated in Washington County, Utah and more particularly described on Exhibit A attached hereto.

3.2 Description of Improvements. The initial improvements will consist of 1 building (the "Building") containing 4 units. The Building will be supplied with telephone, television (via common satellite dish), electricity, water, and sewer service. The Project also includes the Common Areas and Facilities described herein.

ARTICLE 4 SUBMISSION TO ACT

Declarant hereby submits the Property, the Buildings and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in this Declaration, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units; further, each and all of the provisions of this Declaration shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Condominium Association are each hereby granted a limited license to use the name "Villas at Red Mountain" in connection with the administration, sale and operation of their respective interests in the Project.

ARTICLE 5 DESCRIPTION OF UNITS

The boundary lines of each Unit are as set forth on the Map and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls; floors, ceilings and roofs (except the interior finished surfaces thereof); foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Map contains the Unit Number of each Unit in the Project.

ARTICLE 6 DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

6.1 Description of Common Elements. The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies, fire escapes and entrances and exits of the buildings; the grounds, recreational facilities, if any, and parking areas in the Project, designated as part of the Common Areas and Facilities on the Map; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map or any amended Map; and all repairs and replacements of any of the foregoing. In the event of a conflict between this Declaration and the Map, the provisions of this Declaration shall control.

6.2 Allocation of Undivided Interest. The undivided interest in the Common Areas and Facilities appurtenant to each Unit in the Project is based upon the Par Value of such Unit, which is determined by the number of points allocated to each Unit. Points are allocated to each Unit based on views, location and such other amenities and characteristics as may, in the discretion of the Declarant, result in differences in market value. Each Unit is allocated ten (10) points. The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be determined by dividing the number of points allocated to that Unit by the total number of points allocated to all Units in the Project. The percentage of undivided interest of each Unit is set forth on Exhibit E attached hereto. In accordance with the provisions of the Act, the statement of Par Value shall not be considered to reflect or control the sales price or fair market value of any Unit. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered; provided, however, Declarant reserves the right to determine points with respect to Units created pursuant to Article 8, and to adjust the undivided interest of each Unit in the Common Areas and Facilities following any addition of Units to the Project, in accordance with the formulas set forth in Article 8. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent. Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent.

ARTICLE 7 DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not limited to any porches, Balconies, Patios, certain hallways and corridors, as indicated by this Declaration or the Act to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only a portion of the Units shall be Limited Common Areas and

Facilities with respect to the Units they serve. Similarly, hallways and other common walkways serving only a portion of the Units shall be limited Common Areas and Facilities with respect to the Units they serve. The Limited Common Areas and Facilities shall be those areas designated as such on the Map, in this Declaration or as provided for by the Act. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Map or as specified in this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

ARTICLE 8 OPTION TO EXPAND

8.1 Reservation of Option. Declarant hereby reserves, pursuant to Section 57-8-13.6 of the Act, the option to expand the Project (the "Option to Expand") by annexing and adding the Additional Land upon the terms and provisions set forth in this Section without the prior consent of the Owners or the Condominium Association. Each Option to Expand must be exercised no later than seven (7) years from the date of recording this Declaration. Declarant shall have the right to exercise the rights under this Article 8 with respect to the portion of the Property Declarant owns in fee simple or has an option to purchase. The terms and conditions of the Option to Expand shall be as follows:

8.1.1 Subject to the provisions of Section 8.1.2, the Option to Expand may be exercised at different times as to portions of the Additional Land and in any order elected by the Declarant. No assurance is made with regard to which portions of the Additional Land, if any, will be added to the Project or the order in which such portions will be so expanded. In the event the Option to Expand is exercised with respect to a portion of the Additional Land, the Option to Expand may subsequently be exercised with respect to any other portion of the Additional Land.

8.1.2 Declarant shall not be restricted in the location of improvements on the Additional Land that may be created on the Additional Land, except as may be required by applicable zoning requirements, ordinances or regulations. The maximum number of Units that may be created is fifty-two (52).

8.1.3 The Units to be located on the Additional Land shall be subject to the same uses as provided in Articles 9 and 10, as applicable. Declarant reserves the right to exercise all Developmental Rights with respect to any Units located on the Additional Land.

8.1.4 The Units to be built on the Additional Land shall be substantially identical to the Units depicted on the Map. Structures other than buildings containing Units may be erected on the Additional Land. Further improvements may include recreational facilities, parking areas, walkways and landscaping of the Common Areas and Facilities contained therein. Declarant reserves the right to add additional Limited Common Areas and Facilities to the Additional Land without limitation.

8.1.5 The ownership interest in the Common Areas and Facilities for all Units in the Project shall be changed at the time Declarant records an Amendment and Supplemental Map

reflecting Declarant's exercise of the Option to Expand in accordance with the provisions set forth in Section 8.1.6. The Amendment shall state the points assigned to each Unit added by the Amendment for purposes of determining the Par Value of the Unit which is used to calculate the Undivided Interest in the Common Areas and Facilities of the Project pursuant to Section 6.2. It is contemplated that there may be multiple Amendments filed by Declarant and such Amendments are hereby expressly authorized.

8.1.6 Declarant shall calculate and revise the undivided interest for each Unit in the Project based upon the following formula:

$$\frac{\text{Number of points assigned to a Unit pursuant to Section 6.2}}{\text{Total number of points assigned to all the Units}} = \text{Undivided Interest in the Common Areas and Facilities of the Project}$$

Declarant shall have the right to adjust the resulting ownership interests of all Units in the Common Areas and Facilities of the Project as may be necessary to assure that the total ownership interest equals 100% as required by the Act.

8.1.7 Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this Section, including the procedure for adjustment of Unit ownership interests pursuant to Section 8.1.6. After the filing for record of any Amendment to this Declaration and the Supplemental Map reflecting Declarant's exercise of the Option to Expand, or any part thereof, legal and equitable title to each Unit thereby created within the Additional Land including its appurtenant ownership interest in the Common Areas and Facilities shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Unit or its appurtenant ownership interest in the Common Areas and Facilities.

8.1.8 Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding all or portions of the Additional Land.

8.1.9 No provision of this Article 8 shall be amended without the prior written consent of Declarant so long as it owns or has the right to acquire any Units in the Project.

ARTICLE 9 NATURE AND INCIDENTS OF UNIT OWNERSHIP

9.1 **Separate Parcels.** Each Unit is and shall hereafter be a parcel of real property that may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration. Each Unit 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 thereof or of any special improvement

district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

9.2 Right to Use Common Area and Facilities. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use his Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners.

9.3 Alteration and Maintenance. No Owner shall make or cause to be made any alterations, improvements, replacements or repairs in or to any Unit or to any Furnishings except with the prior written consent of the Management Committee. Each Owner shall keep the interior of his Unit, including without limitation, the Furnishings, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. No Owner may subdivide his Unit.

9.4 Right of Entry. The Management Committee shall have the right to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity. Each Owner shall provide the Management Committee with a key to the Owner's Unit so that the Management Committee will have access to the Unit for the purposes set forth in this Section.

9.5 Lease of Units. Nothing in this Declaration shall limit the rights of Declarant to operate the Units owned by it for lease or rental purposes. Each Owner shall pay his full pro rata share of Common Assessments regardless of whether or not such Owner has entered into any lease or rental agreement for a Unit.

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

ARTICLE 10 VOTING

At any meeting of the Condominium Association, each Owner of a Unit, including Declarant, either in person or by proxy, shall be entitled to ten (10) votes. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

ARTICLE 11 TITLE TO UNITS

11.1 Permitted Owners. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

11.2 Appurtenant Rights. Title to a part of a Unit within the Project may not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Condominium Association as herein set forth.

11.3 Ownership of Common Elements. The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

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

11.5 Liens for Labor, Materials or Services. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Condominium Association and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

11.6 Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and

to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

**ARTICLE 12
ADDITIONAL DEVELOPMENTAL RIGHTS**

12.1 Completion of Improvements. Declarant hereby reserves an easement throughout the Project for the purpose of completing all improvements contemplated by this Declaration and the Map, including but not limited to improvements to the Additional Land, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

12.2 Sales or Leasing Activities. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project, and models in any of the Units that it owns or is under contract to purchase or on the Common Areas and Facilities of the Project. Declarant shall be entitled to utilize one or more Units which it owns or is under contract to purchase and some or all of the Common Areas and Facilities as sales or leasing offices, management offices, and models anywhere in the Project. Declarant may relocate sales or leasing offices, management offices, and models to other Units or Common Areas and Facilities at any time.

12.3 Appointment of Management Committee. There is hereby established a period of Declarant control of the Condominium Association during which period Declarant or persons designated by it shall have the authority to appoint and remove the Condominium Association officers and members of the Management Committee. The Period of Declarant Control shall terminate no later than the earlier of: (a) six (6) years from and after the recording of this Declaration, or (b) after conveyance of Units to which seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities appertain or after all Additional Land has been added to the Project, whichever last occurs. After termination of the Period of Declarant Control, the Management Committee shall be elected as provided in the Bylaws.

**ARTICLE 13
RESTRICTIONS ON USE**

13.1 Residential Use. The Units shall be used exclusively for residential purposes and no Unit shall be used for commercial purposes; provided, however, that nothing in this Section shall prevent (a) Declarant or an affiliated corporation or a duly authorized agent from using any Unit owned by Declarant as sales or leasing offices and model Units or a property management office as provided in Section 12.2, or (b) any Owner makes available a Unit for nightly or periodic occupancy in connection with the operation of the Red Mountain Spa, or (c) any Owner or his duly authorized agent from renting or assigning use rights to his Unit from time to time; provided, that such rentals or assignments of rights not including the permitted activities described in (b) above in the case of Owners, other than Declarant or an affiliated corporation, do not result in a pattern of rental activity or assignment of use rights that either the Manager or the Management Committee determines, in its reasonable judgment, constitutes a commercial use.

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

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

13.4 Animals. No animals, birds, reptiles, fish, fowl, poultry or livestock shall be maintained or kept in any Unit or on any other portion of the Project.

13.5 Window Coverings. The draperies, shades and other interior window coverings in Units shall present a uniform appearance and color from the outside of the Units, and shall be made or constructed from materials approved by the Management Committee or with the prior inspection and written approval of the Management Committee. No Owner shall remove, replace or alter the window coverings initially installed in the Unit by the Declarant without the prior written approval of the Management Committee. The Management Committee shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of the Buildings. Owners shall not erect or display any window coverings in violation of the foregoing requirement or any signs, banners or similar items on, from or in their Units without the prior written consent of the Management Committee.

13.6 Combination or Subdivision of Units. Except as otherwise provided in this Declaration, no Unit, or portions thereof, may be combined with one or more other Units or further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

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

13.8 Impairment of Insurance. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over what the Condominium Association, but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner, Occupant or Invitee, and each Owner shall indemnify and hold the Condominium Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his Invitees.

13.9 Rules and Regulations. No Owner shall violate the Rules and Regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Condominium Association.

13.10 Antennas. No antenna, satellite television dish or other device for the transmission or reception of television or radio signals or to receive or transmit internet or other fixed wireless signals shall be installed, used or maintained on any portion of the Project whether attached to the Building or otherwise without the prior written approval of the Management Committee, unless applicable law prohibits the Management Committee from requiring such prior approval. Even if applicable law prohibits the Management Committee from requiring prior approval for the installation or use of certain types of antennas, satellite dishes or other devices, any such antennas, satellite dishes or other devices must be installed or constructed in accordance with such rules and regulations as the Management Committee may adopt.

13.11 Improvements or Alterations. Improvements or alterations to Units or Common Areas or Facilities shall be subject to the following provisions:

13.11.1 Except as expressly provided in this Declaration, no Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Buildings or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

13.11.2 Any Owner may make nonstructural additions, alterations and improvements within his Unit without the prior written approval of the Management Committee, but the Owner of the Unit shall be responsible for any damage to other Units and to the Common Areas and Facilities which results from any such alterations, additions or improvements. No Owner shall make any structural additions, alterations or improvements within a Unit, unless prior to the commencement of each addition, alteration or improvement, the Owner receives the prior written approval of the Management Committee and an architect or engineer, licensed in Utah, certifies that such addition, alteration or improvement will not impair the structural integrity or the mechanical systems of a Building or lessen the support of any portion of the Project.

13.11.3 Notwithstanding Section 13.11.1, no addition, alteration or improvement within a Unit, whether structural or not, which would be visible from the exterior of a Building shall be made without the prior written approval of the Management Committee, which approval shall only be granted if the Management Committee affirmatively finds that the proposed addition, alteration or improvement is aesthetically pleasing and in harmony with the surrounding Improvements. No Owner shall make any addition, alteration or improvement to the Common Areas and Facilities without the prior written approval of the Management Committee. Except as expressly permitted by this Section 13.11, no wall, partition, fixture or other Improvement situated within a Unit shall be constructed, installed or modified without the prior written approval of the Management Committee.

13.11.4 No Owner shall overload the electric wiring in the Building, or operate machines, appliances, accessories or equipment in such manner as to cause, in the judgment of the Management Committee, an unreasonable disturbance to others or connect any machines, appliances, accessories or equipment to the heating or plumbing system, without the prior consent of the Management Committee, acting in accord with the direction of the Management Committee. No Owner shall overload the floors of any Unit. Water-beds and other furnishings which may cause floor overloads shall not be placed, kept or used in any Unit, except with advance written approval of the Management Committee.

13.11.5 The Management Committee may condition the approval of any proposed additions, alterations or improvements to a Unit or the Common Areas and Facilities in any manner, including, without limitation: (a) retaining approval rights of the contractor to perform the work; (b) restricting the time during which such work may be performed; (c) requiring the placement of a security deposit in an amount determined by the Managing Committee in an account controlled by the Management Committee; (d) requiring the provision to the Management Committee of plans and specifications prepared and sealed by a professional engineer or architect duly licensed by the State of Utah; and (e) requiring that the Owner requesting the change obtain, prior to commencing any work, and maintain until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Management Committee. The Owner shall be obligated to designate Declarant, the Condominium Association, the Management Committee and any other Person designated by the Management Committee as additional insureds under the policies. The Owner shall be responsible for all costs incurred by the Management Committee in connection with the Management Committee's review of proposed changes to the Owner's Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Management Committee to assist in their review.

13.11.6 Proposed additions, alterations and improvements to a Unit or the Common Areas or Facilities shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Management Committee with respect to design, structural integrity, sound attenuation, water-proofing, construction details, lien protection or otherwise. The Owner of a Unit to which additions, alterations or improvements are made shall defend, indemnify and hold harmless the Condominium Association, the Declarant and all other Owners or Occupants for, from and against any and all liability, loss or damage resulting from such additions, alterations or improvements and shall be solely responsible for the maintenance, repair and insurance of such additions, alterations and improvements from and after their date of installation or construction as may be required by the Condominium Association.

13.11.7 The Condominium Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 13.11 or any rules of the Condominium Association governing additions, alterations or improvements to the Units or the Common Areas and Facilities. The Condominium Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither Declarant, the Condominium Association nor any of the officers, directors,

employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other Person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions. Without limiting the generality of the foregoing, the Condominium Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner agrees to indemnify and hold Declarant, the Condominium Association and their respective directors, officers, agents and employees harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review, approval or disapproval by the Management Committee of plans submitted by the Owner or Occupant of the Owner's Unit.

13.12 Refuse Removal. No rubbish, trash or garbage shall be placed or kept on the Common Areas or Facilities except in covered containers of a type, size and style which are approved by the Management Committee. All rubbish, trash and garbage shall be regularly removed from the Units by the Owners or Occupants thereof. All trash, garbage or rubbish must be kept in sanitary containers and must be bagged and deposited in designated trash chutes or receptacles. The Rules and Regulations may contain provisions governing the disposal of trash, garbage and rubbish in the Condominium.

13.13 Pest Control. No Owner or Occupant shall permit any thing or condition to exist upon the Condominium which could induce, breed or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Condominium Association, each Owner shall perform such pest control activities in his Unit as may be necessary to prevent insects, rodents and other pests from being present in the Unit.

13.14 Parking. Except for emergency repairs, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Project, and no inoperable vehicle may be stored or parked on any portion of the Project. No automobile, motorcycle, motorbike or other motor vehicle shall be parked upon any part of the Project, except in the Parking Spaces. If a Parking Space is assigned to a Unit as a Limited Common Element, then no Owner or Occupant may park any automobile, motorcycle, motor bike or other motor vehicle owned or leased by such Owner or Occupant in any Parking Spaces other than the Parking Space assigned to the Unit as a Limited Common Element.

13.15 Offensive Activities. No activity shall be conducted upon the Project which is offensive or detrimental to any portion of the Project or any Owner or Occupant or which interferes with quiet enjoyment of a Unit by the Owner or Occupant thereof. No exterior speakers, horns, whistles, bells or other sound devices shall be located, used or placed on the Project without the prior written approval of the Management Committee.

13.16 Balconies. Furniture, furnishings, umbrellas and plants kept and maintained on any Balcony shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior walls of the Building in which the Unit is located and must be approved in writing by the Management Committee unless expressly permitted by the Rules and Regulations. No astro turf, carpet or other floor covering shall be installed in any Balcony without the prior written approval of the Management Committee. No Balcony shall be used as a storage area for items or materials that are not customarily intended for use on a Balcony, such as the use of a Balcony to store bicycles or exercise equipment. No linens, blankets, rugs, swimsuits or similar articles may be hung from any Balcony. No jacuzzis, barbeques and related accessories and equipment may be used on Balconies, except as expressly provided in the Rules and Regulations.

13.17 Patios. Furniture, furnishings, umbrellas and plants may be kept and maintained in a Patio so long as they do not extend above the top of the fence or wall enclosing the Patio. No furniture, furnishings, umbrellas, plants or other items which would extend above the top of the fence or wall enclosing the Patio shall be installed, kept or maintained in any Patio without the prior written approval of the Management Committee unless expressly permitted by the Rules and Regulations. No jacuzzis, barbecues and related accessories and equipment may be used in Patios.

13.18 Time Shares Prohibited. No Unit shall be divided or conveyed on a time increment basis or measurable chronological periods or pursuant to any agreement, plan, program or arrangement under which the right to use, occupy or possess a Unit, or any portion thereof, rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time one hundred eighty (180) consecutive calendar days or less.

13.19 Hazardous Materials. No Owner or Occupant shall use or keep in a Unit or any Limited Common Element allocated to the Unit any kerosene, gasoline, or inflammable or combustible fluid or material or other hazardous materials, other than those required, in limited quantities, for normal cleaning or landscaping work.

13.20 Noise Reduction. No loudspeakers shall be affixed to any wall, ceiling, shelving or cabinets so as to cause vibrations discernable between Units. The use of stereo equipment, televisions and musical instruments shall be subject to and must be used in accordance with the Rules and Regulations. All Owners and Occupants shall take all reasonable precautions to lower noise transference between Units and to abide by the Rules and Regulations.

13.21 Approval of Declaration. After the expiration of the Period of Declarant Control and for so long as the Declarant owns any Unit, any action for which the consent or approval of the Board of Directors is required under this Declaration may be taken only if such action is also consented to or approved by the Declarant.

**ARTICLE 14
CONDOMINIUM ASSOCIATION AND MANAGEMENT COMMITTEE**

14.1 Number and Selection. The management and maintenance of the Project and the administration of the affairs of the Condominium Association shall be conducted by a Management Committee consisting of not less than three (3) nor more than five (5) natural persons as provided in the Bylaws. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

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

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

14.2.2 To engage the services of the Manager, accountants, attorneys, or other employees or agents and to pay to said persons a reasonable compensation therefor.

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

14.2.4 To determine and pay the Common Expenses.

14.2.5 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article 22.

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

14.2.7 To open bank accounts and borrow money on behalf of the Condominium Association and to designate the signatories therefor.

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

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

14.2.10 To obtain insurance for the Condominium Association with respect to the Units, Furnishings and the Common Areas and Facilities, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Condominium Association.

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

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

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

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

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

14.2.16 To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project and enter into contracts with the Red Mountain Spa and other entities. Such contracts may, among other things, obligate the Condominium Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Condominium Association. In addition, it may grant the Red Mountain Spa lien rights with respect to the Condominium Association's properties for non payment of assessments and other costs.

14.2.17 Subject to the limitations of the Act, and any other applicable law, the Management Committee may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section 14.2.

14.2.18 The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Condominium Association. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey those Limited Common Areas or Facilities or subject the same to the Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

14.2.19 Members of the Management Committee, the officers and any assistant officers, agents and employees of the Condominium Association (a) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (b) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Condominium Association in their capacity as such; (c) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them,

except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (d) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

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

14.3 Conveyance of Association Property. Neither the Management Committee nor the Manager shall sell any property of the Association except as permitted by the Act.

14.4 Contract with Manager. The Management Committee may enter into a contract with the Manager for the management of the Project.

ARTICLE 15 MAINTENANCE, ALTERATION AND IMPROVEMENT

15.1 Duties of Condominium Association. The maintenance, replacement and repair of the Common Areas and Facilities and the Furnishings shall be the responsibility of the Condominium Association, and the cost thereof shall be a Common Expense. In the event any Furnishings need to be replaced, the Condominium Association shall have the right to replace such Furnishings with Furnishings of equal or better quality. The Condominium Association shall also maintain, replace and repair all private roads, common porches, and decks and all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. The Management Committee may enter into maintenance agreements with reputable third parties for the performance of the responsibilities of the Condominium Association set forth herein; provided, however, that all amounts that become due and owing under such contracts shall be included as a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense.

15.2 Right of Access for Maintenance. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Condominium Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Condominium Association shall also have the irrevocable right to have

access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Condominium Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Condominium Association.

ARTICLE 16 INSURANCE

16.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Condominium Association shall maintain, to the extent reasonably available, insurance as follows and in accordance with any additional provisions of the Bylaws not inconsistent with the following:

16.1.1 The Condominium Association shall maintain property insurance on the Common Areas and Facilities insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any deductibles, shall be not less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

16.1.2 The Condominium Association shall maintain liability insurance in an amount determined by the Management Committee but not less than \$2,000,000 for any one person injured in any one occurrence and not less than \$2,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Units and the Common Areas and Facilities.

16.1.3 The insurance maintained under Section 16.1 shall include the Units and the Furnishings but need not include improvements and betterments installed by Owners or the personal property of Owners. The Condominium Association may carry any other insurance it deems appropriate to protect the Condominium Association or the Owners.

16.1.4 Where applicable, insurance policies carried by the Condominium Association shall provide the following:

(a) Each Owner, or the Condominium Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his interest in the Common Areas and Facilities or membership in the Condominium Association.

(b) The insurer waives its right to subrogation under the policy against any Owner or members of his household.

(c) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Condominium Association, will void the policy or operate as a condition to recovery under the policy by another person.

(d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, then the Condominium Association's policy provides primary insurance.

(e) All Owners as a class shall be named as additional insureds in any policy issued to the Condominium Association.

16.2 Insurance By Owners. An insurance policy issued to the Condominium Association shall not prevent an Owner from obtaining insurance for his own benefit.

16.3 Adjustment of Loss. Any loss covered by the property policy under Section 16.1.1 shall be adjusted with the Condominium Association, but the insurance proceeds for that loss shall be payable to an insurance trustee designated for that purpose by the Condominium Association and not to the Condominium Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Condominium Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of Article 17, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Condominium Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated.

16.4 Certificate of Insurance. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Condominium Association and, on written request, to any Owner or Mortgagee. The insurer issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the Condominium Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

16.5 Additional Insurance. This Article does not prohibit the Management Committee from acquiring additional or greater amounts of coverage as it reasonably deems appropriate.

16.6 Fidelity Bond. The Management Committee shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Condominium Association having control of, or access to, the funds of the Condominium Association with loss coverage ordinarily not less than the maximum amount of funds of the Condominium Association over which the principal(s) under the bond may reasonably be expected to have control or access at any time.

ARTICLE 17 DESTRUCTION OR DAMAGE

17.1 Automatic Restoration. In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Management Committee, with the help of an independent

appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Project was destroyed or substantially damaged, the Management Committee shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective ownership interests in the Common Areas and Facilities. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas and Facilities having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of Article 19 hereof shall apply.

17.2 Determination Not to Restore or Reconstruct. If two-thirds (2/3) or more of the Project is destroyed or substantially damaged, the Management Committee shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Condominium Association for the purpose of deciding whether or not the Project shall be repaired and restored. If Owners holding three fourths (3/4) or more of the Total Votes of the Condominium Association in the Project, in person or by proxy, vote to repair or restore the Project, the Management Committee shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective ownership interest in the Common Areas and Facilities. If the destruction or damage is by reason of eminent domain, the provisions of Article 19 shall apply. At such election, if Owners holding three-fourths (3/4) or more of the Total Votes of the Condominium Association do not vote either in person or by proxy to make provision for reconstruction, the Management Committee shall record with the Recorder of Washington County a notice that complies with Section 57-8-31 of the Act setting forth such facts, and upon the recording of such notice (a) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities; (b) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (c) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

ARTICLE 18 TERMINATION

18.1 Following Damage or Destruction. In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of Section 17.2 and the Owners do not vote to reconstruct the Project as provided therein, the Project shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage.

18.2 By Owners. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership or contractual rights to purchase Units in the Project, its consent shall also be required to remove the Project from the provisions of the Act.

18.3 Owners as Tenants In Common. After removal of the Project from the Act, the Owners shall own the Project and all assets of the Condominium Association as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be the same as the ownership interest in the Common Areas and Facilities appurtenant to the Units prior to removal from the Act.

18.4 Amendment. This Article 18 cannot be amended without consent of all Owners and all record owners of Mortgages on Units.

ARTICLE 19 EMINENT DOMAIN

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

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

19.3 Deposit of Award. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to Article 17 and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damaged or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his award with the Management Committee, then at the option of the Management Committee, either a special assessment shall be made against the defaulting

Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

19.4 Removal of Project. In the event the Project is removed from the provisions of the Act pursuant to Article 18, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities and the Owners of the affected Units shall have the rights provided in Article 18.2.

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

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

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

19.6 Amendment to Declaration. Changes in Units, in the Common Areas and Facilities, and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Article 19 shall be evidenced by an amendment to this Declaration and the Map, which need not be approved by the Owners.

**ARTICLE 20
MORTGAGEE PROTECTION**

20.1 Roster of Owners and First Mortgagees. The Management Committee shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Management Committee will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Management Committee is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Management Committee of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee.

20.2 Notice to First Mortgagees. The Management Committee shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days.

20.3 Lien Priority. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Condominium Bylaws.

20.4 Validity of Prior First Mortgages. No amendment to this Section shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

**ARTICLE 21
AMENDMENT**

Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a bare majority of the Total Votes of the Condominium Association. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Condominium Association designated for that purpose, or in the absence of such designation, by the President of the Condominium Association that the appropriate consent has been obtained, and shall be duly recorded in the Office of the Washington County Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project.

**ARTICLE 22
ASSESSMENT OF UNITS BY THE CONDOMINIUM ASSOCIATION**

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

22.1.1 Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as the ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him. Two separate and distinct funds shall be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section 22 shall be the Common Expense Fund. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Until the Condominium Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an assessment has been made by the Condominium Association, Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Condominium Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit, and shall commence as to all Units of the Project on the first day of the month following the closing of the first sale of a Unit.

22.1.2 The Condominium Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

22.1.3 In addition to the Regular Common Assessments, the Association may levy in any calendar year Special Common Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of any Furnishings or a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Common Assessments from the Owners. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment against an Owner is a remedy utilized by the Committee to reimburse the Condominium Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, Rules and Regulations or any other governing instrument for the Project. Assessments to bring an Owner or his Unit into compliance with the governing instruments or otherwise assessed as a disciplinary measure may not be secured by the lien for unpaid assessments described in Section 22.1.5. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

22.1.4 All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such greater rate

of interest as may be set by the Management Committee not to exceed the maximum lawful rate, if any, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a late fee in the amount of five percent (5%) of the delinquent amount, or such other reasonable late charge as may be established by the Management Committee from time to time, together with all expenses incurred by the Association in collecting such unpaid assessments, including attorney's fees (whether or not suit is instituted, and at trial or any appeal or petition for review therefrom). If the assessment is not paid within thirty (30) days of its due date, the Management Committee may declare any remaining installments of assessments for the balance of the fiscal year immediately due and payable. The Management Committee shall have the right and duty to recover for the Association such assessments, together with such charges, interest and expense of the proceeding, including attorney's fees, by an action brought against such Unit Owner or by foreclosure of the lien upon the Unit granted by the Act. Any payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Condominium Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Condominium Association may assess that expense exclusively against such Owner's Unit(s). If the Owner's percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

22.1.5 There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Common Assessments and related charges shall be effective upon recordation in the Office of the Washington County Recorder of a written notice of lien by the Management Committee or the Manager. Such lien shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 20.3 and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. A lien for unpaid assessments shall be enforced in accordance with the provisions of this Article 22 or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Condominium Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party. The Management Committee upon written request shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Condominium Association, the Management Committee, the Manager and every Owner, in favor of all who rely on such statement in good faith.

22.2 **Reserves.** The Management Committee shall establish reserves for the periodic repair, restoration or maintenance of the Furnishings and the major components of the Common Areas and Facilities. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of Furnishings and major components of the Common Areas and Facilities for which the Condominium Association is

responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Condominium Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Condominium Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Condominium Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 22.1.3. If the current replacement value of the Furnishings or the major components of the Common Areas and Facilities which the Condominium Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Management Committee shall cause a study to be conducted of the reserve account of the Condominium Association and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

- (a) Identification of the major components, including the Furnishings, which the Condominium Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.
- (b) Identification of the probable remaining useful life of the items identified in subparagraph a, above, as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified in subparagraph a, above, during and at the end of its useful life.
- (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "Reserve Account Requirements" means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore the Furnishings those major components which the Condominium Association is obligated to maintain.

22.3 Assignment of Rents. If an Owner shall at any time lease his Unit and shall default in the payment of assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

22.4 No Exemption from Assessment Obligation. No Owner may exempt himself from liability for payment of assessments, monetary penalties and other fees and charges levied pursuant to this Declaration by waiver and nonuse of any of the Common Areas and Facilities or by the abandonment of his Unit. All assessments, monetary penalties and other fees and charges shall be payable in accordance with the provisions of this Declaration, and no offsets against such Assessments, monetary penalties and other fees and charges shall be permitted for any reason, including, without limitation, a claim that the Condominium Association is not properly exercising its duties and powers as provided in this Declaration or the Act.

22.5 Initial Working Capital. To provide the Condominium Association with initial operating funds, each purchaser of a Unit from the Declarant shall pay to the Association, immediately upon becoming the Owner of the Unit, a sum equal to two monthly installments of the Regular Common Assessment for the Unit. Such amount shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Condominium Association pursuant to this Declaration.

22.6 Reserve Contribution

22.6.1 Except as otherwise provided in this Section 22.6.2, each Person who purchases or otherwise becomes the Owner of a Unit shall pay to the Condominium Association, immediately upon becoming the Owner of the Unit, a contribution (the "Reserve Contribution") to the reserves to be established pursuant to Section 22.2. The amount of the Reserve Contribution shall be \$192 per month, but the amount of the Reserve Contribution may be changed from time to time by the Board of Directors as provided in this Section. The amount of the Reserve Contribution may be changed by the Management Committee from time to time after January 1, 2004; provided, however, that any increase must be approved by Members holding more than fifty percent (50%) of the Total Votes of the Condominium Association.

22.6.2 No Reserve Contribution shall be payable with respect to: (a) the transfer or conveyance of a Unit by devise or intestate succession; (b) a transfer or conveyance of a Unit to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (c) a transfer or conveyance of a Unit to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Management Committee determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of the Reserve Contribution in which event a Reserve Contribution shall be payable with respect to such transfer or conveyance; (d) the conveyance of a Unit by a trustee's deed following a trustee's sale under a deed of trust; or (e) a conveyance of a Unit as a result of the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property. Reserve Contributions shall be non-refundable and shall not be considered as an advance payment of assessments.

22.7 Transfer Fee. Each Purchaser of a Unit shall pay to the Association immediately upon becoming the Owner of the Unit a transfer fee in the amount set from time to time by the Management Committee to compensate the Association for the administrative cost resulting from the transfer of a Unit.

ARTICLE 23 EASEMENTS

23.1 Encroachments. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the 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.

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

23.3 Declarant's Easements. Declarant shall have a transferable easement over, across and within the Property for the purposes of (a) completing construction of the Project and improvements therein as shown on the Map and for doing all things reasonably necessary or appropriate in connection therewith, (b) connecting the Buildings to other adjoining structures or buildings, and (c) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Buildings, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. It is contemplated that Declarant or another party may construct additional buildings, as subsequent phases of the Project, which may encroach upon portions of the Common Areas and Facilities, and Declarant shall also have an easement over, across and within the Common Areas and Facilities for such purposes.

23.4 Access and Support. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he is occupying and to any Limited Common Areas and Facilities appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit.

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

23.6 Conveyances Subject to Easements. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such

easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

**ARTICLE 24
DISPUTE RESOLUTION**

24.1 Agreement to Resolve Certain Disputes Without Litigation. As used in this Section 24, the term "Claim" shall mean: (a) any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas and Facilities, the Units or any other part of the Project, including, without limitation, any claim or cause of action that the Common Areas and Facilities or the Units are defective or that the Declarant, its agents, contractors, employees, subcontractors, architects, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof; or (b) any claim or cause of action against the Declarant or any employee, agent, director, member or officer of Declarant arising out of or in any way related to the development of the Project or the management or operation of the Condominium Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty. The Condominium Association, the Declarant, all Unit Owners, Occupants and other Persons bound by this Declaration, and any Person not otherwise bound by this Declaration who agrees to submit to this Section 24 (collectively, the "Bound Parties") agree that the dispute resolution procedures set forth in this Section 24 shall apply to all Claims.

24.2 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely: (a) the nature of Claim, including, date, time, location, Persons involved, and Respondent's role in the Claim; (b) the factual and legal basis of the Claim; and (c) what Claimant wants Respondent to do or not do to resolve the Claim. In the event the Claimant is the Association and the Claim involves an Alleged Defect (as defined in Section 24.5), the Condominium Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action, proceeding, or arbitration against any Bound Party which notice shall (at a minimum) include: (a) a description of the Claim; (b) a description of the attempts of Declarant or any other Bound Party to correct such Alleged Defect and the opportunities provided to Declarant or any other Bound Party to correct such Alleged Defect; (c) a certification from an engineer licensed in the State of Utah that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer; (d) the estimated cost to repair such Alleged Defect; (e) the name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Management Committee (if any); (f) a description of the fee arrangement between such attorney and the Condominium Association; (g) the estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses; (h) the estimated time necessary to conclude the action; and (i) an affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members.

24.3 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within thirty (30) days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation under the auspices of an independent mediation service designated by the Declarant. If Claimant does not submit the Claim to mediation within thirty (30) days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

24.4 Binding Arbitration. In the event a Claim is not resolved by mediation, the Claimant shall have fifteen (15) days after the date of the Termination of Mediation Notice to submit the Claim to binding arbitration in accordance with this Section 24.4. If the Claimant fails to timely submit the Claim to arbitration, then the Claim shall be deemed waived and abandoned and the Respondent shall be relieved of any and all liability to Claimant arising out of the Claim. The parties shall cooperate in good faith to assure that all necessary and appropriate persons and entities are included in the arbitration proceedings. A Respondent shall be entitled to join as a party to the arbitration any Person who is obligated to indemnify the Respondent with respect to the Claim or who may otherwise be liable to the Respondent with respect to the Claim. If the Claimant submits the Claim to binding arbitration in accordance with this Section 24.4, the arbitration shall be conducted in accordance with the following rules:

(a) The arbitration shall be initiated by either party delivering to the other a Notice of Intention to Arbitrate as provided for in the American Arbitration Association ("AAA") Commercial Arbitration Rules, as amended from time to time (the "AAA Rules").

(b) The arbitration shall be conducted in accordance with the AAA Rules and applicable Utah law. In the event of a conflict between the AAA Rules and this Section 24.4, the provisions of this Section 24.4 shall govern.

(c) The parties shall appoint a single Arbitrator by mutual agreement. If the parties have not agreed within ten (10) days of the date of the Notice of Intention to Arbitrate on the selection of an arbitrator willing to serve, the AAA shall appoint a qualified Arbitrator to serve. Any arbitrator chosen in accordance with this Subsection (c) is referred to in this Section 24.4 as the "Arbitrator".

(d) The Arbitrator shall be neutral and impartial. The Arbitrator shall be fully active in such Arbitrator's occupation or profession, knowledgeable as to the subject matter involved in the dispute, and experienced in arbitration proceedings. The foregoing shall not preclude otherwise qualified retired lawyers or judges from acting as the Arbitrator.

(e) Any candidate for the role of Arbitrator shall promptly disclose to the parties all actual or perceived conflicts of interest involving the dispute or the parties. No Arbitrator may serve if such person has a conflict of interest involving the subject matter of the dispute or the parties. If an Arbitrator resigns or becomes unwilling to continue to serve as an Arbitrator, a replacement shall be selected in accordance with the procedure set forth in Subsection 24.4.(c).

(f) The Arbitrator shall be fully compensated for all time spent in connection with the arbitration proceedings in accordance with the Arbitrator's usual hourly rate unless otherwise agreed to by the parties, for all time spent by the Arbitrator in connection with the arbitration proceeding. Pending the final award, the Arbitrator's compensation and expenses shall be advanced equally by the parties.

(g) Within thirty (30) days after the Arbitrator has been appointed, a preliminary hearing among the Arbitrator and counsel for the parties shall be held for the purpose of developing a plan for the management of the arbitration, which shall then be memorialized in an appropriate order. The matters which may be addressed include, in addition to those set forth in the AAA Rules, the following: (i) definition of issues; (ii) scope, timing and types of discovery, if any; (iii) schedule and place(s) of hearings; (iv) setting of other timetables; (v) submission of motions and briefs; (vi) whether and to what extent expert testimony will be required, whether the Arbitrator should engage one or more neutral experts, and whether, if this is done, engagement of experts by the parties can be obviated or minimized; (vii) whether and to what extent the direct testimony of witnesses will be received by affidavit or written witness statement; and (viii) any other matters which may promote the efficient, expeditious, and cost-effective conduct of the proceeding.

(h) The Arbitrator shall actively manage the proceedings as the Arbitrator deems best so as to make the proceedings expeditious, economical and less burdensome than litigation.

(i) All papers, documents, briefs, written communication, testimony and transcripts as well as any and all arbitration decisions shall be confidential and not disclosed to anyone other than the Arbitrator, the parties or the parties' attorneys and expert witnesses (where applicable to their testimony), except that upon prior written consent of all parties, such information may be divulged to additional third parties. All third parties shall agree in writing to keep such information confidential.

(j) Hearings may be held at any place within the State of Arizona designated by the Arbitrator and, in the case of particular witnesses not subject to subpoena at the usual hearing site, at a place where such witnesses can be compelled to attend.

(k) The Arbitrator shall promptly (but, in no event later than sixty (60) days following the conclusion of the proceedings or such longer period as the parties mutually agree) determine the claims of the parties and render a final award in writing. The Arbitrator may award the prevailing party in the proceeding all or a part of such party's reasonable attorneys' fees and expert witness fees, taking into account the final result of arbitration, the conduct of the parties and their counsel in the course of the arbitration, and other relevant factors. The Arbitrator shall not award any punitive damages. The Arbitrator shall not award indirect, consequential or special damages

regardless of whether the possibility of such damage or loss was disclosed to, or reasonably foreseen by the party against whom the claim is made. The Arbitrator shall assess the costs of the proceedings (including, without limitation, the fees of the Arbitrator) against the non-prevailing party.

24.5 Right to Enter. Following the receipt by a Bound Party of a Claim Notice with respect to an alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Areas and Facilities or any Unit (the "Alleged Defect"), the Bound Party and its employees, agents, contractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Areas and Facilities and any Unit for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section 24.5 shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by Declarant or any other Bound Party in connection with the sale of the Units. The right of a Bound Party and its employees, agents, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and Recorded by the Bound Party. In no event shall any statutes of limitations be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

24.6 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

24.7 Member Approval Required. The Condominium Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or arbitration proceeding or incur legal expenses, including without limitation, attorneys' fees, in connection with any Claim without the written approval of Unit Owners entitled to cast more than seventy-five percent (75%) of the total votes in the Condominium Association, excluding the votes of any Unit Owner who would be a defendant in such proceedings. The Condominium Association must pay for any such legal action or mediation or arbitration proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Condominium Association commences any legal action or arbitration proceeding involving a Claim, all Unit Owners must notify prospective purchasers of their Unit of such legal action or arbitration proceeding and must provide such prospective purchasers with a copy of the notice received from the Condominium Association in accordance with Section 24.2.

24.8 Statute of Limitations. All statutes of limitations applicable to Claims shall apply to the commencement of arbitration proceedings under Section 24.4. If the arbitration proceedings are

not initiated within the time period provided by Utah law for the filing of a legal action with respect to the Claim, the Claim shall forever be barred.

24.9 Conflicts. In the event of any conflict between this Section 24 and any other provision of this Declaration, this Section 24 shall control.

**ARTICLE 25
NOTICES**

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

Management Committee
Villas at Red Mountain Owners Association, Inc.
2555 E. Camelback Road
Suite 700
Phoenix, AZ 85016

**ARTICLE 26
NO WAIVER**

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

ARTICLE 27 ENFORCEMENT

27.1 Right to Enforce. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (a) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (b) the Management Committee to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

27.2 Forfeiture of Interest. The Condominium Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations for the Project except pursuant to: (a) the judgment of a court; or (b) a foreclosure for the failure of an Owner to pay assessments duly levied by the Condominium Association.

ARTICLE 28 AGENT FOR SERVICE OF PROCESS

The agent for service of process under the Act until the expiration of the Option to Expand under Article 8 shall be Thomas A. Ellison, Esq. whose address is c/o Stoel Rives LLP, 201 South Main Street, Suite 1100, Salt Lake City, Utah 84111. Thereafter, the agent for service of process shall be the Manager. Any changes in the agent for service of process shall be designated in a written notice recorded with reference to this Declaration.

ARTICLE 29 SEVERABILITY

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

ARTICLE 30 CAPTIONS

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof. Unless otherwise specified, all references to a Section or Sections refer to Sections of this Declaration.

**ARTICLE 31
LAW CONTROLLING**

This Declaration and the Map shall be construed and controlled by and under the laws of the State of Utah.

**ARTICLE 32
CONSTRUCTION**

The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

**ARTICLE 33
EFFECTIVE DATE**

This Declaration shall take effect when recorded.

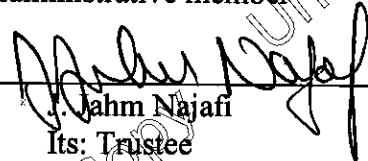
IN WITNESS WHEREOF, the undersigned have executed this instrument this 27th day of November, 2002.

PIVOTAL MARK II, L.L.C., an Arizona limited liability company

By: **Pivotal Spa I, L.L.C.**, an Arizona limited liability company
Its: Manager

By: **Pivotal Group X, L.L.C.**, an Arizona limited liability company
Its: Managing Member

By: **J. Jahm Najafi**, Trustee of the Najafi Trust dated July 30, 1996
Its: Administrative member

By: 
J. Jahm Najafi
Its: Trustee

Dated: 10/25/02

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 25 day of Oct, 2002, by J. Jahm Najafi, Trustee of the Najafi Trust dated July 30, 1996, the Administrative Member of Pivotal Group X, L.L.C., an Arizona limited liability company, the Managing Member of Pivotal Spa I, L.L.C., an Arizona limited liability company, the Manager of Pivotal Mark II, L.L.C., an Arizona limited liability company,

Peggy L. Kennedy
Notary Public
Residing at: Avondale, Ar

My Commission Expires:
2/24/02



EXHIBIT A**DESCRIPTION OF PROPERTY**

Beginning at a point on the section line, said point lies South 88°43'01" East 654.58 feet from the north quarter corner of Section 4, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 00°00'00" East 110.60 feet to a point on the easterly right-of-way line of Snow Canyon Parkway, an 80.00 foot wide dedicated public street, said point being on the arc of a 540.00 foot radius non tangent curve concave southwesterly, the radius point of which bears South 44°56'26" West; thence northwesterly 246.49 feet along the arc of said curve through a central angle of 26°09'11" to the point of curvature of a 44.72 foot radius non tangent curve concave northwesterly, the radius point of which bears North 08°39'44" West; thence northeasterly 44.59 feet along the arc of said curve through a central angle of 57°08'10" to the point of tangency; thence North 24°12'06" East 20.39 feet to the point of curvature of a 428.17 foot radius curve concave westerly; thence northerly 95.62 feet along the arc of said curve through a central angle of 12°47'45" to the point of compound curvature of a 122.61 foot radius curve concave westerly; thence northerly 13.85 feet along the arc of said curve through a central angle of 06°28'22" to the point of tangency; thence North 04°55'59" East 55.16 feet to the point on the arc of a 30.40 foot radius non tangent curve concave northwesterly, the radius point of which bears North 32°03'39" West; thence northeasterly 32.62 feet along the arc of said curve through a central angle of 61°28'34" to the point of compound curvature of a 341.45 foot radius curve concave westerly; thence northerly 90.42 feet along the arc of said curve through a central angle of 15°10'22" to the point of tangency; thence North 18°42'35" West 8.36 feet; thence North 71°17'25" East 30.00 feet; thence North 75°36'44" East 106.14 feet; thence South 14°23'16" East 97.83 feet; thence South 01°09'20" East 136.34 feet; thence North 88°47'01" West 23.19 feet; thence South 00°00'00" East 151.82 feet to a point on said section and township line and the point of beginning.

Contains 1.448 acres.

EXHIBIT B**DESCRIPTION OF ADDITIONAL LAND**

BEGINNING at a point which lies South 88°43'01" East 654.58 feet along the section and township line from the north quarter corner of Section 4, Township 42 South, Range 16 West of the Salt Lake Base and Meridian and running thence South 00°00'00" East 110.60 feet to a point on the easterly right-of-way line of Snow Canyon Parkway, an 80.00 foot wide dedicated public roadway, said point being on the arc of 540.00 foot radius non tangent curve concave southwesterly, the radius point of which bears South 44°56'26" West; thence northwesterly 246.49 feet along the arc of said curve through a central angle of 26°09'11" to the point of curvature of a 44.72 foot radius non tangent curve concave northwesterly, the radius point of which bears North 08°39'44" West; thence northeasterly 44.59 feet along the arc of said curve through a central angle of 57°08'10" to the point of tangency; thence North 24°12'06" East 20.39 feet to the point of curvature of a 428.17 foot radius curve concave westerly; thence northerly 95.62 feet along the arc of said curve through a central angle of 12°47'45" to the point of compound curvature of a 122.61 foot radius curve concave westerly; thence northerly 13.85 feet along the arc of said curve through a central angle of 06°28'22" to the point of tangency; thence North 04°55'59" East 55.16 feet to the point on the arc of a 30.40 foot radius non tangent curve concave northwesterly, the radius point of which bears North 32°03'39" West; thence northeasterly 32.62 feet along the arc of said curve concave westerly; thence northerly 90.42 feet along the arc of said curve through a central angle of 15°10'22" to the point of tangency; thence North 18°42'35" West 12.70 feet to the point of curvature of a 1,414.00 foot radius curve concave westerly; thence northerly 67.24 feet along the arc of said curve through a central angle of 02°43'28" to the point of reverse curvature of a 402.24 foot radius curve concave easterly; thence northerly 195.86 feet along the arc of said curve through a central angle of 27°53'53" to a point on a radial line; thence along said radial line South 83°32'09" East 135.73 feet; thence North 77°28'56" East 141.13 feet; thence North 43°53'57" East 134.43 feet; thence South 88°47'01" East 294.62 feet; thence South 40°0'00" East 499.38 feet; thence South 01°13'10" West 194.35 feet; thence North 88°47'01" West 792.63 feet; thence South 00°00'00" East 151.82 feet to a point on said section and township line and the point of beginning.

CONTAINS 10.995 ACRES.

EXCEPT FOR THE REAL PROPERTY LEGALLY DESCRIBED ON EXHIBIT A ATTACHED TO THIS DECLARATION.