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AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
HEATHER RIDGE CONDOMINIUMS

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AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

FOR

HEATHER RIDGE CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM ("Declaration") is made as of the date of the recording in the Salt Lake County Recorder's Office by Heather Ridge Condominium Association, Inc. ("Association") pursuant to the Utah Condominium Ownership Act.

RECITALS

1. Capitalized terms in this Declaration are defined in Article I.
2. The real property situated in Salt Lake County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), was previously submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project now consisting of residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the "Condominium Project").
3. The "Declaration of Condominium for Heather Ridge" was recorded on June 18, 1979, beginning at book 4883, page 1118, with entry No. 3296127, at the office of the Recorder of Salt Lake County.
4. The Association, 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 Heather Ridge and which shall amend and completely replace all prior recorded Declarations and amendments thereto recorded prior to the date of this Declaration. This Declaration is adopted consistent with the procedures for amending the prior Declaration. It is adopted to update the Declaration, to eliminate ambiguity, to further define the rights of the Association and the Unit Owners, to provide specifically for the ability to more easily amend, change, and correct the Plat under various circumstances and for various purposes, and in furtherance of the Association's efforts to safely, efficiently, and economically provide a quality living environment.
5. The Association hereby desires to establish, for its own benefit and 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).
6. The Association 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 Association hereby amends and replaces all prior Declarations for Heather Ridge (which shall be referred to herein as "The Project") with the following Declaration:

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 the same may be amended from time to time. This Association is specifically made subject to future amendments to the Act (and even replacements thereto) 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 of making the determination, 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 fraction or percentage in 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, late fees, and fines, all as provided in this Declaration.
- 1.5 "Association" shall refer to Heather Ridge Condominium Association, Inc. whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association is incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Management Committee and may utilize such name that the Management Committee shall select in any such reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.
- 1.6 "Bylaws" shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.
- 1.7 "Building[s]" means a structure containing or to contain one or more Units or Common Area, as shown on the Plat.
- 1.8 "Committee Member" shall mean a duly qualified and elected or appointed member of the Management Committee.

- 1.9 "Common Area" shall, unless otherwise provided in this Declaration or any Supplemental Declaration, mean all land and all portions of the Property not contained within any Unit or within the Limited Common Areas; including, but not by way of limitation, roofs, foundations, pipes, ducts, flues, chutes, floors, ceilings, conduits, wires and other utility installations to the outlets; bearing walls, perimeter walls, columns and girders to the undecorated and/or unfinished interior surfaces thereof, regardless of location; hallways, elevators, stairways, walkways, all recreational areas and facilities which may hereafter be contained within the Property; all installations of heat, power, lights, and hot and cold water existing for common use, and all other parts of the Property necessary or convenient to its existence, maintenance and safety or normally in common use and all areas and facilities designated as Common Areas in the Condominium Act.
- 1.10 "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, gardening and other related 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 may be required in this Declaration or, if left to the discretion of the Management Committee, 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.
- 1.11 "Condominium 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.
- 1.12 "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 13.1 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 all air conditioners, special corridors, terraces, and storage areas adjacent to or associated with one or more particular Units and intended for the exclusive use of such Units. All areas of the Property which do not fall within the above definition of Limited Common Areas or of the Unit shall be deemed to be part of the Common Areas as set forth above.
- 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, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.24 "Plat" shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments thereto: "Plat" shall also refer to any additional plat that may be recorded 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, resolutions, and/or regulations 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 Plat as they are specifically defined on the Plat 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, symbol or address that identifies one Unit in the Condominium Project.

ARTICLE 2

THE CONDOMINIUM PROJECT

- 2.1 Submission. The Association 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, and the Association hereby declares and agrees 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 Heather Ridge. 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 HEATHER RIDGE CONDOMINIUM ASSOCIATION, INC. If the name of the Condominium Project is ever found to infringe on another legal name, copyright, or other legal right, or its use becomes distasteful, inappropriate, or unwanted for any other reason, as determined by the Management Committee in its sole discretion, the Management Committee may utilize another name for the Association and for the common use of the Association. In such a case, the legal name of the Condominium Project may remain the same or be changed, as the Management Committee may determine in its sole discretion. Any decision by the Management Committee to change or utilize another name must be by unanimous consent of all members of the Management Committee.
- 2.3 Interpretation of Declaration and Applicability of the Act. The Association intends that the Condominium Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act.

ARTICLE 3

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

- 3.1 **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 Plat, 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 Plat. 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 Plat. The vertical

boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective levels of the Units as shown on the Plat. All framing in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing 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, wallboard, 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.

- (b) **Variations between Plat and as-built construction.** If the original as-built construction of the Project varies from any horizontal or vertical measurement on the Plat, 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 Plat 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 Plat.

3.2 **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. Additionally, the allocation of Limited Common Area to the Units as shown on the Plat may not be altered without the consent of all Owners whose Units would be affected by such reallocation.

3.3 **Division into Units and Ownership Interests.** The Condominium Project consists of 48 units within the Condominium Project. The Plat shows the Unit Number of each Unit, its location, dimensions from which its Area may be determined, and the Common Area and Limited Common Area to which it has access. Each Unit shall be capable of being separately owned, encumbered and conveyed. Each Owner of a Unit shall be entitled to the exclusive ownership and possession of such Owner's unit, subject to the terms and conditions of this Declaration.

- (a) The interest in Common Area appurtenant to a Unit shall be equal to the ratio between the size of such Unit and the aggregate size of all Units included in the Condominium Project. The interests in Common Area which are appurtenant to the Units and which are set forth on Exhibit A have been computed in the aforesaid manner.
- (b) Except as expressly provided to the contrary elsewhere in this Declaration, an interest in Common Area may not be partitioned from the Unit to which it is appurtenant, and any purported conveyance, encumbrance or transfer of an interest in Common Area made with the Unit to which the interesting Common Area is appurtenant shall be void. There

shall not be any restriction upon an Owner's right of ingress to and egress from such Owner's Unit.

- 3.4 **Plat.** The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.
- 3.5 **Description of Property.** The Property is located in Salt Lake County within the corporate limits of Salt Lake City and is more particularly described as follows:

Beginning at a point this is S0°02'03"W along the lot line 57.75 feet from the Northwest corner of Lot 8, Block 7, Ten Acre Plat "A", B.F.S. (Basis of bearing being N89°57'25"W along the 3900 South Street monument line between 300 East and 400 East Streets); thence S 89°58'59"E 233.00 feet; thence N0°01'01"E 1.5 feet; thence S89°58'59"E 22.73 feet; thence S0°01'11"W 86.125 feet; thence S89°59'11" W 1.541 feet; thence South 8.824 feet; thence S79°28'13"E 132.59 feet; thence S1°22'28"W 173.961 feet; thence along the north line of Colleen Rae Subdivision N89°59'45"W 380.519 feet to the Northwest corner of Lot 1 of said subdivision; thence N0°02'03"E 292.14 feet to the point of beginning, containing 2.257 acres.

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 Plat 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 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 windows and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass);
 - (d) 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;
 - (e) 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 compressors, condensers and forced air units), 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, or that they comply with particular materials requirements or standards.

- (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 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. Such Owner shall be liable for any and all damage and/or liability associated with the remodeling including damage to the Unit, another Unit, or any Common Area or Limited Common Area. 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 Plat. 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 the snow, in a reasonable amount of time, from any sidewalks running throughout the Condominium Project and any Common Area parking and any Limited Common Area driveways, parking, and walkways immediately in front of each Unit and as necessary to allow vehicle and pedestrian access to each Unit. 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 except as it relates to the covered Parking. The Association shall repair, maintain, and replace any covered parking stalls. 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, landscaping, trees, grass, doors, electrical

components, and such other fixtures and decorations as an Owner may be allowed to install. 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 and sanitary condition, free of pests and rodents, and uncluttered. An Owner shall not alter any 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.

- (c) **Standard of Maintenance.** 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 cause the maintenance or repair to be made. In such a case, the Association shall assess to 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 by 4.1 above, (2) make repairs thereto 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 fourteen 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 as required following a hearing before the Management Committee under Section 5.15, 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 **Water, Sewer, Natural Gas, Electric and Trash Removal Services.** The Association shall be responsible for obtaining water, sewer, trash, natural gas and electric services for all Common Area. All water, sewer, and trash furnished to the Condominium Project shall be separately metered and billed to the Association and the Limited Common Area appurtenant thereto by the utility company or other party furnishing such services shall be paid for by the Owner of the Unit to which such utility is metered.

4.6 Each Owner shall ensure that its Unit is sufficiently heated to prevent the freezing of water and sewer lines serving the Condominium Project.

4.7 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility services to be obtained and paid for by the Association hereunder or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Property, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any part of any Building or its drains, pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessment under this

Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or orders of any governmental authority.

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 is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Management Committee, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying assessments and abiding by all restrictions, covenants, and conditions contained in this Declaration. In the Management Committee's sole discretion, the Bylaws of the Association may be adopted, in part or in whole, as the Bylaws of any corporation or legal organization of the Association, or the Association may adopt additional Bylaws related to the legal organization of the Association not inconsistent with the Declaration and Bylaws.
- 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. The Association shall make available to the Owners, Lenders and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of this Declaration, Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association. The term "available" as used in this Section 5.3 shall mean available for inspection within a reasonable time after receiving a request, during normal business hours or under other reasonable circumstances.
- 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 elected pursuant to the Bylaws. The Management Committee shall consist of five (5) members. Except as otherwise provided in this Declaration or the Bylaws, the Management Committee may act in all instances on behalf of the Association. Elections of Two Directors and Three Directors will alternate each year, respectively, at the Annual General Meeting to maintain an overlap of new and remaining members of The Management Committee.
- 5.6 **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 as provided in the Bylaws for 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.
- 5.7 **Removal of Management Committee Members.** Each member of the Management Committee may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote of all Owners of the Units.
- 5.8 **Replacement of Management Committee Members.** A vacancy on the Management Committee created by the removal, resignation or death of a Management Committee member shall be filled by a Member elected by the Management Committee.
- (a) Any Member elected pursuant to Section 5.8 shall hold office for the remainder of the unexpired term of the Member that was replaced.
- 5.9 **Annual Meeting.** The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.10 **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, without trespass, to abate any infractions, check smoke and carbon monoxide detectors (which every Unit is required to have), 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.
- 5.11 **Rules.** The Management Committee may adopt and administer reasonable Rules for the regulation and operation of the Condominium Project. 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.
- 5.12 **Remedies Available to the Management Committee.** In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Management Committee may: (1) impose and levy fines for violation of the Declaration, Bylaws, or Rules; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) terminate Owners' rights to access and use recreational facilities; (4) 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.

- 5.13 **Reserve Fund.** The Association shall have the right to 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.
- 5.14 **Availability of Condominium Project Documents.** The Association will maintain current copies of this Declaration, the Articles, the Bylaws, and the Rules concerning the Condominium Project and the Association's own books, records and financial statements available for inspection, upon request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).
- 5.15 **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 thirty (30) days notice and have a term not to exceed two years, which may be renewed by the Management Committee.
- 5.16 **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.

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, late fees, 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, late fees, 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 may, but is not required to, 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 Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Management Committee.
- (a) If the Management Committee fails to adopt an annual budget for any calendar year prior to January 1 of that calendar year, the Owners shall continue to pay periodic installments of the Regular Assessment to the Association at the rate payable during the prior calendar year until such time as the Management Committee adopts a new annual budget for the then calendar year. Once the Management Committee adopts a new annual budget, the Association shall levy against each Unit the Regular Assessment for the then calendar year and each Owner's periodic installments shall be adjusted as necessary to pay the new Regular Assessment in equal periodic installments over the remainder of such calendar year, giving the Owners credit, in such manner as the Management Committee deems necessary or appropriate, for any installments that the Owners have previously paid to the Association during such calendar year.
- 6.4 **Uniformity in Assessments.** Except as otherwise provided herein, all Assessments (other than special Assessments) shall be uniformly imposed upon all Units, in an amount based on the percentage interest for each Unit stated in Section 3.3 of this Declaration, as the same may be amended from time to time.

- 6.5 **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 the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.
- 6.6 **Special Assessments.** If the Association determines that an Assessment is required to immediately fund any Common Expense attributable to the Common Area, the Association may levy an Assessment for such Common Expense against the Units in proportion to the Common Area interest of the 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, fines, interest, costs, and other charges relating thereto as provided in the Declaration, Bylaws, or the Rules.
- 6.7 **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.
- 6.8 **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 apply the excess to reserves, credit the excess against future Assessments or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. 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.
- 6.9 **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.
- 6.10 **Reserve Fund.** The Association shall have the right to maintain a reserve fund for the Common Expenses. The reserve fund shall include such amounts as the Management Committee may deem proper for general working capital, for a general operating reserve, and for a reserve fund for replacements and major maintenance or capital replacement. The reserve fund will be funded at the discretion of the Management Committee.

ARTICLE 7

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

- 7.1 **Due Date and Delinquency.** The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. 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 at the rate of eighteen percent (18%) per annum, in addition to a collection charge, and/or such other late fee penalty 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, late fees, and collection charges). 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 pay the costs and expenses of such proceedings and reasonable attorneys' fees. The Association may, through its duly authorized agents, have and 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 **Trust Deed Provisions.** Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, as beneficiary. The Owner hereby requests that any and all notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit and the last known mailing address of the Owner as shown on the books and records of the Association, if different from the Unit address.
- 7.6 **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 and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

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 unless stated otherwise), and the nonexclusive right to the use of all open parking stalls, if any, within the 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, Occupant or other Person who resides in such Owner's Unit.
- (b) The Association, acting through the Management Committee or its authorized agent shall have nonexclusive easements with the right of access to each Unit, without trespass, 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 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.** 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 are constructed or due to settling, shifting, 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 the following:

- (a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- (b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and
- (c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

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 HEATHER RIDGE, Phase _____, 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 HEATHER RIDGE, a Residential 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 is subject to modification, from time to time, as provided in the Declaration for expansion of the Condominium Project.

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

USE RESTRICTIONS

- 9.1 **Rules and Regulations.** The Association shall have authority to promulgate and enforce such rules, regulations and procedures as may aid the Association in carrying out any of its functions or to ensure that the Condominium Project is maintained and used in a manner consistent with the interest of the Owners.
- 9.2 **Signs.** No signs shall be erected or maintained on the Property whether in a window or otherwise without the approval of the Management Committee, except:
- (a) such signs as may be required by legal proceedings;
 - (b) one for sale sign not to exceed three (3) feet by three (3) feet in dimensions;
 - (c) one house number identification if placed by the Association and in the style selected by the Association;
 - (d) one for rent sign not to exceed three(3) feet by three (3) feet in dimensions for Unit that meet the requirements of Section 9.14;
 - (e) such signs, the nature, number and location of which have been approved by the Management Committee in advance; and
 - (f) street identification and traffic directional signs erected on or adjacent to the Condominium Project by Salt Lake County, or any other municipal entity, which signs shall not require prior approval from the Management Committee.
- 9.3 **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.
- 9.4 **Prohibition on Smoking in Units and Common Areas.** The Association deems tobacco smoke to be a nuisance. As such, no Unit Owner, Occupant, or guest shall be allowed to smoke tobacco in their Unit, breezeways, and within 25 feet of any Building.
- 9.5 **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.
- 9.6 **Parking and Use of Open Parking/Visitor Parking.** Unless otherwise permitted by the Association, and except for "customary parking" and "temporary parking," as permitted by this Section 9.6, 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 portion of the Condominium Project, including any Unit, Limited Common

Area, or Common Area for a period of longer than 36 hours per occurrence; not to exceed four occurrences per year. "Customary parking" shall mean the parking of operable automobiles, motorcycles, small trucks and vans (each of which must not exceed 3/4 ton in size and seven (7) feet in height measured from ground level and eighteen (18) feet in length) within the parking spaces designated as an exclusive Limited Common Area for each respective Unit. "Temporary parking" shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of the Owners and Occupants including the parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants as well as parking of vehicles belonging to or being used by Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Rules relating to the admission and temporary parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to allow an Owner who drives a commercial van or light truck to park, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used 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. No Owner shall be permitted to use more than 2 parking spaces on the Property.

- 9.7 **External Fixtures.** 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, exterior doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, window, skylight, 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. The Management Committee may adopt Rules regulating the type, color, and design of these external fixtures.
- 9.8 **Window Covers.** Only curtains, drapes, shades, shutters and blinds may be installed as window covers,. No window shall be covered by paint, foil, sheets or similar items. The Management Committee may adopt Rules regulating the type, color and design of the external surface of window covers.
- 9.9 **External Laundering.** Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited.
- 9.10 **Outside Speakers and Amplifiers.** No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Management Committee.
- 9.11 **Repairs.** No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.
- 9.12 **Unightly Items.** All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units; shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be

properly disposed in accordance with the Rules applicable thereto adopted by the Management Committee.

9.13 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred, or kept in or on the Property or in any Unit. No pets are allowed on the Property or in any Unit with the exception of a maximum of two cats per Unit.

9.14 **Owner Occupancy Requirement and Rental and Lease Restrictions.** In addition to the all of the other requirements of this Declaration, Owners and Units are subject to the restrictions and requirements specified in this Section.

(a). **OWNER OCCUPANCY REQUIREMENT**

(i) Except as provided in Sections (b) and (c) of this Section, at least seventy percent (70%) of the Units must be occupied by an owner or the immediate family member of the owner who meets the requirements of Article I of this Declaration. As used in this Subsection, "immediate family members" means an owner's spouse, children, siblings, parents, grandparents or grandchildren.

(ii) **Multiple Owners.** When a Unit is owned in whole or in part by a partnership, corporation, trust, or other entity, the entity shall designate by written notice to the Association one particular person or family who shall occupy the Unit. A different person or family may be so designated as the named occupant of a Unit by written notice to the Association

(iii) **Rental and Lease Prohibition.** Except as provided in Sections (b) and (c) of this Section, a Unit may not be rented or leased.

(iv) **Restrictions on Permitted Rentals and Leases.** A Unit permitted to be rented or leased under Sections (b) or (c) of this Section and the owner of the Unit are subject to the following restrictions:

(A) Not less than the entire Unit may be rented or leased.

(B) A Unit may not be rented or leased for transient or hotel purposes.

(C) A Unit may not be rented or leased for a period of less than 6 months.

(D) A Unit permitted to be rented, must provide both the Association and the Management Company with a copy of the lease. A Unit Owner who fails to provide a lease to the Association or Management Company in a timely manner is subject to appropriate fines.

(b) **OWNER OCCUPANCY EXCEPTIONS.** Section (a)(i) and (iii) of this Article do not apply to:

(i) **Grandfather Exception.** Section (a) above does not apply to an Owner who, as of the date of the recording of this amendment, is renting or leasing a Unit in compliance with Section (a)(iv) above. The Owner may continue to rent or lease the Unit to the existing tenant or subsequent tenants. The right of an Owner to rent or lease a Unit under this section terminates when the Owner no longer has an interest in the Unit, or when the Owner occupies the Unit. The successor in interest to the Unit has no rights under this section and is subject to the restrictions of Section (a) above.

(ii) **Mortgagee Exception.** A first mortgagee who acquires a unit by foreclosure, deed in lieu of foreclosure, or other arrangement in lieu of foreclosure. A successor to the first Mortgagee is subject to the requirements and restrictions of Section (a)(i) and (iii) of this Article.

- (iii) **Military Exception.** The owner of a Unit who is deployed with the military. Military personnel are otherwise subject to the requirements and restrictions of Section a(i) and (iii) of this Article.
- (iv) **Employment Relocation.** A person who is relocated for employment for less than two years.
- (v) **Trust or Entity for Estate Planning.** If the trust or estate planning entity was created for (a) the estate of a current resident of the lot; or (b) the parent, child, or sibling of the current resident of the lot, the entity or trust will be allowed to continue renting until an officer, owner, member, trustee, beneficiary, director, or other person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the lot, occupies the lot.

(c) **HARDSHIP EXCEPTION.**

- (i) To avoid undue hardships or practical difficulties such as the owner's death, job relocation, extended vacation, disability, difficulty in selling the unit due to market conditions in the area or other similar circumstances the Management Committee deems appropriate, the Management Committee has discretion to approve an application for a hardship exemption to permit the owner or other authorized person to temporarily rent or lease the owner's lot or unit or to permit the lot or unit to be occupied without the concurrent occupancy of the owner required under Section (a)(i) of this Article. The approval of an application may be subject to such terms and conditions as the Management Committee deems appropriate.
- (ii) When the hardship exception under this Section terminates, the requirements of Section a(i) and (iii) apply to the owner and the lot or unit.

(d) **RENTAL AND LEASE AGREEMENT.**

Rental and lease agreements for a unit rented or leased under an exception specified or permitted under Section (c) of this Article must be in writing and comply with rules adopted under Section (b) of this Article.

(e) **REMEDIES FOR VIOLATION.**

- (i) If an Owner fails to comply with Section (a)(i) or a condition imposed under Section (c) of this Article or rents or leases a lot or unit in violation of Section (a)(iii) or (iv) of this Article, the Management Committee may:
 - (A) Assess fines against the owner and owner's lot or unit in an amount to be determined by the Management Committee pursuant to a schedule of fines adopted in accordance with UCA 57-8-37.
 - (B) Regardless of whether any fines have been imposed, proceed with any other available legal remedies, including, without limitation, an action to require the owner to terminate the rental or lease agreement and remove the tenant.
- (ii) Pursuant to rules adopted under this Article, if the Management Committee determines that a tenant has violated a provision of this Declaration, the Bylaws, any amendments thereto, or rules and regulations adopted pursuant to the documents, after notice and an opportunity for a hearing as prescribed in the adopted resolution, the Management Committee may require an owner to terminate a rental or lease agreement.

(f) **COSTS AND ATTORNEY FEES.**

- (i) Fines, charges, and expenses incurred in enforcing this Declaration, the Bylaws, and rules and regulations with respect to the tenant, and for any costs incurred by the Association in connection with any action under Section (e) of this Article, including reasonable attorney fees, are assessments against the Owner and lot or unit which may be collected and foreclosed by the Association as provided under UCA 57-8-37(6).
- (ii) In addition to the assessment under Subsection (i) of this Section, the Association is entitled to recover from an owner determined by the Management Committee to be in violation of this Article its costs and attorney fees incurred for enforcement of this Article, regardless of whether any lawsuit or other action is commenced. The Association may assess the costs and attorney fees against the owner and the lot or unit as an assessment pursuant to UCA 57-8-20 and Article VI of the Bylaws.

9.15 **Landscape Maintenance.** The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area, subject to the following. The Association may, in the discretion of the Management Committee, allow or require Owners to maintain the landscaping in Limited Common Areas. The Association may further allow owners to alter and change landscaping in Limited Common Areas subject to 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.

9.16 **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.

9.17 **Residential Occupancy and Ownership Limits.** The use of each Unit is restricted to residential occupancy. No industry, business, trade or 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 use of the Unit, shall be conducted, maintained or permitted in any part of a Unit. For the safety, health, protection and quiet enjoyment of all Owners, Unit occupancy shall be limited to one (1) person per 150 square feet of floor space. Any Unit loft areas without window ingress/egress meeting fire code standards shall not be included in computing available floor space. No Persons related by blood, marriage, or business relations shall own more than four (4) Units within the Condominium Project.

9.18 **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 unless the Management Committee has first approved the plat or the proposed covenants, conditions or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 9.18 shall be absolutely null and void. The Management Committee's review shall be for the purpose of assuring, in the sole and absolute discretion of the Management Committee, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Management Committee of any plat or covenant, condition or restriction be an abandonment or

waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions or restrictions except to the extent they defer to the Plat.

- 9.19 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Management Committee or any committee established by the Management Committee for that purpose. 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, color, 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, doorways, and the like.
- 9.20 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Management Committee.
- 9.21 **Variances.** The Management Committee may, at its option and in extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Management Committee determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents of the Condominium Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Management Committee. The members of the Management Committee and the Management Committee shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any member of the Management Committee or the entire Management Committee, unless it is reduced to writing and signed as required in this provision.
- 9.22 **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 to 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 9.22 shall survive any subsequent sale by an indemnifying Owner.
- (c) As used in this Section 9.22, "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 9.21, "Environmental Law" means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

9.23 **Smoke and Carbon Monoxide Detectors.** Every Unit shall have an operable Smoke and Carbon Monoxide Detector. The Management Committee may inspect Units upon reasonable notice as provided in Section 5.9 above.

ARTICLE 10

INSURANCE

10.1 **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, 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 determined by the Management Committee in its sole discretion.

- (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.
- (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 theme 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.

- 10.2 **Liability Insurance.** The Association shall obtain a comprehensive general liability policy 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 public liability policy shall have at least a One Million Dollar (\$1,000,000) single person limit as respects bodily injury and property damage, a Two Million Dollar (\$2,000,000) limit per occurrence, if reasonably available, and a One Million Dollar (\$1,000,000) minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

- 10.3 **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.
- 10.4 **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 determined by the Management Committee, but shall be no less than the estimated maximum amount of funds, including reserve funds, in the custody of the Management Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond, 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.
- 10.5 **Directors and Officers Insurance.** A director's and officer's liability or errors and omissions policy shall be obtained with at least One Million Dollars (\$1,000,000) in coverage.
- 10.6 **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.
- 10.7 **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.
- 10.8 **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. 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.
- 10.9 **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, the Management Committee may 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 10.9 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.
- 10.10 **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 an individual unit owner's policy to cover its personal property. Renters shall procure a renter's insurance policy. In addition, an amount at least equal to the Association's master policy shall be added to an 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 emanate from within their unit or from items that are their responsibility to repair or replace, including improvements, betterments, and special fixtures. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

ARTICLE 11

DESTRUCTION OF IMPROVEMENTS

- 11.1 **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 11.2. In the event that the foregoing requirements are satisfied and the requisite numbers 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 11.1 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 11.2.
- (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.

11.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, 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.

- 11.3 **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.
- 11.4 **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 11.4. 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.
- 11.5 **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.

- 11.6 **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.
- 11.7 **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.
- 11.8 **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 12

EMINENT DOMAIN

- 12.1 **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.
- 12.2 **Partial Taking of a Unit.** Except as provided in Section 12.1, 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.

- 12.3 **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.
- 12.4 **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.
- 12.5 **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.
- 12.6 **Priority and Power of Attorney.** Nothing contained in this Article 12 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 13

RIGHTS OF LENDERS.

- 13.1 **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 13.6. 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 13.1, 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 13.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.
- 13.2 **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.

13.3 **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 recordation 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 13.3(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 13.3 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.

13.4 **Required Lender Approval.** Except upon the prior written approval of seventy-five percent (75%) of all Lenders that have provided notice to the Association as described in Section 13.1 and Section 13.6, 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:
 - i. voting rights;
 - ii. the priority of Assessment liens;
 - iii. reserves for maintenance, repair, and replacement of the Common Areas and facilities;
 - iv. responsibility for maintenance and repairs;
 - v. reallocation of interests in the general or limited common elements, or right to their use;
 - vi. redefinition of any unit boundaries;
 - vii. convertibility of units into Common Area or vice versa
 - viii. hazard or fidelity insurance requirements;
 - ix. expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project;
 - x. 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;
 - xi. imposition of any restrictions on the leasing of Units in a manner other than that specified herein;

- xii. imposition of any restrictions on a unit owner's right to sell or transfer his unit; or
- xiii. any provisions which expressly benefit mortgage holders, insurers, or guarantors.

Any Lender who receives, by certified or registered mail, a written request, with a return receipt requested, to approve a change and who does not return a negative response within thirty (30) days shall be deemed to have approved such request.

- 13.5 **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.
- 13.6 **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 lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (c) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

ARTICLE 14

TERMINATION

- 14.1 **Required Vote.** Except as otherwise provided in Article 11 and Article 12, the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.
- 14.2 **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 (except for the Department of Veterans Affairs, the Department of Housing and Urban Development and FNMA) 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.
- 14.3 **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.

- 14.4 **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 14.1 and 14.2 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(as determined by an independent appraisal of the Unit) 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.
- 14.5 **Proceeds of Sale.** Following termination of the Condominium Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. The interest of any 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. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder.

ARTICLE 15

AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only upon the affirmative vote of at least fifty-one percent (51%) of the Allocated Interest of the Association. The amendment shall be effective upon recordation in the office of the recorder of Salt Lake County, State of Utah. In such instrument the Management Committee shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one owner, the signature of any one owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.
- 15.2 **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 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 16

GENERAL PROVISIONS

- 16.1 **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.
- 16.2 **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.
- 16.3 **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.
- 16.4 **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.
- 16.5 **Covenants to Run with the Land.** 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.
- 16.6 **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.

- 16.7 **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 Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.
- 16.8 **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.
- 16.9 **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.
- 16.10 **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 attorney fees, fines, and costs associated with such counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is initiated or not.
- 16.11 **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 when deposited in the United States mail. 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. Any notice so deposited in the mail shall be deemed delivered upon 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 16.11, 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, the Registered Agent with the Utah Department of Commerce (if any) or if there is none, 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.

- 16.12 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association 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 Association 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.
- 16.13 **Nonliability of Officials.** To the fullest extent permitted by law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Management Committee Member or officer acted in good faith within the scope of such Person's duties.
- 16.14 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, Supplemental Plat, correction to the Plat, 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 Plat 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 that 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 Plat.
- 16.15 **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 nonprofit 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).
- 16.16 **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 nonrefundable transfer fee payable pursuant to the Rules, to cover Association documentation and processing. 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 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 16.16 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding.

- 16.17 **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.
- 16.18 **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.
- 16.19 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in 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 Plat 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.
- 16.20 **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 in which 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. Owner or Occupant agree by purchasing a Unit in this Association 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 10 above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR

OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

EXECUTED this 7 day of May, 2010.

THE HEATHER RIDGE CONDOMINIUM ASSOCIATION

BY: Heidi F. Simmons

TITLE: President

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

On the 7 day of May, 2010, personally appeared before me Heidi F. Simmons who by me being duly sworn, did say that he/she is the President of Heather Ridge Condominium Association, Inc. and that the foregoing instrument was approved by at least 75% of the Ownership of said Homeowners Association.

Karyn Lael Walters
Notary Public

Residing At:
Commission Expires:

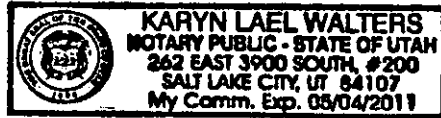


EXHIBIT ____

APPENDIX A

HEATHER RIDGE CONDOMINIUMS

<u>UNIT NO.</u>	<u>BLDG.</u>	<u>APPROX. SQ. FT.</u>	<u>FRACTIONAL INTEREST</u>	<u>ASSIGNED PARKING SPACE</u>
1	B	900	1/45	1
2	B	900	1/45	2
3	B	900	1/45	3
4	B	900	1/45	4
5	B	900	1/45	5
6	B	900	1/45	6
7	B	900	1/45	7
8	B	900	1/45	8
9	B	900	1/45	9
10	B	900	1/45	10
11	B	900	1/45	11
12	B	900	1/45	12
13	C	900	1/45	13
14	C	900	1/45	14
15	C	900	1/45	15
16	C	900	1/45	16
17	C	900	1/45	17
18	C	900	1/45	18
19	C	900	1/45	19
20	C	900	1/45	20
21	C	900	1/45	21
22	C	900	1/45	22
23	C	900	1/45	23
24	C	900	1/45	24
25	D	700	1/60	25
26	D	700	1/60	26
27	D	700	1/60	27
28	D	700	1/60	28
29	D	700	1/60	29
30	D	700	1/60	30
31	D	700	1/60	31
32	D	700	1/60	32
33	D	700	1/60	33
34	D	700	1/60	34
35	D	700	1/60	35
36	D	700	1/60	36
37	A	900	1/45	37

APPENDIX A

(Continued)

<u>UNIT NO.</u>	<u>BLDG.</u>	<u>APPROX. SQ. FT.</u>	<u>FRACTIONAL INTEREST</u>	<u>ASSIGNED PARKING SPACE</u>
38	A	900	1/45	38
39	A	900	1/45	39
40	A	900	1/45	40
41	A	900	1/45	41
42	A	900	1/45	42
43	A	900	1/45	43
44	A	900	1/45	44
45	A	900	1/45	45
46	A	900	1/45	46
47	A	900	1/45	47
48	A	900	1/45	48

3900 SOUTH ST
N 101° 51' 18" W, 121.00 FT

RECORD OF SURVEY MAP

HEATHER RIDGE CONDOMINIUM

IN BLOCK 7 TEN ACRES PLAT "A" B.F.S.

SALT LAKE COUNTY, UTAH

PREPARED BY

COOK, KING & KNOWLTON

SALT LAKE CITY

BOUNDARY DESCRIPTION

BEING A PART OF A SURVEY, MADE BY THE SALT LAKE COUNTY ENGINEER, THE NORTHERLY CORNER OF LOT 2, ALSO; ...

SURVEYOR'S CERTIFICATE

I, C. J. JOHNSON, SURVEYOR, HEREBY CERTIFY THAT THE ACCORDING BOUNDARIES AS SHOWN ON THIS MAP ...



OWNER'S CERTIFICATE OF CONSENT TO RECORD

I, M. M. ENTERPRISES, INC., HEREBY CERTIFY THAT THE PARTIES TO THIS MAP HAVE BEEN ADVISED ...

M. M. ENTERPRISES, INC.

STATE OF UTAH
COUNTY OF DAVIDSON

ACKNOWLEDGEMENT

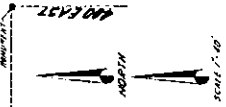
I, M. M. ENTERPRISES, INC., HEREBY ACKNOWLEDGE THAT I HAVE RECEIVED FROM THE STATE ENGINEER ...



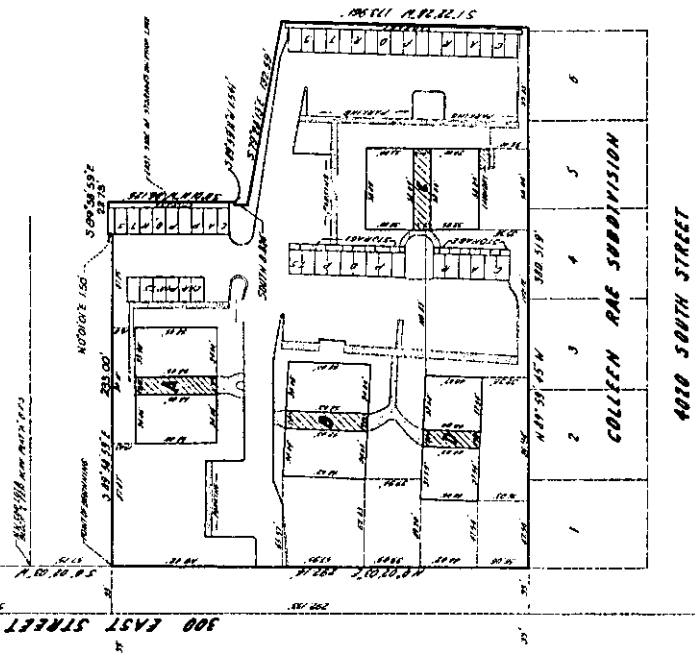
PLAT NO. 1017
SHEET 1 OF 4

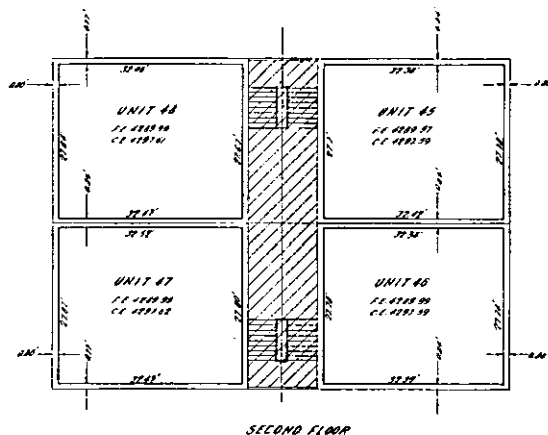
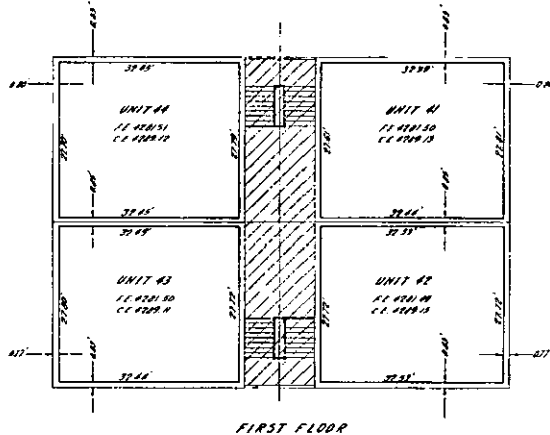
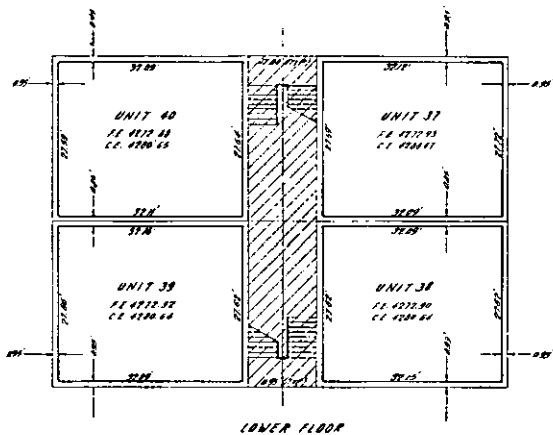
RECORD OF SURVEY MAP OF
HEATHER RIDGE CONDOMINIUM
IN BLOCK 7, PLAT "A", BIG FIELD SURVEY
SALT LAKE COUNTY, UTAH

NO. 1017 P. A. A.
NO. 1000 79-6-223

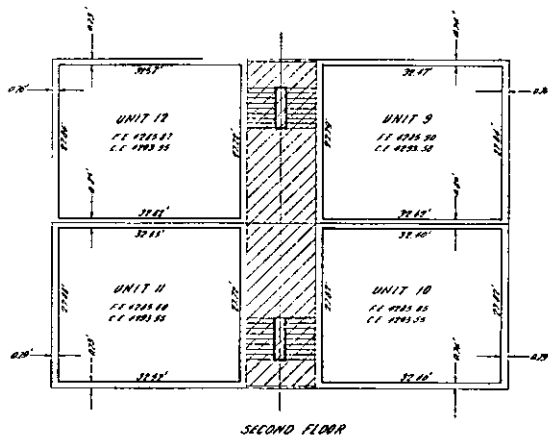
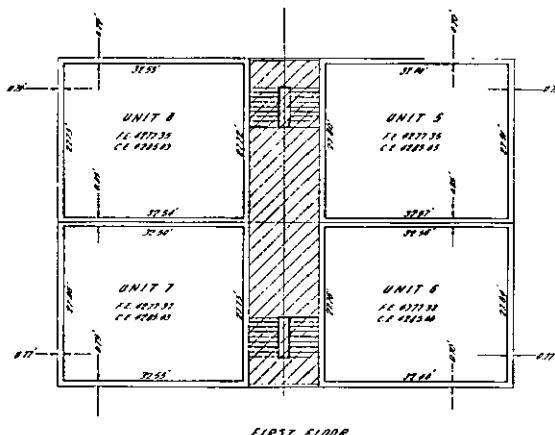
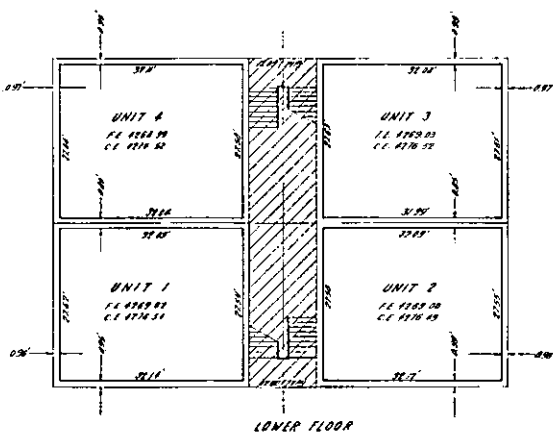


- NOTES:**
1. BOUNDARY CORNER AREA
 2. ALL WALLS SHOWN ON THIS MAP ARE TO BE CONSIDERED AS PERMANENT
 3. ALL WALLS SHOWN ON THIS MAP ARE TO BE CONSIDERED AS PERMANENT
 4. DIMENSIONS ARE IN FEET AND INCHES
 5. DIMENSIONS ARE IN FEET AND INCHES
 6. DIMENSIONS ARE IN FEET AND INCHES
 7. DIMENSIONS ARE IN FEET AND INCHES
 8. DIMENSIONS ARE IN FEET AND INCHES





BUILDING "A"



BUILDING "B"

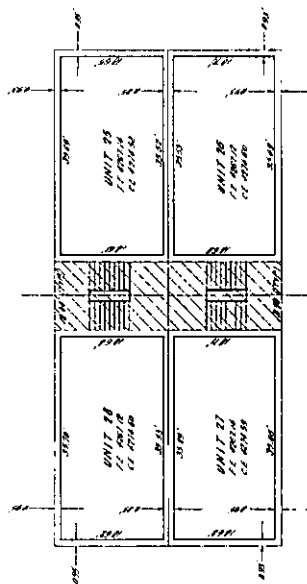
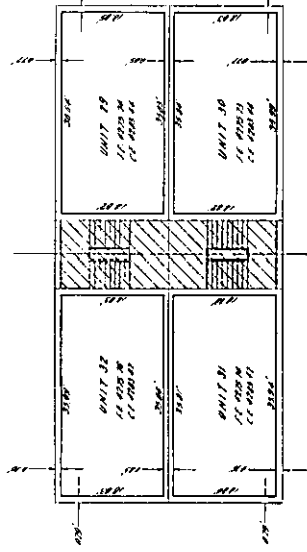
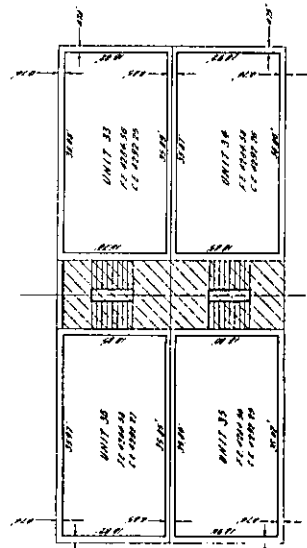
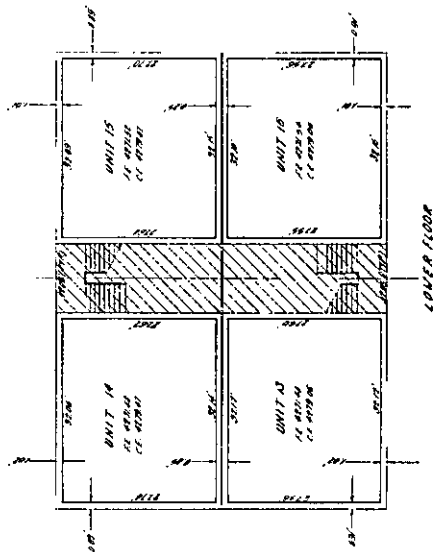
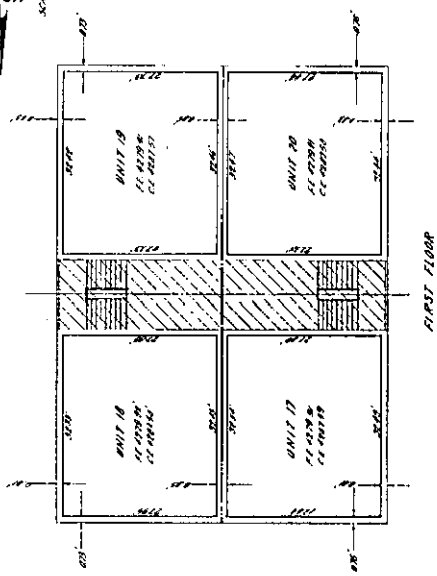
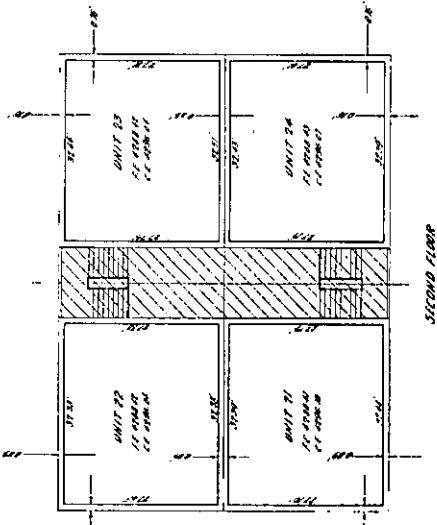


BK 9824 PG 3530

RECORD NO. 3296126
STATE OF UTAH, COUNTY OF SALT LAKE, RECORD
AT THE REQUEST OF Associated Title Co.
BY S. D. TORRINE, REGISTERED PROFESSIONAL SURVEYOR, No. 7256, Exp. 1/22/23
DATE 7/1/23
BY S. D. TORRINE, REGISTERED PROFESSIONAL SURVEYOR

SHEET 2 OF 4
RECORD OF SURVEY MAP OF
HEATHER RIDGE CONDOMINIUM
IN BLOCK 7, PLAT "A", BIG FIELD SURVEY
SALT LAKE COUNTY, UTAH

0001 ADD 79-6-223



SHEET 2 OF 4

**RECORD OF SURVEY MAP OF
HEATHER RIDGE CONDOMINIUM
IN BLOCK 7, PLAT A, BIG FIELD SURVEY
SALT LAKE COUNTY, UTAH**

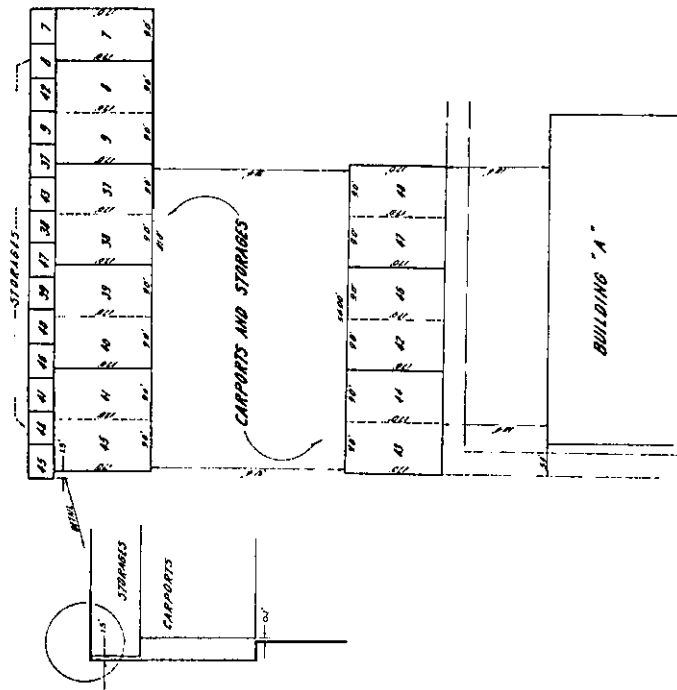
APPROVED AND CORRECTED TO BE THE RECORD OF SURVEY MAP OF HEATHER RIDGE CONDOMINIUM IN BLOCK 7, PLAT A, BIG FIELD SURVEY, SALT LAKE COUNTY, UTAH, BY THE STATE ENGINEER, UTAH, ON THIS 15th DAY OF APRIL, 2004.

STATE ENGINEER, UTAH

9907 600 79-6-2.2.3



SCALE 1"=6'



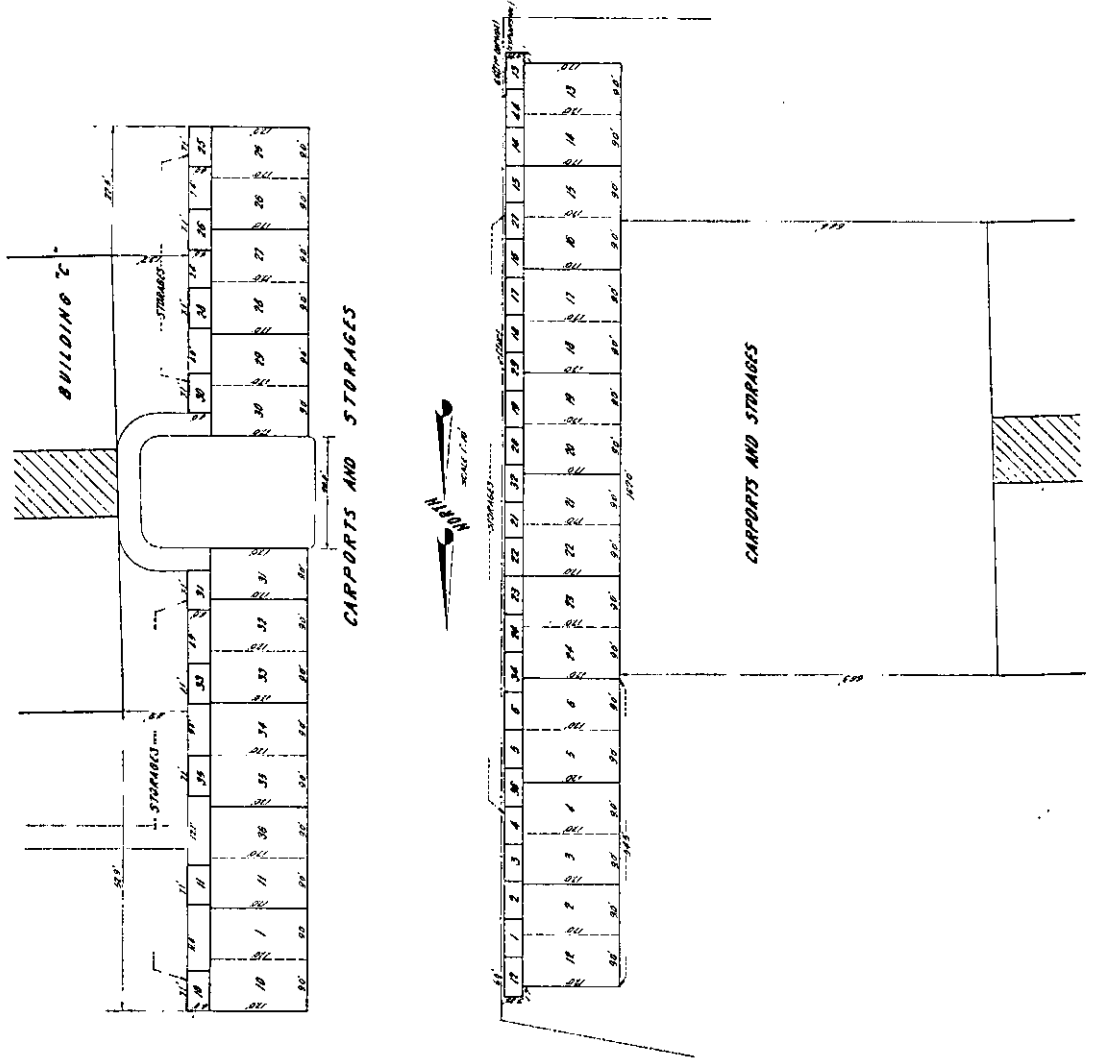
RECORD OF SURVEY MAP OF
HEATHER RIDGE CONDOMINIUM
 IN BLOCK 3, PLAT 3, BIG FIELD SURVEY
 SALT LAKE COUNTY, UTAH

PREPARED BY: [unclear]
 DATE: [unclear]
 FOR: [unclear]
 BY: [unclear]

79-6-223



SCALE 1"=6'



**ARTICLES OF INCORPORATION
OF
HEATHER RIDGE CONDOMINIUM ASSOCIATION, INC.**

A Utah Non-Profit Corporation
(Pursuant to the provisions of UCA § 16-6a-202)

I, the undersigned natural person, being of the age of eighteen years or more, acting as incorporator under the Utah Revised Non-Profit Corporation Act, adopt the following Articles of Incorporation for such Corporation.

**ARTICLE I
NAME**

The name of this Corporation is Heather Ridge Condominium Association, Inc. (“Corporation”).

**ARTICLE II
DURATION**

The period of duration of this Corporation shall be perpetual.

**ARTICLE III
PURPOSE**

1. As properly voted by the members of the Corporation, the Corporation is organized and shall be operated as a nonprofit corporation for the purpose of maintaining and administering the Common Areas, if any, collecting and disbursing the assessments and charges provided for in the Declaration and Bylaws, otherwise administering, enforcing, and carrying out the terms, covenants, and restrictions of the Declaration, and generally providing for and promoting the health, safety, and welfare of the Owners.
2. No part of net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, trustees, officers, or other persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to the Corporation and to make payments and distributions in furtherance of the purposes set forth herein.
3. The Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under 528(c) of the Internal Revenue Code of 1954, as amended (or the corresponding provisions of any future United States Internal Revenue law).

**ARTICLE IV
MEMBERS & VOTING**

The Corporation shall have Members. The nonprofit Corporation will not issue shares evidencing membership. The terms and conditions of membership will be set forth in the Declaration and Bylaws of the Corporation. Each Member shall be entitled to one (1) vote for each Unit owned by such Member.

**ARTICLE V
BYLAWS**

Provisions for the regulation of the internal affairs of the Corporation shall be set forth in the Bylaws (and/or Declaration) (UCA § Section 16-6a-206).

**ARTICLE VI
DIRECTORS**

The affairs of the Corporation shall be managed by a Board of Directors (a.k.a. Management Committee) composed of five (5) individuals elected by a quorum of the Corporation more particularly set forth in the Declaration. Each Director shall hold office until his/her successor has been duly elected and qualified.

The current names and addresses of the Directors are:

Heidi Simmons
4001 S. 300 E. #12
Salt Lake City, UT 84107

Nicole Boswell
4001 S. 300 E. #5
Salt Lake City, UT 84107

Chip Herron
4003 S. 300 E. #21
Salt Lake City, UT 84107

Julia Edwards
3985 S. 300 E. #42
Salt Lake City, UT 84107

Jake Martin
4001 S. 300 E. #3
Salt Lake City, UT 84107

**ARTICLE VII
INCORPORATORS**

The name and address of the Incorporator are:

Peter H. Harrison, Esq.
602 East 300 South
Salt Lake City, UT 84102

**ARTICLE VIII
REGISTERED OFFICE AND AGENT**

The address of the Corporation's registered office shall be:

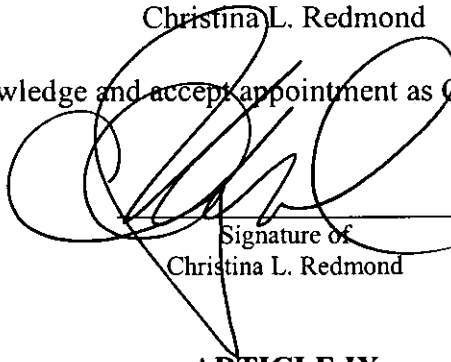
262 East 3900 South, Ste 200
Salt Lake City, UT 84117

Such office may be changed at any time by the Board of Directors without amendment to these Articles of Incorporation.

The Corporation's registered agent at such address shall be:

Christina L. Redmond

I hereby acknowledge and accept appointment as Corporation's registered agent.



Signature of
Christina L. Redmond

**ARTICLE IX
DISTRIBUTIONS**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article III herein. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 528(c) of the Internal Revenue Code, as amended or supplemented, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, as amended or supplemented.

**ARTICLE X
MISCELLANEOUS**


1. Amendment. Any amendment to these Articles must be authorized and approved

by a majority of all members of the Association. Any amendment so authorized and approved shall be accomplished in conformity with the law of the State of Utah.

2. Interpretation. The captions preceding the various portions of these Articles are for convenience 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 provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Declaration and should be read in light of that fact and liberally so as to affect the purposes of both instruments. In the event of a conflict between the provisions of these Articles and the provisions of the Declaration, the provisions of the Declaration shall prevail.

In Witness Whereof, I, Peter H. Harrison, have executed these Articles of Incorporation in duplicate this 21st day of April, 2010, and say:

That I am an incorporator herein, that I have read the above and foregoing Articles of Incorporation, know of the contents thereof, and that the same are true to the best of my knowledge and belief, excepting as to matters herein alleged upon information and belief and as to those matters I believe to be true.


Peter H. Harrison, Incorporator