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Amended and Restated

Declaration of
Covenants, Conditions, and Restrictions

OF

rowhaus

Condominiums

A Condominium Project in
Salt Lake County, Utah

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS**

OF

ROWHAUS CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ROWHAUS CONDOMINIUMS ("the Declaration") is made as of the date of the recording in the Salt Lake County Recorder's Office by Blue-Design Conserve Build, LLC, a Utah Limited Liability Company ("the Declarant"), pursuant to the Utah Condominium Ownership Act.

RECITALS

1. Capitalized terms in this Declaration are defined in Article 1.
2. A "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ROWHAUS CONDOMINIUMS" was recorded on June 15, 2007, beginning at book 9479, page 1338, as entry No. 10135247 at the office of the Recorder of Salt Lake County, concerning sixteen (16) Units located on certain real property as described in Exhibit "A," attached hereto and incorporated in this Declaration by reference ("the Parcel").
3. A "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF ROWHAUS CONDOMINIUMS II" was recorded on June 15, 2007, beginning at book 9479, page 1376, as entry No. 10135252 at the office of the Recorder of Salt Lake County, concerning eight (8) additional Units located on the Parcel, which declaration was intended to be an expansion or second phase of the original condominium project.
4. The Declarant desires that the Parcel, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, "the Property"), be submitted as a condominium project ("the Condominium Project" or "the Project"), now consisting of twenty-four (24) residential Units and related Common Area, pursuant to the Utah Condominium Ownership Act.
5. The Declarant, consistent with the prior recorded declarations and any amendments thereto (including any not herein referenced above), hereby adopts this Declaration, which (along with any future amendments) shall be the sole declaration for ROWHAUS CONDOMINIUMS and ROWHAUS CONDOMINIUMS II (hereinafter referred to collectively as "ROWHAUS CONDOMINIUMS") and which shall amend and completely replace all prior recorded declarations, bylaws, and amendments thereto recorded prior to the date of this Declaration. The Declarant has the right to unilaterally amend the previous declarations under the terms of those documents.

6. The Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively, the "Restrictions," which shall run with and be a burden upon the Property).
7. The Declarant desires to create an association of homeowners ("the Association"), which entity shall possess the power to maintain and administer the Common Areas, collect and disburse the assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.
8. The Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management and enjoyment thereof.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions, and restrictions set forth below, the Declarant hereby amends and replaces all prior Declarations and Bylaws for ROWHAUS CONDOMINIUMS with the following Declaration and included Bylaws:

ARTICLE 1

DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean the Condominium Ownership Act, codified beginning at Section 57-8-1, Utah Code Annotated, pertaining to the creation, ownership, and management of a condominium project in the State of Utah, as it is presently constituted. The Association is specifically made subject to the Act, and any interpretation, rights, and remedies available to any Owner or the Association shall be based upon and determined by this Declaration, and amendments thereto, the Act as it exists at the time this Declaration is recorded, and any other applicable documents such as the Bylaws, any articles of incorporation, and similar documents.
- 1.2 "Allocated Interest" shall mean the undivided interest (expressed as a percentage in Exhibit "C" to this Declaration) in the Common Area, the Common Expense liability, and votes in the Association allocated to each Unit.
- 1.3 "Articles" shall mean the Articles of Incorporation.
- 1.4 "Assessments" shall mean any charge imposed or levied by the Association against Owners including but not limited to those related to Common Expenses as well as miscellaneous special assessments, special assessments for capital improvements, special assessments for the purpose of restoring and reconstructing the Condominium Project in

the event of casualty, and fines, all as provided in this Declaration.

- 1.5 "Association" shall refer to Rowhaus Condominium Homeowner's Association, the membership of which shall include each Owner of a Unit in the Condominium Project. The Association shall be incorporated as a Utah nonprofit corporation pursuant to the Utah Revised Nonprofit Corporation Act (the "URNC Act"). "Association" as used in this Declaration shall refer to that entity or any successor entity by default of law or as permitted by this Declaration.
- 1.6 "Bylaws" shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act and pursuant to the URNC Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The Bylaws are hereby adopted and attached to and incorporated by reference in this Declaration as Exhibit "B" and may be amended pursuant to the terms therein.
- 1.7 "Committee Member" shall mean a duly qualified and elected or appointed member of the Management Committee.
- 1.8 "Common Area" shall, unless otherwise provided in this Declaration or any Supplemental Declaration, mean all of the following, except any part of a Unit:
- (a) the land and everything included within the Condominium Project, whether leasehold or in fee simple;
 - (b) as applicable, the foundations, columns, girders, beams, supports, main walls, and roofs of any buildings in the Condominium Project;
 - (c) the yards, gardens, parking areas, driveways, and garages;
 - (d) any shed or other structure utilized by managers or maintenance persons related to the property;
 - (e) to the extent applicable, central installations for services such as power, light, gas, hot and cold water, heating, and air conditioning;
 - (f) as applicable, any mechanical, plumbing, or other equipment, apparatus, and installations existing for common use;
 - (g) The areas designated Common Area and Limited Common Area on the Plat; and
 - (h) all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.9 "Common Expenses" shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) deficiencies arising by reason of unpaid Assessments; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; (d) utilities (other than separately metered utilities for the Units), extermination, security, landscaping, and other services; (e) insurance and bonds required by this Declaration or any additional insurance and bonds obtained by the Management Committee if allowed in this Declaration; (f) the establishment of reasonable reserves as the Management Committee shall deem appropriate in its discretion; (g) expenses agreed upon as Common Expenses by the Association; and (h) other miscellaneous charges incurred by the Association or the Management Committee pursuant to the Act, this

Declaration, the Bylaws or the Rules.

- 1.10 "Condominium Project" or "Project" shall mean this real estate condominium project wherein fee simple title to single Units in a multi-Unit project, together with an undivided interest in the Common Area of the Property, are owned separately.
- 1.11 "Declarant" shall mean Blue-Design Conserve Build, LLC, a Utah limited liability company, and any successor and assign of Declarant that, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Condominium Project as the Declarant.
- 1.12 "Declaration" shall mean this Declaration, including all attached exhibits, which are incorporated by reference, and any and all amendments and supplements to this Declaration.
- 1.13 "Eligible Mortgagee" shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 12.5 of this Declaration.
- 1.14 "FNMA" shall mean and refer to the Federal National Mortgage Association.
- 1.15 "First Mortgagee" shall mean any person named as a Lender under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- 1.16 "Insurance Trustee" shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.
- 1.17 "Lender" shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.18 "Limited Common Area" shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration, the Plats, or the Act and allocated by this Declaration, the Plats, or the Act for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.19 "Management Committee" shall mean the Management Committee of the Association elected pursuant to the Bylaws and serving as the management body of the Association.
- 1.20 "Occupant" shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit, including, without limitation, family members, tenants, guests, or invitees. Occupants shall include any trespassers in a Unit if the Owner fails to secure the Unit against trespass, fails to take all action necessary and appropriate to remove trespassers immediately upon notice of the trespass, or fails to take reasonable measures to be made aware of any unauthorized occupants in the Unit or of any

unauthorized entry and use of the Unit.

- 1.21 "Owner" shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Salt Lake County, Utah; however, "Owner" shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation.
- 1.22 "Parcel" shall mean the real property legally described in Exhibit "A."
- 1.23 "Person" shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or other legal entity capable of holding title to real property.
- 1.24 "Plats" shall mean the record of survey map of ROWHAUS CONDOMINIUMS, recorded as Entry 10135246 beginning at Book 9479, Page 1337, and ROWHAUS CONDOMINIUMS II (second phase), recorded as Entry No. 10135251 beginning at Book 9479, Page 1375, and all amendments thereto. "Plats" shall also refer to any additional plat that may be recorded by Declarant or with any Supplemental Declaration.
- 1.25 "Property" shall mean the Parcel, together with all the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.
- 1.26 "Restrictions" shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.27 "Rules" shall mean and refer to the rules adopted by the Management Committee.
- 1.28 "Supplemental Declaration" shall mean a written instrument recorded in the records of the County Recorder of Salt Lake County, Utah, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.
- 1.29 "Unit" shall mean and refer to any of the separately numbered and individually described Units now or hereafter shown on the Plats as they are specifically defined on the Plats and herein. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.
- 1.30 "Unit Number" shall mean the number that identifies one Unit in the Condominium project, as indicated in the Plats.

ARTICLE 2

THE CONDOMINIUM PROJECT

- 2.1 **Submission.** The Declarant hereby confirms that the Parcel is a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions

contained in this Declaration. The Declarant hereby declares that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

- 2.2 Name and Location. The Condominium Project shall be named and known as ROWHAUS CONDOMINIUMS. The Condominium Project is located in Salt Lake County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel set forth on Exhibit "A." The name of the Association is "The Rowhaus Condominium Association, Inc."
- 2.3 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Condominium Project shall be governed by the Act and the Utah Revised Nonprofit Corporation Act (the "URNC Act"), except where (in compliance with either) the Declarant has included specific provisions in this Declaration or the Bylaws that legally vary, supersede, or supplement the URNC Act or the Act, in which event such specific provisions of this Declaration and the Bylaws that are contrary to the Act or URNC Act shall govern the Condominium Project to the extent allowed by the Act and the URNC Act.
- 2.4 Agent for Service of Process. Blue-Design Conserve Build, LLC, 183 K Street Salt Lake City, Utah 84103, shall be the initial person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, until such time as the Management Committee shall duly appoint a new agent. The Declarant or the Management Committee may execute and record a Supplemental Declaration solely for the purpose of changing the Agent for Service of Process at any time and without satisfying any procedure otherwise required for a Supplemental Declaration.

ARTICLE 3

DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, COMMON AREA, ALLOCATED INTERESTS, AND PLATS

- 3.1 Description of Improvements. The improvements contained in the Project are now or will be located upon the Parcel. The major improvements contained in the Project include two (2) buildings, one with sixteen (16) Units and the other with eight (8) Units. The buildings are three (3) stories each with asphalt or concrete driveways. The location and configuration of said improvements are shown on the Plats. The Project also contains other improvements such as garages, outdoor lighting, walkways, landscaping, asphalt driveways, and fencing. The principal materials of which the buildings are or are to be constructed are as follows: all load-bearing walls are concrete and non-load bearing walls are wooden frame and studded with wood; the foundation walls are concrete; the main level floors are concrete, and the second and third level floors are wooden joints covered with plywood; the roof is wood framing surfaced with plywood, extruded

polystyrene, and PVC membrane; interior walls are surfaced with sheetrock or gypsum board; and exterior walls are surfaced with stucco and wooden siding.

3.2 Description of Boundaries of Each Unit and Unit Number.

- (a) Description of and Boundaries of each Unit. Subject to the following descriptions of particular items, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plats, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. The cubic content space and Unit Number of each of the Units within the Condominium Project are set forth on the Plats. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit as shown on the Plats. The vertical boundaries of each Unit shall extend up to and include the drywall or wallboard. All framing in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plats) and all framing and concrete in any bearing walls are part of the Common Area. All other materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all plywood decking, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Area. Generally, all paneling, tiles, wallpaper, paint, carpet, flooring, and other materials constituting any part of the finished surfaces or installed within the finished surfaces in a Unit are part of the Unit. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit. For all pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is part of the Unit and any portion serving more than one Unit or any portion of the Common Area is part of the Common Area. All windows, doors, door jams, window sills, window frames, in or on the boundary of any Unit and any part related thereto are part of the Unit. If any are installed (this statement is not permission to install any), skylights and all installations related thereto shall be common area.
- (b) Variances between Plats and as-built construction. If the original as-built construction of the Project varies from any horizontal or vertical measurement on the Plats, the original construction, to the extent ascertainable, shall be the controlling dimension in any Unit. The original construction shall be the first installation of framing and wallboard. If the Management Committee determines (in its sole discretion) that the current construction varies from the Plats and that the location of the original as-built construction is uncertain (i.e., the Management Committee decides that it cannot determine with a reasonable degree of certainty that the current construction is the original as-built construction), the Management Committee may, at the expense of the Association or the Owner, in the Management Committee's discretion, require that the current construction be made to comply with the Plats.

- 3.3 Description of Limited Common Area. The Limited Common Area shall be as set forth on the Plat and as may be provided for in the Act. It includes:
- (a) Parking. The garages set forth on the Plats and designated in this Declaration for a respective Unit shall be Limited Common Area for the Unit and such Owner.
 - (b) Backyards and sideyards. The fenced-in backyards and sideyards, as designated in the Plats or this Declaration for use by a respective Unit or as Limited Common Area, shall be Limited Common Area for the Unit and such Owner.
 - (c) Other. Any shutters, awnings, window boxes, doorsteps, porches, balconies, patios, or other apparatus intended to serve a single Unit, but located outside the boundaries of the Unit, shall constitute a Limited Common Area pertaining to that Unit exclusively.
- 3.4 No Severance of Limited Common Area. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
- 3.5 Division into Units. The Condominium Project is divided into 24 Units as set forth on the Plats, each such Unit consisting of a Unit and an appurtenant undivided interest in and to the Common Area.
- 3.6 Allocated Interest of Each Unit in the Votes of the Association. The designation of the Allocated Interest that each Unit has in the votes for all matters related to the Association is provided for on Exhibit "C".
- 3.7 Allocated Interest of Each Unit in the Common Expenses of the Condominium Project. The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium Project is provided for in Exhibit "C".
- 3.8 Plats. The Plats are hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plats and required by the Act are deemed included in this Declaration. If any conflict exists between the Plats and this Declaration, the Declaration shall control.

ARTICLE 4

MAINTENANCE AND UTILITIES

- 4.1 Maintenance of Units. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repairs and replacements of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plats to be part of a Unit, and such other items designated herein. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, (and for any items and areas in a Unit generally visible from outside of the

Unit, to maintain them in a clean, well maintained, uniform, undamaged, and tidy condition), all of the following:

- (a) all interior and exterior doors, including thresholds and door jams;
- (b) all paneling, tiles, wallpaper, paint, carpet, finished flooring, fireboxes of fireplaces, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;
- (c) all drywall or wallboard;
- (d) all windows and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass, except that the Association shall have the right to arrange for the washing of exterior windows as a Common Expense);
- (e) all sewer and drainage pipes, water, power, and other utility lines in an Owner's Unit and those serving an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units;
- (f) any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures, fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning Units (including swamp coolers, compressors, condensers, and forced air Units), all doors on garages, intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install.

4.2 Modifications to Units.

- (a) An Owner may make nonstructural alterations within the Owner's Unit, but an Owner shall not make any alterations to any part of the Unit on the exterior of a building (such as windows, light fixtures, skylights, and exterior doors), the Common Area, or the Limited Common Area without the prior written approval of the Management Committee. The Management Committee may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, and that they comply with particular materials requirements or standards that they may determine in their discretion.
- (b) Remodeling and Extensive Maintenance. Before an Owner engages in any remodeling (which shall include but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, ceramic tile or hardwood floors; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling), the Owner shall first notify the Association and provide the following: (1) a written description of the proposed remodeling, (2) a description of how any debris or materials removed will be disposed of, (3) the date the remodeling shall begin, (4) the date the remodeling is expected to be completed, (5) the names and contractor's license numbers of all contractors expected to perform work in the remodeling, (6) any expected nuisance that the remodeling shall create such as noise or dust, (7) and the Owner's proposal for mitigating any expected nuisance. Without prior written permission of the Management Committee, none of the

following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction, (2) any nuisance, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

4.3 Maintenance of Common Area and Limited Common Area.

- (a) Maintenance of Common Area. Except as otherwise provided specifically herein, the Association, through the Management Committee or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plats. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall also remove snow from any public sidewalks in the Condominium Project and any Common Area or Limited Common Area driveways, parking, and alleyways in the Project. The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- (b) Maintenance of Limited Common Area. The Management Committee may, by rule or resolution, designate the maintenance responsibilities related to the Limited Common Area and assign maintenance responsibilities, as it deems appropriate, to the Owner of the Unit. In absence of any rule or resolution designating the maintenance responsibilities of the other Limited Common Area, the following provisions shall apply to maintenance of the Limited Common Area. The Association shall be responsible for repairing and maintaining any structural portions of the Limited Common Area including but not limited to any concrete, railings, structures, and fences that border Limited Common Area and Common Area. The Owner shall be responsible for repairing, replacing, and maintaining all of the following to the extent located in Limited Common Area: lighting fixtures, fans, plumbing, intercoms, security systems, fences not bordering Common Area or Limited Common Area of another Unit, landscaping, trees, grass, doors, electrical components, and such other fixtures and decorations as an Owner may be allowed to install in any Limited Common Area. The Owner shall also be responsible for making sure Limited Common Area that is within an Owner's exclusive control is maintained in a clean, neat, uncluttered, and sanitary condition. An Owner shall not alter any fence, fixture in, or structural portion of the Limited Common Area without the prior written approval of the Management Committee, and the Management Committee may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person or company, or that they comply with particular materials requirements or standards. PLEASE BE AWARE THAT MECHANICAL SYSTEMS SUCH AS PLUMBING, WIRING, AND GAS LINES MAY BE BURIED UNDER LIMITED COMMON AREAS AND THAT ANY EXCAVATION MUST BE DONE CONSISTENT WITH THIS KNOWLEDGE. THE OWNER SHALL BE

RESPONSIBLE FOR ANY DAMAGE AS A RESULT OF ANY SUCH EXCAVATION.

- (c) Standard of Maintenance. Subject to the requirements of this Declaration, the Management Committee shall determine, in its sole discretion, the appropriate maintenance of the Common Area and Limited Common Area so long as the Association is maintained in the best interests of the Owners.
 - (d) Assessment of Maintenance Expenses to Specific Owner. If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Management Committee may either require the Owner to make the repairs or cause the maintenance or repair to be made and assess the Owner the reasonable cost of such maintenance or repair.
- 4.4 Default in Maintenance. If an Owner or Occupant fails to (1) maintain a Unit or exclusive Limited Common Area as provided for in this Declaration and the Rules, (2) make repairs to a Unit otherwise required by this Declaration or the Rules in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the attractive appearance and value of the Condominium Project, or (3) observe any Restrictions imposed on such Owner or Occupant by the terms of this Declaration, the Bylaws, or the Rules; then the Management Committee or its authorized representative may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Management Committee determines to be required and requesting that the same be carried out within a period of fourteen (14) days after the giving of such written notice. If the Owner or Occupant fails to carry out such action within the period specified by the notice or within any time period that may be required following a hearing before the Management Committee (if required or otherwise permitted by the Management Committee), the Management Committee may cause corrective action to be taken and may levy a special Assessment for the cost thereof on the Owner. The special Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in Section 6.1 of this Declaration.
- 4.5 Utilities. All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners. Notwithstanding anything to the contrary herein, minimal utility requirements benefitting the Association may be connected to specific Units as part of the original construction of the Project and shall be paid by that Unit Owner, and the Association shall not be under any obligation to reimburse the Owner for such charges or connections.

ARTICLE 5

MANAGEMENT

- 5.1 Organization of Association. The Association shall serve as the governing body for all

Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, any Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, any Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Management Committee.

- 5.2 Legal Organization. The Association shall be organized as a non-profit corporation. Should the corporation ever expire, be dissolved, or be subject to legal challenge in the opinion of the counsel for the Association, the Management Committee shall have the absolute right to take whatever action is necessary to reorganize or otherwise validate the association as a nonprofit corporation. By becoming and/or remaining an Owner under the terms of this Declaration, each Owner hereby specifically ratifies and agrees to the organization of the Association as a nonprofit corporation and waives any actual or potential legal challenge to the corporate form arising from any cause whatsoever including any failure of the Association or Management Committee to file renewals, to comply with the any requirement for registration, or to comply with the applicable version of the URNC Act.
- 5.3 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.4 Voting. Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners.
- 5.5 Management Committee. The governing body of the Association shall be the Management Committee, which shall consist of three (3) members. The Declarant is authorized to appoint and remove members of the Management Committee up until the earlier of (i) three (3) years from the date the first Declaration for the Project was recorded in the office of the County Recorder for Salt Lake County; or (ii) such time when three-fourths (3/4) of the undivided interest in the Common Area have been conveyed. After such time, the members shall be elected as set forth in the Bylaws. Except as otherwise provided in this Declaration or the Bylaws, the Management Committee may act in all instances on behalf of the Association. The Management

Committee may, as it deems appropriate, recommend amendments to the Bylaws and Declaration.

- 5.6 Qualification of Committee Members. Except for members appointed by the Declarant, all members of the Management Committee must reside in the Project. Each Committee Member shall be an Owner or the spouse of an Owner. If an Owner is a corporation, partnership, limited liability company, or trust, a Committee Member may be an officer, partner, member, manager, trustee, or beneficiary of such Owner so long as he or she resides in the Project. If a Committee Member ceases to meet any required qualifications during the Committee Member's term, such Person's membership on the Management Committee shall automatically terminate.
- 5.7 Action by Management Committee and Owners. Except as specifically provided herein, the Management Committee and any individual Owner have no authority to and may not act on behalf of the Association to amend or terminate this Declaration, to elect or remove members of the Management Committee (except in filling vacancies in its membership for the unexpired portion of any term for which a Committee member has resigned or been removed), or to establish or change the qualifications, powers and duties, or terms of the Management Committee.
- 5.8 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.9 Right of Association to Enter Units. The Association acting through the Management Committee or its duly authorized agent shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter upon or into any Unit to abate any infractions, to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by the lien provided in Section 6.1.
- 5.10 Rules. The Management Committee may adopt, amend, repeal, and administer reasonable Rules for the regulation and operation of the Condominium Project and all Owners shall be bound by and comply with those Rules. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive.
- 5.11 Remedies Available to the Management Committee. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declarations, Bylaws, or Rules, the Management Committee may: (1) impose fines for violation of the Declaration, Bylaws, or Rules; (2) terminate Owners' rights to receive utility services paid as a Common Expense; (3) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. All such actions shall be conducted in accordance with any requirements in the Act, if any, and any other applicable law, if any.

- 5.12 **Reserve Fund.** The Association shall maintain a reserve fund for maintenance, repair, and replacement of the Common Area and Limited Common Area, the amount of which shall be determined in the absolute discretion of the Management Committee. Reserve funds may be collected as part of the monthly Assessments. To the extent the Management Committee deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.
- 5.13 **Availability of Condominium Project Documents.** Books, records, and documents related to the Association and its operations shall be available to the owners as required in and subject to the provisions of the Act and the URNC Act.
- 5.14 **Managing Agent.** The Management Committee may contract with a professional management agent to assist the Management Committee in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets and make Assessments. Any powers and duties delegated to any management agent may be revoked by the Management Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon sixty (60) days' notice and have a term not to exceed two (2) years, which may be renewed by the Management Committee.
- 5.15 **Hearing before Management Committee.** The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Management Committee or Association shall take adverse action related to any particular Owner or group of Owners. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.
- 5.16 **Indemnification.** Each past and present member of the Management Committee (including the Declarant to the extent the Declarant is acting in place of the Management Committee in operating the project) shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.
- 5.17 **Liability.** To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act, the Declarant and each past and present member of the Management Committee of the Association shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, payment, error, or negligence.

ARTICLE 6

COVENANT FOR ASSESSMENTS

- 6.1 **Creation of Lien and Personal Obligation for Assessment.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. However, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case: (a) the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments; and (b) the prorated share of any extinguished Association lien may be redistributed to the other Units in the Condominium Project.
- 6.2 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation and protection of the Condominium Project; enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.
- 6.3 **Regular Assessment.** The Management Committee is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Management Committee shall adopt a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Management Committee shall send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Management Committee shall at that time determine the amount of the regular Assessments to be paid by each Owner. Each Owner shall thereafter pay to the Association the Owner's regular Assessment in equal monthly installments on the first day of each month. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment

against each Owner, and the date or dates when due. The revised Assessment amount shall be due upon notice by the Management Committee to the Owners. The Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Management Committee.

- 6.4 Special Assessments. The Management Committee may assess the Owners for special Assessments as it deems appropriate to pay some Association expenses including but not limited to unexpected expenses, expenses inadvertently not included in the budget, expenses not otherwise provided for in the budget, and expenses the amount of which were more than anticipated. Special Assessments may be made payable immediately in one lump sum, may be made payable over a specific period of time, and may provide for incentives such as discounts for early payment so long as the incentives are made available to all Owners.
- 6.5 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments to a particular Unit) shall be in an amount based on the percentage interest for each Unit stated in Section 3.6 of this Declaration, as the same may be amended from time to time.
- 6.6 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of regular and special Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of a default in the payments of Assessments. Such notice may be given at any time prior to or after delinquency of such payment.
- 6.7 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge not to exceed one hundred and fifty dollars (\$150.00) may be collected by the Management Committee for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 6.8 Special Assessments to a Particular Unit. Special Assessments shall be levied by the Management Committee against a Unit and its Owner to reimburse the Association for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws or the Rules;
 - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit;

- (c) Any other charge designated as a special Assessment in this Declaration, the Articles, the Bylaws or the Rules; and
 - (d) Attorneys' fees, interest, costs, and other charges relating thereto as provided in the Declaration, Bylaws or the Rules.
- 6.9 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Association, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a special Assessment at the discretion of the Management Committee.
- 6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee in its discretion may retain the funds in the general accounts of the Association, apply the excess to reserves, or credit the excess against future Assessments in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Management Committee deems appropriate. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.
- 6.12 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

ARTICLE 7

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

- 7.1 Due Date and Delinquency. The first day of each month shall be the Assessment due date for that month. Any Assessment that is not paid within ten (10) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may at its option invoke any or all of the sanctions granted in this Article 7.
- 7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay interest, a collection charge, expenses associated with late payments, or such other penalty or charge as the Management Committee may establish in the Rules of the Association. Until paid, such collection charges, interest, and/or late fees shall constitute

part of the Assessment lien as provided for in Section 6.1 of this Declaration.

- 7.3 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or its successors or assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.4 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial foreclosure or in compliance with applicable provisions relating to the foreclosures of deeds of trust or realty mortgages in the State of Utah. In any foreclosure or sale, the Owner of the affected Unit shall be liable for the costs and expenses of such proceedings and reasonable attorneys' fees. The Association may, through its duly authorized agents, if otherwise authorized by law, exercise the power of the trustee and the power to bid on the Unit at the foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit.
- 7.5 Suspension of Votes. The Management Committee may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent. Any such suspension shall take place thirty (30) days after written notice to the Owner that the Management Committee is suspending the Owner's voting rights. In any such notice suspending the Owner's right to vote, the Management Committee shall afford the Owner the right to a hearing before the Management Committee prior to the date the suspension shall take place.

ARTICLE 8

PROPERTY RIGHTS IN COMMON AREA

- 8.1 General Easements to Common Area and Units.
- (a) Subject to this Declaration and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area). Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, contract

- purchaser, tenants, Occupants or other Person who resides in such Owner's Unit.
- (b) The Declarant reserves in favor of the Declarant such easements and rights of ingress and egress over, across, through, and under the real property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant: (i) to construct and complete each of the Units in any building and all of the other improvements described in this Declaration or in the Plats; and (ii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or its assignee or successor may reasonably determine to be appropriate. This reservation shall, unless sooner terminated by law, expire seven (7) years after the date on which the first declaration for the Project was recorded in the office of the County Recorder of Salt Lake County, Utah.
 - (c) The Declarant reserves in favor of the Declarant and the Association, acting through the Management Committee or its authorized agent, nonexclusive easements with the right of access to each Unit to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Declarant and the Association, acting through the Management Committee or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times with proper notification, unless emergency situations demand immediate access.

8.2 Public Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use,

occupancy or enjoyment by any Owner or such Owner's Unit.

- 8.3 Easements for Encroachments. Subject to the rights of the Management Committee in section 3.2(b) and Article 8, if any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings were originally constructed or due to settling or shifting, or alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.
- 8.4 Limitation on Easement - Suspension of Owner's Rights. An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any restrictions and limitations in this Declaration and the Rules.
- 8.5 Form for Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit No. _____ of ROWHAUS CONDOMINIUMS, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded _____, _____ as Entry Number _____, in Book _____, at Page _____ of the official records of the Salt Lake County Recorder, State of Utah, and as identified and described in the Declaration of Condominium of ROWHAUS CONDOMINIUMS, a Condominium Project, recorded _____, _____, _____ as Entry Number _____, in Book _____, at Page _____ of the official records of the Salt Lake County Recorder, State of Utah, together with an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided interest in the Common Area conveyed hereby may be subject to modification, from time to time, as provided in the Declaration.

Whether or not the description employed in any such instrument is in the above specified form, however, 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.

- 8.6 Views. Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Condominium Project.

ARTICLE 9

SPECIAL DECLARANT RIGHTS

- 9.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the

benefit of the Declarant in this Declaration and the Governing Documents and shall include, without limitation, the following rights which shall remain in effect for the maximum period allowed by law:

- (a) the right to complete any improvements as shown on the Plats;
- (b) the right to maintain sales offices, model Units, and signs advertising the Condominium Project or any Unit at any location in the Condominium Project;
- (c) the right to use easements through the Common Area as set forth in Section 8.1;
- (d) the right to appoint or remove members of the Management Committee subject to the time limitations as set forth in Section 5.5.
- (e) the right to exert any right allowed to the Management Committee or the Association pursuant to the Act and this Declaration.

9.2 Transfer of Special Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any person or entity. Such transfer, conveyance, or assignment shall be effective upon recording in the office of the County Recorder for Salt Lake County.

9.3 Changes by Declarant. Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the rights of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.

ARTICLE 10

USE RESTRICTIONS AND REQUIREMENTS

10.1 Rules. The Owners shall comply with all reasonable Rules.

10.2 Signs. No signs or flags whatsoever (including, but not limited to commercial, political, sale, and similar signs) shall be erected or maintained on the Property by an Owner whether in a window or otherwise without the approval of the Association, except:

- (a) such signs as may be required by legal proceedings;
- (b) a house number identification if placed by the Association and in the style selected by the Association;
- (c) such signs, the nature, number, and location of which have been approved by the Management Committee in advance; and
- (d) an American Flag compliant with any lawful restrictions on its mounting and display.

10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any

law, ordinance, statute, rule or regulation of any local, county, state or federal body.

- 10.4 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Management Committee. Any temporary structure must not exceed the height of the immediately adjacent fencing except for a shade structure (umbrella), which is permitted without the approval of the Management Committee so long as it is made of natural woven fibers in earth tone colors only and is not connected in any way to the adjacent fencing. No impediment to foot traffic is permitted between fencing gates and rear Unit doors and garage doors.
- 10.5 Permanent Structures. All permanent structures are prohibited from the fenced backyard areas including but not limited to dog houses, dog runs, sheds, storage cabinets, and shelving.
- 10.6 Parking. Unless otherwise permitted by the Association, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any Common Area of the Condominium Project, except in garages. There is no visitor parking in the Project. The Association may adopt Rules relating to the admission and temporary parking of vehicles within the Condominium Project, the right to remove or cause to be removed any vehicles that are improperly parked, and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules. Any charges so assessed shall be special Assessments.
- 10.7 External Fixtures. Subject to any contrary laws, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Management Committee, and any replacements thereof, shall be constructed, erected, or maintained on the Condominium Project without the prior written approval of the Management Committee.
- 10.8 Window Covers. No window shall be covered by paint, foil, sheets, or similar items. The Management Committee may adopt Rules regulating the type, external visible color, and design of the external surface of window covers.
- 10.9 External Laundering. Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited.
- 10.10 Outside Speakers and Amplifiers. No radio, stereo, broadcast, or loudspeaker Units, or amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit.
- 10.11 Repairs. No repairs of any detached machinery, equipment, or fixtures, including without

limitation, motor vehicles, shall be made upon the Condominium Project, except the Management Committee may permit by Rule and regulate maintenance or repairs of vehicles in garages.

- 10.12 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and garages and shall not be allowed to accumulate therein or thereon. Refuse containers shall be kept in the area designated by the Association for that purpose. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Management Committee.
- 10.13 Pets. No animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred, or kept for any period of time in any Unit or upon the Condominium Project, except that dogs, cats, and other generally recognized household pets may be kept in Units, subject to the Rules adopted by the Management Committee, and provided that such pets are not raised, bred, kept, or maintained for any commercial purposes. Notwithstanding the foregoing, no animal may be kept within a Unit which, in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to Owners or Occupants within the Condominium Project. The Management Committee may exercise its judgment for specific pets even though others are permitted to remain. All fecal matter shall be immediately cleaned up from the Common Area and shall not be permitted to remain overnight under any circumstances. The Management Committee may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration, fees and/or deposits, the use of leashes, and noise and barking limitations.
- 10.14 Leases. Leasing of Units is permitted. No Unit shall be leased for a period of less than thirty (30) days. All leases shall provide that the tenant is subject to and shall abide by the Declaration, Bylaws, and Rules of the Association. The Owner shall provide a copy of the Declaration, Bylaws, and Rules of the Association to each tenant. The Management Committee may adopt Rules adding further reasonable requirements related to leasing not inconsistent with this Declaration.
- 10.15 Landscape Maintenance. The Association may, in the discretion of the Management Committee, allow or require Owners to maintain the landscaping and fixtures in Limited Common Areas. The Association may further allow Owners to alter and change landscaping and fixtures in Limited Common Areas subject to any restrictions in this Declaration and the limitations that may be set by the Management Committee by resolution or Rule. The Association shall have the right of access to all Common Area and Limited Common Area of the Condominium Project as necessary for such landscape maintenance.
- 10.16 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Management Committee.
- 10.17 Residential Occupancy. The use of each Unit is restricted to residential occupancy. No

industry, business, trade, commercial activities (other than home professional pursuits without employees, signs visible to the outside of the Unit, advertising, public visits, and nonresidential storage and mail), or other non-residential use of the Unit, shall be conducted, maintained, or permitted in any part of a Unit.

- 10.18 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two or more Units, and no Owner of a Unit shall sell or lease part of a Unit. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any Unit. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.18 shall be absolutely null and void.
- 10.19 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee or as may be otherwise allowed in this Declaration. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work that in any way alters the exterior appearance of the Property. The Management Committee, or committee established by the Management Committee for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Management Committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee, or any committee established by the Management Committee for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls and doorways.
- 10.20 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Management Committee.
- 10.21 **Unit Power.** Owners shall maintain electrical service to their Units at all times to insure that lights located in the Limited Common Area and Common Area are able to function.
- 10.22 **Unit Heating.** Owners shall heat Units to no less than 40° F at all times to prevent pipes from freezing.
- 10.23 **Hazardous Substances.**
- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Condominium Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The

preceding two sentences shall not apply to the presence, use, or storage on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate and legal for the maintenance of a Unit or the Condominium Project.

- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the Hazardous Substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner under this Section 10.23 shall survive any subsequent sale by an indemnifying Owner.
- (c) As used in this Section 10.23, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.23, "Environmental Law" means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

10.24 Garages. The Management Committee may by Rule restrict activities in garages including but not limited to any commercial activity, any "shop" type uses such as woodworking, welding, metal fabrication, or other similar activities.

10.25 Exemption for Declarant. Notwithstanding the foregoing, the provisions of this Article 10 shall not apply to the Declarant prior to the time when all Units have been conveyed. The Declarant shall have the right to use any Unit owned by it, and any part of the Common Area reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Area or improvement and sale of Units owned by the Declarant.

ARTICLE 11

INSURANCE

11.1 Property Insurance. The Association shall obtain and maintain the insurance specified in this Declaration; provided, however, the Association shall always comply with the

insurance requirements of the Act.

- (a) **Hazard Insurance.** A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Condominium Project, including: the Common Area; all buildings including all Units (other than the interior content thereof); fixtures, building service equipment, personal property and supplies that are part of the Common Area or owned by the Association, and that are of a class typically encumbered by First Mortgages held by FNMA or other similar institutional mortgage investors; but excluding land and other items not normally covered by such policies. References herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils that are customarily covered with respect to projects similar to the Condominium Project in construction, location and use, including, without limitation, all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Condominium Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance). The maximum deductible amount for such policy covering the Common Area shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount.
- (b) **Flood Insurance.** If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Project, any machinery and equipment that are not part of a building and all Common Area within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Insurable Property within any portion of the Condominium Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.
- (c) The name of the insured under each policy required to be maintained by the foregoing (a) and (b) shall be the Association for the use and benefit of the

individual Owners (the Owners shall be designated by name, if required). Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of 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 Insurance Trustee, for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee). Each Owner and each Owner's Lender, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Lender upon request.

- (d) Each policy required to be maintained by the foregoing items (a) and (b) shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located.
- (e) Each policy required to be maintained by the foregoing items (a) and (b), shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.
- (f) Each policy required to be maintained by the foregoing item (a) shall also contain or provide the following: (i) "Inflation Guard Endorsement," if available; and (ii) "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 (the endorsement must provide for contingent liability from the operation of building laws, demolition costs and increased costs of reconstruction).

11.2 Comprehensive Public Liability Insurance. To the extent available, the Association shall obtain comprehensive general liability insurance insuring the Association, the agents and employees of the Association, the Owners and Occupants and the respective family members, guests and invitees of the Owners and Occupants, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Condominium Project in construction, location and use. Nevertheless, such coverage shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner or Occupant. Such insurance shall also include protection against water damage liability, liability for non-owned and hired automobiles and liability for the property of others. Such insurance must provide that, despite any provisions giving the carrier the right to elect to restore damage in lieu of a cash settlement, such option shall not be exercisable without the approval of the Association. The Management Committee may adjust the amount of the insurance carried under this Section 11.2 from time to time.

- 11.3 **Workers' Compensation Insurance.** The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 11.4 **Fidelity Insurance.** The Management Committee shall obtain fidelity coverage against dishonest acts on the part of Committee Members, officers, employees, or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount no less than one hundred fifty percent (150%) of the estimated current annual Common Expenses of the Association, including reserves, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions.
- 11.5 **Premiums.** Premiums upon insurance policies purchased by the Management Committee on behalf of the Association shall be paid by the Association as part of the Common Expenses.
- 11.6 **Policy Provisions.**
- (a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.
 - (b) The named insured under any policy of insurance shall be the Association, as trustee for the Owners, or its authorized representative, including an Insurance Trustee, who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Declaration, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
 - (c) The Association's insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with insurance purchased by the Owners.
 - (d) Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control.
 - (e) Coverage may not be canceled or substantially modified (including cancellation

for nonpayment of premium) and the insurer may not refuse to renew the policy without at least thirty (30) days prior written notice to the Association and all Lenders, and to any Owner to whom a certificate has been issued.

- (f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Occupants and their respective agents and employees, and any defenses based on coinsurance or on invalidity arising from acts of the insured.

- 11.7 **Supplemental Insurance.** The Management Committee may obtain such other policies of insurance in the name of the Association as the Management Committee deems appropriate to protect the Association and Owners. The Management Committee shall obtain Committee Member's and officer's liability insurance for officers and Committee Members of the Association in accordance with this Declaration. Notwithstanding any of the provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, the Department of Veterans Affairs and the Government National Mortgage Association, so long as any is a mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by FNMA, the Department of Veterans Affairs or the Government National Mortgage Association.
- 11.8 **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, the Management Committee shall obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Declaration and stating whether, in the opinion of such broker or consultant, the insurance complies with the requirements of this Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and the Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Management Committee shall be fully protected in relying on the written report furnished pursuant to this Section 11.8 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.
- 11.9 **Insurance Obtained by Owners.** Notwithstanding the above, Owners shall obtain insurance coverage in addition to the insurance maintained by the Association. All Unit Owners shall have a minimum **COVERAGE OF A BUILDING** for Ten Thousand Dollars (\$10,000.00) added to their individual Unit Owner's policy. Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be primary and the insurance of the Association shall be secondary for losses that emanate from within their Unit, or from items that are their responsibility to maintain and replace. If any Unit Owner fails to maintain insurance, Unit Owners will still be responsible for an amount equal to the Association's insurance deductible on any claim arising from the losses that emanates from within their Unit or from items that are their responsibility to repair or replace, including improvements, betterments, and special fixtures.

ARTICLE 12

DESTRUCTION OF IMPROVEMENTS

- 12.1 Reconstruction. In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Management Committee shall promptly take the following actions:
- (a) The Management Committee shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
 - (b) The Management Committee shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
 - (c) Pursuant to Section 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
 - (d) If the Management Committee determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Management Committee shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the Management Committee intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Management Committee shall call a special meeting of the Owners pursuant to Section 12.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Management Committee shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Management Committee shall levy a uniform special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
 - (e) If the Management Committee in good faith determines that none of the bids submitted under this Section 12.1 reasonably reflect the anticipated reconstruction costs, the Management Committee shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Management Committee as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Management Committee shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 12.2.
 - (f) If the Management Committee determines that any Unit is uninhabitable by

reason of its total or partial destruction, the Management Committee may abate Assessments against the Owner thereof until the Management Committee determines that habitability has been restored.

- 12.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 12.1, as soon as practicable after the same has been determined, the Management Committee shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Management Committee shall levy a uniform special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
- 12.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Management Committee shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Management Committee determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 12.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Management Committee, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Management Committee. Disbursement of such funds shall be made only upon the signatures of two members of the Management Committee and upon the terms and conditions provided in this Section 12.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Management Committee shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Management Committee determines that adherence to such original plans and specifications is impracticable or not

in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Management Committee shall furnish to the Management Committee before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Management Committee. The Management Committee may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

- 12.5 Determination Not to Reconstruct Without Termination. If Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt after a casualty) and Eligible Mortgagees on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 12.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 12.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 12.8 Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE 13

EMINENT DOMAIN

- 13.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.
- 13.2 **Partial Taking of a Unit.** Except as provided in Section 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 13.3 **Taking of Limited Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.
- 13.5 **Taking of Entire Condominium Project.** In the event the Condominium Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any

portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14

RIGHTS OF LENDERS

- 14.1 Notice of Lenders. A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 14.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 14.1, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section 14.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.
- 14.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 14.3 Relationship with Assessment Liens.
- (a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.
 - (b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that became due after the

recording of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

- (c) Without limiting the provisions of Section 14.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
- (d) Nothing in this Section 14.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

14.4 Required Lender Approval. Except upon the prior approval of seventy-five percent (75%) of all Lenders that have provided notice to the Association as described in Section 14.1 and Section 14.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Management Committee shall be entitled by action or inaction to do any of the following:

- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
- (b) Except as specifically provided by this Declaration, amend any provisions governing the following:
 - (1) voting rights;
 - (2) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or the priority of Assessment liens;
 - (3) reductions in reserves for maintenance, repair and replacement of the Common Area;
 - (4) reallocation of interests in the Common Area and the Limited Common Area, or rights to their use;
 - (5) redefinition of any Unit boundaries;
 - (6) convertibility of Units into Common Area or vice versa;
 - (7) expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project;
 - (8) hazard or fidelity insurance requirements;

- (9) imposition of any restrictions on the leasing of Units;
- (10) imposition of any restrictions on an Owner's right to sell or transfer such Owner's Unit;
- (11) restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles or the Bylaws; or
- (12) any provision that expressly benefits Lenders (including their insurers or guarantors).

14.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Rules and other books and records of the Association during normal business hours; and
- (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.

14.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;
- (b) Any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the lien of a Lender, that remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 14.4 of the Declaration.

ARTICLE 15

TERMINATION

15.1 Required Vote. Except as otherwise provided in Article 12 and Article 13, the Condominium Project may be terminated only by the approval of ninety percent (90%) of Owners of all Units.

15.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution

or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when a Lender fails to submit a response 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. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.

- 15.3 Sale of Condominium Project. A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 15.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 15.5 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE 16

AMENDMENTS

- 16.1 Declarant's Right to Amend. Until each Unit has been conveyed, Declarant reserves the right to unilaterally amend and supplement this Declaration and the Bylaws in its discretion. Such an amendment or supplementation is effective upon recording in the office of the County Recorder of Salt Lake County, Utah.
- 16.2 General Amendment Requirements. Except as otherwise provided in this Article 16, this Declaration may be amended only by an instrument in writing to which Owners owning an undivided percentage interests totaling not less than sixty six percent (66%) of the total ownership interests have approved and consented as evidenced by the signature of each Owner on the instrument. Until the Declarant has sold all Units, no amendments to this Declaration that have the effect of diminishing or impairing any right, power, authority, privilege, protection, or control to the Declarant shall be made unless such amendment is consented to in writing by the Declarant. With the Declarant's written consent, the Management Committee shall have the right to amend this Declaration without approval of the Owners for the sole purpose of eliminating those provisions in this Declaration related solely to the rights of the Declarant.
- 16.3 Execution of Amendments. An amendment that requires the affirmative written assent or vote of the Owners as provided above shall be effective when executed by the owners and the Management Committee, through its agent, who shall certify that the amendment has been so approved, and when the amendment has been recorded in the office of the County Recorder of Salt Lake County, Utah.
- 16.4 Lender Approval. Any provision of this Declaration that expressly requires the approval of a specified percentage of the Lenders for action to be taken under such provision or that requires Lender approval can be amended only with the affirmative written assent or vote of not less than the same percentage of the Lenders; provided that in the event approval is requested in writing from a Lender with respect to a proposed amendment and a negative response is not returned within thirty (30) days following the Lender's receipt of the request, by certified or registered mail, with a return receipt requested, the Lender shall be deemed to have approved the proposed amendment.

ARTICLE 17

GENERAL PROVISIONS

- 17.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.
- 17.2 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 17.3 **Cumulative Remedies.** All rights, options, and remedies of the Association, the Owners, or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners, and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.
- 17.4 **Severability.** Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.
- 17.5 **Covenants to Run with the Land: Term.** The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.
- 17.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the articles and sections of this Declaration.
- 17.7 **Gender and Number.** Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and

the neuter, and vice versa.

- 17.8 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.
- 17.9 Attorneys' Fees. If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration, the Bylaws or the Rules, the Association may assess all reasonable fees and costs associated with such enforcement to the party against whom enforcement is sought, regardless of whether a lawsuit is initiated or not.
- 17.10 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.
 - (b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender for purpose of notice under this Declaration. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
 - (c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section 17.10, shall be deemed conclusive proof of such mailing.
 - (d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the Manager of the Association (if any) or if there is no Manager, to the statutory agent of the Association. The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental Declaration and such Supplemental Declaration may be filed for this purpose alone upon approval of the Management Committee.
- 17.11 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals in this Declaration and the Declarant makes no warranties or representations, express or

implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Declarant shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

- 17.12 **Warranty.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THAT, EXCEPT AS PROVIDED FOR IN WRITING IN THE PURCHASE CONTRACT RELATED TO THE PURCHASE OF EACH UNIT, THE DECLARANT, THE ASSOCIATION, AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO ANY UNIT, THE COMMON AREAS, OR THE CONDOMINIUM PROJECT AND EXCEPT ONLY AS PROVIDED FOR IN ANY SPECIFIC WRITTEN WARRANTY, THAT ALL UNITS ARE PURCHASED AS IS, WHERE IS, WITHOUT ANY WARRANTY OF ANY KIND, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES NOT INCLUDED IN SUCH EXPRESS WRITINGS, AND HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 17.13 **Changes to Plats or Boundaries of the Association.** The Association may adopt an amended plat, supplemental plat, correction to the Plats, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. Any such plat may make material changes to the existing or prior Plats including the addition or removal of amenities, increase the size of Units, deleting or modifying Common Area or Limited Common Area, or other changes in the layout of the Association. If any such document or action is approved by the consent of at least Eighty Percent (80%) of the Owners obtained in the manner required to amend this Declaration and so long as the document or action does not materially reduce the size of any Owner's Unit, each and every Owner shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plats.
- 17.14 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 17.15 **Notification of Sale and Transfer Fee.** Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany

such written notice with any required nonrefundable transfer fee payable to the Association to cover Association documentation and processing and any fees and costs associated with the transfer. The Management Committee may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address and Unit Number of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1. Notwithstanding the other provisions of this Declaration, this Section 17.15 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding.

- 17.16 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner; or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.
- 17.17 **Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.
- 17.18 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plats, and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights

as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

- 17.19 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area that the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. By purchasing a Unit in this Association and/or residing in this Association, Owners and Occupants agree that Association and the Management Committee are not insurers of the safety or well being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to Persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 11 above.

EXECUTED the day and year first above written.

BLUE-DESIGN CONSERVE BUILD, LLC

By: Mark Lloyd Wisniewski

TITLE: MANAGER

STATE OF UTAH)

SS:

COUNTY OF SALT LAKE)

On the 22nd day of Feb, 2008, personally appeared before me Mark Lloyd Wisniewski, who by me being duly sworn, did say that he/she is the Manager of Blue-Design Conserve Build, LLC, and that the foregoing instrument was signed on behalf of said company pursuant to a resolutions of the members of said company, and said person duly acknowledged to me that said company executed the same.

Lujean N. Schneider
Notary Public

Residing At: _____

Commission Expires: _____

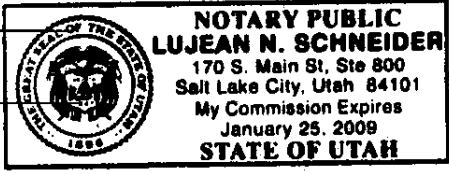


EXHIBIT "A"

All of Lots 1 through 11, Block 2 of West Boulevard Subdivision as recorded with the Salt Lake County Recorder's Office further described as follows:

Beginning at the Northeast corner of Lot 11, Block 2 West Boulevard Subdivision and running thence South $00^{\circ}01'12''$ East along the Westerly boundary line of West Temple Street 270.00 (275.25 Calc'd) feet to the Southeast corner of Lot 1, Block 2, said West Boulevard Subdivision; thence South $89^{\circ}56'44''$ West along the Northerly boundary line of Paxton Avenue 135.00 (135.00 Calc'd) feet to the Southwest corner of Lot 1, West Boulevard Subdivision, said point being on the Easterly line of an 16 foot wide public alley; thence North $00^{\circ}01'12''$ West along said Easterly alley line 275.00 (275.24 Calc'd) feet to the Southerly boundary line of said Fremont Avenue, said point along being the Northwest corner of Lot 11, Block 2, West Boulevard Subdivision; thence North $89^{\circ}56'33''$ East along said Southerly line 135.00 (135.02 Calc'd) feet to the point of beginning.

All of Lots 12 through 17 Block 2 of West Boulevard Subdivision as recorded with the Salt Lake County Recorder's Office further described as follows:

Beginning at the Northeast corner of Lot 12, Block 2, West Boulevard Subdivision and running thence South $00^{\circ}01'12''$ East along the Westerly boundary line of a public alley 130.00 (130.12 calculated) feet to the Southeast corner of Lot 12, Block 2 said West Boulevard Subdivision said point also being the Northerly boundary of a public alley; thence South $89^{\circ}56'38''$ West along the Northerly boundary line of said alley 150.00 (150.00 calculated) feet to the Southwest corner of Lot 17, Block 2, West Boulevard Subdivision; thence North $00^{\circ}01'28''$ West 130.00 (130.12 calculated) feet to the Southerly boundary line of said Fremont Street, said point also being the Northwest corner of Lot 17, Block 2, West Boulevard Subdivision; thence North $89^{\circ}56'33''$ East along said Southerly line 150.00 (150.00 calculated) feet to the point of beginning.

EXHIBIT "B"

**BYLAWS
OF**

rowhaus

**Condominium Homeowners'
Association**

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**BYLAWS
OF
ROWHAUS CONDOMINIUMS**

**ARTICLE I
DEFINITIONS**

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions and Restrictions of the Project (the "Declaration") shall have the same meanings when used in these Bylaws.

**ARTICLE II
MEMBERS**

- 2.1 Annual Meetings. The annual meeting of Members shall be held in the spring of each year, beginning with the year following the year in which these Bylaws are adopted, at a time and place selected by the Management Committee. The purpose of the annual meeting shall be electing Committee Members and transacting such other business as may come before the meeting. If the election of Committee Members cannot be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Management Committee shall cause the election to be held either at a special meeting of the Members to be convened as soon thereafter as may be convenient or if this attempted meeting is also unsuccessful, at the next annual meeting of the members. The Management Committee may from time to time by resolution change the date and time for the annual meeting of the Members.
- 2.2 Special Meetings. Special meetings of the Members may be called by the Management Committee, the President, or upon the written request of Members holding not less than fifty-percent (50%) of the allocated interest of the Association. A written request for a special meeting presented by the Members may be delivered to a member of the Management Committee. The written request shall state the purpose or purposes of the meeting. Upon receipt of a proper request, the Management Committee shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request.
- 2.3 Place of Meetings. The Management Committee shall attempt to hold annual and special meetings either in the Project or at an appropriate facility or place as close as reasonably possible to the Project.
- 2.4 Notice of Meetings. The Management Committee shall cause written or printed notice of the date, time, place, and purpose or purposes for all meetings (whether annual or special)

to be delivered, not more than sixty (60) nor less than ten (10) days prior to the meeting. Notice shall be provided to each Member in the manner provided for notice in the Declaration.

- 2.5 Members of Record. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than sixty (60) nor less than ten (10) 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 last date on which a notice of the meeting is mailed or delivered 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 Units 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.
- 2.6 Quorum. At any meeting of the Members, the presence of Members and holders of proxies entitled to cast more than forty percent (40%) of the allocated interest of the Association shall constitute a quorum for the transaction of business.
- 2.7 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 or by the Member's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) owner of such Unit or the Members' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument 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.
- 2.8 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 Unit of such member, as shown in the Declaration. 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, these Bylaws, the Declaration, or the Act. The election of Committee Members shall be by secret ballot. When more than one (1) Person owns an interest in a Unit, any Person who is the owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) unit, no vote shall be counted for that Unit but the Unit

shall be counted for purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.

- 2.9 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Members present, and in the decision and votes of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting if the objecting party was not present at the meeting.
- 2.10 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 enough Members such that the vote would have passed if all of the members had been in attendance at a regularly called meeting.

ARTICLE III MANAGEMENT COMMITTEE

- 3.1 General Powers. The property, affairs and business of the Association shall be managed by the Management Committee. The Management Committee may exercise all of the powers of the Association, whether derived from the Act or the Declarations, except such powers that the Articles, these Bylaws, the Declaration, or the Act vest solely in the Members.
- 3.2 Number, Tenure and Qualifications. The property, business and affairs of the Association shall be governed and managed by a Management Committee composed of three (3) persons, each of whom shall meet the qualifications in the Declaration. At each annual meeting, the Members shall elect for terms of two (2) years each the appropriate number of Committee Members to fill vacancies by expiring terms of Committee Members. At the first annual meeting of the Association following the expiration of the Declarant's right to appoint members of the Management Committee, all positions on the Committee shall be up for election with one to be designated for a one year term and two to be designated for two year terms. Following this election, all terms shall be for two years.
- 3.3 Regular Meetings. The Management Committee shall hold regular meetings at least quarterly but may meet or often in the discretion of the Management Committee. The Management Committee may designate any place in Salt Lake County, Utah as the place of meeting for any regular meeting called by the Management Committee. Meetings may also be held with members appearing telephonically so long as any member appearing telephonically consents to such appearance. If no designation is made, the place of the meeting shall be at the principal office of the Association.
- 3.4 Special Meetings. Special meetings of the Management Committee may be called by or at the request of any two Management Committee Members or by the President of the

Association. The person or persons authorized to call special meetings of the Management Committee may fix any place reasonably near the Project as the place for holding any special meeting of the Management Committee. Notice of any special meeting shall be given at least five (5) days prior thereto. Any Committee Member may waive notice of a meeting and attendance at any meeting shall be an automatic waiver of any irregularities in notice as to that person.

- 3.5 Quorum and Manner of Acting. The act of a majority of the Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Committee Members shall be the act of the Management Committee. The Committee Members shall act only as a Management Committee, and individual members shall have no powers as such. At least members shall be required to vote affirmatively for any decision of the Management Committee. If, for any reason, there is only one member of the Management Committee, that member shall have authority only to appoint a new member.
- 3.6 Compensation. No Committee Member shall receive compensation for any services that such member may render to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in performance of such duties as a Committee Member to the extent such expenses are approved unanimously by the remaining Management Committee members.
- 3.7 Resignation and Removal. A member of the Management Committee may resign at any time by delivering a written resignation (which may be in electronic form) to either the Manager (if any) or any member of the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Management Committee Member may be removed at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the allocated interest of the Association at a special meeting of the Members duly called for such purpose.
- 3.8 Vacancies and Newly Created Committee Memberships. If vacancies shall occur in the Management Committee by reason of the death, resignation or disqualification of a Committee Member (other than such member appointed by Declarant), the Committee Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Committee Members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Committee Member by the Members may be filled by election by the Members at the meeting at which such Committee Member is removed. Any Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.
- 3.9 Informal Action by Committee Members. Any action that is required or permitted to be taken at a meeting of the Management 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 Committee Members.

- 3.10 Delegation of Duties. The Management Committee and the officers thereto may delegate their duties to a Manager as provided for in the Declaration.

ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Association shall be a President, Vice President, and Secretary/ Treasurer and such other officers as may from time to time be appointed by the Management Committee.
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first regular meeting of the Management Committee following the annual meeting of the members. In the event of failure to choose officers at such regular meeting of the Management Committee, officers may be chosen at any regular or special meeting of the Management Committee. Each such officer (whether chosen at a regular meeting of the Management Committee or otherwise) shall hold such office until the next ensuing regular meeting of the Management Committee and until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. The President, Vice President, and Secretary/ Treasurer must be and remain Committee Members of the Association during the entire term of their respective offices.
- 4.3 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any member of the Management Committee or to any Managing Agent. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be changed and replaced by the Management Committee at any time, with or without cause.
- 4.4 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 Management Committee at any regular or special meeting.
- 4.5 The President. The President shall preside at meetings of the Management Committee and at meetings of the Members. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or

“The Modern Rules of Order.” The President shall sign on behalf of the Association all conveyances, mortgages, documents and contracts, and shall do and perform all other acts and things as required by the Management Committee.

- 4.6 The Vice President. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Management Committee or Members. The Vice President shall perform such other duties as required by the Management Committee.
- 4.7 The Secretary/Treasurer. The Secretary/Treasurer shall be responsible for (1) the preparation of minutes of the meetings of the members of the Association and of meetings of the Management Committee; (2) the preparation and maintenance of other records and information required to be kept by the nonprofit corporation under Section 16-6a-1601, the Utah Condominium Ownership Act, the Declaration, the Bylaws, or pursuant to any other legal requirement or resolution of the Management Committee; and (3) authenticating records of the nonprofit corporation. The Secretary/Treasurer shall also act in the place and stead of the President in the event of the President’s and Vice President’s absence or inability or refusal to act. The Secretary/Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Members and at any meeting of the Management Committee. The Secretary/Treasurer shall perform such other duties as required by the Management Committee.
- 4.8 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

ARTICLE V COMMITTEES

- 5.0 Designation of Committees. The Management Committee may from time to time by resolution designate such 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) Committee Member. No Committee Member shall receive compensation for services rendered to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in performance of such duties as a Committee Member to the extent that such expenses are approved by the Management Committee. A Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any committee at any time.

- 5.1 Proceeding 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.
- 5.2 Authority. A committee shall have no authority except to make reports and recommendations to the Management Committee.
- 5.3 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 such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any committee designated by it thereunder.
- 5.4 Vacancies. If any vacancy shall occur in any committee designated by the Management Committee the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act.

ARTICLE VI
AMENDMENTS

- 6.0 Amendments. Except as otherwise provided by law, the Articles, or the Declaration, these Bylaws may be amended, altered or repealed and new Bylaws may be made and adopted by the Members upon the affirmative vote of a majority of the allocated interest of the Association at a meeting called for that purpose; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the total votes of the Association, shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Salt Lake County, Utah.

EXHIBIT "C"

Unit Number	Appurtenant Undivided Interest in Common Area
101	4.1666
102	4.1666
103	4.1666
104	4.1666
105	4.1666
106	4.1666
107	4.1666
108	4.1666
109	4.1666
110	4.1666
111	4.1666
112	4.1666
113	4.1666
114	4.1666
115	4.1666
116	4.1666
117	4.1666
118	4.1666
119	4.1666
120	4.1666
121	4.1666
122	4.1666
123	4.1666
124	4.1666