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**DECLARATION OF CONDOMINIUM  
STONEY BROOK CONDOMINIUM PROJECT**

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**WHEN RECORDED MAIL TO:**

Twin Peaks Properties, L.C.  
7258 Racquet Club Drive  
Salt Lake City, Utah 84121  
Attn: Brian Merrill

**DECLARATION OF CONDOMINIUM  
STONEY BROOK CONDOMINIUM PROJECT**

THIS DECLARATION OF CONDOMINIUM (as amended from time to time, this "Declaration") is made as of June \_\_, 2006, by TWIN PEAKS PROPERTIES, L.C., a Utah limited liability company (together with its successors and assigns, "Declarant").

**Recitals**

A. Declarant owns the land located in the County of Salt Lake, State of Utah that is more particularly described on Exhibit A hereto.

B. Declarant desires to create a condominium project on such land pursuant to the Utah Condominium Ownership Act, Utah Code Annotated Sections 57-8-1 through 57-8-38, as the same may be amended from time to time. The condominium project shall be known as the "Stoney Brook Condominium Project".

C. Declarant deems it necessary and desirable to subject such property, and all improvements now or hereafter constructed on such property, to the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration.

D. Declarant desires to explicitly reserve the option in the future to convert certain space within the project to be a part of certain units and to potentially expand such condominium project on additional land located adjacent to such property, as more particularly set forth herein.

**Declaration**

In consideration of the foregoing, Declarant hereby declares as follows:

**ARTICLE I: DEFINITIONS**

**1.01 Basic Definitions.**

As used in this Declaration, the following terms have the meanings given to them in this Section 1.01.

(a) "Act" means the Utah Condominium Ownership Act, Utah Code Annotated §§57-8-1 through 57-8-38 (2005 Replacement), as the same may be amended from time to time.

(b) "Area" when reference is made to a Unit or Units, means the total number of square feet of the ground or floor surface thereof, rounded to the nearest whole number ending in zero,

and computed and determined as follows on the basis of dimensions shown on the Map. The measurements used in determining Area shall run from the interior surfaces of the walls surrounding the Unit concerned and each separate level, story, or floor contained within or making up the Unit shall be taken into account and, subject to the following provisions, shall augment the Area thereof. So long as it substantially complies with the provisions of this Section I.01(b) and is not arbitrary, Declarant's determination of the Area of a Unit, as set forth in this Declaration, the Map, or in any amendment hereto or thereto, shall be conclusive.

(c) "Articles" means the articles of incorporation of the Association, as the same may be amended from time to time.

(d) "Assessment" means a General Assessment, a Special Assessment or a Default Assessment levied and assessed pursuant to Article VII below.

(e) "Assessment Lien" has the meaning given to that term in Section 7.08 below.

(f) "Association" means the association of Owners known as **Stoney Brook Condominium Association, Inc., a Utah nonprofit corporation, and its successors and assigns.**

(g) "Association Documents" means this Declaration, the Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

(h) "Building" means a structure containing or to contain one or more Units or Common Area, as shown on the Map.

(i) "Bylaws" means the bylaws of the Association, attached hereto and forming a part hereof as Exhibit B, as the same may be amended from time to time.

(j) "Common Area" means the General Common Area and the Limited Common Area.

(k) "**Common Expenses**" means:

(i) any and all costs, expenses and liabilities incurred by or on behalf of the **Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Area; (B) providing facilities, services and other benefits to Owners; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby including, but not limited to, the Rules and Regulations; (D) levying, collecting and enforcing the Assessments, charges and liens imposed pursuant hereto; (E) regulating and managing the Condominium Project; and (F) operating the Association;**

(ii) costs, expenses and liability agreed upon as Common Expenses by the Association or declared to be Common Expenses by this Declaration, the Act or the Association;

(iii) all sums lawfully assessed against the Owners; and

(iv) reserves for any such costs, expenses and liability.

(I) "Condominium Project" means the real estate condominium project created on the Land by this Declaration, consisting of the Units and the Common Area, known as the Stoney Brook Condominium Project.

(m) "Condominium Unit" means a Unit together with:

(i) the Interest in General Common Area appurtenant to that Unit;

(ii) the right to the exclusive or nonexclusive use of the General Common Area and Limited Common Area appurtenant to that Unit, if any; and

(iii) the membership in the Association appurtenant to that Unit.

(n) "Declarant" means Twin Peaks Properties, L.C., a Utah limited liability company, and its successors and assigns.

(o) "Declarant Control Period" has the meaning given to that term in Section 6.03 below.

(p) "Declaration" means this Declaration of Condominium for Stoney Brook Condominium Project, as the same may be amended from time to time.

(q) "Default Assessment" has the meaning given to that term in Section 7.06 below.

(r) "Director" means a duly elected or appointed member of the Management Committee.

(s) "Eligible Insurer or Guarantor" means an insurer or guarantor of a First Mortgage which has requested notice of certain matters from the Association in accordance with Section 15.02 of this Declaration.

(t) "Eligible Mortgagee" means a Mortgagee which has requested notice of certain matters from the Association in accordance with Section 15.02 of this Declaration.

(u) "First Mortgage" means any Mortgage which is not subordinate to any other monetary lien or encumbrance, except liens for taxes or other liens which are given priority by statute.

(v) "First Mortgagee" means a Mortgagee under a First Mortgage.

(w) "Fiscal Year" means the twelve (12) month period commencing on January land ending on December 31, or such other fiscal year as may be adopted by the Management Committee at any time or from time to time.

(x) "General Assessment" has the meaning given to that term in Section 7.04 below.

(y) "General Common Area" means all of the areas of the Condominium Project, other than the Units and the Limited Common Area. Without limiting the generality of the preceding sentence, the General Common Area includes, without limitation:

(i) the Land;

(ii) all Improvements, including, without limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, **sprinkler systems, exhaust, heating and ventilation systems, storage areas, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, chimneys, drainage facilities, yards, gardens, parking areas, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, tanks, pumps, motors, fans,** compressors, ducts, and in general all apparatus and installations existing for common use, and all other parts of the Land and Buildings necessary or convenient to the existence, maintenance and safety of the Condominium Project, or normally in use by two or more Units, except for those Improvements that are designated by the Act, by this Declaration or by the Map as Units or Limited Common Area; and

(iii) any parcels of real property and improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (8) that are used or possessed by the Association for the benefit of all Owners.

(z) "Guest" means any family member, agent, lessee or invitee of an Owner.

(aa) "Improvement" means the Buildings, together with any other building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein) **located on the Land and within which one or more Units or Common Area are or will be located.**

(bb) "Interest in General Common Area" means the undivided interest in the General Common Area appurtenant to each Unit, determined in accordance with the terms and conditions of Section 3.03 below.

(cc) "Land" means the real property which Article II of this Declaration submits to the terms of the Act.

(dd) "Limited Common Area" means the Common Area designated by this Declaration or the Map for the exclusive use of one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, "Limited Common Area" includes, without limitation,

(i) any shutters, awnings, window boxes, windows, doors, doorsteps, **porches, balconies, patios, stoops, and other fixture or apparatus intended to serve a single Unit but** located outside the boundaries of such Unit;

(ii) all installations for and all equipment connected with furnishing the Condominium Project with utility service, including, but not limited to, utility systems, mechanical systems and exhaust and ventilation systems;

(iii) patios, decks, porches, waiting areas, laundry facilities, storage spaces, parking areas, entrances, exits and walkways and other areas and improvements that are designed to serve fewer than all of the Units; and

(iv) any parcels of real property and Improvements and fixtures located thereon (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (8) that are used or possessed by the Association for the benefit of Owners of fewer than all of the Units.

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If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Area allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Area is a part of the General Common Area. Nonstructural walls located wholly within a Unit are a part of the Units in which they are located.

(ee) "Management Committee" means the Association's board of directors which shall also be and have all of the rights, duties and authority of the management committee described by the Act, except as otherwise expressly provided herein.

(ft) "Majority," regardless of whether capitalized, means the Owners of more than fifty percent (50%) of the aggregate Interest in General Common Area.

(gg) "Map" means the Condominium Plat filed herewith, entitled "Condominium Plat Stoney Brook Condominium Project", executed and acknowledged by Declarant, consisting of nine (9) sheets, and prepared by Dale K. Bennett, P.L.S., a duly registered Utah Land Surveyor holding Certificate No. 103381, as such Condominium Map may be amended or supplemented in accordance with law and the provisions hereof from time to time.

(hh) "Mortgage" means any mortgage, deed of trust or other document pledging any Condominium Unit or interest therein as security for payment of a debt or obligation.

(ii) "Mortgagee" means any Person named as a mortgagee or beneficiary in any Mortgage and any successor to the interest of any such Person under a Mortgage.

(ij) "Officer" means a duly elected or appointed officer of the Association.

(kk) "Owner" means the Person who is the record holder of legal title to the fee simple interest in any Condominium Unit as reflected in the Salt Lake County Records. If there is more than one record holder of legal title to a Condominium Unit, each record holder shall be an Owner. The term "Owner" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Condominium Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such Person has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(II) "Person" means any natural person, corporation, partnership, limited liability company, association, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Utah.

(mm) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Condominium Unit or portion thereof.

**(nn)** "Record", "Recording", "Recorded" and "Recorder" each have the meaning stated in Utah Code Annotated §57-3-101 through §57-3-108, as the same may be amended from time to time.

(oo) "Rules and Regulations" means any instrument adopted from time to time by the Association for the regulation and management of the Condominium Project, as the same may be **amended from time to time**.

Utah. (pp) "Salt Lake County Records" means the Official Records for Salt Lake County,

(qq) "Share of Common Expenses" means the share of Common Expenses allocated to each Unit in accordance with the terms and conditions of Section 7.02 below.

(rr) "Special Assessment" has the meaning given to that term in Section 7.05 below.

(ss) "Special Declarant Rights" means all rights that Declarant reserves for itself in this Declaration.

(n) **"Successor Declarant" means any Person who succeeds to any Special Declarant Right.**

(uu) "Unit" means a physical portion of the Condominium Project that:

(i) consists of one or more rooms or spaces located in one or more floors or parts of floors located in a Building;

(ii) is designated for separate ownership and independent use; and

(iii) is designated as a Unit in Exhibit C of this Declaration and on the Map.

The walls, floors or ceilings are designated as boundaries of a Unit, and all paneling, tiles, wallpaper, painting, finished flooring and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Area.

(vv) "Unit Number" means the number, letter, or combination thereof which designates a Unit on the attached Exhibit C and on the Map.

#### 1.02 Gender and Number.

Wherever the context of this Declaration so requires:

(a) words used in the masculine gender shall include the feminine and neuter genders;

(b) words used in the neuter gender shall include the masculine and feminine genders;

(c) words used in the singular shall include the plural; and

(d) words used in the plural shall include the singular.

## ARTICLE II: SUBMISSION

### 2.01 Submission

There is hereby submitted to the provisions of the Act, as the Land associated with the Stoney Brook Condominium Project, the following-described parcel of real property situated in Salt Lake County, State of Utah:

See Exhibit A attached hereto and incorporated herein by this reference.

TOGETHER WITH: (i) all Buildings, improvements, and structures situated on or comprising a part of the above-described parcel of real property; (ii) all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying said parcel; and (iii) all articles of personal property intended for use in connection with said parcel.

ALL OF THE FOREGOING IS SUBJECT TO: all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Land or any portion thereof; all visible easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Map or **otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described Land at such times as construction of all improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.**

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through, and under the above-described Land and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any assignee or successor of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) To construct and complete the Buildings and all of the other improvements described in this Declaration or in the Map recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; and (ii) To improve portions of the Land with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the above-described Land or any improvement thereon is traversed or partially occupied by a permanent **improvement or utility line, a perpetual easement for such improvement or utility line shall exist.** With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire five (5) years after the date on which this Declaration is filed for record in the Salt Lake County Records.

2.02 Covenants Running with the Land.

**All covenants, conditions, restrictions, reservations, easements, charges, liens and other provisions of this Declaration are covenants running with the land, or equitable servitudes, as the case may be. The obligations, burdens and benefits created by this Declaration shall bind and inure to the benefit of Declarant, the Owners, the Association, all other parties having any, right, title or interest in the Land or any portion thereof and their respective successors, assigns, heirs, devisees, executors, administrators and personal representatives.**

2.03 Statement of Intention.

The condominium project to be created on the Land is hereby created pursuant to and shall be governed by the provisions of the Act.

**ARTICLE III: BUILDINGS, UNITS AND COMMON AREA**

3.01 The Buildings.

(a) The Improvements included in the Condominium Project are now or will be located on the Land. The significant Improvements contained in the Condominium Project include six (6) Buildings, forty-eight (48) Units, seventy-two (72) covered parking spaces, eighteen (18) enclosed parking spaces, six (6) uncovered parking spaces, a swimming pool and hot tub, storage areas, asphalt or concrete driveways, and the Common Area. The location and configuration of the Improvements referred to in the foregoing sentence are depicted on the Map. The Condominium Project also contains other improvements of a less significant nature which may not be depicted on the Map, such as outdoor lighting, fencing, area landscaping and concrete sidewalks and walkways. The Map shows the number of stories and the number of Units which are contained in each Building included in the Condominium Project.

(b) The principal materials used in the construction of the Buildings are as follows: all load bearing and non-load bearing walls are wood frame or concrete; the ground floor is comprised of reinforced concrete and/or wooden joists covered with plywood and concrete; the above-grade floors are of wooden joists covered with plywood; the roof is of wood covered with asphalt tiles; interior walls are surfaced with sheetrock or gypsum board; and exterior walls are surfaced with aluminum siding.

3.02 Units.

(a) Declarant hereby creates forty-eight (48) Units within the Condominium Project. The Map shows the Unit Number of each Unit, its location, dimensions from which its Area may be determined, and the General 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.

(b) No Owner may alter its Unit, subdivide its Unit or relocate the boundaries between a Unit and an adjacent Unit, except as expressly provided by this Declaration and the Act.

(c) Except as expressly provided to the contrary in this Declaration, the Interest in General Common Area and the right to use Limited Common Area appurtenant to the Unit may not be partitioned or separated from the Unit or any part thereof; provided that this Subsection shall not prejudice or otherwise affect the rights set forth in Article XIII of this Declaration in the event of casualty or condemnation.

(d) Notwithstanding anything to the contrary contained in Sections 3.02(b) and 3.02(c) above or elsewhere in this Declaration:

(i) nothing shall prevent or limit Declarant's exercise or enjoyment of any Special Declarant Right;

(ii) an Owner may grant its rights to use any General Common Area or any Limited Common Area appurtenant to the Owner's Unit to the Owner's Guests;

(iii) an Owner shall have the perpetual right to ingress and egress from such Owner's Unit, and such right shall be appurtenant to such Unit; and

(iv) the right of an Owner to sell, transfer or otherwise convey such Owner's Condominium Unit shall not be subject to any right of first refusal or similar transfer restriction created by this Declaration in favor of any other Owner or the Association, and such Owner may sell, transfer or otherwise convey such Owner's Condominium Unit free from any such restriction.

### 3.03 Interests in General Common Area.

(a) The Interests in General Common Area shall be allocated among the Units as set forth in this Section 3.03. The Interest in General Common Area appurtenant to a Unit shall be expressed as a percentage and shall be equal to the ratio between the Area of such Unit and the aggregate Area of all Units included in the Condominium Project. In determining the Interests in General Common Area, Declarant may have made minor adjustments in some or all of the Interests in General Common Area which result from a strict application of the formula described in the immediately foregoing sentence for the purpose of assuring that the total Interests in General Common Area equals 100.00%. The Interests in General Common Area which are appurtenant to the Units and which are set forth on Exhibit C have been computed in the aforesaid manner.

(b) The Interest in General Common Area appurtenant to each of the Units of the Condominium Project are set forth on Exhibit C attached hereto and made a part hereof.

(c) The Interest in General Common Area shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration adopted as provided in Section 17.03 hereof. If any Units are added to or withdrawn from the Condominium Project, or if the Area of one or more Units is increased or decreased, the Interest in General Common Area for all Units within the Condominium Project after such addition or withdrawal, increase or decrease shall be recalculated in accordance with the formula set forth in Section 3.03(a) above.

(d) Except as expressly provided to the contrary elsewhere in this Declaration, an Interest in General 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 General Common Area made without the Unit to which the Interest in General Common Area is appurtenant shall be void. The immediately foregoing sentence shall not prejudice or otherwise affect the rights set forth in Article XIII of this Declaration in the event of casualty or condemnation. There shall not be any restriction upon on Owner's right of ingress to and egress from such Owner's Unit.

3.04 Limited Common Area.

Except as expressly provided to the contrary in this Declaration, the allocation of the Limited Common Area to the Units as shown on the Map may not be altered without the consent of all Owners whose Units would be affected by such reallocation.

3.05 Separate Taxation of Condominium Units.

Pursuant to the Act, each Condominium Unit constitutes a separate parcel of real estate and will be separately assessed and taxed.

3.06 Description of Condominium Units.

Any deed, lease, mortgage, deed of trust, or other instrument conveying, encumbering or otherwise affecting a Condominium Unit shall describe the interest or estate substantially as follows:

[Unit \_\_\_\_] contained within the Stoney Brook Condominium Project as the same is identified in the Condominium Map recorded in Salt Lake County, Utah, on \_\_\_\_\_, 2006 as Entry No. \_\_\_\_\_ (as said Condominium Map shall have heretofore been amended or supplemented) and in the Declaration of Condominium for Stoney Brook Condominium Project, recorded in Salt Lake County, Utah on \_\_\_\_\_, 2006 as Entry No. \_\_\_\_\_ in Book No. \_\_\_\_\_ at Page \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented). TOGETHER WITH the undivided ownership interest in said Project's Common Area that is appurtenant to said Unit as more particularly described in said Declaration.

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

3.07 Interpretation. In interpreting this Declaration, the Map or any deed or other instrument affecting the Buildings or a Unit, the boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Map shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Map, regardless of settling or lateral movement of such Building and regardless of minor variance between boundaries shown on the Map and those of such Building or Unit.

## ARTICLE IV: THE ASSOCIATION

### 4.01 Formation of the Association.

On or before the date on which Declarant conveys the first Unit to a Purchaser, Declarant shall form the Association. Each Owner of a Unit is required to be a member of the Association.

### 4.02 Purposes and Powers.

(a) The Association's purposes are:

(i) **to manage, operate, insure, construct, improve, repair, replace, alter and maintain the Common Area;**

(ii) to provide certain facilities, services and other benefits to the Owners;

(iii) **to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby;**

(iv) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto;

(v) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements with one or more condominium associations, with or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of Mortgages, or of any other Person, including, but not limited to, those which contemplate the sharing of expenses among the Association and the other condominium associations, for facilities and services that serve the Association and the other condominium associations;

(vi) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners;

(vii) to regulate and manage the Condominium Project; and

(viii) to execute and record, on behalf of all Owners, any amendment to this Declaration or the Map which has been approved by the vote or consent necessary to authorize such amendment.

(b) Unless expressly prohibited by law or any of the Association Documents, the Association may:

(i) take any and all actions that it deems necessary or advisable to fulfill its purposes;

(ii) exercise any powers conferred on it by the Act or any Association Document; and

(iii) exercise all powers that may be exercised in Utah by nonprofit corporations.

(c) Without in any way limiting the generality of Section 4.02(b) above, the Association may, but is not obligated to:

(i) to the extent not provided by a public, quasi-public or private utility provider, arrange for the provision of certain facilities and services to the Owners, such as (A) recreational facilities and services, (B) water, sewer, natural gas, electric, cable television and other utility services, (C) parking facilities, and (D) trash collection facilities and services for residential purposes only;

(ii) acquire, sell, lease and grant easements over, under, across and through Common Area which are reasonably necessary to the ongoing development and operation of the Condominium Project;

(iii) borrow monies and grant security interests in the Common Area and in the assets of the Association as collateral therefor;

(iv) make capital improvements, repairs and replacements to Common Area; and

(v) hire and terminate managers and other employees, agents and independent contractors.

#### 4.03 Association Documents.

(a) This Declaration and the Map create the Condominium Project and set forth certain covenants, conditions, restrictions, reservations, easements, assessments, charges and liens applicable to the Land. The Articles create the Association. The Bylaws provide for the regulation and management of the Association, and the Rules and Regulations provide for the regulation and management of the Condominium Project.

(b) If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules and Regulations, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules and Regulations, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules and Regulations, the terms and conditions of the Bylaws shall control.

#### 4.04 Books and Records.

The Management Committee, or manager, if any, shall keep detailed, accurate records in chronological order, of receipts and expenditures affecting the Common Area, specifying and itemizing the Common Expenses and any other expenses incurred. Upon request, the Association shall allow Owners and Mortgagees and their respective agents, any insurer of a First Mortgage, and prospective purchasers of any Condominium Unit to inspect current copies of the Association Documents and the books, records, budgets and financial statements of the Association during normal business hours and under other reasonable circumstances. The Association may charge a reasonable fee for copying such

materials. Upon written request from any agency or corporation that has an interest or prospective interest in any Condominium Unit, the Management Committee shall prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding fiscal year.

## ARTICLE V: VOTING

### 5.01 Voting.

(a) At any meeting of the Association, the Interest in General Common Area appurtenant to a Unit may be voted in connection with issues presented to the Owners for vote.

(b) The votes allocated to the Units of the Condominium Project are equal to the Interests in General Common Area set forth on Exhibit C attached hereto and made a part hereof.

(c) If any Units are added to or withdrawn from the Condominium Project, the total number of votes allocated to all Memberships and the allocation thereof after such addition, withdrawal, increase or decrease shall be adjusted so that such votes at all times remain equal to the Interest in General Common Area appurtenant to such Unit.

(d) Each Unit shall be entitled to the number of votes allocated to it in accordance with Sections 5.01(a), (b) and (c) above, regardless of the number of Owners of the Unit. If the Owners of a Unit cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a particular Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Unit, unless objection thereto is made by an Owner of that Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Unit, none of such votes shall be counted and all of such votes shall be deemed null and void other than to determine whether a quorum exists.

(e) In any case in which the Act or this Declaration requires the vote of a stated percentage of the Owners or approval of an act or transaction, such requirement shall be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the stated percentage of required votes. Such written consents shall be subject to the following conditions:

(i) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(ii) Any change in ownership of a Condominium Unit which occurs after consent has been obtained by the Owner having an interest therein shall not be considered or taken into account for any purpose.

(iii) Unless consent of all Owners having an interest in the same Condominium Unit is secured, the consent of none of such Owners shall be effective.

## ARTICLE VI: MANAGEMENT COMMITTEE

### 6.01 Number and Election of Directors.

The Management Committee shall consist of at least three (3) but not more than five (5) Directors. The initial number of Directors shall be three (3) and shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the terms and conditions of Sections 6.03 and 6.04 below, each Director will hold office for a term of one (1) year and the Owners shall elect the Directors at the annual meetings.

### 6.02 Powers of the Management Committee.

(a) Except as provided in this Declaration, the Articles and the Bylaws, the Management Committee may act on behalf of the Association in all instances.

(b) The Management Committee may not act on behalf of the Association to:

- (i) amend this Declaration;
- (ii) terminate the Association, this Declaration or the Condominium;
- (iii) elect Directors to the Management Committee;
- (iv) increase the number of Directors comprising the Management

Committee; or

(v) determine the qualifications, powers and duties, or terms of office, of Directors.

### 6.03 Declarant Control Period.

(a) Subject to the terms and conditions of Sections 6.03(b) and (c) below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the period commencing on the date on which this Declaration is Recorded, and ending on the first to occur of the following:

- (i) three (3) years from the date that the Declaration is Recorded; or
- (ii) one hundred twenty (120) days after the date upon which Units representing seventy-five percent (75%) of the total Interests in the General Common Area have been conveyed to Purchasers.

(b) Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Management Committee, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

(c) During the thirty (30)-day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect the Directors of the Management Committee as set forth in Section 6.0 I above, at least a majority of whom must be Owners other than Declarant or designated representatives of Owners other than Declarant. Such Directors shall take office upon expiration of the Declarant Control Period. Directors may be removed only as provided in this Declaration.

(d) No management contract, lease of recreational areas or facilities, employment contract or lease of recreational or parking areas or facilities entered into during the Declarant Control Period or any other contract or lease designed to benefit the Declarant which was (i) executed by or on behalf of the Association or the Unit Owners as a group or (ii) to which Declarant is a party shall be binding after the expiration of the Declarant Control Period shall be binding on the Association unless the Association has a right of termination thereof which is exercisable without penalty at any time after the end of the Declarant Control Period upon not more than ninety (90) days' notice to the other party thereto, unless renewed or ratified by the consent of a Majority of the votes in the Association. For purposes of this Section 6.03(d) only, Declarant shall include any person or entity that controls, is controlled by, or is under common control with, Declarant. A person or entity shall be deemed to control Declarant if the person or entity (i) is a general partner, officer, director, or employee of Declarant; (ii) directly or indirectly or acting in concert with one or more persons, or through one of more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting shares of Declarant; (iii) controls in any manner the election of a majority of the directors of the Declarant; or (iv) has contributed more than twenty percent (20%) of the capital of Declarant. A person or entity shall be deemed to be controlled by Declarant if Declarant (i) is a general partner, officer, director, or employee of that person or entity; (ii) directly or indirectly or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting share of that person or entity; (iii) controls in any manner the election of a majority of the directors of that person or entity; or (iv) has contributed more than twenty percent (20%) of the capital of that person or entity.

#### 6.04 Removal of Directors.

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director, other than a Director appointed by Declarant, may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote of the votes allocated to the Units as provided in Section 5.01(b).

#### 6.05 Replacement of Directors.

(a) Vacancies on the Management Committee created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Management Committee created by the removal, resignation or death of a Director appointed or elected by the Owners shall be filled by a Director elected by the Owners.

(c) Any Director elected or appointed pursuant to this Section 6.05 shall hold office for the remainder of the unexpired term of the Director that Director replaced.

6.06 Management Committee Liability.

No Director shall be liable to the Owners for any mistake in judgment, for negligence, or on other grounds, except for such Director's own individual and willful misconduct or bad faith. The Owners and Association shall indemnify and hold harmless each Director from and against all liability to third parties arising out of any contract made by the Management Committee on behalf of the Association or Owners, unless such contract was made in bad faith or contrary to the provisions of the Act or this Declaration. The liability of an Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Owner's Interest in General Common Area.

**ARTICLE VII: ASSESSMENTS, COMMON EXPENSES, BUDGETS AND LIENS**

7.01 Obligations for Assessments.

(a) Each Owner, by accepting a deed to a Unit (regardless of whether it shall be expressly stated in such deed), shall be deemed to have covenanted and agreed, to pay to the Association all:

- (i) General Assessments;
- (ii) Special Assessments;
- (iii) Default Assessments; and
- (iv) other charges,

that the Association is required or permitted to levy or impose on such Owner or such Owner's Unit pursuant to this Declaration or any other Association Document.

(b) Notwithstanding the definition of the term "Owner":

(i) a Person who acquires a Unit in a foreclosure sale shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit on or after the date of the foreclosure sale; and

(ii) a Person who acquires a Unit by deed-in-lieu of foreclosure shall be personally liable for all Assessments and other charges that the Association is required or permitted to levy or impose on that Unit or on the Owner of that Unit on or after the date on which the Owner of the Unit executes the deed-in-lieu of foreclosure.

(c) No Owner shall be exempt from liability for any Assessment or other charges by waiving the use or enjoyment of any Common Area or by abandoning a Unit against which such Assessments or other charges are made.

(d) Each Owner shall be personally liable for all Assessments and other charges levied on such Owner or such Owner's Unit during the period of such Owner's ownership of the Unit. If there is more than one Owner of a Unit, each Owner shall be jointly and severally liable with the other Owners of the Unit for all Assessments and other charges levied on the Unit or any Owner of the Unit. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all

unpaid Assessments against the grantor without prejudice to the grantee's rights to recover from the grantor the amount of the Assessment paid by the grantee.

(e) Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment or other amount, including all fees and disbursements of attorneys, accountants, appraisers, receivers and other professionals engaged by the Association in connection therewith, may be recovered by a suit for a money judgment by the Association without foreclosing or waiving any Assessment Lien securing the same.

7.02 Shares of Common Expenses.

(a) Except as otherwise set forth in this Declaration, the Association's Common Expenses shall be allocated among the Units in accordance with the Interest in General Common Area appurtenant to such Units (the "Shares of Common Expenses").

(b) Until the Association first levies an Assessment, Declarant shall pay all Common Expenses.

7.03 Budgets.

(a) Prior to the first levy of a General Assessment, and thereafter on or before the date occurring sixty (60) days before the commencement of the next Fiscal Year, the Management Committee shall adopt a proposed annual budget for the Association for the next Fiscal Year that sets forth:

(i) the Management Committee's estimates of Common Expenses for the next calendar year, taking into account any default or surplus realized for the current calendar year and any amounts as may be necessary to fund the reserve provided for in Section 7.12 of this Declaration;

(ii) the amount of funds for such Common Expenses that the Management Committee proposes to raise through General Assessments; and

(iii) the amount of funds for such Common Expenses that the Management Committee proposes to raise through Special Assessments.

(b) Within thirty (30) days after adopting a proposed annual budget, the Management Committee shall deliver a summary of the proposed annual budget to the Owners and set a date for a meeting of the Owners to consider ratification of the proposed annual budget. The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed annual budget to the Owners. Unless at that meeting a Majority or the Owners present at such meeting, whether or not a quorum is present, rejects the proposed annual budget, the proposed annual budget shall be deemed ratified. If the proposed annual budget is rejected, the annual budget last ratified by the Owners shall be deemed renewed for the next calendar year and shall remain in full force and effect until such time as the Owners ratify a subsequent annual budget proposed by the Management Committee.

(c) If the Management Committee deems it necessary or advisable to amend an annual budget that has been ratified by the Owners under Section 7.03(b) above, the Management Committee may adopt a proposed amendment to the annual budget, deliver a summary of the proposed amendment to all Owners and set a date for a meeting of the Owners to consider ratification of the

proposed amendment, The date of such meeting shall not be less than fourteen (14) days nor more than sixty (60) days after the delivery of the summary of the proposed amendment. Unless at that meeting a Majority of the Owners present at such meeting, whether or not a quorum is present, rejects the proposed amendment, the proposed amendment shall be deemed ratified.

#### 7.04 General Assessments.

(a) After the Management Committee has adopted an annual budget pursuant to Section 7.03(b) above, the Association shall levy an assessment for Common Expenses (a "General Assessment") on each Unit. The amount of the General Assessment levied against a Unit shall equal the product obtained by multiplying:

(i) the amount set forth in the annual budget adopted by the Management Committee as the amount of Common Expenses to be raised by General Assessments, by

(ii) that Unit's Interest in General Common Area.

(b) The Owners shall pay the General Assessments levied against their respective Units in such periodic installments as may be required by the Association.

(c) If the Management Committee adopts an amendment to the General Assessment portion of an annual budget pursuant to Section 7.03(c) above, the amount of the General Assessment levied against each Unit shall be adjusted accordingly, as shall the amount of each Owner's periodic installments.

(d) If the Management Committee fails to adopt an annual budget for any Fiscal Year prior to the commencement of that Fiscal Year, the Owners shall continue to pay periodic installments of the General Assessment to the Association at the rate payable during the prior Fiscal Year until such time as the Management Committee adopts a new annual budget for the then current Fiscal Year. Once the Management Committee adopts a new annual budget, the Association shall levy against each Unit the General Assessment for the then current Fiscal Year and each Owner's periodic installments shall be adjusted as necessary to pay the new General Assessment in equal periodic installments over the remainder of such Fiscal 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 Fiscal Year.

(e) The failure of the Association to levy a General Assessment for any Fiscal Year shall not be deemed a waiver, modification or release of an Owner's liability for the Share of Common Expenses allocated to such Owner's Unit.

#### 7.05 Special Assessments.

(a) The Assessments that the Association may levy pursuant to this Section 7.05 are referred to in this Declaration as "Special Assessments."

(b) Notwithstanding anything to the contrary contained in Section 7.04 above, 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 Interests of General Common Area

(c) Each Special Assessment levied against any Unit shall be shown on an annual budget, or an amendment to an annual budget, adopted by the Management Committee pursuant to Section 7.03 above and shall be paid as and when required by the Association.

7.06 Default Assessments.

(a) Notwithstanding anything to the contrary contained herein, if any Common Expense is caused by:

(i) the negligence or misconduct of an Owner or an Owner's Guest; or

(ii) a violation of any covenant or condition of an Association Document by an Owner or an Owner's Guest, the Association may levy an Assessment for such Common Expense against such Owner's Unit. Any such Assessment levied by the Association and each fine, penalty, fee or other charge imposed upon an Owner for the Owner's violation of any covenant or condition of any Association Document are each referred to herein as a "Default Assessment."

(b) Default Assessments need not be shown on an annual budget, or on an amendment to an annual budget, adopted by the Management Committee pursuant to Section 7.03 above.

(c) With respect to any Default Assessment, or portion thereof, levied other than as a late charge, the Owner of the Unit against which the Association seeks to levy the Default Assessment shall be provided notice and an opportunity to be heard as provided by the Act. Owners of Units against which Default Assessments have been levied shall pay such Default Assessments as and when required by the Association subject to any limitations imposed by the Act.

7.07 Assignment of Assessments.

The Association shall have the unrestricted right to assign its right to receive Assessments and other future income, either as security for obligations of the Association or otherwise, on the condition that any such assignment is approved by a Majority of the votes allocated to Units represented at a **meeting at which a quorum is present.**

7.08 Assessment Lien.

(a) The Association shall have a lien on each Unit for any Assessment levied against that Unit and for any fines, late charges, penalties, interest and attorneys' fees, disbursements and costs of collection imposed against the Owner of such Unit under any Association Document (the "Assessment Lien"). The Assessment Lien shall secure all of the foregoing obligations of an Owner from the time such obligations become due. If an Assessment is payable in installments, the Assessment Lien shall secure each installment from the time it becomes due, including the due date set by any valid Association **acceleration of installment obligations.**

(b) An Assessment Lien shall constitute a lien upon the Owner's Unit, and, upon the Recording of a notice of lien by the Management Committee or manager, if any, it is a lien prior to all other liens and encumbrances on a Unit, recorded and unrecorded except:

(i) encumbrances on the interest of an Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances; and

(ii) liens for real estate taxes and special assessment liens on the Unit in favor of any governmental assessing unit or special improvement district.

(c) An Assessment Lien shall be subordinate to a First Mortgage recorded on or before the date on which the Assessment sought to be enforced became delinquent to the extent permitted by the Act. An Assessment Lien shall not be affected by any sale or transfer of such Unit, except that a sale or transfer of a Unit pursuant to a foreclosure of a First Mortgage shall extinguish a subordinate Assessment Lien which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit so sold or transferred from the lien of, any Assessments thereafter becoming due.

(d) An Assessment Lien is extinguished unless proceedings to enforce the Assessment Lien are instituted within six (6) years after the full amount of the Assessment secured **thereby becomes due. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.**

(e) This Section 7.08 does not prohibit actions or suits to recover sums secured by an Assessment Lien or the Association from taking a deed in lieu of foreclosure.

(f) In any action by the Association to collect Assessments or to foreclose an Assessment Lien for unpaid Assessments, the court may appoint a receiver of the Owner to collect all sums alleged to be owed by the Owner prior to or during the pendency of the action, including, but not limited to, all costs and expenses of such proceedings, reasonable attorneys' fees, and a reasonable rental for the Unit. A court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Assessments.

(g) An Assessment Lien may be foreclosed in like manner as a deed of trust or mortgage on real estate or in any other manner permitted by law. Periodic Assessments shall be payable during the period of foreclosure of an Assessment Lien.

#### 7.09 Failure to Pay Assessment

(a) If an Owner fails or refuses to pay any assessment when due, the Management Committee may, upon following the procedures set forth in Utah Code Ann. §57-8-20(5), as the same may be amended from time to time:

(i) terminate the Owner's right to receive utility services paid as a part of the Common Expenses, and

(ii) terminate the Owner's right of access and use of any recreational facilities included in the Common Area.

(b) If an Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the Management Committee may, upon following the procedures set forth in Utah Code Ann. §57-8-20(6), as the same may be amended from time to time, demand the tenant of such Unit to pay to the Association all future lease payments due the Owner from such tenant, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid.

7.10 Waiver of Homestead Exemptions.

To the fullest extent permitted by law, by acceptance of the deed or other instrument of conveyance of a Unit, an Owner irrevocably waives the homestead exemption provided by the Utah Exemptions Act, Utah Code Ann. §78-23-1 through §78-23-15 as amended from time to time, as the same may apply to the Assessment Lien.

7.11 Estoppel Certificates: Notices to Mortgagees.

The Association shall furnish to an Owner or such Owner's designee or to a Mortgagee or its designee upon written request, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the Association's registered agent, and payment of a reasonable fee not to exceed the amount provided for in the Act, a statement setting forth the amount of unpaid Assessments currently levied against such Owner's Unit. The statement shall be furnished within ten (10) calendar days after receipt of the request and is binding on the Association, the Management Committee and every Owner in favor of all Persons who rely upon such statement in good faith. If no statement is furnished to the Owner, the Mortgagee or their designee, delivered personally or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert the priority of its Assessment Lien upon the Unit for unpaid Assessments which were due as of the date of the request.

7.12 Reserve Fund.

(a) The Association shall maintain a reserve fund for 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, and will be funded as follows. At the closing of the sale of a Unit by Declarant to a Purchaser, the Purchaser shall pay to the Association an amount equal to the Association's estimate of three (3) months of Common Expenses for the Fiscal Year in which the sale of the Unit occurs. Thereafter, the Association may increase the reserve fund or replace funds withdrawn from the reserve fund with funds collected through Assessments.

(b) Payments by Purchasers to the Association at closings under Section 7.12(a) above shall not be credited against, or relieve Purchasers from, their obligation to pay other Assessments levied against Units by the Association.

(c) Upon the sale of a Unit from one Owner to another, the Association shall not be obligated to return to the transferor any funds held in reserve, but the transferor shall be entitled to an appropriate credit from its transferee.

**ARTICLE VIII: UTILITY AND OTHER SERVICES**

8.01 Water, Sewer, Natural Gas, Electric and Trash Removal Services.

(a) The Association shall be responsible for obtaining water, sewer, and trash removal services for all Units and the Common Areas.

(b) All natural gas and electric services furnished to the Condominium Project which are separately metered to a Unit by the utility company or other party furnishing such services shall be

obtained and paid for by the Owner of the Unit to which such utility is metered. All other water, sewer, natural gas and electric services shall be a part of the Common Expenses and shall be allocated by the Association among the Units and charged to the Owners in accordance with their Shares of Common Expenses.

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

8.02 Cable Television.

All cable television services furnished to the Condominium Project which are separately metered and billed to an individual Unit by the cable company or other party furnishing such services shall be paid for by the Owner of the Unit to which such services are metered. Each Owner shall be responsible for obtaining any desired cable television services for such Owner's Unit and the Limited Common Area appurtenant thereto, and shall pay all costs, expenses, fees, rates and other installation and connection charges incurred in connection therewith, including, without limitation, any connection fees, directly to the provider of such services. All other cable television services shall be a part of the Common Expenses and shall be allocated by the Association among the Units and charged to the Owners in accordance with their Shares of Common Expenses.

8.03 Telephone.

(a) Each Owner shall be responsible for obtaining telephone services for its Unit and the Limited Common Area designed to serve only such Unit and shall pay all costs, expenses, fees, rates and other charges incurred in connection therewith, including, without limitation, any connection fees, directly to the provider of such services.

(b) The Association shall determine what, if any, telephone services are necessary for the General Common Area and shall be responsible for obtaining those services. The Common Expenses incurred by the Association for those services shall be allocated among the Units in accordance with their proportionate Shares of Common Expenses.

8.04 Other Utilities.

If the Association incurs Common Expenses for any utility service not described above, or if the manner of providing or metering any utility service described above changes from the manner in which such service is provided or metered as of the date of this Declaration, the Association may allocate the Common Expenses incurred for such new utility service or changed utility service in any reasonable and equitable manner consistent with the Act.

**ARTICLE IX: MAINTENANCE OF COMMON AREA AND UNITS**

9.01 Maintenance of Common Area.

Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain the Common Area and the other Association property in good order and condition and shall otherwise manage and operate the Common Area as it deems necessary or appropriate. The Association shall have the irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of the Common Area or for making emergency repairs necessary to prevent damage to the Common Area or to another Unit or

Units. In addition, the Association shall ensure that all interior Common Areas are sufficiently heated to prevent the freezing of water and sewer lines serving the Condominium Project. Without the limiting the foregoing, the Association may:

- (a) construct, modify, add to, repair, replace or renovate any improvements that are located on or constitute a part of any Common Area;
  - (b) plant and replace trees, shrubs and other vegetation on any Common Area;
  - (c) place, maintain and replace signs upon any Common Area;
  - (d) adopt and enforce Rules and Regulations regulating the use of Common Area;
- and
- (e) take any other actions as the Association deems necessary or advisable to protect, maintain, operate, manage or regulate the use of the Common Area.

9.02 Maintenance of Units.

Each Owner, at such Owner's sole cost and expense, shall maintain in good order and repair its Unit and all utility facilities, lines, ducts, and other such apparatus (including all fixtures located therein) serving solely such Unit. Each Owner shall keep the Limited Common Area serving solely its Unit, if any, in a clean and orderly condition. The Association shall have no obligation regarding maintenance or care which is required to be accomplished by any Owner.

9.03 Mechanic's Liens and Indemnification.

No labor performed or materials furnished and incorporated into a Unit with the consent or at the request of an Owner or an agent, contractor or subcontractor of an Owner shall be the basis either for filing a lien against the Unit of any other Owner not expressly requesting or consenting to the same, or against the Common Area. Notwithstanding the foregoing, labor performed or materials furnished for the Common Area, if authorized by the Owners, the manager or the Management Committee in accordance with this Declaration, the Bylaws, the Rules and Regulations, or the Act, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for filing a lien pursuant to applicable law. Payment for any such lien shall be made as provided in the Act. Each Owner shall indemnify and hold harmless each of the other Owners and any Mortgagee from and against all liability arising from any claim or lien against the Unit of any other Owner or against the Common Area for construction performed or for labor, materials, services or supplies incorporated in the Owner's Unit at the **Owner's request.**

**ARTICLE X: COVENANTS, CONDITIONS AND RESTRICTIONS**

10.01 Applicability of Covenants, Conditions and Restrictions.

**Except as otherwise provided in this Declaration, the covenants, conditions and restrictions set forth in this Article X shall apply to all Units and Common Area.**

I0.02 Association Documents.

Each Owner shall strictly comply with, and shall require its Guests to comply with, all provisions of the Association Documents that apply to such Owner or such Owner's Unit.

I0.03 Notice of Conveyance, Assignment or Encumbrance.

(a) Promptly after a conveyance of a fee simple interest in a Unit or portion thereof, the grantee shall furnish a copy of the conveyance deed to the Association.

(b) Promptly after an encumbrance of a fee simple interest in a Unit or portion thereof, the Owner shall furnish the Association with a copy of the Mortgage creating the encumbrance.

I0.04 Use of Units.

(a) Except as otherwise expressly permitted by this Declaration, an Owner of a Unit may use such Unit only as a permanent single-family residence (as "family" is defined from time to time in the zoning ordinances of Salt Lake County, Utah) for itself and its Guests. No Owner of a Unit shall conduct any business, profession, occupation or trade from its Unit; provided that this Declaration does not prohibit an Owner from leasing or renting such Owner's Unit to others for residential purposes so long as the use of such Unit complies with the provisions of this Declaration, the Act and other applicable laws and ordinances. No Unit shall be used for conducting the business of the rental of other Units. Any lease of a Unit shall be in writing and shall be subject to this Declaration and the Bylaws.

(b) It is the intent of this Declaration to create a residential community where the Units are occupied by the Owner of such Unit. Unless otherwise specifically approved by the Management Committee, no Unit shall be leased or rented by an Owner to any Person for an initial term of less than six (6) months. No Owner shall advertise its Unit for rent or lease or any period less than six (6) months.

(c) Notwithstanding the restrictions set forth in Section I0.04(a) above:

(i) an Owner may use its Unit as its private office, on the condition that the Owner does not invite others to its Unit to conduct business and such use complies with all applicable federal, state and local laws, ordinances, regulations and rules; and

(ii) the Association and, during the Declarant Control Period, Declarant may use one Unit owned or leased by it, or space within the clubhouse identified on the Condominium Map as a management office for the Condominium Project.

I0.05 Use of Common Area.

All Owners and their Guests may use the General Common Area and the Limited Common Area designed to serve their Units for the purposes for which such Common Area is intended. Notwithstanding the preceding sentence, neither an Owner nor a Guest may use any Common Area in any manner that unreasonably interferes with, hinders or encroaches upon the rights of other Owners in and to the Common Area. Without limiting the generality of the foregoing, no Owner shall cause, or permit its Guests to cause, waste to any Common Area.

IO.06 Alterations.

(a) Except as otherwise expressly provided in this Declaration, an Owner of a Unit may not make (i) any improvement or alteration to a Common Area, or (ii) any improvement or alteration to its Unit that affects any Common Area or any other Unit, without the prior written consent of the Association. No Owner shall do any work or make any alterations or changes that would jeopardize the soundness or safety of the Condominium Project, reduce its value or impair any easement or hereditaments, without in every case first obtaining the unanimous written consent of all Owners.

(b) Without limiting the generality of Sections IO.06(a), an Owner of a Unit may not, without the prior written consent of the Association, install or erect any improvement, mechanical system or fixture that either:

(i) protrudes beyond the boundaries of the Owner's Unit; or

(ii) is located wholly outside the Owner's Unit (even if located within a Limited Common Area that is assigned to solely the Owner's Unit).

IO.07 Nuisances, Hazardous Activities and Unsightliness.

(a) No Person shall conduct any activity on the Land which creates a nuisance.

(b) No Person shall conduct any activity on the Land which is or might be hazardous to any Person or property.

(c) No unsightliness shall be permitted at the Land.

(d) Normal construction activities shall not be considered to violate the terms and conditions of this Section IO.07.

IO.08 Signs.

(a) No signs whatsoever shall be erected or maintained on the Land, except signs required by legal proceedings and those permitted or approved by the Association.

(b) Without limiting the generality of Section IO.08(a) above, no "For Sale" or "For Rent" signs shall be displayed on the exterior of a Unit or on the interior of a Unit which are visible from the exterior of the Unit.

IO.09 Compliance with Laws.

Nothing shall be done or kept at the Land in violation of any law, ordinance, rule, regulation or other requirement of any governmental or quasi-governmental authority.

IO.10 Compliance with Insurance.

Except as may be approved in writing by the Association, nothing shall be done or kept at the Land that may result in the cancellation of any insurance maintained by the Association or may result in **an increase in the rates of any such insurance.**

**10.11 Subdivision, Rezoning and Timesharing.**

(a) Subject to Section 3.02(d), no Unit may be subdivided, unless the subdivision has been approved by 100 percent of the votes allocated to all Units at a duly convened meeting of the Association and has received all applicable governmental and quasi-government approvals.

(b) No application for rezoning any portion of the Land, and no applications for variances, shall be filed with any governmental or quasi-governmental authority, unless the proposed rezoning and/or variance has been approved by 100 percent of the votes allocated to all Units at a duly convened meeting of the Association and the uses that would be permitted under the rezoning comply with this Declaration and the other Association Documents.

(c) No Owner shall offer or sell any interest in any Unit under a "timesharing" or "interval ownership" plan or similar plan.

(d) The covenants, conditions and restrictions set forth in Sections 10.1 (a) and (b) above shall not apply to Declarant's development of the Land or to Declarant's exercise of any Special Declarant Right.

**10.12 Vehicles and Parking.**

(a) No motor vehicle classed by manufacturer rating as exceeding three-quarter ton and no mobile home, trailer, detached camper or camper shell, boat or other similar equipment or vehicle may be kept or parked at the Condominium Project.

(b) No motor vehicle shall be constructed, repaired or serviced at the Condominium Project.

(c) Each Owner of a Unit or its Guests may use one parking space that is a part of the Limited Common Area belonging to the Unit owned by such Owner and one parking space that is a part of the General Common Area (subject to availability) during any period during which the Owner or one or more of its Guests are staying in the Owner's Unit. At no time may an Owner of a Unit or its Guests use more than one parking space in the General Common Area, and an Owner may not park a car in the General Common Area for more than five (5) consecutive days when the Owner or its Guest is not staying in the Owner's Unit.

(d) Owners of the Units shall have no right to use, and shall not permit their lessees and other Guests to use, any parking space located in the Condominium Project and designated as Limited Common Area to a Unit.

(e) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has by virtue of its ownership of a Unit (other than in connection with the sale, lease or other conveyance of such Owner's Unit).

**10.13 Deliveries, Trash Removal and Other Services.**

(a) By acceptance of a deed to a Unit, an Owner agrees that all deliveries and all trash removal services, and other such services to that Owner or its Unit shall be effected at a location or locations designated by the Association from time to time for such purposes. Unless otherwise directed

by the Association, Owners of all Units and their Guests shall place all trash and other waste from the Units in receptacles which are located in the General Common Area and designated for that purpose.

(b) Owners shall not, and shall not permit their Guests to litter. No burning of trash, garbage or other waste materials will be permitted at the Land.

10.14 Exterior Storage.

No Owner shall store any materials or items on or in any Common Area, other than those Common Areas designed for that purpose and then only in strict accordance with the terms and conditions of the Association Documents.

10.15 Animals.

No animals of any kind shall be raised, bred or kept on the Land or within any Unit, except that a small animal may be kept in a Unit with the prior written consent of the Management Committee.

10.16 Solid-Fuel Burning Devices.

No solid-fuel burning devices, such as charcoal grills and wood burning stoves or fireplaces shall be used, kept or stored on the Land.

10.17 No Smoking.

To the fullest extent allowed by law, no smoking is permitted within the Condominium Project, including but not limited to, within any Unit or any Common Areas.

10.18 Declarant's Exemption.

Nothing contained in this Declaration or in any other Association Document shall be construed to prevent:

(a) Declarant's exercise and enjoyment of any Special Declarant Right or any other rights of Declarant under this Declaration or any other Association Document; or

(b) the conduct by Declarant or its employees or agents of any activity, including, without limitation, the erection or maintenance of temporary structures, improvements or signs, necessary or convenient to the development, construction, marketing or sale of property within or adjacent to the Condominium.

## **ARTICLE XI: EASEMENTS AND RESERVATIONS**

11.01 Declarant's Easements Over Common Area.

(a) In accordance with the Act, Declarant hereby reserves for itself, its successors and assigns a general, transferable easement over, across, through and under the Common Area to:

(i) discharge Declarant's obligations under this Declaration;

(ii) exercise any of Declarant's rights under this Declaration; and

(iii) make improvements on the Land or any other real estate owned by Declarant, for the purpose of doing all things reasonably necessary and proper in connection with the foregoing.

(b) Declarant hereby reserves for itself, its successors and assigns, the right to:

(i) establish from time to time utility and other easements, permits or licenses over, across, through and under the Common Area for the benefit of the Condominium Project or any property owned by Declarant; and

(ii) create other reservations, exceptions and exclusions for the best interest of the Declarant and other Persons, on the conditions that (A) the parties benefitted by the easement, license, permit, reservation, exception or exclusion must use reasonable efforts to locate any such easement, license, permit reservation, exception or exclusion to minimize interference with the use of the Land by the Owners to the extent practicable; and (B) if the parties benefitted by the easement, license, permit, reservation, exception or exclusion construct or install any improvements on the Land pursuant to the same, the benefitted parties shall promptly repair any damage caused to the Land thereby at their sole cost and expense.

#### 11.02 Utility Easement.

(a) Subject to the terms and conditions of this Declaration and all other Association Documents, Declarant hereby creates a general easement over, across, through and under the Land for ingress to, egress from, and installation, replacement, repair and maintenance of, all utility and service lines and systems, including, without limitation, water, sewer, natural gas, telephone, electricity and cable communication that service the Land or any portion thereof. The Association may, but is not obligated to, authorize the release of portions of the general easement created pursuant to this Section 11.02 upon the request of any Owner showing good cause therefor.

(b) Pursuant to this easement, a utility or service company may install and maintain facilities and equipment on the Land and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Improvements to provide service to the Units or the Common Area. Notwithstanding anything to the contrary contained in this Section 11.02, no sewer lines, electrical lines, water lines or other utilities or service lines may be installed or relocated on any portion of the Land, except in accordance with terms and conditions of Section 10.06 above. Any utility or service company using this general easement shall use its best efforts to install, repair, replace and maintain its lines and systems without disturbing the uses of Owners, the Association, Declarant and other utility and service companies.

(c) If any utility or service company furnishing utilities or services to the Land or any portion thereof as permitted under Section 11.02(a) above requests a specific easement by separate recordable document, the Association shall have the right and authority, but not the obligation, to grant such easement over, across, through and under any portion of the Land.

#### 11.03 Association's Easement.

(a) The Association shall have a general easement over, across, through and under each Unit and each Common Area to:

(i) exercise any right held by the Association under this Declaration or any other Association Document; and

(ii) perform any obligation imposed upon the Association by this Declaration or any other Association Document.

(b) Notwithstanding the foregoing, the Association shall not enter any Unit without reasonable prior notice to the Owner thereof, except in cases of emergency.

#### 11.04 Easements for Encroachments.

In the event that any portion of the General Common Area, a Limited Common Area, Unit and/or a Building (whether constructed by Declarant or reconstructed so as to substantially duplicate a Unit or Building originally constructed by Declarant) encroaches or comes to encroach on the General Common Area, a Limited Common Area, another Unit and/or another Building, as a result of **construction, reconstruction, repair, shifting, settlement, or movement of any portion of the foregoing, an easement is created hereby and shall exist so long as such encroachment exists, but such easement shall not relieve an Owner of liability in the case of willful misconduct.**

#### 11.05 Emergency Access Easement.

Declarant hereby grants a general easement to all police, sheriff, fire protection, ambulance and all other similar emergency agencies or Persons to enter upon the Land in the proper performance of their duties.

#### 11.06 Pedestrian Access Easements.

Declarant hereby creates a nonexclusive access easement for the benefit of the Owners and their Guests over and across any and all roads, streets, plazas, courtyards, paths, pathways, sidewalks and boardwalks located outside of the Buildings and on the Land, subject to the Rules and Regulations.

### ARTICLE XII: INSURANCE

#### 12.01 General Liability Insurance.

The Management Committee shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Condominium Project, if any, all other areas of the Condominium Project that are under the Management Committee's supervision, and commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional Mortgage investors for condominium projects similar to the Condominium Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$ 1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the **operation, maintenance, or use of the Common Areas, and legal liability arising out of lawsuits related to** employment contracts of the Management Committee or the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to condominium projects similar to the Condominium Project in construction, location, and use, including

but not limited to, host liquor liability, contractual and all written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Unit Owner's claim because of negligent acts of the Association or Management Committee or any other Unit Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a First Mortgage in such policy.

#### 12.02 Property Insurance.

The Management Committee shall at all times maintain in force, and pay the premiums for, property insurance meeting the following requirements:

(a) A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas; Units; fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Management Committee or the Association; and fixtures, equipment, or other property comprising a part of or located within any Unit and which are of a class typically encumbered by Mortgages held by the Federal National Mortgage Association (hereinafter "FNMA") or other similar institutional Mortgage investors; but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against: (i) loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, (ii) if the Condominium Project contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed by the Association as precedent based on the nature of the property); and (iii) and by all other perils which are customarily covered with respect to condominium projects similar to the Condominium Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" or "extended coverage" 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 maximum deductible amount for such policy shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

(b) If any part of the Condominium Project is or comes to be situated in an area identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("NFIP"), the Association shall obtain and pay the premiums upon, as a part of the Common Expenses, a "master" or "blanket" policy of flood insurance on Buildings and other property covered by the required form of policy (hereinafter "Insurable Property") in an amount deemed appropriate by the Association, but not less than the lesser of: (1) the maximum limit of coverage available under the NFIP for all Buildings and Insurable Condominium Property within any portion of the Condominium Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the current replacement cost of all such Buildings and Insurable Property. Such policy shall be in a form which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

(c) The name of the insured under each policy required to be maintained by the foregoing items (a) and (b) shall be set forth therein substantially as follows: "Association of Unit Owners of the Stoney Brook Condominium Project for the use and benefit of the individual Owners." [Said Owners shall be designated by name, if required.] Notwithstanding the requirement of the two immediately foregoing sentences, 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 Trustee, for the use and benefit of the individual Unit Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Unit Owner and each such Owner's Mortgagee. Each Unit Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy in the percentage of such Owner's Interest in the General Common Area. Evidence of insurance shall be issued to each Unit Owner and Mortgagee upon request.

(d) Certificates of insurance shall be issued to each Owner and Mortgagee on request. 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 Project is located. If FNMA is a holder of one or more Mortgages on Condominium Units within the Project, such mortgage clause shall name FNMA, FHLMC or FNMA's servicer of such Mortgages as Mortgagee. If FNMA's servicer is named as mortgagee in such mortgage clause, such servicer's name shall be followed therein by the phrase "its successors and assigns." In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a First Mortgage in the policy. Each policy shall be consistent with state and local insurance laws and at least equal to such coverage as is commonly required by prudent 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 for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Unit Owners individually; the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Unit Owners collectively; and the policy is primary in the event the Unit Owner has other insurance covering the same loss. The requirements stated in this item (e) are generally provided by the insurer in the form of a "Special Condominium Endorsement" or its equivalent.

(f) Each policy required to be maintained by the foregoing item (b) shall also contain or provide the following: (1) "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement," and (2) if required by FNMA or FHLMC, "Construction Code Endorsements" (such as a "Demolition Cost Endorsement", a "Contingent Liability from Operation of Building Laws Endorsement" and an "Increased Cost of Construction Endorsement"), if the Condominium Project is subject to a construction code provision which would become operative upon Partial or Substantial Destruction and require changes to undamaged portions of the Building(s), thereby imposing significant costs in the event of such Destruction of the Project by an insured peril; and (3) "Steam Boiler and Machinery Coverage Endorsement" if the Condominium Project includes central heating or cooling, which shall provide that the insurer's minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Building containing the boiler or machinery.

**12.03 Additional Requirements for Insurance Policies.**

(a) Any insurance policies obtained and maintained by the Association pursuant to Sections 12.01 and 12.02 above shall be with generally acceptable insurance carriers, as determined by the discretion of the Management Committee consistent with the specific requirements set forth in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

(b) No such policy shall be maintained where: (i) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, a Unit Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, FHLMC, or the designee of FNMA or FHLMC; (ii) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carriers board of directors, policyholders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, a Unit Owner, FNMA, FHLMC, or the borrowers) from collecting insurance proceeds. The provisions of this Section

12.03 and of the foregoing Sections 12.01 and 12.02 shall not be construed to limit the power or authority of the Management Committee or Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

**12.04 Insurance Trustees and General Requirements Concerning Insurance.**

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, and notwithstanding Section 13.05, there may be named as an insured on behalf of the Management Committee and the Association, the Association's authorized representative, including any trustee with whom the Management Committee and the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform other functions as are necessary to accomplish this purpose. Each Unit Owner hereby appoints the Management Committee, or any Insurance Trustee or substitute Insurance Trustee designated by the Management Committee, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Management Committee, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Unit Owner's and their Mortgagees, as their interests may appear.

**12.05 Individual Property Insurance Limited.**

Each Owner shall have the right to separately insure its Unit and its personal property against loss by fire or other casualty. In addition, any Improvements made by an Owner within its Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and Mortgagees.

#### 12.06 Fidelity Bonds.

The Management Committee shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Management Committee and the Association and for all other persons handling or responsible for funds of or administered by the Management Committee or the Association. Furthermore, where the Management Committee or the Association has delegated some or all of the responsibility **for** the handling of funds to a management agent, the management agent shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Management Committee, for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Management Committee or the Association. The total amount of fidelity bond coverage required shall not be less than the estimated maximum 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. Nevertheless, in no event may the amount of such bonds be less than: a sum equal to three months' aggregate assessments on all Condominium Units plus reserve funds. The bonds required shall meet the following additional requirements: (1) the fidelity bonds shall name the Management Committee and the Association as obligees; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Management Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Committee or Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to *the* Management Committee and the Association, to any Insurance Trustee, and to each servicer of loans on behalf of FNMA.

### ARTICLE XIII: CASUALTY AND CONDEMNATION

#### 13.01 Definitions.

The provisions of this Article XIII shall apply with respect to the destruction or condemnation of the Condominium Project. As used herein, each of the following terms shall have the meaning indicated:

(a) **Destruction.** "Substantial Destruction" shall exist whenever, as a result of any damage or destruction to the Condominium Project or any part thereof, the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Destruction" shall mean any other damage or destruction to the Condominium Project or any part thereof.

(b) **Condemnation.** "Substantial Condemnation" shall exist whenever a complete taking of the Condominium Project or a taking of part of the Condominium Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. "Partial Condemnation" shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(c) **Restoration.** "Restoration" shall mean restoration of the Condominium Project, to the extent reasonably possible, in accordance with the Declaration, the Map, and the original plans and specification for the Condominium Project and to a condition the same or substantially the same as the

condition in which the Condominium Project existed prior to the damage or destruction concerned; and to the extent not so possible, "Restoration" shall mean restoration of the Condominium Project to an attractive, sound, and desirable condition. Any "Restoration" not in accordance with the Declaration, the Map, and the original plans and specifications for the Condominium Project shall require the consent of Eligible Mortgagees holding First Mortgages on Condominium Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership Interest in the General Common Area which is then subject to First Mortgages held by Eligible Mortgagees.

(d) Restored Value. "Restored Value" shall mean the value of the Condominium Project after Restoration.

(e) Estimated Costs of Restoration. "Estimated Costs of Restoration" shall mean the estimated costs of Restoration.

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

#### 13.02 Determination by Committee.

Upon the occurrence of any damage or destruction to the Condominium Project or any part thereof, or upon a complete or partial taking of the Condominium Project under eminent domain or by grant or conveyance in lieu thereof, the Management Committee shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Condominium Project.

#### 13.03 Restoration of Project.

Restoration of the Condominium Project shall be undertaken by the Management Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, and shall also be undertaken in the event of Substantial Destruction or Substantial Condemnation unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent (67%) of the Project's undivided ownership interest and is further consented to by Eligible Mortgagees holding First Mortgages on Condominium Units which have appurtenant at least fifty-one percent (51%) of the undivided ownership Interest in the General Common Area which is then subject to First Mortgages held by Eligible Mortgagees. Within thirty (30) days after the Management Committee has determined that Substantial Destruction or Substantial Condemnation exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Management Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided Interests in the General Common Area. Payment to any Owner whose Condominium Unit is the subject of a Mortgage shall be made jointly to such Owner

and the interested Mortgagee. In the event the cost of Restoration exceeds Available Funds, all of the Units shall be assessed for the deficiency on the basis of their respective percentages of undivided ownership Interest in the General Common Area. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Condominium Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any agreement in lieu thereof, the undivided ownership Interest in the General Common Area shall be immediately reallocated to the remaining Units in accordance with the method set forth in Section 3.03.

13.04 Sale of Project.

Unless Restoration is accomplished in accordance with the foregoing Section 13.03, the Condominium Project shall be sold in the event of Substantial Destruction or Substantial Condemnation. In the event of such sale, condominium ownership under this Declaration and the Map shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Management Committee to the Owners in proportion to their respective undivided Interests in the General Common Area. Payment to any Owner whose Condominium Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

13.05 Authority of Committee to Represent Owners in Condemnation or to Restore or Sell.

The Management Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Unit Owners and their Mortgagees as their interests may appear. The Management Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Condominium Project and each Condominium Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided. Such authority shall include the right and power to enter into any contracts, deeds, or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

**ARTICLE XIV: SPECIAL DECLARANT RIGHTS**

140 I Improvements.

Declarant hereby reserves for itself, its successors and assigns the right, but is not obligated, to construct:

(a) any Improvements shown on the Map; and

(b) any other buildings, structures or improvements that Declarant desires to construct on the Land, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Condominium Project.

14.02 Development Rights.

Declarant hereby reserves for itself, its successors and assigns the right to create easements, permits, licenses and other property rights and reservations as described in Articles II and XI of this Declaration.

#### 14.03 Sales Offices and Models.

Notwithstanding anything in the Declaration to the contrary, during the Declarant Control Period, Declarant shall have the following rights in furtherance of any sales, promotional, or other activities designed to accomplish or facilitate the sale of all Units owned or to be owned by Declarant.

(a) Declarant shall have the right to maintain two (2) or less sales offices or model Units. Such offices and/or model Units may be one or more Units (of any floor area and at any location) owned by it, one or more separate structures or facilities placed on the Land for the purpose of aiding Declarant's sales efforts, a room or rooms in the Common Area, or any combination of the foregoing. If one or more structures or facilities is so utilized by Declarant, each shall be reasonably located given the layout of the Condominium Project and each shall have an aggregate floor area not substantially in excess of the aggregate floor area of the largest Unit contained in the Condominium Project.

(b) Declarant shall have the right to maintain a reasonable number of promotional, advertising, and/or signs, banners, or similar devices at any place or places on the Land, but any such device shall be of a size and in a location as is reasonable and customary.

(c) Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Units, and/or signs, banners, or similar devices, but in connection with such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period after the end of the Declarant Control Period, Declarant shall have the right to remove from the Condominium Project any signs, banners, or similar devices and any separate structure or facility which was placed on a portion of the Land for the purpose of aiding Declarant's sales efforts. Any signs, banners, or similar devices, and any separate structure or facility for aiding Declarant's sales efforts shall comply with applicable zoning ordinances.

#### 14.04 Exercising Special Declarant Rights.

Declarant may exercise its Special Declarant Rights at any time prior to the date on which the Declarant Control Period expires. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise its Special Declarant Rights. If Declarant exercises any Special Declarant Right with respect to any portion of the Land, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Land. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article XIV and any other right reserved to Declarant in this Declaration, without the consent of the Association or any of the Owners.

#### 14.05 Interference with Special Declarant Rights.

Neither the Association nor any Owner may take any action or adopt any Rule or Regulation that interferes with or diminishes any Special Declarant Right, without Declarant's prior written consent. Any action taken in violation of this Section 14.05 shall be null and void and have no force or effect.

#### 14.06 Rights Transferable.

Declarant may transfer any Special Declarant Right reserved to it under this Article XIV or under any other provision of this Declaration in accordance with the terms and conditions of the Act.

## ARTICLE XV: MORTGAGEE PROTECTIONS

### 15.01 Benefit of Mortgagees.

This Article establishes certain standards and covenants which are for the benefit of Mortgagees. This Article is supplemental to, and not in substitution of, any other provisions of this Declaration, but in the case of any conflict, this Article shall control.

### 15.02 Notice of Actions.

If requested in writing to do so by the holder, insurer or guarantor of a First Mortgage (such request to state the name and address of the requesting party and the Unit numbers(s) to which the request applies), such holder, insurer or guarantor shall be deemed thereafter to be an Eligible Mortgagee or Eligible Insurer or Guarantor (as the case may be), shall be included in appropriate lists maintained by the Association, and shall be entitled to timely written notice of the following:

(a) any proposed amendment to the Association Documents effecting a change in the (i) boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interests in the General Common Area or Limited Common Area appertaining to any Unit or the liability for Common Expenses appertaining thereto; (iii) the number of votes in the Association appertaining to any Unit; or (iv) the purposes to which any Unit or the Common Area are restricted;

(b) any proposed termination of the Condominium Project;

(c) any condemnation loss or any casualty loss which affects a material portion of the Condominium Project or which affects any Unit on which there is a First Mortgage held, insured or guaranteed by the Eligible Mortgagee or such Eligible Insurer or Guarantor;

(d) any delinquency in the payment of Assessments which remains uncured for sixty days by an Owner whose Unit is encumbered by a First Mortgage held, insured or guaranteed by such Eligible Mortgagee or such Eligible Insurer or Guarantor;

(e) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association pursuant to Section 12.06 above; and

(t) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as set forth in this Article.

### 15.03 Consent Required.

(a) The consent of Eligible Mortgagees holding First Mortgages on Units which have appurtenant at least 67%, of the Interests in the General Common Area which is then subject to First Mortgages held by Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Condominium Project as a condominium.

(b) The consent of Eligible Mortgagees holding First Mortgages on Condominium Units which have appurtenant at least 51% of the Interests in the General Common Area which is then subject to Mortgages held by Eligible Mortgagees shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the

following: (i) voting; (ii) assessments, assessment liens, or subordination of assessment liens; (iii) reserves for maintenance, repair, and replacement of the Common Areas; (iv) insurance or fidelity bonds; (v) rights to use of the Common Areas; (vi) responsibility for maintenance and repair of the several portions of the Condominium Project; (vii) expansion or contraction of the Condominium Project or the addition, annexation or withdrawal of property to or from the Condominium Project; (viii) the boundaries of any Unit; (ix) the Interests in the General Common Areas or Limited Common Areas; (x) convertibility of Units into Common Areas or of Common Areas into Units; (xi) leasing of Units; (xii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit; or (xiii) establishment of self-management by the Association where professional management has been required by any agency. An addition or amendment shall not be considered material for purposes of this Paragraph (b) if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Map (or to approve a decision of the Owners and/or the Management Committee with respect to the nature of Restoration under Section 13.01(c) hereof or a decision not to undertake Restoration pursuant to Section 13.03 hereof) is mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association and who does not deliver to the Condominium Committee or the Association a negative response within 30 days from the date of such mailing shall be deemed to have approved such request.

(c) The consent of the Veterans Administration, as per applicable regulations of the Veterans Administration, shall be required to add to or amend any material provision of this Declaration or the Map which establishes, provides for, governs, or regulates any of the following: (i) termination of the legal status of the Condominium Project as a condominium project; (ii) insurance or fidelity bonds; (iii) convertibility of Units into Common Areas or of Common Areas into Units; (iv) leasing of Units; and (v) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit.

The consent requirements set forth in the foregoing items (a), (b) and (c) of this Section shall not be applicable to amendments to this Declaration and the Map or to termination of the legal status of the Condominium Project as a condominium if such amendments or such termination are made or accomplished in accordance with the provisions of Article XIII in the event of Substantial Destruction or Substantial Condemnation.

## **ARTICLE XVI: ENFORCEMENT AND REMEDIES**

### **16.01 Enforcement.**

(a) Each provision of this Declaration with respect to the Association or the Common Area shall be enforceable by Declarant or by any Owner by a proceeding for injunctive relief. Owners also shall have a right of action against the Association for violation of any provision of this Declaration, the Bylaws, and any of the Association Documents.

(b) Each provision of this Declaration, the Bylaws, and the Association Documents with respect to an Owner or a Unit shall be enforceable by Declarant, by the Association, or by an aggrieved Owner through:

- (i) a proceeding for injunctive relief;
- (ii) a suit or action to recover damages; or

(iii) in the discretion of the Association, for so long as any Owner fails to comply with any such provisions, exclusion of such Owner and its Guests from the use of any Common Area and from participation in any Association affairs.

(c) In addition to the rights and remedies described in Section 16.01(b) above, if an Owner fails to strictly perform or observe any covenant or condition to be performed or observed by such Owner under this Declaration or any other Association Document, the Association shall have the following rights and remedies:

(i) The Association may, but is not obligated to, cure such failure to comply at the Owner's sole cost and expense. If the Association cures any such failure to comply, the Owner shall pay to the Association the amount of all costs incurred by the Association in connection therewith within thirty days after the Owner receives a written invoice therefor from the Association.

(ii) The Association may, after notice and an opportunity to be heard as provided in the Act, fine the Owner, as a Default Assessment, an amount not to exceed \$100 for each violation. The Owner shall pay any such fine to the Association within thirty days after the Owner receives written invoice therefor from the Association.

(iii) With respect to an Owner's failure to pay an installment of any Assessment, the Association may accelerate the due date for the payment of the full amount of the Assessment.

(iv) The Association shall have all other rights and remedies available to it under this Declaration, at law or in equity.

(d) All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

#### 16.02 Attorneys' Fees.

In the event of any dispute under or with respect to this Declaration or any other Association Document, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including, without limitation, the fees and disbursements of any attorneys, accountants, engineers, appraisers or other professionals engaged by the prevailing party.

#### 16.03 Interest.

If an Owner fails to pay to the Association any Assessment or other amount due to the Association as and when the same becomes due, the Owner shall pay to the Association interest on such unpaid amount at the rate of eighteen percent (18%) per annum, or such other rate as the Management Committee may establish from time to time, from the due date of such unpaid amount until the date paid.

#### 16.04 Right to Notice and Hearing.

Whenever an Association Document requires that an action be taken after "notice and hearing," the following procedure shall be observed. The party proposing to take the action (e.g., the Management Committee or a committee or officer of the Association) shall give at least three (3) days (or such additional notice as the Act may require) prior written notice of the proposed action to all Owners

whose interests would be significantly affected by the proposed action, as reasonably determined by the proposing party. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the party proposing to take the action, and all affected Owners may give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the hearing to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. Any affected Owner shall be notified of the decision in the same manner in which notice of the hearing was given. Any Owner having a right to notice and hearing shall have the right to appeal to the Management Committee from a decision of a proposing party other than the Management Committee. Such right of appeal may be exercised within ten (10) days after an Owner receives notice of the decision, by filing a written notice of appeal with the Management Committee. The Management Committee shall conduct a hearing within forty-five (45) days thereafter, giving the same notice and observing the same procedures as were required for the original hearing.

16.05 Nonwaiver.

Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, reservation, easement, assessment, charge, lien or other provision of this Declaration or any other Association Document shall in no way be deemed to be a waiver of the right to do so thereafter.

**ARTICLE XVII: TERM AND AMENDMENTS**

17.01 Term.

The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Declaration shall run with and bind the Land until the Declaration is terminated pursuant to Section 18.02 below.

17.02 Termination.

Subject to the rights of First Mortgagees under Article XV above, the Owners may terminate the Condominium Project and this Declaration, by the vote of sixty-seven percent (67%) of the votes allocated to all Units. If the necessary votes are obtained, the agreement of the Owners to terminate the Condominium Project and this Declaration shall be evidenced by a termination agreement or ratification thereof, executed by the required number of Owners in accordance with the Act. Upon recordation of the termination agreement in the Salt Lake County Records, the Condominium Project shall be terminated, this Declaration shall have no further force or effect, and the Association shall be dissolved. Notwithstanding the foregoing, the Owners may not amend this Declaration or terminate the Condominium Project during the Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion.

17.03 Amendments.

Except as otherwise expressly provided in this Declaration or the Act, and except for provisions of this Declaration regarding the rights and obligations of Declarant, which may not be amended without Declarant's prior written consent, and subject to the rights of First Mortgagees under Article XV above, Owners may amend any provision of this Declaration at any time by a vote of at least sixty-seven percent (67%) of the votes allocated to all Units. If the necessary votes and consent are obtained, the Association shall cause an amendment to the Declaration to be Recorded in the Salt Lake County Records. Notwithstanding the foregoing, the Owners may not amend this Declaration during the

Declarant Control Period without Declarant's prior written consent, which consent Declarant may withhold in its sole discretion. Declarant reserves the right during the Declarant Control Period to make changes or revisions to this Declaration without the consent of the Association, any Owner or any First Mortgagee, as necessary in Declarant's sole discretion, to comply with the requirements of the Department of Housing and Urban Development, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation or Veterans Administration.

## **ARTICLE XVIII: MISCELLANEOUS**

### **18.01 Interpretation of the Declaration.**

Except for judicial construction, the Association, by its Management Committee, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by the covenants and the provisions hereof.

### **18.02 Severability.**

Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity and enforceability of any other **provision hereof.**

### **18.03 Disclaimer of Representations.**

Notwithstanding anything to the contrary contained in this Declaration, Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of the Condominium Project can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subject to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, that such use will continue in effect.

### **18.04 Reference to Declaration and Deeds.**

Deeds to and instruments affecting any Unit or any other part of the Condominium Project may contain the provisions set forth herein by reference to this Declaration, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

### **18.05 Successors and Assigns of Declarant.**

Any reference in this Declaration to Declarant shall include any successors or assignees of Declarant's rights and powers hereunder on the condition that Declarant's rights and powers may only be assigned, in whole or in part, by a written recorded instrument expressly assigning such rights and powers.

18.06 Captions and Titles.

All captions and titles of headings of Articles and Sections in this Declaration are for the purpose of reference and convenience and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

18.07 Exhibits.

All exhibits attached to this Declaration are a part of, and are incorporated into, this Declaration.

18.08 Governing Law.

This Declaration shall be governed by and construed in accordance with Utah law.

18.09 Notices.

All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or the representative of the Owners of a Unit shall furnish such registered address to the secretary of the Association within ten (10) days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed their registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit. All notices and demands intended to be served upon the Association shall be sent to the following address or such other address as the Association may designate from time to time by notice to the Owner(s):

Twin Peaks Properties, L.C.  
7258 Racquet Club Drive  
Salt Lake City, Utah 84121  
Attn: Brian Merrill

18.10 Service of Process.

The name and place of business of the person to receive service of process is as set forth in the Articles of Incorporation of the Association, and initially shall be Brian Merrill, whose place of business within Salt Lake County, Utah is 7258 Racquet Club Drive, Salt Lake City, Utah 84121.

IN WITNESS WHEREOF, Declarant has caused its name to be signed by the signature of a duly authorized officer as of the day and year first written above.

TWIN PEAKS PROPERTIES, L.C.,  
A Utah limited liability company

STATE OF UTAH

)

By: Brian J. Merrill  
Its: CEO

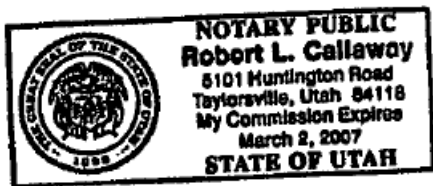
) ss.

COUNTY OF SALT LAKE

)

On this **12th** day of June, 2006, before me, personally appeared before me Brian T. Merrill, who acknowledged himself to be the CEO of Twin Peaks Properties, L.C., a Utah limited liability company, and being authorized to do so, he executed the foregoing instrument for the purposes therein contained.

Robert L. Callaway  
NOTARY PUBLIC  
Residing at: salt Lake County



**EXHIBIT A**

(Attached to and forming a part of the Declaration of Condominium  
for Stoney Brook Condominium Project)

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**Legal Description of the Land**

The "Land" referred to in the foregoing Declaration of Condominium is located in Salt Lake County, Utah, and is more particularly described as follows:

BEGINNING AT A POINT NORTH 53.98 FEET AND WEST 1086.885 FEET AND SOUTH 89°56'15" WEST 69.39 FEET FROM THE EAST QUARTER CORNER OF SECTION 20, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN AND RUNNING THENCE SOUTH 00°09'00" EAST 142.04 FEET; THENCE SOUTH 89°12'35" EAST 69.03 FEET; THENCE SOUTH 130.91 FEET; THENCE SOUTH 88°58'39" WEST 341.82 FEET; THENCE NORTH 89°54'06" WEST 35.64 FEET; THENCE SOUTH 64°35'13" WEST 34.05 FEET; THENCE NORTH 03°00'00" WEST 290.11 FEET; THENCE NORTH 75°51'06" EAST 18.31 FEET, THENCE NORTH 89°56'15" EAST 336.19 FEET TO THE POINT OF BEGINNING.

Subject to those particular Easements, Rights-of-Way, Terms, Covenants and Conditions and Ordinances of record or enforceable by equity or law.

**EXHIBIT**

(Attached to and forming a part of the Declaration of Condominium  
for Stoney Brook Condominium Project)

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**Bylaws**

A copy of the Bylaws of the  
Stoney Brook Condominium Association  
follows this cover sheet.

**BYLAWS  
OF  
STONEY BROOK CONDOMINIUM  
ASSOCIATION, INC.**

**ARTICLE 1.  
DEFINITIONS**

1.01 Declaration.

As used herein, "Declaration" means the Declaration of Condominium for Stoney Brook Condominium Association, Inc., recorded in the Official Records of Salt Lake County, Utah.

1.02 Other Definitions.

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Declaration.

**ARTICLE 2.  
OFFICES**

The Association is a Utah nonprofit corporation, with its principal office located at 7258 Racquet Club Drive, Salt Lake City, Utah 84121.

**ARTICLE 3.  
VOTING, QUORUM, AND PROXIES**

3.01 Voting.

Votes shall be allocated as set forth in Section 5.01 of the Declaration.

3.02 Quorum.

Except as otherwise required by law or by the Articles, the presence in person or by proxy of Owners entitled to vote more than thirty-five percent (35%) of the total votes of the Owners shall constitute a quorum.

3.03 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Owner or his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy.

3.04 Majority Vote.

At any meeting of the Owners, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Owners, unless the vote of a greater number is required by Jaw, the Articles, the Declaration, or these Bylaws.

**ARTICLE 4.**  
**ADMINISTRATION**

4.01 Annual Meeting.

The annual meeting of the Owners shall be held at a time designated by the Management Committee in the month of November in each year, or at such other date designated by the Management Committee, beginning with the year 2006, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

4.02 Special Meetings.

Special meetings of the Owners, for any purpose, unless otherwise prescribed by statute, may be called by the president or by a majority of the Directors and shall be called by the president at the request of Owners entitled to vote twenty percent (20%) or more of the total votes of all Owners.

4.03 Place of Meeting.

The Management Committee may designate the Association's principal offices or any place within Salt Lake County, Utah, as the place for any annual meeting or for any special meeting called by the Management Committee.

4.04 Notice of Meeting.

Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each Owner entitled to vote at such meeting not less than ten nor more than fifty days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Management Committee may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by

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the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

4.05 Informal Action by Owners.

Any action required or permitted to be taken at a meeting of the Owners may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Owners entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Owners.

**ARTICLES.**  
**DECLARANT CONTROL**

Declarant shall be entitled to control the Association as set forth in Section 6.03 of the Declaration.

**ARTICLE 6.**  
**MANAGEMENT COMMITTEE**

6.01 Number and Election of Directors.

Directors shall be appointed, elected, and removed as set forth in Article VI of the Declaration.

6.02 Resignations; Vacancies.

Any Director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Other than with respect to a Director appointed by the Declarant during the Declarant Control Period, any vacancy occurring on the Management Committee (by reason of resignation or death) may be filled by the affirmative vote of a majority of the Directors then in office though less than a quorum. A vacancy occurring on the Management Committee created by the resignation or death of a Director appointed by the Declarant during the Declarant Control Period shall be filled by the Declarant appointing a new Director. A Director elected to fill a vacancy shall hold office until the next annual meeting of the Owners and until his successor is duly elected and qualified.

6.03 Regular Meetings.

Regular meetings of the Management Committee may be held without call or formal notice at such places within or outside the State of Utah, and at such times as the Management Committee from time to time by vote may determine. Any business may be transacted at a regular meeting. The regular meeting of the Management Committee for the election of Officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Owners, or any special meeting of Owners at which a Management Committee is elected.

6.04 Special Meetings.

Special meetings of the Management Committee may be held at any place within the State of Utah or by telephone, provided that each Director can hear each other Director, at any time when called by the president, or by two or more Directors, upon the giving of at least three days' prior notice of the time and place thereof to each Director by leaving such notice with such Director or at such Director's residence or usual place of business, or by mailing it prepaid and addressed to such Director at such Director's address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the Directors shall be required.

6.05 Quorum.

A majority of the number of Directors fixed by these Bylaws, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the Directors in attendance shall, except where a larger number is required by law, by the Articles, or by these Bylaws, decide any question brought before such meeting.

6.06 Waiver of Notice.

Before, at, or after any meeting of the Management Committee, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Management Committee shall be a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.07 Informal Action by Directors.

Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Directors.

**ARTICLE 7.**  
**OFFICERS AND AGENTS**

7.01 **General.**

The Officers of the Association shall be a president (who shall be chosen from among the Directors), one or more vice presidents, a secretary, and a treasurer. The Management Committee may appoint such other officers, assistant officers, committees, and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be determined by the Management Committee. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent, or employee are not prescribed by the Bylaws or by the Management Committee, such Officer, agent, or employee shall follow the orders and instructions of the president.

7.02 **Removal of Officers.**

The Management Committee may remove any Officer, either with or without cause, and elect a successor at any regular meeting of the Management Committee, or at any special meeting of the Management Committee called for such purpose.

7.03 **Vacancies.**

A vacancy in any office, however occurring, shall be filled by the Management Committee for the unexpired portion of the term.

7.04 **President.**

The president shall be the chief officer of the Association. The president shall preside at all meetings of the Association and of the Management Committee. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents, and employees. The president of the Association is designated as the Officer with the power to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

7.05 **Vice Presidents.**

The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Management Committee. In the absence of the president, the vice president designated by the Management Committee or (if there be no such designation) designated in writing by the president shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

7.06 Secretary.

The secretary shall:

- (a) keep the minutes of the proceedings of the Owners Meetings and of the Management Committee Meetings;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration, and as required by law;
- (c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Management Committee;
- (d) maintain at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each Mortgagee;
- (e) authenticate records of the corporation; and
- (f) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the Management Committee. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

7.07 Treasurer.

The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association and shall deposit the same in accordance with the instructions of the Management Committee. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association, and shall pay out of the funds on hand all bills, payrolls, and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Management Committee, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Management Committee, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Management Committee, conditioned upon the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Management Committee or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

**ARTICLES.**  
**EVIDENCE OF OWNERSHIP, REGISTRATION OF**  
**MAILING ADDRESS AND LIEN HOLDERS**

8.01 Proof of Ownership.

Except for those Owners who initially contracted to purchase a Unit from the Declarant, any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Unit. Such copy shall remain in the files of the Association. An Owner shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Owners unless this requirement is first satisfied.

8.02 Registration of Mailing Address.

If a Unit is owned by two or more Owners, such Owners shall designate one address as the registered address required by the Declaration. The registered address of an Owner or Owners shall be furnished to the secretary of the Association within ten days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized to represent the interests of all Owners of the Unit. If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Unit.

8.03 Liens.

Any Owner who mortgages or grants a deed of trust covering his Unit shall give the Association written notice of the name and address of the Mortgagee and shall file true, correct, and complete copies of the note and security instrument with the Association.

8.04 Address of the Association.

The address of the Association shall be 7258 Racquet Club Drive, Salt Lake City, Utah 84121. Such address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

**ARTICLE 9.**  
**SECURITY INTERESTS IN MEMBERSHIP**

Owners shall have the right irrevocably to constitute and appoint a mortgagee their true and lawful attorney-in-fact to vote their interest in the Association at any and all meetings of the Association and to vest in the Mortgagee any and all rights, privileges and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by the

Mortgagee with the secretary of the Association. A release of the Mortgage covering the subject Unit shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the Mortgagee the duties and obligations of an Owner.

## **ARTICLE 10. AMENDMENTS**

### **10.01 By Directors.**

Except as limited by law, the Articles, the Declaration, or these Bylaws, the Management Committee shall have power to make, amend, and repeal the Bylaws of the Association at any regular meeting of the Management Committee or at any special meeting called for that purpose at which a quorum is represented. If, however, the Owners shall make, amend, or repeal any Bylaw, the Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action.

### **10.02 Owners.**

Subject to any rights conferred upon first Mortgagees in the Declaration, the Owners may, by the vote of the holders of at least sixty-seven percent (67%) of the votes of the Owners, unless a greater percentage is expressly required by law, the Articles, the Declaration, or these Bylaws, make, alter, amend, or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

## **ARTICLE 11. MISCELLANEOUS**

### **11.01 Fiscal Year.**

The fiscal year of the Association shall be such as may from time to time be established by the Management Committee.

### **11.02 Other Provisions.**

The Declaration contains certain other provisions relating to the administration of the Condominium Project, which provisions are hereby incorporated herein by reference.

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**EXHIBIT C**

{ Attached to and forming a part of the Declaration of Condominium  
Stoney Brook Condominium Project)

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**Interest in General Common Area**

<b><u>UNIT NUMBER</u></b>	<b><u>AREA</u></b>	<b><u>INTEREST IN GENERAL COMMON AREAS</u></b>
101	1,006	2.140
102	1,006	2.140
103	1,006	2.140
104	1,006	2.140
105	1,006	2.140
106	1,006	2.140
107	1,006	2.140
108	1,006	2.140
201	1,006	2.140
202	1,006	2.140
203	1,006	2.140
204	1,006	2.140
205	1,006	2.140
206	1,006	2.140
207	1,006	2.140
208	1,006	2.140
301	952	2.026
302	952	2.026
303	955	2.032
304	950	2.024
305	952	2.026
306	952	2.026
307	955	2.032
308	950	2.024
309	952	2.026
310	952	2.026
3 II	955	2.032
312	950	2.024
401	955	2.032
402	950	2.023
403	952	2.025
404	952	2.025
405	955	2.032
406	950	2.024

407	952	2.025
408	952	2.025
409	955	2.032
410	950	2.023
411	952	2.025
412	952	2.025
501	1,006	2.140
502	1,006	2.140
503	1,006	2.140
504	1,006	2.140
505	1,006	2.140
506	1,006	2.140
507	1,006	2.140
508	1,006	2.140