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**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
HOLLADAY CREEK CONDOMINIUM**

**DECLARANT
HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION
4252 S. Highland Dr., #105
Salt Lake City, UT 84124**

**WHEN RECORDED RETURN TO:
HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION
c/o Western Management
4252 S. Highland Dr., #105
Salt Lake City, UT 84124**

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
HOLLADAY CREEK CONDOMINIUM**

This Amended and Restated Declaration of Condominium for Holladay Creek Condominium is made and executed by HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION, a Utah nonprofit corporation, of 4252 S. Highland Dr., #105, Salt Lake City, UT 84124 (the "Declarant").

RECITALS:

A. The Declaration of Condominium for Holladay Creek Condominium was recorded in the office of the County Recorder of Salt Lake County, Utah on October 11, 1984 as Entry No. 4003311 in Book 5597 at Page 1952 of the official records (the "Declaration").

B. The Declaration of Condominium for Holladay Creek Condominium was re-recorded in the office of the County Recorder of Salt Lake County, Utah on October 11, 1984 as Entry No. 4005437 in Book 5599 at Page 418 of the official records (the "Declaration").

C. The First Amendment to the Declaration of Condominium for Holladay Creek Condominium was recorded in the office of the County Recorder of Salt Lake County, Utah on December 8, 1986 as Entry No. 4362819 in Book 5849 at Page 2370 of the official records (the "First Amendment").

D. The Second Amendment to the Declaration of Condominium for Holladay Creek Condominium was recorded in the office of the County Recorder of Salt Lake County, Utah on October 14, 1992 as Entry No. 5350632 in Book 6535 at Page 1558 of the official records (the "Second Amendment").

E. The Third Amendment to the Declaration of Condominium for Holladay Creek Condominium was recorded in the office of the County Recorder of Salt Lake County, Utah on July 13, 1994 as Entry No. 5873105 in Book 6980 at Page 33 of the official records (the "Third Amendment").

F. The Fourth Amendment to the Declaration of Condominium for Holladay Creek Condominium was recorded in the office of the County Recorder of Salt Lake County, Utah on April 21, 2003 as Entry No. 8619060 in Book 8781 at Page 2401 of the official records (the "Fourth Amendment").¹

¹ This document is entitled the "Third Amendment" but chronologically it is the Fourth Amendment to the Declaration.

G. The Declarant is the managing agent for the owners of the real property located in Salt Lake County, Utah, described with particularity on Exhibit "A," attached hereto and incorporated herein by this reference (the "Property").

H. The Property is subject to the Declaration.

I. All of the voting requirements to amend the Declaration have been satisfied.

J. The Property is an area of unique natural beauty, featuring distinctive terrain;

K. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Declarant to substantially preserve the Project, enhance the desirability of living on the Property, and increase and preserve the attractiveness, quality and value of the lands and improvements therein.

NOW, THEREFORE, Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following uniform covenants, conditions, restrictions, and equitable servitudes. The covenants, conditions, restrictions, and equitable servitudes constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property. They are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the Recitals.

I. DEFINITIONS

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

1. Assessment shall mean and refer to any amount imposed upon, assessed or charged Owners and/or Units at the Project.

2. Association shall mean and refer collectively to all of the Unit Owners at Holladay Creek Condominium taken as or acting as, a group in accordance with the Declaration.

3. Board of Directors shall mean and refer to the governing board of the Association. The Board of Directors is also sometimes known as the "Management Committee".

4. Bylaws shall mean and refer to the Bylaws of the Association, a copy of which is attached to and incorporated in this Declaration by reference as Exhibit "D".

5. Common Areas shall mean and refer to all real property in the Project owned in common by the Unit Owners including but not limited to the following items:

a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.

b) All Common Areas and Facilities designated as such in the Condominium Plat;

c) All Limited Common Areas designated as such in the Condominium Plat;

d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as electricity, gas, water, and sewer;

e) The Project's outdoor grounds, recreational amenities, private roads, streets and driving lanes, parking amenities, sidewalks and walkways, entry and entry monument;

f) All portions of the Project not specifically included within the individual Units; and

g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property, including property owned by the Association for the common benefit of its Members.

6. Common Expense shall mean and refer to all sums lawfully assessed against the Owners, the expense of maintenance, repair or replacement of the common elements, and expenses declared common expenses by the Declaration.

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

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

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

10. Final Plat shall mean and refer to the recorded Condominium Plat for Holladay Creek Condominium.

11. Limited Common Areas shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, including but not

limited to any porches, decks, balconies, foyers, storage closets, hot tubs, patios, attics, and other areas as indicated by the Declaration or the Condominium Plat to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems or utility closets serving only the certain Units shall be considered Limited Common Areas and Facilities with respect to the Units which they serve. The Limited Common Areas and Facilities shall be those areas designated as such in the Act, this Declaration or on the Condominium Plat. The use and occupancy of a designated Limited Common Areas and Facilities shall be reserved to the Units to which such Limited Common Areas is adjacent, unless otherwise shown on the Condominium Plat or as specified in the Act or this Declaration. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest. Any portico, colonnade, entry, doorsteps, landings, porches, balconies, decks, patios, garages, assigned parking spaces, or other improvements intended to serve only a single Unit shall be considered and constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

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

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

14. Owner shall mean and refer to the person who is the owner of record in the office of the County Recorder of Salt Lake County, Utah of a fee or an undivided fee interest in a Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

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

16. Project shall mean and refer to this the Holladay Creek Condominium Project.

17. Project Documents shall mean and refer to the Declaration, Bylaws, Rules and Regulations, and Articles of Incorporation.

18. Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, off road vehicle, 4-wheeler, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, eighteen wheeler, or any other recreational oversized or commercial transportation device of any kind so designated by the Board of Directors.

19. Total Vote shall mean and refer to the total percentage of undivided ownership interest appertaining to all Units.

20. Unit shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

II. SUBMISSION

The Land described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Act.

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

The Land is subject to the right of the municipal agencies and bodies politic to access the roads within the Project for emergency vehicles, service vehicles, and to all of the utility installations up to the residential meters.

The Land is subject to the described easements and rights of way. Easements and rights-of-way in favor of the municipal agencies, bodies politic, and utilities, including any dedicated roadways and public utility easements and are depicted on the Condominium Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including by way of illustration and not limitation all easements and rights-of-way in and to the detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservation and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise

existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

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

1. Description of Improvements. The Project consists of 2 Buildings and 24 Units, Common Area, and other improvements of a less significant nature. Each Unit is assigned one covered parking space and one uncovered parking space. Resident parking is limited to assigned parking spaces.

2. Description and Legal Status of the Property. The Condominium Plat shows each Unit, its identifying number and location, those Limited Common Areas which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered, and conveyed. Each and every Unit shall have an appurtenant undivided percentage of ownership interest in the Common Areas and Facilities.

3. Membership In and Status Of The Association.

(a) Membership in the Association is mandatory. Each Owner, by virtue of his acceptance of a deed or other document of conveyance, shall be considered a member of the Association. Membership in the association may not be partitioned from the ownership of a Unit.

(b) The Association shall be incorporated. The Board of Directors may unilaterally re-file the articles of incorporation of the Association if its status has been suspended or dissolved, and to adopt the prior bylaws if none exist.

(c) The Association shall register with the Utah Department of Commerce and pay the Registration Fee.² The registration will include: (1) the name and address of the Association; (2) the name, address, telephone number, and, if applicable, e-mail address of the President of the Association; (3) the name and address of each member of the Board of Directors; (d) the name, address, telephone number, and, if the contact person wishes to use e-mail or facsimile transmission for communicating payoff information, the e-mail address or facsimile number, as applicable, of a primary contact person who will provide Association Payoff information. The Registration shall be updated within ninety (90) days after a change in any of the information provided. If the Association has failed to register or update its

² Currently \$37.00

registration with the State of Utah may not record a notice of lien against a Unit or enforce a previous lien.

4. Allocation of Common Expenses and Voting Rights. Common Expenses and voting rights shall be distributed among the Owners equally. The percentage of ownership interest in the Common Areas and Facilities appurtenant to each Unit is set forth in Exhibit "C" attached hereto and incorporated herein by this reference. The undivided ownership interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the affirmative written consent of at least two-thirds (2/3) of the Total Vote expressed in an amendment to the Declaration duly recorded.

5. Limited Common Areas. Limited Common Areas are a type of Common Area. Limited Common Area may not be partitioned from the Unit to which it is appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Condominium Plat, as amended from time to time.

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

All 24 Units contained within HOLLADAY CREEK CONDOMINIUM, as the same is identified in the Condominium Plat recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium for HOLLADAY CREEK CONDOMINIUM recorded in Salt Lake County, Utah as Entry No. _____ in Book _____ at Page _____ of the official records of the County Recorder of Salt Lake County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

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

7. Architectural and Design Guidelines. The Declarant has prepared Design Guidelines for the Project, which have been approved by the Municipal agencies and bodies

politic. The Municipal agencies and bodies politic shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion. The approved Design Guidelines shall apply to all construction activities within the Project. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property; provided, however, the approved Design Guidelines may not be at any time changed, amended, or supplemented without the express written consent of the Municipal agencies and bodies politic. The Declarant or, after transition of the Project, the Association must stamp all proposed plans and specifications to construct or remodel a Building or Unit "approved and in compliance with the Declaration and Design Guidelines" before presenting such plans and specifications to the Municipal agencies and bodies politic for the issuance of a building permit.

8. Ownership. Each Owner shall be entitled to the exclusive ownership and possession of his Unit, an undivided percentage of ownership interest in the Common Areas and Facilities, and a membership in the Association. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by persons. The Common Area and Facilities shall only be used in a manner consistent with the residential nature of the Project. Each Owner shall have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the right of the Association to limit the number of guests and to adopt administrative rules and regulations governing the use and enjoyment of the Common Area. The Association may suspend the voting rights and the privilege to use the recreational amenities by a member for any period during which his account is delinquent or he is in material violation of the Project Documents.

8. Use Restrictions.

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

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

(c) Damage or Waste. No damage to, or waste of, the Common Areas or Limited common Areas shall be committed by any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that Owner.

(d) Parking. Motor vehicles are subject to the Parking Rules and Regulations adopted by the Board of Directors. Motor vehicles and trailers in violation may be immobilized, towed, and/or impounded, at the owner's sole expense, without further warning or notice.

(e) Nuisance. No Owner or resident may create or maintain a nuisance.

(f) Common Area and Facilities. The Board of Directors shall determine and manage the use of the Common Area and Facilities. Structural and/or landscaping alterations in or to the Common Area and Facilities by an Owner or resident are not permitted without the express prior written consent of the Board of Directors.

(g) Garbage and Recycling. The Board of Directors may but is not obligated to arrange for regular and recycling dumpsters and trash receptacles, and establish rules for their use.

(h) Pets. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Excluding dogs, up to two (2) domestic pets are allowed per Unit. All pets must be properly licensed and registered with the appropriate governmental agency. All pets and pet owners must abide by all pet rules and regulations adopted by the Board of Directors. Pets may not create a nuisance. The following acts of a pet are considered a nuisance: (1) causing damage to the property of anyone other than its Owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) defecating on any common area if the feces are not immediately cleaned-up by a responsible party; (5) making other disturbing noises in length or frequency; or (6) molesting, harassing, or threatening other residents, pets, and/or passersby; (7) bothering, annoying or disturbing other residents; (8) interfering with the right of other residents to the quiet and peaceful enjoyment of their property; (9) creating a danger to the health, welfare, or safety of other residents or their pets; and/or (10) violating a local ordinance. The Board of Directors may require a pet deposit and/or an annual pet registration fee. Pets in the Common Area must be in a kennel or on a leash and under the control of a responsible person, and cleaned up after immediately.

(i) Rules. Nothing shall be done or kept in, on or about any Unit or in the Common Area in violation of the rules and regulations adopted by the Board of Directors. Each Owner and resident shall do those things required by the rules and regulations.

9. Rentals.

(a) The following rental restrictions shall apply. The terms "rentals" or "rental unit" shall mean (a) a Unit owned by an individual not described in Subsection (1)(b) that is occupied by someone while no Unit owner occupies the Unit as the Unit owner's primary residence; and (b) a Unit owned by an entity or trust, regardless of who occupies the Unit. Subject to the provisions set forth below, rentals in excess of twenty-five percent (25%) of the total number of Units in the Project are prohibited. Anything to the contrary notwithstanding, the following are exempt from the rental restrictions:

- (1) a Unit owner in the military for the period of the Unit owner's deployment;
- (2) a Unit occupied by a Unit owner's parent, child, or sibling;

(3) a Unit owner whose employer has relocated the Unit owner for no less than two years;

(4) a Unit owner or Unit determined by the Board of Directors to constitute a hardship; or

(5) a Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of a current resident of the Unit; or the parent, child, or sibling of the current resident of the Unit; or

(6) a Unit owner who has a rental before the date this document is recorded with the county recorder may continue renting until the Unit owner occupies the Unit; or an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit³; and

(b) The Association may create, by rule or resolution, procedures to determine and track the number of rentals and Units in the Project; and ensure consistent administration and enforcement of the rental restrictions. A transfer shall be considered to have occurred when one or more of the following events happens (1) the conveyance, sale, or other transfer of a Unit by deed; (2) the granting of a life estate in the Unit; or (3) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75%

³ Grandfathered Units:

Rudy Battisti, 1780 Keysview Court #14
Rudy Battisti, 1780 Keysview Court #32
Paula Dahlberg, 1770 Keysview Court #12
Leslee Gray, 1780 Keysview Court #22
John Holton, 1790 Keysview Court #12
Standford Peterson, 1780 Keysview Court #24
Jamie Thaxton, 1780 Keysview Court #12
Daniel Vanderhoof, 1780 Keysview Court #21
Max Aeschbacher, 1780 Keysview Court #34
Mark Beebe, 1790 Keysview Court #31
Thomas Brown, 1790 Keysview Court #11
Sean Christensen, 1770 Keysview Court #32
James Elrod, 1780 Keysview Court #33
Lean Garriott, 1790 Keysview Court #21
Heidi Kleemyer, 1790 Keysview Court #32
Erin Larsen, 1780 Keysview Court #23
Nick Meunier, 1770 Keysview Court #21
Lee Pennington, 1780 Keysview Court #31
Rowley/Roper, 1780 Keysview Court #13
Chad Skidmore, 1790 Keysview Court #22
Stephen Takahashi, 1770 Keysview Court #11
Bonnie Thompson, 1770 Keysview Court #22
Trent Turner, 1780 Keysview Court #11

of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

(c) Notwithstanding the foregoing provisions, the Association may, upon unanimous approval by all Unit owners, restrict or prohibit rentals without any of the exceptions described above.

(d) The minimum rental period is thirty (30) days.

(e) The Association may charge a rental registration fee in a sum to be determined by the Board of Directors.

(f) The Association may charge a rental deposit in a sum to be determined by the Board of Directors.

(g) Owners and renters shall abide by rental rules adopted by the Board of Directors.

10. Easements. The Association is hereby granted a non-exclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance, and repair of the Common Area and Facilities.

11. Liability For Damages. Each Owner is liable to the Association and/or other Owners for damages to person or property caused by his negligence.

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

13. Status and General Authority of Board of Directors. The Association shall be governed and directed by a Board of Directors consisting of not less than three (3) Owners but not more than five (5) owners. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (m) below, constitute a legal entity capable of dealing in its Committee name. The Board of Directors shall have, and is hereby granted, the following authority and powers:

(a) Access. The right, power and authority to have access to each Unit: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair or replacement of any of the

Common Areas and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.

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

(c) Execute Documents. The authority to execute amendments and supplements to the Declaration or Condominium Plat, contracts, agreements, and other instruments for and in behalf of the Association.

(d) Standing. The power to sue and be sued.

(e) Rules. The authority to adopt, amend, and repeal rules and regulations.

(f) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

14. Delegation of Management Responsibilities: The Board of Directors may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than thirty (30) days, and no such contract or agreement shall be for a term greater than one (1) year. The Board of Directors may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Anything to the contrary notwithstanding, any management contract may be terminated for cause on ten (10) days prior written notice. Any Person who at the termination of the management contract fails to return all of the books and records of the Association (e.g., software and hardware, hard and electronic copies) to the Board of Directors within seven (7) days after written notice shall be personally liable for (a) the cost of obtaining the books and records, including a reasonable attorney's fee, and (b) the cost of duplicating the books and records.

15. Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Board of Directors shall maintain up to date lists of the name, address and phone number of all Owners, Renters, Eligible Mortgagees, Insurers, and Guarantors.

16. Maintenance. Each Owner at his sole expense shall maintain his Unit in good condition and repair. The Association at its sole expense shall maintain the Common Area and Facilities in good condition and repair.

17. Common Expenses. Each Owner shall pay his share of the Common Expenses and all of his Assessments. Time is of the essence. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

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

(a) Itemization. The Budget shall set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account(s) and the Association's proportionate share of the cost of maintaining the Recreation Amenity) for the twelve (12) month calendar year, commencing with the following January 1.

(b) Basis. The Budget shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, including the Recreation Amenity, and regulation of the Association, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, including the Recreation Amenity, and replacement of those elements of the Common Areas, including the Recreation Amenity, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(c) The Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside

and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

19. Reserve Analysis -- Reserve Fund.

(1) As used in this section, the term "reserve analysis" means an analysis to determine: (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring common areas and facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the association of unit owners; and (b) the appropriate amount of any reserve fund.

(2) After the expiration of the Declarant's Period of Control, the Board of Directors shall cause a reserve analysis to be conducted no less frequently than every five (5) years; and review and, if necessary, update a previously conducted reserve analysis no less frequently than every two (2) years.

(3) The Board of Directors may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board of Directors, to conduct the reserve analysis.

(4) The Board of Directors may not use money in a reserve fund: (i) for daily maintenance expenses, unless a majority of the members of the Association vote to approve the use of reserve fund money for that purpose; or (ii) for any purpose other than the purpose for which the reserve fund was established.

(5) The Board of Directors shall maintain a reserve fund separate from other funds of the Association.

(6) This Subsection (4) may not be construed to limit the Board of Directors from prudently investing money in a reserve fund provided it is government insured.

(7) The Association shall: (a) annually, at the annual meeting of the Association or at a special meeting of the Association: (i) present the reserve study; and (ii) provide an opportunity for Unit Owners to discuss reserves and to vote on whether to fund a reserve fund and, if so, how to fund it and in what amount; (b) prepare and keep minutes of each meeting so held and indicate in the minutes any decision relating to funding a reserve fund; provided, however, and anything to the contrary notwithstanding, the Association shall fund and maintain a reserve account sufficient to satisfy the requirements for certification by the US Department of Housing and Urban Development.⁴

⁴ For government financing currently HUD requires at least a 10% reserve fund and a 10% contribution from annual assessments as they accrue until the reserve fund contains a sufficient amount to cover repair or replacement of all common areas. All condominium projects must be recertified every two years and HUD will examine the previous and current year budgets to be assured that the reserve fund has been properly maintained at all times.

(8) Anything to the contrary notwithstanding, this Section 19 does not apply to an Association during the Period of Declarant's Control.

20. Special Assessments. The Board of Directors may assess a Special Assessment during any fiscal year to cover shortfalls and other unforeseen expenses, repairs, and replacement of improvements.

21. Collections. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due. The Board of Directors may charge late fees and default interest on the outstanding balance of all delinquent accounts. Late fee not to exceed \$50.00 per month on any unpaid balance. If any Unit Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Board of Directors or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances. The lien may be foreclosed judicially (through the courts) or non-judicially (outside the courts) in accordance with the Act and Utah law. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Unit. Any Person, including a first mortgagee or government lender, insurer or guarantor who obtains title to a Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months past due assessments and related collection charges, including a reasonable attorneys fee. All other grantees who obtain title to a Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Unit for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee. If an owner fails or refuses to pay any assessment when due, the Board of Directors may (a) terminate the owner's right to receive utility services paid as a common expense; and (b) terminate the owner's right of access and use of recreational facilities., after giving notice and an opportunity to be heard. Upon payment of the assessment due, including any interest or late payment fee, the manager or Board of Directors shall immediately take action to reinstate the terminated utility services to the unit and right to use of recreational facilities. If the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than thirty (30) days after it is due and payable, the Board of Directors may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the association is paid; provided, however, the manager or Board of Directors must give the owner written notice, in accordance with the declaration, Bylaws, or association rules, of its intent to demand full payment from the tenant. Within five (5) business days of payment in full of the assessment, including any interest or late payment fee, the manager or Board of Directors must notify the tenant in writing that future lease

payments are no longer due to the association. A copy of this notification must be mailed to the owner. As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

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

23. Insurance.

(a) Generally. The Association must maintain the following insurance coverage; at least to the extent it is reasonably available:

(1) Property insurance on ALL structures, including ALL Common Area and Facilities, and Units; and

(2) Public liability insurance.

(3) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict

with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

(b) Denial or Cancellation of Coverage. If property or liability insurance is not reasonably available, then fair and reasonable notice must be given to the owners within seven (7) days.

(c) Additional Coverage. The Association may purchase additional or greater coverage.⁵

(d) Property Insurance. The Property Insurance coverage must include:

(1) All common area; and

(2) The Unit, including ALL fixtures, floor coverings, wall coverings, cabinets, heating and plumbing fixtures, windows, any (other) item permanently attached.⁶

(3) The Property Insurance must be for at least **100%** of the **FULL** replacement cost of the item at the time insurance is purchased and at the renewal date.

(4) The Association is not obligated to insure detached Units; that is, a Unit if the Unit is **NOT** physically attached to another Unit or to an above-ground structure that is part of the Common Area.

(5) When a claim is covered by the Association's Property Insurance AND the Unit Owner's Property Insurance, the Association's Property Insurance is considered PRIMARY. The Unit Owner's insurance may apply to the deductible.

(6) If a Unit Owner makes a claim on the Association's Property Insurance policy, then the Owner is responsible for the deductible.

(7) If two (2) or more Unit Owner's make a claim arising out of a single event, then each Owner is responsible for payment of his or her portion of the deductible based upon his or her percentage of the loss.

(8) If a Unit Owner fails to pay his or her share of the loss/deductible, then the Association may assess an assessment against the Owner/Unit, and file a lien against the Unit to secure payment.

⁵ Such as Earthquake Insurance, fidelity bond (e.g., a sum equal to 3 months' assessments and all of the money in reserve or contingency funds), directors and officers insurance, coverage for defamation, and coverage for defense of housing discrimination claim, etc..

⁶ The tongue and cheek rule of thumb is can it be removed in 10 minutes with a screw driver and pliers without damaging the structure.

(9) For each such claim the Association must at a minimum set aside the amount of the deductible or \$25,000.

(10) Also, the Association must give notice to ALL Unit Owners of (a) the amount of the deductible and (b) their obligation to pay the Association's deductible if a claim is filed, and (c) provide follow-up notice of any change to the amount of the deductible⁷.

(11) THE ASSOCIATION IS NOT OBLIGATED TO SUBMIT A CLAIM TO ITS PROPERTY INSURANCE CARRIER IF THE GOVERNING BOARD DETERMINES THAT IN ITS REASONABLE BUSINESS JUDGMENT THE AMOUNT OF THE CLAIM IS UNLIKELY TO EXCEED THE INSURANCE DEDUCTIBLE AND, IF SO, THE UNIT OWNER'S INSURANCE POLICY PROVIDES THE PRIMARY COVERAGE, OR IF THE UNIT OWNER IS UNINSURED, THEN HE OR SHE WILL BE LIABLE FOR THE LOSS UP TO THE AMOUNT OF THE DEDUCTIBLE.

(12) When the Association receives insurance proceeds from its Property Insurance carrier, the association receives the insurance proceeds in trust for the Owner(s) and the Association.

(e) Liability Insurance.

(1) The Association must obtain public liability insurance.

(2) The Association may purchase more public liability insurance than is required by the governing documents.

(3) Each Unit Owner is considered an "insured" under the public liability policy purchased by the Association.

(f) Worker's Compensation Insurance.

(g) Fidelity Bond. The Association shall obtain insurance or a fidelity bond covering employee dishonesty in an amount equal to three (3) months of HOA fee income plus the amount of funds held in the reserve account.

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

⁷ Current amount of deductible is \$25,000.00.

Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the ownership interest in the Association and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the ownership interest in the Association which is then subject to Mortgages held by Eligible Mortgagees. Within thirty (30) days after the Committee has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective ownership interests in the Association. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency. Restoration is accomplished as set forth above; the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Declaration and the Condominium Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners in proportion to their respective ownership interests in the Association, subject to rights of Mortgagees. The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear. The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders. The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder (except (where appropriate) the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal

National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA)) fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. Each of the following terms shall have the meaning indicated:

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

(2) "Partial Destruction" shall mean any other damage or destruction to the Project or any part thereof.

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

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

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

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

(7) "Restored Value" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "Estimated Cost of Restoration" shall mean the estimated costs of restoring the Project to its former condition.

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

25. Amendment. Any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the total

undivided ownership interest in the Common Area and Facilities cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Provided, however, and anything to the contrary notwithstanding, the Association reserves and the Board of Directors is hereby granted the express right and authority to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Units and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, then Declarant shall have the unilateral right to amend this Declaration to restore such control.

26. Consent of Eligible Mortgagee to Terminate Legal Status of Project. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project.

27. Consent of Eligible Mortgagees to Add or Amend Any Material Provision. The consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Condominium Plat which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for maintenance, repair, and replacement of Common Areas, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, Limited Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Unit boundaries;
- Convertibility of Units into Common Area or Elements, or vice versa;

- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Units;
- Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- A decision by the Association (if the Project consists of more than 50 Units) to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this paragraph if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Condominium Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Condominium Plat or the termination of the legal status of the Project. If such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

28. Separate Taxation. Each Unit and its percentage of undivided interest in the Common Areas and Facilities shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building or Buildings, the property nor any of the Common Areas and Facilities may be considered a parcel for tax purposes.

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

30. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties

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

31. Enforcement and Right to Recover Attorneys Fees.

(a) All Owners and residents shall strictly comply with the provisions of the Project Documents.

(b) The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Declaration or the decisions of the Association.

(c) Owners shall have a similar right of action against the Association. Failure to so comply shall be grounds for: (a) an action to recover sums due for damages, including a reasonable attorney's fee, or injunctive relief or both, maintainable by the Board of Directors, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (b) the Board of Directors to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Board of Directors shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board of Directors.

(d) The Board of Directors may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed.

(e) The Board of Directors may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

32. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act.

33. Combination of Units. An Owner of two or more adjoining Units shall have the right upon approval of the Board of Directors and the mortgagees of said Units, to combine one or more adjoining Units or portions thereof and to alter or amend the Declaration and Map to reflect such combination.

(a) Such amendments may be accomplished by the Unit Owner recording an amendment or amendments to this Declaration, together with an amended Map or Maps containing the same information with respect to the altered Units as required in the initial Declaration and Map with respect to the initial Units. All costs and expenses required in such amendments shall be borne by the Unit Owner desiring such combination.

(b) All such amendments to the Declaration and Map must be approved by attorneys employed by the Board of Directors to insure the continuing legality of the Declaration and the Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

(c) Any amendments of the Declaration or Map pursuant to this paragraph shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Common Areas and Facilities which are appurtenant to the Units involved in the alterations. The remaining combined Unit, if two or more Units are totally combined, will acquire the total of the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Units that are combined as set forth in Exhibit "C". If a portion of one Unit is combined with another, the resulting units shall acquire a proportionate percentage of the total undivided interest in the Common Areas and Facilities of the Units involved in the combination on the basis of area remaining in the respective, combined Units. The percentage of undivided interest in the Common Areas and Facilities appurtenant to all other Units shall not be changed. All such amendments must, in all instances, be consented to by the Board of Directors and also all other persons holding interest in the Units affected. The consent of other Unit Owners need not be obtained to make such amendments or alterations valid, providing the percentages of undivided interest in the Common Areas and Facilities of the other Unit Owners remain unchanged.

34. Fines. The Board of Directors may assess a fine or issue other penalties or sanctions for a breach of the Project Documents. The Board of Directors shall establish the Fine Schedule by rule.

35. Reinvestment/Reserve Fund Fee and Transfer Fee. The Board of Directors may charge the buyer of a Unit a reinvestment fee to be paid at closing not to exceed \$500.00. The management may charge the buyer of a Unit a Transfer fee not to exceed \$200.00 at closing.

36. Fair and Reasonable Notice. Notice given in accordance with the provisions of the Revised Nonprofit Corporations Act) shall be considered fair and reasonable notice. The Association may give notice by text message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice.

37. Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees. If proper notice is given to a Mortgagee or other

creditor, then a legal presumption is created that the Mortgagee and/or creditor consented, absent the delivery of a written objection.

38. Providing Payoff Information.

(a) The Association may charge a fee for providing Association payoff information needed in connection with the closing of a Unit Owner's financing, refinancing, or sale of the Owner's Unit (the "Payoff Fee").

(b) The Association may require that the Payoff Fee be paid before closing and the Payoff Fee may not exceed \$50 without a change in the statute.


(c) If the Association fails to provide the payoff information requested within five (5) business days after the closing agent requests the information may not enforce a lien against that Unit for money due to the association at closing; provided, however, a request shall not be considered effective unless the request is conveyed in writing to the designated contact person for the Association on record with the State of Utah and contains: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; and (3) is accompanied by a written consent for the release of the payoff information: (a) identifying the person requesting the information as a person to whom the payoff information may be released; and (b) signed and dated by an Owner of the Unit for which the payoff information is requested.

39. Production of Records. The Association shall: (a) keep detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance and repair expenses of the Common Areas and Facilities and any other expenses incurred; and (b) make those records available for examination by any Unit Owners at a convenient hour during the regular work week no later than fourteen (14) days after the Unit Owner makes a written request to examine the records.

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

Dated this 24 day of August, 2012.

HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION,

By: 

Name: Thomas Brown

Title: President

EXHIBIT "A"

**LEGAL DESCRIPTION
HOLLADAY CREEK CONDOMINIUM**

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

U	101	22-04-452-002-0000	
U	102	22-04-452-003-0000	
U	103	22-04-452-004-0000	
U	104	22-04-452-005-0000	
U	105	22-04-452-006-0000	
U	106	22-04-452-007-0000	
U	107	22-04-452-008-0000	
U	108	22-04-452-009-0000	
U	201	22-04-452-010-0000	
U	202	22-04-452-011-0000	
U	203	22-04-452-012-0000	
U	204	22-04-452-013-0000	
U	205	22-04-452-014-0000	
U	206	22-04-452-015-0000	
U	207	22-04-452-016-0000	
U	208	22-04-452-017-0000	
U	301	22-04-452-018-0000	
U	302	22-04-452-019-0000	
U	303	22-04-452-020-0000	
U	304	22-04-452-021-0000	
U	305	22-04-452-022-0000	
U	306	22-04-452-023-0000	
U	307	22-04-452-024-0000	
U	308	22-04-452-025-0000	
U	AREA	22044520010000	YES
U	AREA	22044520260000	YES
U	AREA	22-04-452-027-0000	
U	AREA	22-04-452-028-0000	
U	AREA	22-04-452-029-0000	

EXHIBIT "B"
BYLAWS OF
HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

Section 1 .01 Name and Location. The name of the association is HOLLADAY Creek Condominium Homeowners Association, a Utah nonprofit corporation (the "Association"). The principal office of the corporation shall be located at 4252 S. Highland Dr., #105, Salt Lake City, UT 84124, but meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

ARTICLE II
DEFINITIONS

Section 2.01 Definitions. Except as otherwise provided herein or as may be required by context, all terms defined in Paragraph 1 of the Declaration shall have such defined meanings when used in these Bylaws.

ARTICLE III
MEETINGS OF MEMBERS OF THE ASSOCIATION

Section 3.01 Annual Meeting. The Association shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

Section 3.02 Special Meetings. Special meetings of the Association may be called at any time by the President, by a majority of the Members of the Board of Directors, or by a petition signed by $\frac{1}{4}$ of the Units.

Section 3.03 Notice of Meetings. Written notice of a meeting of the Association, regular or special, shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 3.04 Quorum. Owners present in person or by proxy at a meeting of the Association shall constitute a quorum for all purposes.

Section 3.05 Proxies. At all Association meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall be valid only for the meeting for which it is provided. No owner may present more than one (1) proxy of another owner for any meeting of the association.

ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE

Section 4.01 Number. The affairs of the Association shall be managed by a Board of Directors comprised of not less than three (3) persons and not more than five (5) persons who must be owners of record. Each Member must be duly qualified and appointed or elected.

Section 4.02 Replacement. If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

Section 4.03 Term of Office. Each Member on the Board of Directors shall serve a term of two (2) years.

Section 4.04 Compensation. No Member shall receive compensation for any service he may render to the Association as a Director, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Association to provide additional services for a fee.

Section 4.05 Voting. Each Member shall have one vote.

Section 4.06 Proxies. A Director may give a written proxy to another member of the Board of Directors if he or she is unable to attend a meeting.

ARTICLE V MEETINGS AND ACTION WITHOUT A MEETING

Section 5.01 Action Taken Without a Meeting. Any action that may be taken at any meeting of Owners or the Board of Directors may be taken without a meeting if the Association delivers a written ballot to every Owner in accordance with Utah Code Ann., Section 16-6a-707 (2002) as it may be amended from time to time (or a written ballot is delivered to every member of the Board of Directors. The ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action. The number of approvals must equal or exceed the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The parties must be provided a fair and reasonable amount of time before the day on the Association or Board of Directors must receive ballots. An amount of time shall be considered fair and reasonable if the Owners (or members) are given at least 15 days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail; Owners (or members) are

given at least 30 days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail' or considering all of the circumstances, the amount of time is otherwise reasonable. Any action so approved shall have the same effect as though taken at a meeting of the Association or Board of Directors, respectively.

Section 5.02 Action by Written Ballot. Any action that may be taken at any meeting of the Owners or the Board of Directors may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter in accordance with Utah Code Ann., Section 16-6a-709 (2002) as it may be amended from time to time. Any action so approved shall have the same effect as though taken at a meeting of the Association or Board of Directors, respectively.

Section 5.03 Meetings by Telecommunications. Persons participate in a meeting of the Owners or Board of Directors by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other (or read a transcript of what is being said in real time) during the meeting. A person participating in a meeting by telecommunication shall be considered to be present in person at the meeting.

ARTICLE VI POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.03 Powers. The Association shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. Without in any way limiting the generality of the foregoing, the Association may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including

Section 6.03.1 Assessments. The power and duty to levy Assessments on the Owners, and to enforce payment of such Assessments in accordance with the Declaration.

Section 6.03.2 Association Property. The right to own and/or lease the Association Property and the duty to maintain and manage the Common Areas and Facilities and improvements thereon. In particular the Association shall:

a. Maintain and repair in an attractive, safe and functional condition the Common Areas and Facilities;

b. Pay all taxes and Assessments levied upon the Common Areas and Facilities and all taxes and Assessments payable by the Association;

c. Obtain any water, sewer, gas and electric services needed for the Common Areas and Facilities; and

d. Do each and every other thing reasonable and necessary to operate the Common Areas and Facilities and the Association.

ARTICLE VII OFFICERS AND THEIR DUTIES

Section 7.01 Enumeration of Officers. The officers of the Association shall be a president and secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not hold the office of president and secretary at the same time. The officers need not be Members of the Board of Directors.

Section 7.02 Election of Officers. The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

Section 7.03 Term. Each officer of the Association shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

Section 7.04 Special Appointments. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

Section 7.05 Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.06 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.07 President. The president shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out; (c) sign all contracts; and (d) serve as the Delegate to the Master Association if required.

Section 7.08 Secretary. The secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Association, (b) keep the corporate seal of the Association and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Association, (d) keep appropriate current record.

showing the Members of the Association together with their addresses; (e) serve as the Delegate to the Master Association if the President is unable to do so; and (f) perform such other duties as may required by the Board of Directors.

ARTICLE VIII COMMITTEES

Section 8.01 Committees. The Board of Directors may appoint such committees as deemed appropriate in carrying out its purpose.

ARTICLE IX BOOKS AND RECORDS

Section 9.01 Books and Records. The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

Section 9.02 Signatures. The Board of Directors shall determine who is required to sign checks, drafts, contracts, and legally binding agreements.

Section 9.03 Bookkeeping. The accounting and financial statements for Association must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be A Director or an officer of the Association. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered by the bookkeeper or accountant to each Director. The accountant or bookkeeper shall prepare and file all tax returns for the Association.

Section 9.04 Audit. Either a (a) majority vote of the Members of the Board of Directors or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the Association.

**ARTICLE X
AMENDMENTS**

Section 10.01 Amendment to Bylaws. These Bylaws may be amended by the affirmative vote of a majority of the members of the Board of Directors.

Section 10.02 Conflict Between Articles, Bylaws and Declaration. In the case of any conflict between the Declaration and these Bylaws or Articles, the former shall in all respects govern and control.

**ARTICLE XI
MISCELLANEOUS**

Section 11.01 Miscellaneous. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

IN WITNESS WHEREOF, the undersigned has hereunto set its hand this 24 day of August, 2012.

HOLLADAY CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION,

By: Thomas Brown
Name: Thomas Brown
Title: President

