

AFTER RECORDING RETURN TO:  
Nathan W. Pugsley  
Oquirrh Highlands Condominiums, LLC  
39 East Eagleridge Drive, Suite 100  
North Salt Lake, UT 84054

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GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
OQUIRRH HIGHLANDS CONDOMINIUMS  
39 E EAGLERIDGE DR STE 100  
N SALT LAKE UT 84054  
BY: ALG, DEPUTY - WE 53 P.

**DECLARATION OF CONDOMINIUM FOR OQUIRRH HIGHLANDS CONDOMINIUMS, AN  
EXPANDABLE UTAH CONDOMINIUM PROJECT**

This Declaration of Condominium is made and executed by Oquirrh Highlands Condominiums, LLC, a Utah limited liability company, whose principal address is 39 East Eagleridge Drive, Suite 100, North Salt Lake, Utah 84054 (hereinafter referred to as the "Declarant").

**RECITALS:**

A. Declarant owns certain real property located in Salt Lake County, Utah. This Declaration of Condominium affects that certain real property which is described with particularity in Article II below (hereinafter referred to as the "Tract").

B. Declarant has developed, or is in the process of developing, or will develop upon the Tract a residential condominium project which shall include certain Units, Limited Common Area, Common Area and Facilities, and other improvements. All of such construction has been, or is to be, performed in substantial accordance with the plans contained in the Condominium Plat to be recorded concurrently herewith.

C. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Tract, together with an appurtenant undivided ownership interest in the Common Area and a corresponding membership interest in the Association of Unit Owners, subject to the Condominium Plat, Combined Map and Master Map, and this Declaration.

D. Since the completion of the Community may be in phases, the completed Community will consist of the original phase and all subsequent phases.

E. Declarant desires, by filing this Declaration of Condominium and Condominium Plat, to submit Phase 1 Plat "A" of the Tract and all improvements now or hereafter constructed thereon to the provisions of the Utah Condominium Ownership Act (the "Act").

F. The Community is to be known as "The Condos at Oquirrh Highlands."

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

**1. DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1.1 Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

1.2 Annexation shall mean and refer to the addition or incorporation or additional real property into the condominium project pursuant to Declarant's unilateral right of annexation as provided elsewhere in this Declaration, which property is more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

1.3 Articles of Incorporation shall mean and refer to the Articles of Incorporation of The Condos at Oquirrh Highlands Homeowners Association, Inc. on file or to be filed with the State of Utah.

1.4 Assessment shall mean and refer to any amount imposed upon, assessed or charged a Unit Owner or Resident at the Community.

1.5 Association shall mean and refer to all of the Unit Owners at The Condos at Oquirrh Highlands taken or acting as a group in accordance with the Declaration.

1.6 Building shall mean and refer to any of the structures constructed in the Community.

1.7 Business Use and Trade shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in on a full or part-time basis; b) such activity is intended to or does generate a profit; or c) a license is required therefor.

1.8 Bylaws shall mean and refer to the Bylaws of The Condos at Oquirrh Highlands Homeowners Association, Inc., a copy of which is attached to and incorporated in this Declaration by reference as Exhibit B.

1.9 Capital Improvement shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Community, as opposed to ordinary repair and maintenance.

1.10 County shall mean and refer to the Salt Lake County, Utah.

1.11 Common Areas and Facilities shall mean and refer to that portion of the Community that is not a Unit.

1.12 Committee shall mean and refer to the Management Committee of the Association as duly constituted.

1.13 Common Expense shall mean and refer to: (a) all sums lawfully assessed against the Owners; (b) expenses of administration of the Association and the maintenance, repair or replacement of the Common Areas and Facilities; (c) maintenance of Areas of Common Responsibility (as defined in Section 6.2.3), including, but not limited to, any pool, community center, pocket parks, trees, recreational facilities, fire sprinklers, etc., if any should be constructed; (d) expenses allocated by the Association among the Owners; (e) expenses agreed upon as common expenses by the Association; and (f) expenses declared common expenses by the Declaration.

1.14 Community shall mean and refer collectively to The Condos at Oquirrh Highlands and the real property subject to the Declaration and the Act.

1.15 Community Wide Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

1.16 "Condominium Plat" or "Plat" shall mean and refer to the Condominium Plat or Plats of Oquirrh Highlands Condominiums Phase 1 Plat "A" or subsequent phases Recorded on 2/9/2004 in

Book 2004p of Plats, Page 33, in the office of the County Recorder of Salt Lake County, Utah as amended or supplemented from time to time by Declarant, together with any map which may, in the future, be Recorded with respect to the Additional Land.

1.17 Declaration shall mean and refer to this Declaration of Condominium for Oquirrh Highlands Condominiums, an expandable Utah condominium project.

1.18 Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.19 Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

1.20 Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an "eligible vote".

1.21 Governing Documents shall mean the Declaration, Articles of Incorporation, Bylaws, Plat, and Rules and Regulations. Any inconsistency among the Governing Documents shall be governed pursuant to Section 18.12 below ("Priorities and Inconsistencies").

1.22 Guest shall mean and refer to an invitee, temporary visitor or any person whose presence within the Community is approved by or is at the request of a particular Resident.

1.23 Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

1.24 Land shall mean and refer to all of the real property subject to this Declaration.

1.25 Limited Common Areas shall mean and refer to those Common Areas designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit Owner to the exclusion of the other Unit Owners. Any doorsteps, landings, porches, balconies, decks, patios, carports, or other improvements intended to serve only a single Unit, shall constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

1.26 Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.01%) percent or more of the total eligible number.

1.27 Management Committee shall mean and refer to the committee of Owners elected or appointed to direct the affairs of the Association.

1.28 Manager shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Community and/or assist in the administration of the Association.

1.29 Map shall mean and refer to the Condominium Plat on file in the office of the County Recorder of Salt Lake County, Utah, each of whom is obligated by this/her ownership to be a member of the Association.

1.30 Member, unless context clearly requires otherwise, shall mean and refer to the Owner of a Unit.

1.31 Mortgage shall mean and refer to both a first mortgage or first deed of trust on any Unit, but shall not mean an executory contract of sale.

1.32 Mortgagee shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust on any Unit, but shall not mean an executory contract of sale.

1.33 Owner shall mean and refer to holder of a fee or an undivided fee interest in a Unit in this Community, excluding a mortgagee, or a beneficiary or trustee under a deed of trust, unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.34 Permanent Resident shall mean and refer to anyone who resides in the Community for more than four (4) consecutive weeks or for more than sixty (60) days in any twelve (12) month period.

1.35 Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

1.36 Phase shall mean and refer to a particular stage or area of development within the Community so designated by the Developer.

1.37 "Plat" or "Plat Map" shall mean and refer to the Condominium Plat.

1.38 Property shall mean and refer to all of the land or real estate, improvements and appurtenances submitted hereby to the Act and this Declaration.

1.39 Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

1.40 Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

1.41 Resident shall mean and refer to any person living or staying at the Community. This includes, but is not limited to, all lessees, tenants and family members, agents, representatives, or employees of Owners, tenants or lessees.

1.42 Single Family shall mean and refer to *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.

1.43 Single Family Residence shall mean and refer to both: (a) the architectural style of a Unit and (b) the nature of the residential use permitted.

1.44 Survey Map shall mean and refer to the Condominium Plat on file in the office of the County Recorder of Salt Lake County.

1.45 Unit shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, and the corresponding roof, exterior walls, foundations, columns, girders, beams, supports and main walls of the Building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper,

wall coverings, glass and window units, doors and door units, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

1.46 Unit Number shall mean and refer to the number, letter or combination thereof designating a particular Unit.

## **2. SUBMISSION**

The Land described with particularity on Exhibit C attached hereto is hereby submitted to the Act.

The Land is hereby made subject to, and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein.

The Land is SUBJECT TO the described easements and rights of way.

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

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

## **3. LEGAL STATUS OF PROPERTY; PROPERTY INTERESTS; CONVEYENCES**

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

3.1 Description of Improvements. The significant improvements contained or to be contained in the Community will include Buildings, Units, and Common Areas and Facilities. The Buildings will be constructed principally of concrete foundations with exterior walls of stone, stucco veneer, vinyl or wood composition siding, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. Each Unit will be assigned a carport. The Community will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat.

3.2 Description and Legal Status of the Property. The Map shows the Unit Number of each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered and conveyed.

3.3 Limited Common Areas. Limited Common Areas may not be partitioned from the Unit to which they are appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Plat Map.

3.4 Allocation of Profits, Losses and Voting Rights. Profits, losses and voting rights shall be distributed among the Owners equally. The percentage of ownership interest in the Common Areas and Facilities appurtenant to each Unit is equal. The undivided interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the consent of two-thirds (2/3) of the Unit Owners expressed in an amended declaration duly recorded.

3.5 Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of UNIT NO. \_\_\_\_ contained within PHASE \_\_\_\_, PLAT \_\_\_\_, Oquirrh Highlands Condominiums, an expandable Utah condominium project, as the same is identified in the Condominium Plat recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium of Oquirrh Highlands Condominiums, an expandable Utah condominium project recorded in Salt Lake County, Utah as Entry No. \_\_\_\_\_ in Book \_\_\_\_\_ at Page \_\_\_\_\_ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such rights of use shall automatically accompany the transfer of the Unit to which they relate.

#### 4. **USE RESTRICTIONS**

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying the Community and this Declaration, all Units and ownership interests within the Community shall be held, used and enjoyed subject to the limitations, restrictions, and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article Four may be modified or waived in whole or in part by the Management Committee in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Management Committee. Any other provision herein notwithstanding, neither Declarant, the Association, the Management Committee, nor their respective officers, members, agents or employees, shall be liable to any Owner or any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

4.1 Ownership and Use. Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his Unit, to an undivided percentage of ownership interest in the Common Areas and to membership in the Association as set forth herein and subject to the following:

4.1.1 Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights. The Common Areas shall only be used in a manner consistent with the residential nature of the Community.

4.1.2 Title to the Common Area. Each Unit Owner shall be entitled to a undivided percentage of undivided ownership interest (as further described in Section 14.6.6 of this Declaration) in and to the Common Areas and Facilities free and clear of all liens (other than the current years taxes, if any), prior to the Declarant's first conveyance of a Unit.

4.1.3 Mandatory Membership in the Association. Each owner of a Unit by virtue of his acceptance of a deed or other document of conveyance shall automatically become a member of the Association.

4.1.4 Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Areas. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

4.1.4.1 The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Areas;

4.1.4.2 The right of the Association to suspend the voting rights of and/or the privilege to use the recreational amenities by a member for a period not to exceed ninety (90) days for: (a) a material violation of the Declaration or Rules, and/or (b) not paying his/her share of the Common Expenses;

4.1.4.3 Subject to the prior written consent of Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA) (where appropriate), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Declarant's Period of Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and

4.1.4.4 The right of the Association to charge a reasonable admission or other fee for the use of any recreational facility situated upon the Common Area.

4.1.5 Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such rules, regulations and use restrictions shall be binding upon all Owners, Residents, guests and invitees.

4.1.5.1 Parties Bound. All provisions of the Declaration, Bylaws, Rules and Regulations shall be binding upon all Owners and Residents, and their families, guests and invitees.

4.1.5.2 Nuisance. It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Community. The term "nuisance" includes but is not limited to the following:

(a) The development of any unclean, unhealthy, unsightly, or unkempt condition on or about his/her Unit or the Common Areas;

(b) The storage of any item, property or thing that causes any Unit or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

(c) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees;

(d) Creating or maintaining an unreasonable amount of noise or traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. on weekdays and after Midnight and 8:00 a.m. on weekends and holidays; and

(e) Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable residents or interfere with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78-38-9 (1999) as amended or supplemented.

4.1.5.3 Signs; Unsightly Work and Unkempt Conditions. No "For Sale" or "For Rent" or other signs or banners are permitted in the Common Area or so as to be visible from the street, unless approved in writing by the Committee. Activities (e.g., assembly/disassembly of motor vehicles and other mechanical devices) which might tend to cause disorderly, unsightly, or unkempt conditions, are prohibited on any part of the Community.

4.1.5.4 Removing Garbage, Dust and Debris. All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon.

4.1.5.5 Subdivision of a Unit. No Unit shall be subdivided or partitioned.

4.1.5.6 No Severance. The elements of a Unit and other rights appurtenant to the ownership of a Unit, including the appurtenant interest in the Common Areas and Facilities are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances. Any conveyance made in contravention of this subsection, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

4.1.5.7 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices, or the painting or graffiti, within the Community is prohibited. The term firearms, includes, but is not limited to, all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

4.1.5.8 Temporary Structures. No Owner or occupant shall place upon any part of the Community any temporary structures including, but not limited to, tents, trailers, or sheds, dog runs or their equivalent, without the prior written consent of the Committee.

4.1.5.9 Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections. All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.



4.1.5.10 Energy Conservation Equipment. Except in compliance with U.C.A. Section 17-27-901, as it may be amended from time to time, no solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Community.

4.1.5.11 Business Use. No commercial trade or business may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the Community; (c) the business activity does not involve persons coming onto the Community who do not reside in the Community or door-to-door solicitation of residents of the Community; and (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Committee. Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-Section.

4.1.5.12 Storage and Parking of Vehicles. The driving, parking, standing and storing of motor vehicles and bicycles in, on or about the Community shall be subject the following:

- (a) The Parking rules and regulations adopted by the Committee from time to time;
- (b) Motor vehicles parked in violation of the parking rules and regulations may be impounded, towed and stored, at the Owner's sole expense, without further notice;
- (c) No mechanical work or repairs are to be conducted in streets or Common Areas;
- (d) No inoperative automobile or vehicle shall be placed or stored on the property;
- (e) Recreational vehicles, commercial-type vehicles, and trucks shall not be parked or stored on the property;
- (f) Trailers, mobile homes, trucks over three quarter ton capacity, boats, campers not on a truck bed, motor homes, buses, tractors, and maintenance or commercial equipment of any kind shall not be parked or stored on the property;
- (g) Except for purposes of loading and unloading, no motor vehicle or trailer may be parked or stationed in such a manner so as to create an obstacle or along any street, driving lane, parking area, sidewalk, walkway, path, dumpster, Building or Unit, or in an unauthorized Common Area;
- (h) Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas;
- (i) Visitors or guests shall park their motor vehicles in Common Areas designated for "Guest" or "Visitor" parking;
- (j) No Owners or Residents shall repair or restore any motor vehicle of any kind in, on or about any Unit or the Common Area, except for emergency

repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility;

(k) All parking areas shall be used solely for the parking and storage of motor vehicles and bicycles used for personal transportation;

(l) No motor vehicle or bicycle shall be parked in such a manner as to inhibit or block access to a Unit, Common Areas and Facilities, dumpster, driving lane, or parking area; and

(m) Bicycles in the Common Areas must be parked or stored in the bicycle racks or storage areas designated by the Management Committee.

4.1.5.13 Aerials, Antennas, and Satellite Systems. Antennas and Satellite Dishes: Antennas and satellite dishes shall be prohibited within the Property except: (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is:

(a) located in the attic, crawl space, or other interior spaces of the dwelling or another approved structure on the Unit, so as not to be visible from outside the dwelling or other structure; or

(b) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the dwelling directly in front of such antenna.

Notwithstanding the foregoing, the Board may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all Permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device in authorized areas.

4.1.5.14 Window Coverings. No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any residential structure on a Unit.

4.1.5.15 Windows and Doors. All exterior doors, windows, and window units in the Community shall be harmonious, and comparable in size, design, construction materials, and quality so as not to detract from uniformity in appearance and quality of construction.

4.1.5.16 Pets. No pets, animals, livestock or poultry of any kind shall be commercially bred in, on or about the Community. Pets must be properly licensed and registered by the appropriate governmental agency where required. Pets may not create a nuisance. The following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unreasonable fouling of the air by odors; (c) causing unsanitary conditions; (d) defecating on any common area when the feces are not immediately cleaned up by the responsible party; (e) barking, howling, whining or making other disturbing noises in an excessive, continuous or untimely fashion; (f) molesting or harassing passersby by lunging at them or chasing passing vehicles; (g) attacking or threatening to attack people or other domestic animals; (h) otherwise acting so as to bother, annoy or disturb other reasonable residents or interfering with their right to the peaceful and quiet enjoyment of their property; or (i) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents. Pets in the

Common Area must be in a cage or on a leash and under the control of a responsible person. Pets may not be tied or tethered in the Common Area. The Management Committee may establish Pet Rules, including rules limiting the number of pets per unit, and charge a pet deposit and/or a registration fee. Two small pets (30 lbs and under) per unit will be allowed.

4.1.5.17 Insurance. Nothing shall be done or kept in, on or about any Unit or in the Common Areas or Limited Common Areas which may result in the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property over what the Management Committee would pay, but for such activity.

4.1.5.18 Laws. Nothing shall be done or kept in, on or about any Unit or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

4.1.5.19 Damage or Waste. No damage to, or waste of, the Common Areas or Limited common Areas shall be committed by any Owner or Resident, their guests or invitees; and each Owner and Resident shall indemnify and hold the Management Committee and the other Owners in the Community harmless against all loss resulting from any such damage or waste caused by that Owner or Resident, their guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

4.1.5.20 Structural Alterations. Except in the case of an emergency repair, no structural alterations of any kind to the Common Areas or Limited Common Areas shall be done or permitted by any Owner without the prior written consent of the Management Committee.

4.2 Leases. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing and a copy thereof shall be delivered to the Management Committee upon request. By virtue of taking possession of a Unit, each lessee agrees to be subject to and abide by these restrictive covenants. Further, each lessee agrees that any covenant violation shall be deemed to constitute a default under the lease. No Owner shall be permitted to lease his/her Unit for transient, hotel, seasonal, rental pool or corporate/executive use purposes, which shall be deemed to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his/her entire Unit. *Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.*

4.3 Easement – Support, Maintenance and Repair. There is hereby RESERVED and the Association is hereby GRANTED a non-exclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance and regulation of the Common Area and Facilities.

4.4 Liability of Owners and Residents for Damages. Each Owner or Resident shall be liable to the Association, or other Owners or Residents for damages to person or property in the Community caused by his/her negligence.

4.5 Encroachments. If any portion of Common Area, Limited Common Area, or a Unit encroaches or comes to encroach upon other Common Area, Limited Common Area, or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

## 5. ASSOCIATION; MANAGEMENT COMMITTEE; MEETINGS

5.1 Organization of Association. The Association is or shall be incorporated under the name of THE CONDOS AT OQUIRRH HIGHLANDS HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation under the laws of the State of Utah. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with applicable Utah law.

5.2 Duties, Powers and Rights of Association. The Association is organized as a nonprofit corporation and does not contemplate pecuniary gain or profit to its members. The specific purposes for which the Association is formed is to (a) maintain the common areas and facilities at The Condos at Oquirrh Highlands as per the Declaration and By-laws, (b) interpret and enforce the covenants, conditions, and restrictions governing The Condos at Oquirrh Highlands, (c) promote the health, safety, and welfare of the residents of The Condos at Oquirrh Highlands, and (d) take any other action and to enter into any other transactions which may be reasonably necessary to accomplish the foregoing.

5.3 Membership in the Association. Membership in the Association is mandatory. Each Owner, upon acquiring title to a Unit, shall automatically become a Member and shall remain a Member until such time as his/her ownership of the Unit ceases, at which time his/her membership in the Association shall automatically cease. Memberships shall not be assignable, except to the Person to which title to the Unit has been transferred, and each Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

5.4 Management Committee. The Association shall be managed by a Management Committee. The Committee shall consist of not less than three (3) members. The Declarant shall appoint the initial Management Committee. During the Period of Declarant's Control, the Declarant at anytime, with or without cause, may remove or replace any member of the Management Committee appointed by Declarant. Members of the Management Committee appointed by Declarant need not be Owners.

5.4.1 Period of Declarant's Control. The Period of Declarant's Control shall terminate upon the earlier of the following events (the "Events") at which time control of the Management Committee shall be transferred by Declarant to the Association within one-hundred twenty (120) days of the Event:

5.4.1.1 The date on which seventy-five (75%) percent of the Units in the Community have been conveyed to a Unit purchaser;

5.4.1.2 Seven (7) years after the first Unit in the Community is conveyed by Declarant;

5.4.1.3 The date that Declarant abandons Phasing of the Additional Land by recording a waiver as set forth below; or

5.4.1.4 The date on which Declarant expressly waives the right of control.

5.5 Officers and Agents. The Management Committee shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary and Treasurer.

5.6 Management Committee Meetings. The Management Committee shall meet at regular intervals.

5.7 Voting Restrictions. Each Unit shall have one (1) vote. The following additional restrictions apply to voting on Association issues, including but not limited to the election of Committee Members:

5.7.1 Subject To Assessment. No vote shall be cast or counted for any Unit not subject to assessment.

5.7.2 Multiple Owners. When more than one person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one person or entity seeks to exercise it.

5.7.3 Leased Unit. Any Owner of a Unit which has been leased may assign the voting right appurtenant to that Unit to the lessee in the lease or other written instrument, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

5.8 Election of Committee Members. Upon termination of Declarant's Control, the Association shall elect the members of the Management Committee at the annual meeting or the Association. Cumulative voting shall not be permitted.

5.9 Terms. Terms of membership on the Management Committee shall be two (2) years; provided, however, at the first Annual meeting of the Association at which the Members of the Association elect the Members on the Management Committee, two (2) of the Members of the Management Committee shall be elected for two (2) year terms and one (1) Member of the Management Committee shall be elected for a one (1) year term. Thereafter, all Members shall be elected to serve a two (2) year term.

5.9.1 Qualify. To qualify, a Member of the Committee must be an individual Unit Owner, or the legal representative of an entity or institutional Owner in good standing.

5.10 Status and General Authority of Committee. Any instrument executed by the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (m) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

5.10.1 Access. To enter into or upon any Unit to make repairs and to do other work necessary for the proper maintenance and operation of the Common Areas and Facilities from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities; and (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.

5.10.2 Grant Easements. With or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Community.

5.10.3 Execute Documents. To execute and record, on behalf of all Owners, any amendment to this Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.

5.10.4 Standing. The Power to sue.

5.10.5 Enter Into Contracts. To enter into contracts which in any way concern the Community, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

5.10.6 Transfer Interests in Real Property. To exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Owners.

5.10.7 Purchase or Acquire Additional Property. To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Owners.

5.10.8 Borrow Money and Pledge Collateral. The Power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Owners.

5.10.9 Promulgate Rules. To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Community is maintained and used in a manner consistent with the Act and this Declaration.

5.10.10 Meetings. To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

5.10.11 Delegation of Authority. To delegate its responsibilities over the management and control of the Common Areas and regulation of the Community to a professional manager, reserving the right, power and authority, however, to control and oversee the administration thereof.

5.10.12 Proceedings. Pursue Proceedings on behalf of the Association, but only as described in Section 5.11.

5.10.13 All other Acts. To perform any and all other acts, and to enter into any other transactions, which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

Anything to the contrary notwithstanding, while Declarant controls the Association and before the end of the Period of Declarant's Control, any amendments to the Declaration or mergers must (where appropriate) be approved in writing and in advance by Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

5.11 Proceedings. The Association, acting through the Management Committee, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Management Committee, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration

or the Common Areas and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

5.11.1.1 Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof, or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate; shall be referred to herein as an "Operational Proceeding." The Management Committee from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization;

5.11.1.2 Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies." To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Management Committee and individual members of the Management Committee or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.11.1.2 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Management Committee:

(a) The Management Committee shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Management Committee shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Management Committee shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Management Committee shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Management Committee shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Management Committee has fully complied with the following procedures:

(i) The Management Committee shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney regularly residing in Salt Lake County, Utah, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material

liability with respect to any counterclaim which may be asserted against the Association. The Management Committee shall be authorized to spend up to an aggregate of Five Thousand Dollars (\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefore, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Management Committee may increase said \$5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose;

(ii) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Management Committee shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter");

(iii) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Management Committee affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Management Committee thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Management Committee: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Management Committee shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts



and for the duration set forth in the Special Assessment Report, then the Management Committee shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Management Committee shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require: (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Management Committee shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(iv) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Management Committee that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Management Committee shall have the authority to accept such settlement offer. In all other cases, the Management Committee shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

5.11.1.3 In no event shall any Association Working Capital Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). The Association Working Capital Fund, Pursuant to Section 7.5, below, is to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

5.11.1.4 Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.11.1.2, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Management Committee without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.11.1.2, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Management Committee who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.11.1.2 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.11.1.2 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than two-thirds (2/3) of the total voting power of the Management Committee; and any purported amendment or deletion of this Section 5.11.1.2, or any portion hereof, without both of such express prior written approvals shall be void.

5.12 Delegation of Management Responsibilities. The Management Committee may delegate some of its management responsibilities to either, a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or an advanced notice of not less than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days notice in accordance with Title 38, Code of Federal Regulations, Section 36.4360a (f), as it may be amended from time to time.

5.13 Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney's fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith, and except for any matter that is *ultra vires* under 13(k) of this Declaration. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

5.14 Owners Meetings. The Association shall meet as a group at least annually.

5.15 Consent in Lieu of Vote. In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

5.15.1 Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and

5.15.2 Change In Ownership. Any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein but before the vote becomes final shall not be considered or taken into account for any purpose.

5.16 Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Management Committee and may elect to transfer the management of the Community to a Committee elected by the Owners. Upon the occurrence of the Sale's Events referred to above, or if the Declarant elects to transfer control sooner, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Expenses of the Association prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Association funds to the newly elected Committee.

## **6. CAPITAL IMPROVEMENTS; OPERATION, MAINTENANCE, AND ALTERATIONS OF UNITS AND THE COMMON AREAS**

6.1 Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

6.1.1 Committee Discretion/Expenditure Limit. Any capital improvement to the Community which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Community, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

6.1.2 Unit Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area prior to the commencement of construction.

6.1.3 Unit Owner Approval/Changing the Nature of the Community. Any capital improvement which would materially alter the nature of the Community must be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas prior to being constructed or accomplished, regardless of its cost.

6.2 Operation, Maintenance and Alteration. Each Unit, the Limited Common Area and the Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

6.2.1 Clean and Attractive Condition. The Units, Limited Common Area and Common Area shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards.

6.2.2 Landscaping. All landscaping in the Community shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with Community Wide Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Community.

6.2.3 Area of Common Responsibility. The Association shall maintain, repair and replace all of the Common Area and Facilities and the roofs, exterior surfaces, foundations, columns, girders, beams, supports, main walls, and all other structural components of the Buildings (the "Common Responsibility").

6.2.4 Area of Personal Responsibility. Each Owner shall maintain, repair and replace his/her Unit and Limited Common Area, including, by way of illustration, but not limitation, all individual services such as power, light, gas; hot and cold water; heating, refrigeration, and air conditioning; fixtures; glass, windows and window units; and doors and door units. Each Unit Owner shall be responsible for keeping his/her Unit and Limited Common Area clean, attractive, safe, sanitary, and functional so as not to detract from the health, safety or uniform appearance or design of the Community and in a manner consistent with both Community Standards and rules and regulations adopted by the Management Committee.

6.2.5 Neglect. If (except in the case of an emergency) after written notice and a hearing, the Committee determines that any Owner has failed or refused to discharge properly his/her obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his/her family, guests, lessees,

or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense. Such costs shall be considered an Individual Assessment.

6.2.5.1 Notice of Intent to Repair. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Committee. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

6.2.6 Alterations to the Common Area. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without the consent of the Committee or Members of the Association. However, no Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area) without the prior written consent of the Committee.

6.2.7 Certain Work Prohibited. No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Unit Owners being first had and obtained.

## **7. COMMON EXPENSES, ASSESSMENTS, WORKING CAPITAL FUND, MORTGAGEE PROTECTION, AND FINES**

7.1 Common Expenses. Each Owner shall pay his/her share of the Common Expenses, subject to and in accordance with the procedures set forth below.

7.1.1 Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Unit owned by it until such time as the earlier of the following events occurs: (1) the Period of Declarant's Control ends; (2) the physical structures are substantially completed, certificates of permanent occupancy are issued, and the Units are sold or rented; or (3) Declarant records a Waiver of right not to pay Assessments.

7.1.2 Purpose of Assessments. The Assessments provided for herein shall be used for the general purpose of paying the Common Expenses, and promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents.

7.1.3 Creation of Assessments. Each Owner, by acceptance of a deed or other document of conveyance to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed against him by the Management Committee, and his/her share of the Common Expenses.

7.1.4 Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

7.1.4.1 Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

7.1.4.2 Basis. Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, and each Unit Owner's share of the Common Expenses, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and

special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Community is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

7.1.4.3 Apportionment. The common profits, losses and voting rights of the Community, and the Association's share of the Common Expenses shall be distributed among and be charged equally to the Unit Owners.

7.1.4.4 Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the annual meeting of the Association by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Area Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.

7.1.4.5 Payment of Assessments. Payment of all Assessments shall be made to The Condos at Oquirrh Highlands Homeowners Association.

7.1.4.6 Personal Obligation of Owner. Each Unit Owner is obligated to pay his/her share of the Common Expenses and any Additional Charges which may be assessed.

7.1.4.7 Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Common Area Assessment in any calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

7.1.4.8 Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

7.1.4.9 Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and major Repairs.

7.1.4.10 Capital Asset Table. The Committee shall establish and update at least annually a Capital Asset Table which shall list each major asset and physical improvement in the Community, such as the roofs, building exteriors, driving lanes, parking areas, entry and entry monument; its expected useful life; the present cost of replacement; the estimated cost to replace the item at the end of its useful life; the percentage and amount of each Assessment designated for the reserve account to replace the item at the end of its useful life, and the amount of money currently set aside in the reserve account for the replacement of the item.

7.1.4.11 Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the

entire annual Common Area Assessment for delinquent Owners. If, however, the Common Area Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

7.1.4.12 Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his/her Unit. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

7.1.4.13 Superiority of Assessments. Each Owner by accepting a deed or other document of conveyance to a Unit, agrees to waive or subordinate, and hereby waives and subordinates, his/her homestead exemption to his/her share of the Common Expenses.

7.1.4.14 Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Management Committee, the right to use any amenities in the Community may be suspended for up to ninety (90) days if the Owner is in arrears on his/her obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

7.1.4.15 Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended for up to ninety (90) days if the Owner is delinquent in the payment of his/her Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

7.2 Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

7.2.1 Committee Based Assessment. So long as the special assessment does not exceed the sum of Five Hundred and 00/100th Dollars (\$500.00) (the "Special Assessment Limit") per Unit in any one fiscal year, the Committee may impose the special assessment without any additional approval.

7.2.2 Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

7.3 Benefit Assessments. If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

7.3.1 Benefit only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

7.3.2 Unequal or Disproportionate Benefit. If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee, and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this Section.

7.4 Individual Assessments. Individual Assessments shall be levied by the Committee, against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Community Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible; (c) any other charge, fine, fee, due, expense, or cost designated as an Individual Assessment in the Community Documents or by the Management Committee; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration. Owners may be charged fines for material violations of the Community Documents in accordance with the Act.

7.5 Working Capital Fund. A working capital fund shall be established by the Declarant in a sum equal to two times the estimated monthly Assessment. Each Unit's share of the working capital fund shall be collected and transferred to the Management Committee at the time of closing of the sale of each Unit by Declarant. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit shall be paid to the Management Committee at the time such Unit is first occupied for residential purposes or a certificate of permanent occupancy is issued, whichever first occurs. With respect to each Unit for which the Declarant pays the contribution to the working capital fund, the Declarant shall be reimbursed for such contribution by the buyer of such Unit at the time of closing. The purpose of the working capital fund is to insure that the Management Committee will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Community. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Common Expenses.

7.6 Collection of Assessments. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

7.6.1 Delinquent Accounts. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded.

7.6.2 Late Fees and Default Interest. A late fee of \$50.00 shall be assessed on all tardy payments. Default interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts.

7.6.3 Lien. If any Unit Owner fails or refuses to make any payment of any Assessment or his/her portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

7.6.4 Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

7.6.5 Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in

the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

7.6.6 No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his/her Unit.

7.6.7 Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

7.6.8 Application of Payments. All payments shall be applied as follows: Additional Charges; Delinquent Assessments; and Current Assessments.

7.6.9 Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

7.6.10 Appointment of Trustee. If the Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his/her right, title and interest in and to the real property for the purpose of securing his/her performance of the obligations set forth herein.

7.6.11 Attorney-in-Fact. Each Owner by accepting a deed to a Unit hereby irrevocably appoints the Association as his/her attorney-in-fact to collect rent from any person renting his/her Unit, if the Unit is rented and Owner is delinquent in his/her Assessments. Upon written demand, sent both to the Owner and the renter, rent due shall be paid directly to the Association until such time as the Assessments due on the Unit are current, and the Owner agrees, by accepting a deed or other document of conveyance to a Unit, to credit the renter, against rent due, for the amount of money paid to the Association.

7.7 Mortgagee Protection. The lien or claim against a Unit for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration or the Act shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:

7.7.1 Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with



the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.

7.7.2 Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Declaration, Bylaws, and administrative rules and regulations concerning the Community, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

7.7.3 Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

7.7.4 Management Contracts. Any agreement for professional management of the Community, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

7.7.4.1 Either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and

7.7.4.2 No contract may be for an initial term greater than one (1) year.

7.7.5 Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

7.7.5.1 Condemnation Loss or Award. Any condemnation loss or any casualty loss which affects a material portion of the Community or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

7.7.5.2 Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

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

7.7.5.4 Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

7.7.6 Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request, with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request; provided, however and anything to the contrary notwithstanding, so long as Declarant is in control of the owner's association, such action or transaction must be approved in writing by the Department of Veterans Affairs (VA)

pursuant to CFR, Title 38, § 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Acorporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

7.7.7 Assignment of Rents. Each Owner by virtue of his/her acceptance of a deed or other document of conveyance to a Unit hereby agrees to an assignments of rents as set forth in the Act.

7.8 Fines. Responsibility: Each Owner and resident is responsible for adhering to the Governing Documents governing the community. A breach of these documents is subject to enforcement pursuant hereto and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his/her residents, tenants, and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owners.

7.8.1 Fines imposed are final unless appealed in writing to the Management Committee within thirty (30) days of written notification of the violation from management. If a request for a hearing is not submitted to the Management Committee within said thirty (30) days, the right to a hearing is waived, and the fine imposed will stand.

7.8.2 Before assessing a fine, the Management Committee shall give notice to the Owner or resident of the violation and inform the Owner or resident that the fine will be imposed if the violation is not cured within the time provided in the Governing Documents, which shall be at least forty-eight (48) hours.

7.8.3 A fine assessed shall:

7.8.3.1 be made only for a violation of a covenant, condition, restriction, rule, or regulation which is specifically listed in the Governing Documents as an offense which is subject to a fine;

7.8.3.2 be in the amount specifically provided for in the Governing Documents for that specific type of violation, not to exceed \$500.00; and

7.8.3.3 accrue interest and late fees as provided in the Governing Documents;

7.8.4 Cumulative fines for a continuing violation may not exceed \$500.00 per month.

7.8.5 An Owner or resident who is assessed a fine may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed. The hearing shall be conducted in accordance with the standards provided in the Governing Documents. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

7.8.6 A unit owner may appeal a fine issued by initiating a civil action within one hundred and eighty (180) days after:

7.8.6.1 a hearing has been held and a final decision has been rendered by the Management Committee; or

7.8.6.2 the time to request an informal hearing has expired without the unit owner making such a request.

7.8.7 A fine assessed under Subsection (1) which remains unpaid after the time for appeal has expired becomes a lien against the unit owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under Section 57-8-20 of the Act.

7.8.8 All violations of the Governing Documents shall be subject to a fine, in amounts to be determined and published by the Management Committee from time to time.

## 8. INSURANCE

8.1 Insurance. The Association, Management Committee or Manager shall, in accordance with U.C.A., Section 57-8-29 (2000) as it may be amended from time to time, obtain insurance against loss or damage by fire and other hazards for all Common Areas and Facilities; and all Buildings that contain more than one Unit, including any improvement which is a permanent part of a building. Premiums on insurance required by this section shall be a Common Expense. These insurance provisions shall be without prejudice to the right of each Unit Owner and Resident to insure his/her own Unit and property for his/her benefit.

8.1.1 Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard "condominium" casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgement and in its sole discretion.

8.1.2 Flood Insurance. If any part of the Community's improvements are in a Special Flood Hazard Area, which is designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map (FIRM), the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value of the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

8.1.3 Liability Insurance. A public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence, if reasonably available, and a One Million (\$1,000,000) Dollar minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

8.1.4 Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

8.1.5 Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the Management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

8.1.5.1 Agents. Furthermore, where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

8.1.5.2 Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

8.1.5.3 Quality of Coverage. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Association, and the Property Manager as obligee; (b) if the insurance contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten (10) days prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

8.1.6 Earthquake Insurance shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

8.1.7 Miscellaneous Items. The following provisions shall apply to all insurance coverage:

8.1.7.1 Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VII" or better in Best's Insurance reports -- International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service -- if the carrier is issuing a master policy or an insurance policy for the common elements in the Community.

8.1.7.2 The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners of The Condos at Oquirrh Highlands, for the use and benefit of the individual Owners."

8.1.7.3 Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

8.1.7.4 Beneficiary. In any policy covering the entire Community, each owner and his/her Mortgagee, if any, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

8.1.7.5 Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

8.1.7.6 Mortgage Provisions. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially

modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

8.1.7.7 Miscellaneous Provisions. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect of any individual Owner.

8.1.7.8 Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his/her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

8.1.7.9 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

8.1.7.10 Special Endorsements. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Community has any central heating or cooling.

8.1.7.11 Restrictions on Policies. No insurance policy shall be maintained where:

(a) Individual Assessments Prohibited. Under the term of the carrier's charter, Bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

(b) Payments Contingent. By the terms of the Declaration, Bylaws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

(c) Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

8.1.7.12 Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

8.1.7.13 Deductible. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

8.1.8 Adjusting Claims. The Management Committee has the authority to adjust claims and, if the claim may be filed with the Unit Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company, particularly if (1) it risks cancellation of the Association's insurance, or (2) the problem occurred in the Unit, or (3) was caused by the claimant, or (4) the claim is legally or primarily the responsibility of the claimant, and (5) there is a substantial likelihood that the claim will be covered by the Owner's or renter's insurance company.

8.1.9 Government Lenders or Insurers. If financing is provided by any governmental agency, such as the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), all of the insurance requirements of such agencies shall be satisfied, anything to the contrary notwithstanding.

## 9. DESTRUCTION, CONDEMNATION, AND OBSOLESCENCE

9.1 Destruction, Condemnation, and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Community.

9.1.1 Definitions. Each of the following terms shall have the meaning indicated:

9.1.1.1 "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Community or any part thereof, the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Community.

9.1.1.2 "Partial Destruction" shall mean any other damage or destruction to the Community or any part thereof.

9.1.1.3 "Substantial Condemnation" shall exist whenever a complete taking of the Community or a taking of part of the Community has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty five (25%) percent or more of the estimated restored value of the Community.

9.1.1.4 "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

9.1.1.5 "Substantial Obsolescence" shall exist whenever the Community or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Community.

9.1.1.6 "Partial Obsolescence" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

9.1.1.7 "Restored Value" shall mean the fair market value of the Community after Restoration as determined by an MAI or other qualified appraisal.

9.1.1.8 "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Community to its former condition.

9.1.1.9 "Available Funds" shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Management Committee or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

9.1.2 Determination by Committee. Upon the occurrence of any damage or destruction to the Community or any part thereof, or upon a complete or partial taking of the Community under eminent domain or by grant or conveyance in lieu thereof, the Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Community. In addition, the Committee shall, from time to time, review the condition of the Community to determine whether Substantial Obsolescence exists. In making such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

9.1.3 Restoration of the Community. Restoration of the Community shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven (67.0%) percent of the Community's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51.0%) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

9.1.4 Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.

9.1.5 Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

9.1.6 Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

9.1.7 Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Community will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any

agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

9.1.8 Sale of Community. Unless Restoration is accomplished as set forth above, the Community shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, condominium Ownership under this Declaration and the Survey map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

9.1.9 Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

9.1.10 Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

9.1.11 Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Community and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

9.1.12 Right of Entry. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

9.1.13 Termination of Legal Status. Any action to terminate the legal status of the Community after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders.

The termination of the legal status of the Community for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder (except (where appropriate) the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA)) fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

## 10. AMENDMENTS

10.1 Amendment. This Declaration may be amended as follows:

10.1.1 Amendments by Declarant Prior to First Sale. Except as provided elsewhere in this Declaration, prior to the conveyance of the first Unit to an Owner other than a Declarant, this



Declaration and any amendments thereto may be amended or revoked by the execution by Declarant of an instrument amending or revoking same.

10.1.2 Amendments by Declarant After First Sale. Except as provided elsewhere in this Declaration, Declarant (without obtaining the approval of Owners, the Association, or existing Mortgagees) may unilaterally amend or modify this Declaration in the exercise of its rights set forth in this Declaration. Also, notwithstanding anything herein to the contrary, Declarant shall have the unilateral right (without obtaining the approval of the Owners, the Association, or existing Mortgagees) to amend this Declaration until the end of Period of Declarant's Control, if such amendment is required solely: (a) to comply with applicable law or to correct any error or inconsistency of the Declaration and if such amendment does not adversely affect the rights of any Owner or Mortgagee, or (b) to comply with the rules or guidelines, in effect from time to time, of any governmental or quasi-governmental entity or federal corporation guaranteeing or insuring mortgage loans or governing transactions involving mortgage instruments (including, without Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA), or any similar agency). If such amendment bears recitation that it is recorded based on such technical error or the requirements of any of the foregoing agencies, such amendment shall not require approval of any Owners or Mortgagees.

10.1.3 Consent of the Owners. The affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Plat Map. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

10.1.4 Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, or Period of Declarant Control unless the Declarant approves or consents in writing.

10.1.5 Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Salt Lake County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.

10.1.6 Consent of Eligible Mortgagee. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Community; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common elements; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use of the Common Areas; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Community or the addition, annexation or withdrawal of property to or from the Community; (8) the boundaries of any Lot; (9) the percentages of ownership interest in the Common Areas; (10) convertibility of a Lot into Common Areas or Common Area into a Lot; (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell,

transfer, or otherwise convey his/her Lot; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the requirement that the Community be professionally managed rather than self managed. Any addition or amendment shall not be considered material for purposes of this Paragraph b) if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Plat Map or the termination of the legal status of the Community, if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

## **11. DECLARANT'S RIGHTS, EXEMPTIONS, AND OBLIGATIONS**

In addition to the rights, exemptions, and obligations of Declarant described elsewhere in this Declaration and the Governing Documents, the following provisions apply to the Community:

11.1 Declarant's Sales Program. Anything to the contrary notwithstanding, for so long as Declarant continues to own any of the Units the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay Common Area or other Assessments, except as herein otherwise provided. Neither the Owners, the Association nor the Committee shall interfere with the completion of improvements and sale of all remaining Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

11.1.1 Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and one (1) or more model Units at any one time. Such office and/or models may be one or more of the Units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

11.1.2 Promotional. Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

11.1.3 Common Area Use. Declarant shall have the right to use the Common Areas of the Community including but not limited to the Community Center to facilitate sales.

11.1.4 Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from the Community any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

11.1.5 Parking Spaces. So long as Declarant owns any unity within the Community, Declarant reserves the right to reserve any uncovered parking space or spaces to facilitate sales activities.

11.2 Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) all of the Additional Land has been added and the Declarant has sold or rented all of

the Units, or (b) seven (7) years after the date of the sale of the first Unit in Phase I, or (c) such time as Declarant chooses, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

11.3 Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

11.3.1 Units. Each Unit which an Owner has contracted to purchase, the Building within which such Unit is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and

11.3.2 Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor lighting, and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use.

11.4 Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Community, title to which is vested in Declarant, shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

11.5 Mortgagee Approval. Until the termination of the Period of Declarant's Control, the Declarant shall not annex additional properties or amend the Declaration without the prior written consent (where appropriate) of the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

## 12. LIMITED WARRANTY

12.1 Each Owner, and the Association, by taking title to a Unit and/or any portion of the Common Areas and Facilities, acknowledges and agrees as follows:

12.1.1 Limited Warranty by Declarant. Declarant may issue a "Home Builder's Limited Warranty" (the "Limited Warranty") regarding the Units, Limited Common Areas, and Common Areas and Facilities to each initial third-party Owner upon the close of escrow. The Limited Warranty is administered by Professional Warranty Service Corporation ("PWC"). The actual terms of the Limited Warranty are defined by the Limited Warranty documents themselves. A copy of the Limited Warranty has been or will be provided to each initial third-party Owner, and may be obtained from PWC at its current address of P.O. Box 800, Annandale, VA 22003-0800. Each Owner, whether they are an initial purchaser of a Unit or a subsequent purchaser, and the Association, as concerns the Common Areas and Facilities, are hereby advised and agree that:

12.1.1.1 the Limited Warranty is the only warranty provided by the Declarant;

12.1.1.2 that all allegations of "Construction Defects," as that term is defined in the Limited Warranty documents provided to the initial third-party Owner and to the Association, will be resolved under and in accordance with, the Limited Warranty;

12.1.1.3 that final, binding arbitration is the sole remedy for resolving disputes involving alleged Construction Defects;

12.1.1.4 that by taking title to a Unit or the Common Area and Facilities, each Owner (whether an initial purchaser of a Unit or a subsequent purchaser) and the Association agree to be bound by the terms of the Limited Warranty; and

12.1.1.5 the length of time for coverage under the Limited Warranty shall be defined on the Limited Warranty Validation Form provided to the initial Owner.

12.2 Obligation of Owners to Provide Copy of Limited Warranty Documents to Subsequent Purchaser. Each Owner that transfers his or her interest in a Unit and/or the Common Areas and Facilities shall provide a copy of the Limited Warranty to the subsequent owner and shall thereby transfer to the subsequent owner all remaining coverage for the Unit and Common Areas and Facilities under the Limited Warranty.

### 13. MANDATORY BINDING ARBITRATION FOR MATTERS INVOLVING DECLARANT.

Each Owner, and the Association, by taking title to a Unit and/or any portion of the Common Areas and Facilities, acknowledges and agrees as follows:

13.1 Binding Arbitration. To the fullest extent permitted by law, any matter, dispute, claim, or controversy (a "Dispute") involving Declarant or any member, director, officer, partner, shareholder, member, employee, representatives, contractor, subcontractor, affiliate, design professional or agent of Declarant shall be submitted and resolved by binding arbitration, as the sole remedy for resolving disputes. The arbitration shall be conducted by and pursuant to the rules of Construction Arbitration Services, Inc. ("CAS") in effect at the time of the initiation of the arbitration or such other reputable arbitration service as PWC may select, in its sole discretion at the time the request for arbitration is submitted. The arbitration shall be governed by the Federal Arbitration Act to the exclusion of any inconsistent state law, regulation, or judicial decision. Disputes subject to binding arbitration shall include, but are not limited to:

- (a) Any disagreement that a condition in the Unit or in the Common Areas and Facilities is a Construction Defect (as defined in the Limited Warranty) and is therefore covered by the Limited Warranty;
- (b) Any disagreement as to whether a Construction Defect has been corrected in compliance with the Limited Warranty;
- (c) Any alleged breach of the Limited Warranty;
- (d) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- (e) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- (f) Any disputes concerning the issues that should be submitted to binding arbitration;
- (g) Any disputes concerning timeliness of performance and our Buyer's notifications under the Limited Warranty;
- (h) Any dispute as to the payment or reimbursement of the arbitration filing fee;

(i) Any dispute as to whether the Limited Warranty, or any provision thereof, including, but not limited to any waiver under the Limited Warranty, is unenforceable; and

(j) Any other claim arising out of or relating to the sale, design, or construction of the Unit or the common areas and elements, including, but not limited to any claim arising out of, relating to or based on any implied warranty or claim for negligence or strict liability not effectively waived by the Limited Warranty.

13.1.2 Interpretation. The construction of the Unit and common areas involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act. To the extent that any state or local law, ordinance, regulation, or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

13.1.3 Enforcement. This Section 13.1 shall inure to the benefit of, and be enforceable by, Grantor Parties and any other person whom Claimant contends is responsible for any alleged defect in or to the Unit, the common area, or any improvement or appurtenance thereto.

13.1.4 Expenses. In the event any dispute is submitted to arbitration, each party shall bear its own attorneys' fees and costs (including expert costs) for the arbitration. The filing fee to initiate the arbitration shall be advanced by the initiating party and subsequent fees and costs of the arbitration and the arbitrator shall be borne equally by the parties to the arbitration; provided, however, that the fees and costs of the arbitration and the arbitrator shall ultimately be borne as determined by the arbitrator. The filing fee shall be no more than the amount charged by the arbitration service to PWC for arbitration. Contact PWC to determine the arbitration filing fee in effect at the time arbitration is being requested.

13.1.5 Authority of Arbitrator. The arbitrator appointed to serve shall be a neutral and impartial individual, authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration. The decision of the arbitrator shall be final and binding. Claimant and Grantor Parties expressly agree that an application to confirm, vacate, modify or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the county in which the Unit is located.

13.1.6 Effect of Participation. The participation by any party in any judicial proceeding concerning this Section 13.1 or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this Section 13.1.

13.1.7 Venue. The venue of the arbitration shall be in the county where the Unit is located unless the parties agree in writing to another location.

13.1.8 Waiver. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party or a bar to the right of any other party to seek arbitration of that or any other Dispute, and the Court shall, upon motion of any party to the proceeding, direct that such Dispute be arbitrated in accordance therewith.

13.1.9 Severability. If any provision of this Section 13.1 shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

13.2 No Presumption of Unobserved Construction Defects. The Declarant, the Association, and the Owner(s) agree that if the Association or any Owner(s) alleges that any Unit(s) or any portion(s) of the Common Areas and Facilities are subject to or alleged to be subject to a Construction Defect, then in any arbitration, mediation, or other proceeding regarding such matters, there shall be no presumption that an alleged Construction Defect is prevalent or consistently present in other Units or in other portions of the Common Areas and Facilities where such alleged Construction Defect has not been observed.

13.3 Construction Process; Third-Party Inspector. Declarant is only the seller of the Units in the Community. Neither Declarant nor any affiliate of Declarant is the general contractor for the construction work for the Community. The construction work performed by the third-party general contractor and its subcontractors is being inspected by a separate third-party construction inspector at multiple points in the construction process.

13.4 Independent Obligation. The obligations of this Section 13.1 to submit all disputes to final, binding arbitration is wholly independent and separate from the rights and obligations under the Limited Warranty provisions of Section 13.1. In the event any Unit is not issued a Home Builder's Limited Warranty as described in Section 13.1, all Disputes shall be resolved by final, binding arbitration conducted by Construction Arbitration Services, Inc., or such other organization as the parties to the Dispute may agree upon, pursuant to the terms of this Section 13.1.

13.5 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article 13 and the subsections hereof of this Declaration may not be amended except with the written consent of the Declarant.

**BY TAKING TITLE TO ANY UNIT, EACH OWNER ACKNOWLEDGES THAT HE OR SHE HAS READ AND UNDERSTANDS THE FOREGOING AND ACCEPTS THAT HE OR SHE IS WAIVING HIS OR HER RIGHT TO A JURY TRIAL.**

#### **14. ANNEXATION.**

14.1 Reservation of Option to Expand. Declarant hereby reserves the option to expand the Community to include additional Units in the Community. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire seven (7) years from the date following the first conveyance of a Unit in Phase I to a Unit purchaser unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said seven (7) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Units shall be constructed on any or all portions of the Additional Property. The improvements on the property will be substantially completed before it is added.

14.2 Supplemental Declarations and Supplemental Maps. Such expansion may be accomplished by the filing by Declarant for record in the office of the County Recorder of Salt Lake County, Utah, no later than seven (7) years from the date this Declaration is recorded, a Supplement or Supplements to this Declaration containing a legal description of the site or sites for new Units, together with supplemental Map or Maps containing the same information with respect to the new Units as was required on the Map with respect to the Phase I Units. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

14.3 Expansion of Definitions. In the event of such expansion the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Community as so expanded. The term "Property" shall mean the real property initially submitted under the Declaration, plus any

Additional Land added to the Community by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Units after such expansion shall be effective to transfer rights in the Community, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the office of the Salt Lake County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Units in the Community as it existed before such expansion the respective undivided interests in the new Common Areas added to the Community as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Community as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Areas added to the Community as a result of such expansion.

14.4 Declaration Operative on New Units. The new Units shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Units therein shall be subject to condominium ownership with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said office of the Salt Lake County Recorder.

14.5 Right of Declarant to Adjust Ownership Interest in Common Areas. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentages in the Common Areas set forth in Supplemental or Amended Declaration. The proportionate interest of each Unit Owner in the Common Areas after any expansion of the Community shall be an undivided interest of the Community as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Areas in accordance with Supplemental or Amended Declarations recorded pursuant hereto and each deed of a Unit in the Community shall be deemed a grant of such power to the Declarant. Various provisions of this Declaration and deeds and mortgages of the Units may contain clauses designed to accomplish a shifting of the Common Areas. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Areas can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Areas may be effected more than seven (7) years after the effective date of the Declaration.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the Common Areas contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Community conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

14.6 Other Provisions Concerning Expansion. If the Community is expanded as hereinbefore contained, then it is further provided that:

14.6.1 All or any part of the Additional Land may be added to the Community without any limitations whatsoever save and except that all additional Units created must be restricted to multi family residential housing limited to one family per Unit;

14.6.2 Portions of the Additional Land may be added to the Community at different times without any limitations;

14.6.3 Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Map. The Association of Unit Owners shall not allow anything to be built upon or interfere with said easement areas; and

14.6.4 No assurances are made concerning:

14.6.4.1 The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Community;

14.6.4.2 Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Units will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation;

14.6.4.3 Whether any Units created on any portion of the Additional Land will be substantially identical to those within the initial Community except that Units will be constructed of an equal or better quality of materials and construction than the Units in Phase I; and

14.6.4.4 Type, size, or maximum number of Limited Common Areas which may be created within any portion of the Additional Land added to the Community.

14.6.5 Notwithstanding anything to the contrary which may be contained herein, the Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to: (i) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Declaration; (ii) the creation, construction, or addition to the Community of any additional property; (iii) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or (iv) the taking of any particular action with respect to the Additional Land, the Community, or any Land.

14.6.6 Assuming that only Phase 1 of the original Declaration is completed the minimum number of Units would be 12, and the maximum percentage of ownership interest of each Unit would be 8.33%. Assuming all Phases are completed and all Additional Land is added to the Community the maximum number of Units shall be 180, the maximum number of units per acre will be about 19, and the minimum Percentage Interest of each Unit would be 0.555%. Provided, however, the number of Units actually constructed and the actual undivided percentage of ownership interest of each Unit may actually be somewhere in between the numbers and percentages set forth above.

## 15. MISCELLANEOUS

### 15.1 Separate Taxation.

15.2 Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any sex shall include both sexes.

15.3 Compliance With Utah Condominium Ownership Act. It is the intent of Declarant and the Community that this Declaration shall be in all respects consistent with, and not in violation of, applicable provisions of Utah Condominium Ownership Act. In the event any provision of this Declaration is found to irreconcilably conflict with or violate any applicable provision of Utah Condominium Ownership Act, such offending Declaration provision shall be automatically deemed modified or severed here from to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of Utah Condominium Ownership Act.

15.4 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be



binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Community, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Community, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.5 Enforcement and Right to Recover Attorneys Fees. Should the Association, Management Committee or aggrieved Owner be required to take action to enforce the Declaration, Bylaws or any administrative rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

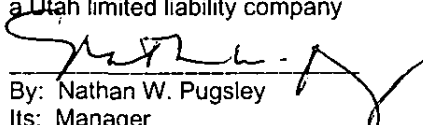
15.6 Severance. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof. If any covenant, condition, restriction, part, term or provision of this Declaration is deemed to be inconsistent, incongruent or in conflict with (the "Inconsistent Provision") any condominium approval guidelines of the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, § 36.4357(b)(4) for the financing, insuring or the guaranty of the Property, or any part thereof (the "Required Provision"), then (a) the rights and obligations of the parties shall be construed and enforced as if the Declaration did not contain such Inconsistent Provision, and (b) the Required Provision shall be and is hereby incorporated herein by this reference, anything to the contrary notwithstanding.

15.7 Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial Registered Agent is Nathan Pugsley and the initial office of the Registered Agent is 39 East Eagleridge Drive, Suite 100, North Salt Lake, UT 84054.

15.8 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Survey Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

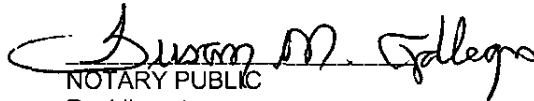
EXECUTED this 1<sup>st</sup> day of February, 2004.

DECLARANT:  
OQUIRRH HIGHLANDS CONDOMINIUMS, L.L.C.,  
a Utah limited liability company

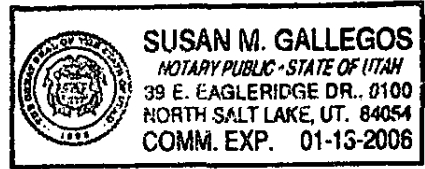
  
By: Nathan W. Pugsley  
Its: Manager

STATE OF UTAH,                    )  
  :SS  
COUNTY OF SALT LAKE.        )

On the 9 day of February, 2004, personally appeared before me Nathan W. Pugsley, who by me being duly sworn, did say that he is the Manager of OQUIRRH HIGHLANDS CONDOMINIUMS, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members or its Articles of Organization, and said Nate Pugsley, duly acknowledged to me that said Company executed the same.



NOTARY PUBLIC  
Residing at:  
My Commission Expires:



**EXHIBIT A  
LEGAL DESCRIPTION OF ADDITIONAL LAND**

The Land described in the foregoing document is located in Salt Lake County, Utah, and is described more particularly as follows:

A parcel of land located in the Southwest Quarter of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point which is N0°00'48"W, 33.00 feet from the Southwest corner of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian; and running thence N0°00'48"W, 572.00 feet; thence N89°41'45"E, 718.32 feet; thence S0°40'00"E, 22.00 feet; thence N89°41'45"E, 14.00 feet; thence S0°40'00"E, 550.00 feet; thence S89°41'44"W, 732.30 feet to the POINT OF BEGINNING. Said parcel contains 418,576.75 square feet or 9.6092 acres, more or less.

Less that portion commonly known as Oquirrh Highlands Condominiums Phase 1, Plat "A," and more particularly described as follows:

A parcel of land located in the Southwest Quarter of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point which is N89°41'44"E, 528.57 feet along the Section Line from the Southwest corner of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian; and running thence N0°17'58"W, 221.46 feet; thence N89°24'03"E, 204.84 feet; thence S0°00'58"E, 222.52 feet to the Section Line; thence S89°41'44"W, 203.74 feet to the POINT OF BEGINNING. Said parcel contains 45,350.32 square feet or 1.0411 acres, more or less.

**EXHIBIT "B"**

**BYLAWS**

OF

**THE CONDOS AT OQUIRRH HIGHLANDS HOMEOWNERS ASSOCIATION, INC.**

A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101 *et. seq.* (as amended from time to time, the "Act"), the following Bylaws are hereby adopted as the Bylaws of The Condos at Oquirrh Highlands Homeowners Association, Inc., a Utah nonprofit corporation.

ARTICLE 1

NAME AND PRINCIPAL OFFICE

1.1 Name. The name of the nonprofit corporation is **The Condos at Oquirrh Highlands Homeowners Association, Inc.** (hereinafter referred to as the "**Association**").

1.2 Offices. The initial principal office of the Association shall be at 39 East Eagleridge Drive, Suite 100, North Salt Lake, UT 84054.

ARTICLE 2

DEFINITIONS

2.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined the **Declaration of Condominium for Oquirrh Highlands Condominiums, an Expandable Condominium Project**, executed by Oquirrh Highlands Condominiums, LLC, and recorded in the official records of Salt Lake County, Utah (the "**Declaration**"), shall have such defined meanings when used in these Bylaws. A copy of the Declaration is attached hereto as Exhibit A.

ARTICLE 3

MEETINGS OF MEMBERS

3.1 Annual Meetings. The annual meeting of members shall be held on the first Monday of February of each year at 7:00 p.m., or at such other day and time as the Board of Trustees/Management Committee ("Committee") shall fix by resolution. If the election of Management Committee Members shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Committee shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient.

3.2 Special Meetings. Special meetings of the members may be called by the Committee, the President or upon the written request of members holding not less than THIRTY PERCENT (30%) of the total votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Committee or the President.

3.3 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Committee and stated in the notice of the meeting.

3.4 Notice of Meetings. The Committee shall cause written or printed notice of the time, place and purposes of all meetings of the members (whether annual or special) to be delivered, not more than SIXTY (60) nor less than SEVEN (7) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the member at his registered address, with first-class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a member's Lot address shall be deemed to be his registered address for purposes of notice hereunder.

3.5 Members of Record. Upon purchasing a Lot, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Lot has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Committee may designate a record date, which shall not be more than SIXTY (60) nor less than SEVEN (7) days prior to the meeting, for determining members entitled to notice of or to vote at any meeting of the members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Lots in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members.

3.6 Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the total votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a date no later than thirty (30) days from the date of the originally scheduled meeting. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be delivered to the members in the manner prescribed for regular meetings of the Association. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

3.7 Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. With respect to each matter submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot(s) of such member. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration or Utah law. The election of Management Committee Members shall be by secret ballot. If a membership is jointly held, all

or any holders thereof may attend each meeting of the members. Where membership is jointly held by more than one person, such holders must act unanimously to cast the votes relating to such membership.

3.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting form of proxies, and method of ascertaining members present, shall be deemed waived if no objection is made at the meeting.

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

3.11 Action by Written Ballot. Any action that may be taken by a meeting may also be taken by the Association delivering a ballot to every member entitled to vote. An action by written ballot shall pass if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting. Any solicitation of votes by written ballot must (1) indicate the number of responses needed to meet quorum requirements; (2) state the percentage of approvals necessary to approve each matter; (3) specify the time by which the Association must receive the ballots to be counted; and be accompanied by sufficient written information so that the member can reach an informed decision on the matter.

3.12 Meetings by Telecommunication. Members may participate in a meeting by any means of communication, so long as all persons participating in such meeting can hear one another. Participation in a meeting through the above means shall constitute presence in person at such meeting.

3.13 Presumption of Assent. A member of the Association who is present at a meeting of the members at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless (s)he shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Association immediately after the adjournment of the meeting. No member may dissent regarding action for which the member voted in favor.

## ARTICLE 4

### MANAGEMENT COMMITTEE

4.1 General Powers. The property, affairs and business of the Association shall be managed by its Management Committee. The Committee may exercise all of the powers of the Association, except such powers as are by the Act, the Declaration, the Articles of Incorporation, or by these Bylaws solely in the members and/or the Declarant. The Committee may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, functions and powers as are properly delegable.

4.2 Number, Tenure and Qualifications. The number of Management Committee Members of the Association shall be no less than three (3) and no more than five (5) and the number of Members on the Committee may only be changed by the approval of sixty seven percent (67%) of the votes cast at a meeting of the members at which a quorum is present. The initial Committee appointed by Declarant shall serve until new Management Committee Members shall have been elected at the first annual meeting of the members. At the first annual meeting of the members, three (3) new Management Committee Members shall be elected, one to a term of one (1) year, and two (2) to a term of two (2) years. Each Management Committee Member elected thereafter shall serve for a term of two (2) years. All Management Committee Members, other than Management Committee Members elected while the

Declarant is still in control, shall be Members of the Association and shall serve for no more than two (2) consecutive terms at a time.

4.3 Regular Meetings. The regular annual meeting of the Committee shall be held without other notice than these Bylaws immediately after, and at the same place as, the annual meeting of the members. The Committee may provide by resolution the time and place for the holding of additional regular meetings without other notice than such resolution.

4.4 Special Meetings. Special meetings of the Committee may be called by or at the request of any Management Committee Member. The person or persons authorized to call special meetings of the Committee may fix any place reasonably convenient to the Management Committee Members, as the place for holding any special meeting of the Committee called by such person or persons. Notice of any special meeting shall be given at least five (5) days prior thereto by written notice delivered personally or mailed to each Management Committee Member at his registered address. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first class postage thereon prepaid. Any Management Committee Member may waive notice of a meeting.

4.5 Quorum and Manner of Acting. A majority of the then authorized number of Management Committee Members shall constitute a quorum for the transaction of business at any meeting of the Committee. The act of a majority of the Management Committee Members present at any meeting at which a quorum is present shall be the act of the Committee. The Management Committee Members shall act only as a Committee, and individual Management Committee Members shall have no powers as such.

4.6 Compensation. No Management Committee Member shall receive compensation for any services that he may render to the Association as a Management Committee Member; provided, however, that a Management Committee Member may be reimbursed for expenses incurred in performance of his duties as a Management Committee Member to the extent such expenses are approved by the Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Management Committee Member (e.g., as a manager).

4.7 Resignation and Removal. A Management Committee Member may resign at any time by delivering a written resignation to either the President or the Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Management Committee Member, except a Management Committee Member appointed by the Declarant, may be removed at any time, for or without cause, by the affirmative vote of sixty seven percent (67%) of the total votes that are cast at a special meeting of the members duly called for that purpose at which a quorum is present.

4.8 Vacancies and Newly Created Management Committee. If vacancies shall occur in the Committee by reason of the removal, death, resignation or disqualification of a Management Committee Member (other than a Management Committee Member appointed by Declarant), the Management Committee Members then in office shall continue to act, and such vacancies shall be filled by a vote of the members at a special meeting called for such purpose or at the next annual meeting. If the authorized number of Management Committee Members shall be increased, such newly created Management Committee shall be filled by election of the members at a special meeting or annual meeting of the members. If vacancies shall occur in the Committee by reason of death, resignation or removal of a Management Committee Member appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any Management Committee Member elected or appointed hereunder to fill a vacancy shall serve the unexpired term of his predecessor or for the term of the newly created Management Committee, as the case may be.

4.9 Informal Action by Management Committee Members. Any action that is required or permitted to be taken at a meeting of the Committee may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Management Committee Members.

## ARTICLE 5

### OFFICERS

5.1 Officers. The officers of the Association shall be a President, a Secretary and a Treasurer. The Association may also have such other officers as may from time to time be appointed by the Committee.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Committee annually at the regular annual meeting of the Committee. In the event of failure to choose officers at such regular annual meeting of the Committee, officers may be chosen at any regular or special meeting of the Committee. Each officer shall hold his office until the next ensuing regular annual meeting of the Committee and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President shall be and remain a Management Committee Member of the Association during the entire term of his or her respective office. No other officer need be a Management Committee Member.

5.3 Subordinate Officers. The Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority and perform such duties as the Committee may from time to time determine. The Committee may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be members or Management Committee Members of the Association.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Committee at any time, for or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Committee at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Committee and at meetings of the members. The Secretary shall sign on behalf of the Association all conveyances, mortgages, documents and contracts and shall do and perform all other acts and things that the Committee may require of him or her.

5.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Committee may require to keep. The Secretary shall also act in the place and stead of the President in the event of the absence of the President or the President's inability or refusal to act. The Secretary shall perform such other duties as the Committee may require of him or her.

5.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Committee, and shall, when requested by the President to do so,



report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Committee. The Treasurer shall perform such other duties as the Committee may require of him or her.

5.9 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer (e.g., as a manager).

## ARTICLE 6

### COMMITTEES

6.1 Designation of Committees. The Management Committee may from time to time by resolution designate such other committees as it may deem appropriate in carrying out its duties, responsibilities, functions and powers. The membership of each such committee designated hereunder shall include at least one (1) Management Committee Member. No committee member shall receive compensation for services that he may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of his duties as a committee member to the extent that such expenses are approved by the Management Committee and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a committee member.

(a) Proceedings of Committees. Each committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.

(b) Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Management Committee hereunder shall act only as a committee, and the individual members thereof shall have not powers as such.

(c) Resignation and Removal. Any member of any committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, for or without cause, remove any member of any committee designated by it hereunder.

(d) Vacancies. If any vacancy shall occur in any committee designated by the Management Committee hereunder, due to disqualification, death, resignation, removal or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

## ARTICLE 7

### INDEMNIFICATION

7.1 Indemnification of Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association), by reason of the fact that (s)he is or was a Management Committee Member, officer or committee member of the Association, or is or was serving at the request of the Association as a Management Committee Member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that the conduct was unlawful.

7.2 Indemnification of Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that such person is or was a Management Committee Member, officer or committee member of the Association, or is or was serving at the request of the Association as a Management Committee Member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, if such person acted in good faith and in a manner reasonably believed by such person to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of such person's duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.1 or 7.2 above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred in connection therewith. Any other indemnification under Section 7.1 or 7.2 above shall be made by the Association only upon a determination that indemnification of such person is proper in the circumstances because such person has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 above. Such determination shall be made either (i) by the Committee by a majority vote of disinterested Management Committee Members, or (ii) by independent legal counsel in a written opinion, or (iii) by the members or the affirmative vote of at least fifty percent (50%) of the total votes of the Association at any meeting duly called for such purpose.

7.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of a quorum of the Committee and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that such person is entitled to be indemnified by the Association as authorized by this article or otherwise.

7.5 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Declaration, the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested members or Management Committee Members or otherwise, both as to actions taken by a person in an official capacity and as to action taken in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future Management Committee Members, officers, committee members, employees and agents of the Association and shall continue as to such persons who cease to be Management Committee Members, officers, committee members, employees or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Management Committee Member, officer, committee member, employee or agent of the Association, or who was or is serving at the request of the Association as a Management Committee Member, officer, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit), as may be deemed appropriate by the Committee.

7.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute Common Expenses, and shall be paid with funds from the General Assessments referred to in the Declaration.

## ARTICLE 8

### FISCAL YEAR

8.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the last day of December next following, except that the first fiscal year shall begin on the date of incorporation.

## ARTICLE 9

### RULES AND REGULATIONS

9.1 Rules and Regulations. The Committee may from time to time adopt, amend, repeal and enforce reasonable rules and regulations governing the use and operation of the Common Areas of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Declaration, the Articles of Incorporation or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Committee and with copies of all amendments and revisions thereof.

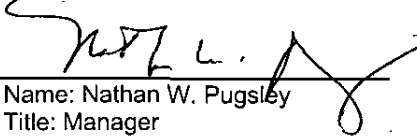
## ARTICLE 10

### AMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration or by these Bylaws, these Bylaws may be amended, altered or repealed and new bylaws may be made and adopted only upon the approval of at least sixty seven percent (67%) of the votes cast at a meeting of the Members called for such purpose at which a quorum is present.

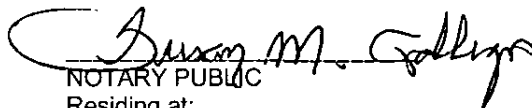
IN WITNESS WHEREOF, the undersigned, being the sole member of the Association hereby approves these Bylaws and adopts the same as the Bylaws of the Association as of the 9<sup>th</sup> day of February, 2004.

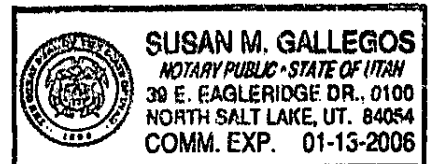
OQUIRRH HIGHLANDS CONDOMINIUMS, LLC,  
a Utah limited liability company

By:   
Name: Nathan W. Pugsley  
Title: Manager

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

On the 9 day of February, 2004, personally appeared before me Nathan W. Pugsley, who by me being duly sworn, did say that he is the Manager of OQUIRRH HIGHLANDS CONDOMINIUMS, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said Company by authority of a resolution of its Members or its Articles of Organization, and said Nate Pugsley, duly acknowledged to me that said Company executed the same.

  
NOTARY PUBLIC  
Residing at:  
My Commission Expires:



**EXHIBIT C  
LEGAL DESCRIPTION**

The Land described in the foregoing document is located in Salt Lake County, Utah, and is described more particularly as follows:

A parcel of land located in the Southwest Quarter of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point which is N89°41'44"E, 528.57 feet along the Section Line from the Southwest corner of Section 23, Township 2 South, Range 2 West, Salt Lake Base and Meridian; and running thence N0°17'58"W, 221.46 feet; thence N89°24'03"E, 204.84 feet; thence S0°00'58"E, 222.52 feet to the Section Line; thence S89°41'44"W, 203.74 feet to the POINT OF BEGINNING. Said parcel contains 45,350.32 square feet or 1.0411 ACRES, more or less.

20-23-300-023