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REC FOR: MILLSTONE MANOR CONDO HOA

**AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM**

**FOR**

**MILLSTONE MANOR  
CONDOMINIUMS**

**A Condominium Project in**

**Ogden City, Weber County, Utah**

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AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
OF  
MILLSTONE MANOR CONDOMINIUMS

THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM ("Declaration") is made as of the date of the recording in the Weber County Recorder's Office by the MILLSTONE MANOR HOMEOWNERS ASSOCIATION ("Association").

RECITALS

1. Capitalized terms in this Declaration are defined in Article I.
2. The real property situated in Weber County, Utah, described in Exhibits "A, B, C, D, and E," attached to and incorporated in this Declaration by reference (the "Parcel"), was previously submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project now consisting of 88 residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the "Condominium Project").
3. The "Declaration of Covenants, Conditions, and Restrictions, MILLSTONE MANOR" was recorded on July 1, 1985, beginning at book 1470, page 2050, with entry No. 941365, at the office of the Recorder of Weber County.
4. Subsequently, an Amendment to the "Declaration of Covenants, Conditions, and Restrictions, MILLSTONE MANOR" was recorded on January 16, 1987, beginning at book 1507, page 2134, with entry No. 996184, at the office of the Recorder of Weber County.
5. Subsequently, an Amendment to the "Declaration of Covenants, Conditions, and Restrictions, MILLSTONE MANOR" was recorded on July 20, 1994, beginning at book 1723, page 2782, with entry No. 1302624, at the office of the Recorder of Weber County.
6. Subsequently, an Amendment to the "Declaration of Covenants, Conditions, and Restrictions, MILLSTONE MANOR" was recorded on August 9, 2006, with entry No. 2199627, at the office of the Recorder of Weber County.
7. The Association, consistent with the prior recorded Declarations and any amendments thereto (including any not herein referenced above), hereby adopts this Declaration, which (along with any future amendments) shall be the sole Declaration for MILLSTONE MANOR and which shall amend, supersede, and replace all prior recorded Declarations and amendments thereto recorded prior to the date of this Declaration. This Declaration is adopted consistent with the procedures for amending the preceding Declaration. It is adopted to update and improve the contents of the

preceding Declarations, to eliminate ambiguity, to further define the rights of the Association and the Unit Owners, to provide specifically for the ability to more easily amend, change, and correct the Declaration and Plat under various circumstances and for various purposes, and in furtherance of the Association's efforts to safely, efficiently, and economically provide a quality living environment.

- 8. The Association hereby desires to establish, for its own benefit and for the mutual benefit of all future Owners and Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein. (collectively, the "Restrictions," which shall run with and be a burden upon the Property).
- 9. The Association intends that the Owners, Occupants, Lenders and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management and enjoyment thereof.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Association hereby amends, supersedes, and replaces all prior Declarations for MILLSTONE MANOR (which shall be referred to herein as the "Project") with the following Declaration:

ARTICLE 1  
DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean the Condominium Ownership Act, codified beginning at Section 57-8-1, Utah Code Annotated, as the same may be amended from time to time. This Association is specifically made subject to future amendments to the Act and any interpretation, rights, and remedies available to any Owner or the Association shall be based upon and determined by this Declaration, and amendments thereto, the Act as it exists at the time of making the determination, and any other applicable documents such as the bylaws, any articles of incorporation, and similar documents.
- 1.2 "Allocated Interest" shall mean the undivided interest (expressed as a fraction or percentage in this Declaration) in the Common Area, the Common Expense liability, and votes in the Association allocated to each Unit.
- 1.3 "Articles" shall mean the Articles of Incorporation.
- 1.4 "Assessments" shall mean any charge imposed or levied by the Association against Owners including but not limited to those related to Common Expenses as well as miscellaneous special assessments, special assessments for capital improvements, special assessments for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, late fees, and fines, all as provided in this Declaration.



- 1.5 "Association" shall refer to THE MILLSTONE MANOR HOMEOWNERS ASSOCIATION, Inc. whose membership shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association is incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.
- 1.6 "Bylaws" shall mean the Bylaws adopted by the Association pursuant to Section 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time.
- 1.7 "Board Member" shall mean a duly qualified and elected or appointed member of the Board of Directors.
- 1.8 "Board of Directors" shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. It shall have the same meaning as "Management Committee" does under the Utah Condominium Ownership Act.
- 1.9 "Common Area" shall, unless otherwise provided in this Declaration or any Supplemental Declaration, mean all of the following, except any part of a Unit:
- (a) the land and everything included within the Condominium Project, whether leasehold or in fee simple;
  - (b) as applicable, the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of any buildings in the Condominium Project;
  - (c) yards, gardens, parking areas, storage spaces, and the swimming pool;
  - (d) any office, premises, shed, or other structure utilized by managers or maintenance persons related to the property;
  - (e) as applicable, installations of central services (not servicing just one Unit) such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
  - (f) as applicable, the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;
  - (g) such community and commercial facilities as may be provided for in this Declaration; and
  - (h) all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.10 "Common Expenses" shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association; and (e) expenses declared common expenses by the Declaration. and (f) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act, this Declaration, the Bylaws or the Rules.

- 1.11 "Condominium Project" shall mean this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Area of the Property, are owned separately.
- 1.12 "Declaration" shall mean this Amended and Restated Declaration, including all attached exhibits, which are incorporated by reference, and any and all amendments and supplements to this Declaration.
- 1.13 "Eligible Mortgagee" shall mean and refer to a First Mortgagee which has requested notice of certain matters from the Association in accordance with this Declaration.
- 1.14 "FNMA" shall mean and refer to the Federal National Mortgage Association.
- 1.15 "First Mortgagee" shall mean any person named as a Lender under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.
- 1.16 "Insurance Trustee" shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.
- 1.17 "Lender" shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.18 "Limited Common Area" shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.19 "Occupant" shall mean any Person, other than an Owner, living, dwelling, or staying in a Unit. This includes, but is not limited to all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Unit.
- 1.20 "Owner" shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the County Recorder of Weber County, Utah; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation.
- 1.21 "Parcel" shall mean the real property legally described in Exhibits "A, B, C, D, and E."
- 1.22 "Person" shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.23 "Plat" shall mean the record of survey map of the Property submitted with respect to the Condominium Project recorded in the records of the Weber County Recorder and all amendments

thereto: "Plat" shall also refer to any additional plat that may be recorded with any Supplemental Declaration.

- 1.24 "Property" shall mean the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.
- 1.25 "Restrictions" shall mean the covenants, conditions, assessments, easements, liens and restrictions set forth in this Declaration.
- 1.26 "Rules" shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Directors.
- 1.27 "Supplemental Declaration" shall mean a written instrument recorded in the records of the Weber County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.
- 1.28 "Unit" shall mean and refer to any of the separately numbered and individually described units now or hereafter shown on the Plat as they are specifically defined on the Plat and herein. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.
- 1.29 "Unit Number" shall mean the number, symbol or address that identifies one Unit in the Condominium Project.

ARTICLE 2  
THE CONDOMINIUM PROJECT

- 2.1 Submission. The Association hereby confirms that the Parcel is a Condominium Project pursuant to the Act, and in furtherance thereof, makes and declares the Restrictions contained in this Declaration, and the Association hereby declares and agrees that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns.
- 2.2 Name and Location. The Condominium Project shall be named and known as MILLSTONE MANOR. The Condominium Project is located in Ogden City, Weber County, Utah, and the legal description of the real estate included in the, Condominium Project is the Parcel set forth on Exhibits "A, **B**, C, **D**, and E." The name of the Association is THE MILLSTONE MANOR HOMEOWNERS ASSOCIATION, INC.
- 2.3 Interpretation of Declaration and Applicability of the Act. The Association intends that the Condominium Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede or supplement the Act, in which event such

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specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act.

- 2.4 Agent for Service of Process. Dominick Guida of Kier Property Management, located at 3710 Quincy Avenue, Ogden, Utah 84403, shall be the initial person to receive service of process for the Condominium Project pursuant to Section 57-8-10(2)(d)(iii) of the Act, until such time as the Board of Directors shall duty appoint a new agent or until such time as Kier Property Management is no longer the manager of the Association. The Board of Directors may execute and record a Supplemental Declaration solely for the purpose of changing the Agent for Service of Process at any time and without satisfying any procedure otherwise required for a Supplemental Declaration.

ARTICLE3  
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, COMMON AREA,  
ALLOCATED INTERESTS, AND PLAT

- 3.1 Description of Boundaries of Each Unit and Unit Number.
- (a) Description of and Boundaries of each Unit. Subject to the following descriptions of particular items, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. The cubic content space and Unit Number of each of the Units within the Condominium Project are set forth on the Plat. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit as shown on the Plat. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines of the respective levels of the Units as shown on the Plat. All framing in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing in any bearing walls are part of the Common Area. All other materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all plywood decking, wallboard, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Area. Generally, all paneling, tiles, wallpaper, paint, carpet, flooring, and other materials constituting any part of the finished surfaces or installed within the finished surfaces in a Unit are part of the Unit. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit. For all pipes, wires, conduits, chutes, flues, ducts, shafts; public utility, water or sewer lines, or any other similar fixtures lying partially or wholly within or outside the designated boundaries of a Unit, any portion serving only that Unit is part of the Unit and any portion serving more than one Unit or any portion of the Common Area is part of the Common Area. All windows, doors, door jams, window sills, window frames, in or on the boundary of any Unit and any part related thereto are part of the Unit.
- (b) Variances between Plat and as-built construction. If the original as-built construction of the Project varies from any horizontal or vertical measurement on the Plat, the original construction, to the extent ascertainable, shall be the controlling dimension in any Unit. The original construction shall be the first installation of framing and wallboard. If the Board of Directors determines (in its sole discretion) that the current construction varies from the Plat and that the

location of the original as-built construction is uncertain (i.e., the Board of Directors decides that it cannot determine with a reasonable degree of certainty that the current construction is the original as-built construction), the Board of Directors may, at the expense of the Association or the Owner, in the Board of Directors discretion, require that the current construction be made to comply with the Plat.

3.2 Description of Limited Common Area.

- (a) Parking. The covered parking stalls set forth on the Plat and designated in this Declaration for a respective Unit shall be Limited Common Area for the Unit and such Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit. However, the Board of Directors may exchange assigned covered parking stalls among Owners (No Unit may be assigned more or fewer parking areas), in its sole discretion. An Owner shall have a right of ingress/egress over a covered parking stall where necessary to get to such Owner's storage closet.
- (b) Storage Closets. The storage closets and any space set forth on the Plat and designated in the Plat or this Declaration for use by a respective Unit or as Limited Common Area shall be Limited Common Area for the Unit and such Owner. Such Limited Common Area shall be appurtenant to each respective Unit and may not be severed from the ownership of the Unit. The Board of Directors may exchange assigned storage closets among the Owners in its sole discretion.

3.3 No Severance of Limited Common Area. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

3.4 Division into Units and Ownership Interests. The Condominium Project consists of 88 units. Building A has 23 Units, Building B has 23 Units, Building C has 20 Units, and Building D has 22 Units, as set forth on the Plat. Each such Unit consists of a Unit and an appurtenant undivided but equal interest in and to the Common Area. Thus, with 88 units, the Owner of each Unit has a 1/88<sup>th</sup> undivided interest in the Common Area.

3.5 Allocated Interest of Each Unit in the Votes of the Association. The designation of the Allocated Interest that each Unit has in the votes of the Association is one vote for each Unit; thus, since there are 88 units in the Condominium Project, each Unit has 1/88<sup>th</sup> vote for all matters of the Association.

3.6 Allocated Interest of Each Unit in the Common Expenses of the Condominium Project. The designation of the Allocated Interest that each Unit bears in the Common Expenses of the Condominium Project is deemed to be equally divided; thus, since there are 88 units in the Condominium Project, each Unit has a 1/88<sup>th</sup> Allocated Interest in the Common Expenses.

3.7 Plat. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

ARTICLE4  
MAINTENANCE AND UTILITIES

- 4.1 Maintenance of Units. Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repairs and replacements of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit, and such other items designated herein. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well maintained, uniform, undamaged, and tidy condition, all of the following:
- (a) all interior and exterior doors, including thresholds and door jams;
  - (b) all paneling, tiles, wallpaper, paint, carpet, finished flooring, fireboxes of fireplaces, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;
  - (c) all windows and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass);
  - (d) all sewer and drainage pipes, water, power, and other utility lines in an Owner's Unit and those serving an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units;
  - (e) any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures, fans, plumbing fixtures, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install.
- 4.2 Modifications to Units.
- (a) An Owner may make nonstructural alterations within the Owner's Unit, but an Owner shall not make any alterations to any part of the Unit on the exterior of a building (such as windows, light fixtures, skylights, and exterior doors), the Common Area, or the Limited Common Area without the prior written approval of the Board of Directors. The Board of Directors may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials requirements or standards.
  - (b) Remodeling and Extensive Maintenance. Before an Owner engages in any remodeling (which shall include but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, or ceramic tile; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling), the Owner shall first notify the Association and provide the following: (1) a written description of the proposed remodeling, (2) a description of how any debris or materials removed will be disposed of, (3) the date the remodeling shall begin, (4) the date the remodeling is expected to be completed, (5) the names and contractor's license numbers of all contractors expected to perform work in the remodeling, (6) any expected nuisance that the remodeling shall create such as noise or dust, (7) the Owner's proposal for mitigating any expected nuisance, and (8) a copy of the building permit if required by Ogden City ordinance. Such Owner shall be liable for any and all damage and/or liability associated with the remodeling including damage to the Unit, another Unit, or any Common



Area or Limited Common Area. Without prior written permission of the Board of Directors, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction, (2) any nuisance, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

#### 4.3 Maintenance of Common Area and Limited Common Area

- (a) Maintenance of Common Area. Except as otherwise provided specifically herein, the Association, through the Board of Directors or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall also remove the snow, in a reasonable amount of time, from any sidewalks running throughout the Condominium Project and any Common Area or Limited Common Area parking, and walkways immediately in front of each Unit, and as necessary to allow vehicle and pedestrian access to each Unit. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- (b) Maintenance of Limited Common Area. The Association shall repair, maintain, and replace any Limited Common Area. The Owner shall also be responsible for making sure Limited Common Area that is within an Owner's exclusive control is maintained in a clean and sanitary condition, free of pests and rodents, and uncluttered.
- (c) Standard of Maintenance. The Board of Directors shall determine, in its sole discretion, the appropriate maintenance of the Common Area and Limited Common Area so long as the Association is maintained in the best interests of the Owners.
- (d) Assessment of Maintenance Expenses to Specific Owner. If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Board of Directors may cause the maintenance or repair to be made. In such a case, the Association shall assess to the Owner the reasonable cost of such maintenance or repair.

4.4 Default in Maintenance. If an Owner or Occupant fails to (1) maintain a Unit as provided by 4.1 above, (2) make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board of Directors to preserve and protect the attractive appearance and value of the Condominium Project, or (3) observe any Restrictions imposed on such Owner or Occupant by the terms of this Declaration, the Bylaws, or the Rules, then the Board of Directors or its authorized representative may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Board of Directors determines to be required and requesting that the same be carried out within a period fourteen days after the giving of such written notice. If the Owner or Occupant fails to carry out such action within the period specified by the notice or as required following a hearing before the Board of Directors under Section 5.15, the Board of Directors may cause corrective action to be taken and may levy a special Assessment for the cost thereof on the Owner. The special Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in Section 6.1 of this Declaration.

4.5 Utilities. All utilities for individual Units (except those utility costs that are metered collectively and paid

by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the respective Owners.

## ARTICLES MANAGEMENT

- 5.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration and operation of the Common Area, assessment of expenses, payment of losses, division of profits, acquisition of hazard insurance and disposition of such hazard insurance proceeds, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, any Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles and the Bylaws. Except as specifically authorized in this Declaration, any Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.
- 5.2. **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying assessments and abiding by all restrictions, covenants, and conditions contained in this Declaration.
- 5.3. **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held. The Association shall make available to the Owners, Lenders and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of this Declaration, Articles, Bylaws and other rules governing the Condominium Project and other books, records and financial statements of the Association. The term "available" as used in this Section 5.3 shall mean available for inspection within a reasonable time after receiving a request, during normal business hours or under other reasonable circumstances.
- 5.4. **Voting.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners.
- 5.5. **Board of Directors.** The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws. The Board of Directors shall consist of five (5) members. Except as otherwise provided in this Declaration or the Bylaws, the Board of Directors may act in all instances on behalf of the Association. The Board of Directors may, as it deems appropriate, recommend amendments to the Bylaws and Declaration and adopt, amend, and repeal the Rules.

- 5.6 **Qualification of Board Members.** At least four (4) members of the Board of Directors must physically occupy their Units in the Project. Each Board Member shall be an Owner or the spouse of an Owner, but no two members of the Board of Directors may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). If an Owner is a corporation, partnership, limited liability company, or trust, a Board Member may be an officer, partner, member, manager, trustee or beneficiary of such Owner so long as they reside in the Project. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board of Directors shall automatically terminate.
- 5.7 **Action by Board of Directors and Owners.** Except as specifically provided herein, the Board of Directors and any individual Owner have no authority to and may not act on behalf of the Association to amend or terminate this Declaration, to elect or remove members of the Board of Directors (except as provided in the Bylaws for filling vacancies in its membership for the unexpired portion of any term for which a Board Member has resigned or been removed), or to establish or change the qualifications, powers and duties, or terms of the Board of Directors.
- 5.8 **Annual Meeting.** The Association shall conduct an annual meeting as provided in the Bylaws.
- 5.9 **Right of Association to Enter Units.** The Association acting through the Board of Directors or its duly authorized agent shall have the right at all times upon reasonable notice of at least 24 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to abate any infractions, check smoke and carbon monoxide detectors (which every Unit is required to have), to make repairs or correct any violation of any of the Restrictions herein set forth, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided in Section 6.1.
- 5.10 **Rules.** The Board of Directors may adopt and administer reasonable Rules for the regulation and operation of the Condominium Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board of Directors determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive.
- 5.11 **Remedies Available to the Board of Directors.** In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board of Directors may: (1) impose and levy fines for violation of the Declaration, Bylaws, or Rules; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) terminate Owners' rights to access and use recreational facilities; (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.12 **Reserve Fund.** The Association shall maintain a reserve fund for maintenance, repair and replacement of the Common Area and Limited Common Area, the amount of which shall be determined in the absolute discretion of the Board of Directors. Reserve funds may be collected as part of the monthly Assessments. To the extent the Board of Directors deems necessary, surplus monies of the Association

may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

- 5.13 Availability of Condominium Project Documents. The Association will maintain current copies of this Declaration, the Articles, the Bylaws, and the Rules concerning the Condominium Project and the Association's own books, records and financial statements (as required by law) available for inspection, upon request, during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender).
- 5.14 Managing Agent. The Board of Directors may contract with a professional management agent to assist the Board of Directors in the management and operation of the Condominium Project and may delegate such of its powers and duties to the management agent as it deems appropriate; provided, however, that only the Board of Directors shall have the right to approve Association budgets and make Assessments. Any powers and duties delegated to any management agent may be revoked by the Board of Directors at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days notice and have a term not to exceed two years, which may be renewed by the Board of Directors.
- 5.15 Hearing before Board of Directors. The Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Board of Directors or Association shall take adverse action related to any particular Owner or group of Owners. The Board of Directors shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

#### ARTICLE 6 COVENANT FOR ASSESSMENTS

- 6.1 Creation of Lien and Personal Obligation for Assessment. Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due. The personal obligation shall not pass to the successor in title of an Owner unless expressly assumed by such successor. However, a lien to secure unpaid Assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a prior recorded encumbrance is involved, in which case: (a) the foreclosure will extinguish the lien for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments; and (b) the prorated share of any extinguished Association lien may be redistributed to the other Units in the Condominium Project.

- 6.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation and protection of the Condominium Project; enhancing the quality of life in the Condominium Project and the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.
- 6.3 Regular Assessment. The Board of Directors is expressly authorized to adopt and amend budgets from time to time. Not later than thirty (30) days prior to the beginning of each fiscal year, the Board of Directors shall adopt a budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred for such fiscal year. The Board of Directors may, but is not required to, send a written summary of the budget to all Owners within thirty (30) days after the adoption of the proposed budget. The Board of Directors shall at that time determine the amount of the regular Assessments to be paid by each Owner. Each Owner shall thereafter pay to the Association the Owner's regular Assessment in equal monthly installments on the first day of each month. In the event the Board of Directors determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it shall then immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of the regular Assessment against each Owner, and the date or dates when due. The Owners shall have no right to ratify any budget, or amendment thereof, adopted by the Board of Directors.
- 6.4 Capital Improvements. All expenses for Capital Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (a) Board of Directors Discretion/Expenditure Limit. Any Capital improvement to the Project that costs twenty percent (20%) or less of the total annual budget of the Association for all expenses, and does not materially alter the nature of the Project (e.g. changing the roofing materials, the construction of the external building surfaces, removal of the existing swimming pool, etc), maybe authorized by the Board of Directors alone (the "Capital Improvement Ceiling"). Landscaping alterations and regular maintenance of the Common Area are not material.
  - (b) Owner Approval/Expenditure Limit. Any Capital Improvement, the cost of which is expected to exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least forty percent (40%) of the undivided ownership interest in the Common Area;
  - (c) Owner Approval/Changing the Nature of the Project. Any Capital Improvement that would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven percent (67%) of the undivided ownership interest in the Common Area; and
  - (d) Emergencies and Livability of the Project. Notwithstanding anything to the contrary, in case of emergencies or Capital Improvements necessary to preserve the ability of people to comfortably live in the Units, the Board of Directors may authorize any necessary Capital Improvement.
  - (e) Repairs and Replacements. The Association has the responsibility to repair, maintain, and replace the Common Area and Limited Common Area whether by reason of normal wear and

tear, damage, defect, etc. The cost of such repairs and replacements shall be covered by Assessments. No Owner approval is required for these activities of the Association.

- 6.5 Uniformity in Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments) shall be uniformly imposed upon all Units, in an amount based on the percentage interest for each Unit stated in Section 3.6 of this Declaration, as the same may be amended from time to time.
- 6.6 Rules Regarding Billing and Collection Procedures. The Board of Directors shall have the right and responsibility to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of regular and special Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment.
- 6.7 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. To the extent permitted by law, a reasonable charge not to exceed one hundred and fifty dollars (\$150.00) may be collected by the Board of Directors for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 6.8 Special Assessments. Special Assessments shall be levied by the Board of Directors against a Unit and its Owner to reimburse the Association for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws, or the Rules;
  - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit;
  - (c) Any other charge designated as a Special Assessment in this Declaration, the Articles, the Bylaws or the Rules; and
  - (d) Attorneys' fees, fines, interest, costs, and other charges relating thereto as provided in the Declaration, Bylaws, or the Rules.
- 6.9 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Association, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment at the discretion of the Board of Directors.

- 6.10 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors in its discretion may apply the excess to reserves, credit the excess against future Assessments or pay the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Condominium Project, as the Board of Directors deems appropriate. The decision of the Board of Directors shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.11 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

ARTICLE 7  
EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

- 7.1 Due Date and Delinquency. The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Any Assessment that is not paid within ten (10) days after it becomes due shall be delinquent. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any or all of the sanctions granted in this Article 7.
- 7.2 Collection Charge. If any Assessment is delinquent, the Owner shall be obligated to pay interest at the rate of twenty-one percent (21%) per annum, in addition to a collection charge, and/or such other late fee penalty as the Board of Directors may establish in the Rules of the Association. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Section 6.1 of this Declaration.
- 7.3 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association or its successors or assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.4 Foreclosure Sale. Any foreclosure provided for in this Declaration maybe conducted pursuant to a judicial foreclosure or in compliance with applicable provisions relating to the foreclosures of deeds of trust or realty mortgages in the State of Utah. In any foreclosure or sale, the Owner of the affected Unit shall pay the costs and expenses of such proceedings and reasonable attorneys' fees. The Association may, through its duly authorized agents, have and exercise the power of the trustee and the power to bid on the Unit at the foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit.

- 7.5 Trust Deed Provisions. Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, as beneficiary. The Owner hereby requests that any and all notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit and the last known mailing address of the Owner as shown on the books and records of the Association, if different from the Unit address.
- 7.6 Suspension of Votes. The Board of Directors may suspend the obligated Owner's right to vote on any matter at regular or special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.
- 7.7 Termination of Services. If an Owner fails or refuses to pay any assessment when due, the Board of Directors may terminate the Owner's right to receive utility services paid as a common expense, and access to and use of the Common Area. Before terminating any utility service or restricting access to or use of the Common Area, the Association shall notify the Owner and give such Owner at least 48 hours to pay the past due assessments.
- 7.8 Unpaid Assessments and Future Lease Proceeds. If an Owner who is leasing a Unit fails to pay any assessment for more than sixty (60) days after the assessment is due, the Board of Directors may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

ARTICLES  
PROPERTY RIGHTS IN COMMON AREA

- 8.1 General Easements to Common Area and Units.
- (a) Subject to this Declaration and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area, except that the Board of Directors may, in its sole discretion and in an effort to help subsidize the expenses involved, charge a reasonable fee each Summer for the use of and access to the swimming pool. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), and the nonexclusive right to the use of all open parking stalls, if any, within the Common Area. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, contract purchaser, Occupant or other Person who resides in such Owner's Unit; however, if delegated to an individual other than the Owner, the Owner shall not have access to and use of the swimming pool, and any other Common Area amenities.
- (b) The Association, acting through the Board of Directors or its authorized agent shall have nonexclusive easements with the right of access to each Unit, without trespass, to make



inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Association, acting through the Board of Directors or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

- 8.2 Public Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy or enjoyment by any Owner or such Owner's Unit.
- 8.3 Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.
- 8.4 Limitation on Easement - Suspension of Owner's Rights. An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:
- (a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
  - (b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and

- (c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

- 8.5 Form for Conveyancing. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit \_\_\_ of MILLSTONE MANOR, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded \_\_\_\_\_ as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_ of the official records of the Weber County Recorder, State of Utah, and as identified and described in the Declaration of Condominium of MILLSTONE MANOR a Residential Condominium Project, recorded \_\_\_\_\_ as Entry Number \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, of the official records of the Weber County Recorder, State of Utah. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided interest in the Common Area conveyed hereby is subject to modification, from time to time, as provided in the Declaration for expansion of the Condominium Project.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

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

#### ARTICLE9 USE RESTRICTIONS

- 9.1 Rules and Regulations. The Association shall have authority to promulgate and enforce such rules, regulations and procedures as may aid the Association in carrying out any of its functions or to ensure that the Condominium Project is maintained and used in a manner consistent with the interest of the Owners.
- 9.2 Signs. No signs shall be erected or maintained on the Property whether in a window or otherwise without the approval of the Board of Directors, except:
- (a) such signs as may be required by legal proceedings;
  - (b) one for sale sign not to exceed three (3) feet by three (3) feet in dimensions;
  - (c) one unit number identification if placed by the Association and in the style selected by the Association;

- (d) such signs, the nature, number and location of which have been approved by the Board of Directors in advance; and
  - (e) street identification and traffic directional signs erected on or adjacent to the Condominium Project by Weber County, or any other municipal entity, which signs shall not require prior approval from the Board of Directors.
- 9.3 Nuisance. No noxious or offensive activity shall be carried on upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 9.4 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless the same and its proposed use are approved by the Board of Directors.
- 9.5 Parking and Use of Open Parking/Visitor Parking. Unless otherwise permitted by the Association, and except for "customary parking" and "temporary parking," as permitted by this Section 9.5, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles or boats) shall be parked, stored or located within any portion of the Condominium Project, including any Unit, Limited Common Area, or Common Area. "Customary parking" shall mean the parking of currently licensed and operable automobiles, motorcycles, small trucks and vans within the parking spaces designated as an exclusive Limited Common Area for each respective Unit. "Temporary parking" shall mean the use of designated parking areas within the Condominium Project for parking of operable vehicles belonging to invited guests of the Owners and Occupants including the parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants as well as parking of vehicles belonging to or being used by Owners, Occupants and invitees during social engagements and for loading and unloading purposes. The Association may adopt Rules relating to the size and dimensions of the vehicles parked within the Customary parking spaces, and Rules relating to the admission and temporary parking of vehicles within the Condominium Project and the use of the visitor parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Association, the right to allow an Owner who drives a commercial van or light truck to park, the right to remove or cause to be removed any vehicles that are improperly parked, restrictions on the time visitor spaces may be used and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such rules.
- 9.6 External Fixtures. No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, window, skylight, landscaping and planting, other than those provided in connection with the original construction for the Condominium Project, and any replacements thereof, and other than those approved by the Board of Directors, and any replacements thereof, shall be constructed, erected or maintained on the Condominium Project without the prior written

approval of the Board of Directors. The Board of Directors may adopt Rules regulating the type, color, and design of these external fixtures.

- 9.7 Window Covers. Only curtains, drapes, shades, shutters and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board of Directors. No window shall be covered by paint, blankets, rugs, foil, sheets, or similar items. The Board of Directors may adopt Rules regulating the type, color and design of the external surface of window covers.
- 9.8 External Laundering. Unless otherwise permitted by the Board of Directors, external laundering and drying of clothing and other items is prohibited.
- 9.9 Outside Speakers and Amplifiers. No radio, stereo, broadcast or loudspeaker units and no amplifiers of any kind shall be placed upon or outside, or be directed to the outside of, any Unit without the prior written approval of the Board of Directors.
- 9.10 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project.
- 9.11 Unsightly Items. All rubbish, debris or unsightly materials or objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Directors.
- 9.12 Pets.
- (a) Dogs. No dogs shall be allowed at the Condominium Project. Any dog shall be strictly prohibited and promptly removed from the Condominium Project and the owner of the dog shall pay all costs, attorney fees, and fines incurred in removing the dog.
  - (b) House Pets. House pets, except dogs, may be allowed upon the written approval of the Board of Directors, which shall be granted when an owner of such pet agrees to abide by the provisions set forth herein and by signing a Pet Ownership Agreement. The Board of Directors may refuse any request to admit a pet into the Condominium Project if the applicant refuses to enter into the Pet Ownership Agreement and to abide by the provisions set forth herein. Under no circumstances will the Board of Directors approve an applicant to maintain a pet in the Condominium Project unless the owner of such pet agrees in writing to abide by the following standards:
    - (1) The pet will not disturb the other residents by creating an unacceptable level of noise or by creating any offensive odors. Pets shall not be left unattended in patios or balconies during a resident's absence;
    - (2) The pet will not defecate on, do damage to, or in any way disturb, the Common Area;
    - (3) The pet will remain inside the Owner's Unit at all times unless it is on a leash and/or in the presence of the Owner or agent of the Owner;

- (4) The pet owner shall provide a litter box for the pet inside the Unit where the pet resides. The contents of the litter box shall be first placed in a tightly secured plastic bag before deposited in any trash container;
  - (5) The pet owner understands that the Board of Directors reserves the right to require removal of any pet if it receives complaints about the pet and it determines, in its sole discretion, that the complaints are valid; and
  - (6) The pet owner agrees to pay a fine of \$20.00 per day for each day the pet remains in a Unit after its removal has been required by the Board of Directors.
- (c) Other than cats and small household pets, no animal, livestock or poultry will be allowed, raised, bred or kept (with the exception of small birds and small, quiet children's pets, e.g. hamsters) in any Unit or in the Common Area or Limited Common Area unless they receive written approval from the Board of Directors before being brought in to the Condominium Project. The Board of Directors has the right to refuse any application to bring an animal into the Condominium Project if it determines the animal could be a nuisance or potentially damage the Common Area or pose danger upon a resident. In no case will an application be approved unless the pet owner requesting permission makes the representations contained in the preceding paragraph.
  - (d) The Board of Directors shall have authority to order the removal of any pet if, at any time, the pet owner possessing the pet fails to live up to the representations made in the application or in this amendment.
  - (e) Pets shall be registered and have current shots in accordance with Ogden City and Weber County Ordinances. A copy of this information shall be made available to the Board of Directors within 24 hours of its request. The Board of Directors shall not be responsible for loss or liability of any kind whatsoever arising from or growing out of having any pet in the Common Area or within the Condominium Project, including flowerbeds, grass areas, and shrubbery. Pet owners must immediately clean up after their pets.
  - (f) No pet owner shall maintain or bring a pet to a Unit that can be heard or noticed in another Unit such that the sound or smell created by the pet is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life.
  - (g) Pursuant to the Fair Housing Act, the Board of Directors shall make reasonable accommodations for "service animals" related to a legitimate medical condition and prescribed by a medical physician to a disabled resident. The disabled resident wishing to have a companion or service animal must first submit a Doctor's Certification Letter (the form for which may be provided by the Board of Directors) from their medical physician to the Board of Directors before bringing the animal into the Unit. Companion and service animals are subject to the same rules and subsequent fines associated with any necessary upkeep.
  - (h) The Board of Directors may promulgate additional rules and regulations governing pets and/or service animals in the Condominium Project.

#### 9.13 Leases.

- (a) Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing. The Board of Directors must approve any proposed lease form prior to its use, and may require an addendum to any lease in its sole discretion. Such approval shall not be

unreasonably denied or delayed but may dictate matters reasonably calculated to preserving, protecting and enhancing the value and interests of the Project. Once a lease has been approved as to form, it may be used in subsequent transactions unless and until the Board of Directors notifies the user of the form that approval has been withdrawn. Any such lease shall include the names of all adults living in the Unit; emergency contact information for the tenants; and the tenants' vehicular information, including license plate numbers and descriptions.

(b) Copies of any and all executed leases shall be delivered to the Board of Directors within thirty (30) days of their execution. For leases already in existence upon the recording of this Declaration, such leases shall also be delivered to the Board of Directors within thirty (30) business days.

(c) By virtue of taking possession of a Unit, each lessee agrees to be subject to and abide by these restrictive covenants, the Bylaws, and any Rules, and that any violation shall be deemed to constitute a default under the lease. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Bylaws, or the Rules, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board of Directors in writing of his or her intentions. An Owner shall evict a tenant for continued violations of these restrictive covenants, the Bylaws, or the Rules. In the event that the Owner fails to take eviction action, the Association may stand in the shoes of the Owner and initiate eviction proceedings as if done by the Owner. Such Owner shall reimburse the Association for any expenses incurred, including reasonable attorney fees.

(d) An Owner who leases his or her Unit shall comply with all Ogden City and Weber County ordinances concerning landlords, and shall participate in Ogden's "Good Landlord Program." The Board of Directors shall provide Ogden City the names and addresses of all Owners leasing Units at the Condominium Project at least annually.

(e) No Owner shall be permitted to lease his or her Unit for transient, hotel, seasonal, or corporate/executive use purposes. The term "transient" by way of illustration and not limitation includes the rental of any Unit with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Unit without the express written consent of the Board of Directors.

(f) The Board of Directors may by resolution promulgate additional rules and regulations concerning the leasing of Units.

(g) Other than this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

9.14 Landscape Maintenance. The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area. The Association shall have the right of access to all Common Area and Limited Common Area of the Condominium Project as necessary for such landscape maintenance.

9.15 Floor Load. There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load

capacity in the areas of the heavy use is approved in writing by the Board of Directors. This includes, but is not limited to, the use of waterbeds.

9.16 Residential Occupancy and Ownership Limits.

(a) The use of each Unit is restricted to residential occupancy. No industry, business, trade or commercial activities (other than home professional pursuits without employees, signs visible to the outside of the unit, advertising, public visits, and nonresidential storage and mail), or other use of the Unit, shall be conducted, maintained or permitted in any part of a Unit.

(b) For the safety, health, protection and quiet enjoyment of all Owners, Unit occupancy shall be limited to one (1) person per 150 square feet of floor space. Any Unit loft areas without window ingress/egress meeting fire code standards shall not be included in computing available floor space.

(c) No Persons related by blood, marriage, or business relations shall own more than four (4) Units within the Condominium Project.

9.17 No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided or separated into two or more Units, and no Owner of a Unit shall sell or lease part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any owner or other Person with respect to any Unit unless the Board of Directors has first approved the plat or the proposed covenants, conditions or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 9.17 shall be absolutely null and void. The Board of Directors review shall be for the purpose of assuring, in the sole and absolute discretion of the Board of Directors, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of Directors of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions or restrictions except to the extent they defer to the Plat.

9.18 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors or any committee established by the Board of Directors for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, doors, evaporative coolers, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations or other work that in any way alters the exterior appearance of the Property. The Board of Directors, or committee established by the Board of Directors for that purpose, may designate the design, color, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors, or any committee established by the Board of the Directors for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like, and any changes to the air conditioning system.

- 9.19 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board of Directors.
- 9.20 Variances. The Board of Directors may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article 9 if the Board of Directors determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Condominium Project and is consistent with the high quality of life intended for residents of the Condominium Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Directors. The members of the Board of Directors and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any member of the Board of Directors or the entire Board of Directors, unless it is reduced to writing and signed as required in this provision.
- 9.21 Hazardous Substances.
- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any Hazardous Substances (as defined below), on or within the Condominium Project that are not properly controlled, safeguarded and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to maintenance of a Unit or the Condominium Project.
  - (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Condominium Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the Hazardous Substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner under this Section 9.21 shall survive any subsequent sale by an indemnifying Owner.
  - (c) As used in this Section 9.21, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section



9.21, "Environmental Law" means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety or environmental protection.

- 9.22 Smoke and Carbon Monoxide Detectors. Each Unit shall have an operable Smoke and Carbon Monoxide Detector. The Board of Directors may inspect any Unit to ensure compliance with this Section 9.22 upon reasonable notice as provided in Section 5.9 above.
- 9.23 Unit Heating. Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.
- 9.24 Unit Flooring Surfaces. Except for bathroom and kitchen areas, no Unit located above another Unit may have hard surface flooring. Hard surface flooring includes but is not limited to: hardwood, Pergo, tile, concrete, linoleum, etc. Accordingly, except for bathroom and kitchen areas, all floor coverings shall be carpet or another sound-absorbing material pre-approved by the Board of Directors. This Section does not apply to Units located directly above parking garages, and only applies to the installation of flooring after the date this Declaration is recorded.

#### ARTICLE 10 INSURANCE

- 10.1 Property Insurance. The Association shall obtain and maintain the insurance specified in this Declaration; provided, however, the Association shall always comply with the insurance requirements of the Act.
- (a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Condominium Project, including: the Common Area; all buildings including all Units (other than the interior content thereof); fixtures, building service equipment, personal property and supplies that are part of the Common Area or owned by the Association, and that are of a class typically encumbered by First Mortgages held by FNMA or other similar institutional mortgage investors; but excluding land and other items not normally covered by such policies. References herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils that are customarily covered with respect to projects similar to the Condominium Project in construction, location and use, including, without limitation, all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Condominium Project covered by such policy, exclusive of land, foundations, excavation and other items normally excluded from coverage. The insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more) and, if the policy includes a coinsurance

clause, an Agreed Amount Endorsement (which waives the requirement for coinsurance). The maximum deductible amount for such policy covering the Common Area shall be determined by the Board of Directors in its sole discretion.

- (b) Flood Insurance. If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard area as designated on a Flood Insurance Rate Map, a "master" or "blanket" policy of flood insurance shall be maintained covering the Condominium Project, any machinery and equipment that are not part of a building and all Common Area within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Insurable Property within any portion of the Condominium Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. The maximum deductible amount for such policy covering the Common Area shall be determined by the Board of Directors in its sole discretion.
- (c) The name of the insured under each policy required to be maintained by the foregoing (a) and (b) shall be the Association for the use and benefit of the individual Owners (the Owners shall be designated by name, if required). Notwithstanding the requirement of the immediately foregoing sentence, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an insurance trust agreement, or any successor to such Insurance Trustee, for theme and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee). Each Owner and each Owner's Lender, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Lender upon request.
- (d) Each policy required to be maintained by the foregoing items (a) and (b) shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Condominium Project is located.
- (e) Each policy required to be maintained by the foregoing items (a) and (b), shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and that the policy is primary in the event the Owner has other insurance covering the same loss.

10.2 Comprehensive Public Liability Insurance. The Association shall obtain a comprehensive general liability policy insuring the Association, the agents and employees of the Association, the Owners and Occupants and the respective family members, guests, and invitees of the Owners and Occupants, against liability incident to the use, ownership, or maintenance of the Common Area or membership in the Association. The liability policy shall have at least a One Million Dollar (\$1,000,000) single person limit as respects bodily injury and property damage, a Two Million Dollar (\$2,000,000) limit per occurrence, if reasonably available, and a One Million Dollar (\$1,000,000) minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

10.3 Workers' Compensation Insurance. The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance

is required by law.

- 10.4 Fidelity Insurance. The Board of Directors shall obtain fidelity coverage against dishonest acts on the part of Board Members, officers, employees or volunteers who handle or who are responsible for handling funds of the Association. Such fidelity bonds shall name the Association as obligee and shall be written in an amount determined by the Board of Directors, but shall be no less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board of Directors, the Association, or the management agent as the case may be, at any given time during the term of each bond, and shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar terms or expressions.
- 10.5 Directors and Officers Insurance. A directors and officers liability policy shall be obtained with at least One Million Dollars (\$1,000,000) in coverage.
- 10.6 Premiums. Premiums upon insurance policies purchased by the Board of Directors on behalf of the Association shall be paid by the Association as part of the Common Expenses.
- 10.7 Policy Provisions.
- (a) Any insurer that has issued an insurance policy to the Association under this Article shall also issue a certificate or memoranda of insurance to the Association and upon request, to any Owner or Lender.
  - (b) The named insured under any policy of insurance shall be the Association, as trustee for the Owners, or its authorized representative, including an Insurance Trustee, who shall have exclusive authority to negotiate losses under the policies. The policy shall provide that each Owner shall be an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of purchasing and maintaining insurance required by this Declaration, and adjustment of all losses related thereto, including: the collection and appropriate disposition of all insurance proceeds, the negotiation of all losses and execution of releases of liability, the execution of all documents and the performance of all other acts necessary to administer such insurance. The Association shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the Owners and their Lenders, as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
  - (c) The Association's insurance shall contain the "Special Condominium Endorsement" or its equivalent. Insurance coverage obtained by the Association shall be primary insurance and may not be brought into contribution with insurance purchased by the Owners.
  - (d) Coverage must not be limited by (i) any act or neglect by Owners or Occupants which is not within control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Condominium Project over which the Association has no control,
  - (e) Coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) and the insurer may not refuse to renew the policy without at least

thirty (30) days prior written notice to the Association and all Lenders, and to any Owner to whom a certificate has been issued.

- (f) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, the Owners, Occupants and their respective agents and employees, and any defenses based on coinsurance or on invalidity arising from acts of the insured.
- 10.8 Supplemental Insurance. The Board of Directors may obtain such other policies of insurance in the name of the Association as the Board of Directors deems appropriate to protect the Association and Owners. Notwithstanding any of the provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, the Department of Veterans Affairs and the Government National Mortgage Association, so long as any is a mortgagee or Owner of a Unit, except to the extent such coverage is not available or has been waived in writing by FNMA, the Department of Veterans Affairs or the Government National Mortgage Association.
- 10.9 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board of Directors may obtain a written report by a reputable independent insurance broker or consultant setting forth the existing insurance obtained pursuant to this Declaration and stating whether, in the opinion of such broker or consultant, the insurance complies with the requirements of this Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and the Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board of Directors shall be fully protected in relying on the written report furnished pursuant to this Section 10.9 provided reasonable care and prudence were exercised in selecting such independent insurance broker or consultant.
- 10.10 Insurance Obtained by Owners. Notwithstanding the above, Owners shall obtain insurance coverage in addition to the insurance maintained by the Association. All Unit owners shall have an individual unit owner's policy to cover its personal property. In addition, all Unit Owners shall add to their individual Unit Owner's policy, "Coverage of a Building" in an amount at least equal to the Association's master policy deductible, as established by the Board of Directors pursuant to Section 10.1. Anything to the contrary notwithstanding, the insurance coverage of a Unit Owner or resident shall be primary and the insurance of the Association shall be secondary for losses that emanate from within their Unit, or from items that are their responsibility to maintain and replace. If any Unit Owner fails to maintain insurance, unit owners will still be responsible for an amount equal to the Association's insurance deductible on any claim arising from the losses that emanate from within their unit or from items that are their responsibility to repair or replace, including improvements, betterments, and special fixtures. In the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible. Renters shall procure a renter's insurance policy.

ARTICLE 11  
DESTRUCTION OF IMPROVEMENTS

- 11.1 Reconstruction. In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Board of Directors shall promptly take the following actions:
- (a) The Board of Directors shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
  - (b) The Board of Directors shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
  - (c) Pursuant to Section 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
  - (d) If the Board of Directors determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a Special Assessment equal to twenty-five percent (25%) or less of the then aggregate annual regular Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board of Directors shall cause notice to be sent to all Owners and to all Lenders' encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests in the votes of the Association object in writing to such reconstruction as indicated in such notice, the Board of Directors shall call a special meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board of Directors shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.
  - (e) If the Board of Directors in good faith determines that none of the bids submitted under this Section 11.1 reasonably reflect the anticipated reconstruction costs, the Board of Directors shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board of Directors as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board of Directors shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.
  - (f) If the Board of Directors determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board of Directors may abate Assessments against the Owner thereof until the Board of Directors determines that habitability has been restored.
- 11.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board of Directors shall call a special meeting of the

Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

- 11.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Board of Directors shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Board of Directors determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.
- 11.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Board of Directors, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Weber County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board of Directors. Disbursement of such funds shall be made only upon the signatures of two members of the Board of Directors and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board of Directors shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Board of Directors determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Weber County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board of Directors shall furnish to the Board of Directors before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made

subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances, and deemed suitable by the Board of Directors. The Board of Directors may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

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

ARTICLE 12  
EMINENT DOMAIN

- 12.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

- 12.2 Partial Taking of a Unit. Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 12.3 Taking of Limited Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 12.4 Taking of Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.
- 12.5 Taking of Entire Condominium Project. In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 12.6 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 13  
RIGHTS OF LENDERS.

- 13.1 Notice of Lenders. A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 13.6. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in



addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section 13.1, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section 13.1 shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.

- 13.2 Priority of Lenders. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 13.3 Relationship with Assessment Liens.
- (a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.
  - (b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.
  - (c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
  - (d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.
- 13.4 Required Lender Approval. Except upon the prior written approval of seventy-five percent (75%) of all Lenders that have provided notice to the Association as described in Section 13.1 and Section 13.6, based on one vote for each Unit encumbered by a loan, neither the Association nor the Board of Directors shall be entitled by action or inaction to do any of the following:
- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
  - (b) Except as specifically provided by this Declaration, amend any provisions governing the following:
    - i. voting rights;
    - ii. the priority of Assessment liens;

- 111. reallocation of interests in the Common Area and the Limited Common Area, or rights to their use;
  - lv. redefinition of any Unit boundaries;
  - v. convertibility of Units into Common Area or vice versa;
  - vl. expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project; or
  - vn. restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles or the Bylaws.
- 13.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:
- (a) To inspect current copies of this Declaration (and any amendments), the Association's Articles, Bylaws, Rules and other books and records of the Association during normal business hours; and
  - (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.
- 13.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:
- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;
  - (b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (c) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

ARTICLE 14  
TERMINATION

- 14.1 Required Vote. Except as otherwise provided in Article 11 and Article 12, the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.
- 14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Weber County, Utah and is effective only on recordation.
- 14.3 Sale of Condominium Project. A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the

Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

- 14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.5 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

#### ARTICLE 15 AMENDMENTS

- 15.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended only upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interest of the Association. Where the Association first receives an affirmative vote from at least 51% of the Allocated Interest of the Association, **any Owner who receives, by certified or registered mail, with a return receipt requested, a written request to vote for a proposed amendment(s) to this Declaration and who does not return a response within forty-five (45) days of delivery shall be deemed to have approved and consented to the amendment(s).** Any amendment(s) shall be effective upon recordation in the office of the recorder of Weber County, State of Utah. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one owner, the signature of any one owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the

signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.

- 15.2 Lender Approval for Association Amendment or Action. Assuming a Lender has given notice as provided in Section 13.1 above, if a Lender's consent is a condition for amending this Declaration or the Bylaws, or for any other action, such Lender's consent is presumed if:
- (a) Written request of the proposed amendment or action is sent by certified or registered mail to the Lender's address listed with the Association;
  - (b) Sixty (60) days have passed after the day on which notice was mailed, and
  - (c) The Association has not received a written response from the Lender consenting to or refusing to accept the amendment or action.

#### ARTICLE 16 GENERAL PROVISIONS

- 16.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.
- 16.2 No Waiver. Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 16.3 Cumulative Remedies. All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.
- 16.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Rules by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.
- 16.5 Covenants to Run with the Land. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

- 16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.
- 16.7 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.8 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.
- 16.9 Attorneys' Fees. If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration, the Bylaws or the Rules, the Association may assess all reasonable attorney fees, fines, and costs associated with such counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is ultimately initiated or not.
- 16.10 Notices. Any notice to be given to an Owner, a Lender or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner shall be delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners.
  - (b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered upon deposit.
  - (c) The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been mailed to any Owner or Owners, or to any Lender or Lenders, to the address or addresses for the giving of notice pursuant to this Section 16.10, shall be deemed conclusive proof of such mailing.
  - (d) Notice to the Association shall be delivered by registered or certified United States mail, postage prepaid, addressed to the office of the Manager of the Association (if any) or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any) or if there is none, to the statutory agent of the Association. The Association shall, however, have

the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental Declaration and such Supplemental Declaration may be filed for this purpose alone upon approval of the Board of Directors.

- 16.11 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 16.12 **Nonliability of Officials.** To the fullest extent permitted by law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence if such Board of Directors Member or officer acted in good faith within the scope of such Person's duties.
- 16.13 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including the addition or removal of amenities, increase the size of Units, deleting or modifying Common Area or Limited Common Area, or other changes in the layout of the Association. If any such document or action is approved by the consent of at least eighty-percent (80%) of the Owners obtained in the manner required to amend this Declaration and so long as the document or action does not materially reduce the size of that Owner's Unit, each and every Owner shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat.
- 16.14 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 16.15 **Notification of Sale and Transfer Fee.** Concurrently with the consummation of the sale or other transfer of any Unit, or within fourteen (14) days after the date of such transfer, the transferee shall notify the Association in writing of such transfer and shall accompany such written notice with any nonrefundable transfer fee payable pursuant to the Rules, to cover Association documentation and processing. The Board of Directors may establish a transfer fee, from time to time, which shall be no more than the amount of the then current regular monthly Assessment. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee,

the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. Prior to the receipt of such written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The transfer fee shall be the personal obligation of the new Owner and shall be secured by the lien in Section 6.1. Notwithstanding the other provisions of this Declaration, this Section 16.15 shall not apply to a Lender who becomes an Owner by a foreclosure proceeding.

- 16.16 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.
- 16.17 **Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.
- 16.18 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 16.19 **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that Association, and the Board of Directors, are not insurers of the safety or well being of Owners or Occupants or of their personal

property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article 10 above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD OF DIRECTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

EXECUTED this 5 day of March, 2010.

THE MILLSTONE MANOR HOMEOWNERS ASSOCIATION

BY: Luke E. Dalton

TITLE: Secretary

STATE OF UTAH )

) SS:

COUNTY OF WEBER )

On the 5th day of March 2010, personally appeared before me Luke E. Dalton. Who by me being duly sworn, did say that he/she is the Secretary of the Millstone Manor Homeowners Association, and that the foregoing instrument was approved by at least 67% of the Ownership of said Homeowners Association.

Kelli Duran  
Notary Public





## EXHIBIT A

A part of the Northeast Quarter of Section 21, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point on the East line of Brinker Avenue, being 375.14 feet North 89 degrees 57' West along the Quarter Section line to said East line of Brinker Avenue, and 136.19 feet North 0 degrees 31' East along said East line of Brinker Avenue from the East Quarter corner of said Section 21, said point also being 1173.20 feet North 0 degrees 31' East along the Centerline of Brinker Avenue, and 33.0 feet South 89 degrees 29' East from an Ogden City Monument at the intersection of 16th Street and Brinker Avenue; and running thence North 0 degrees 31' East 56.10 feet along said East line of Brinker Avenue to the South line of Canyon Road; thence along the said South line of Canyon Road the following two (2) courses: North 62 degrees 19'52" East 288.20 feet; and North 48 degrees 04'52" East 30.12 feet; thence South 30 degrees 00' East 149.23 feet; thence South 18 degrees 48'30" West 73.55 feet; thence South 60 degrees 00' West 135.32 feet to a point in the Lynne Canal; thence along said Lynne Canal the following two (2) courses: North 30 degrees 40' West 139.83 feet; and South 65 degrees 35' West 154.36 feet to the point of beginning.

Contains 1.000 Acres

**EXHIBIT B**

A part of the Northeast Quarter of Section 21 and the Northwest Quarter of Section 22., Township 6 North, Range 1 West, Salt Lake Base & Meridian, U.S. Survey:

Beginning at a point 132.39 feet North 89 degrees 57' West along the Quarter Section line and 29.90 feet North 0 degrees 03' East from the East Quarter Comer of said Section 21; and running thence North 30 degrees 40' West 58.17 feet along the Lynne Canal; thence North 60 degrees East 135.62 feet; thence North 18 degrees 48'30" East 73.55 feet; thence North 30 degrees West 30.54 feet; thence East 155.46 feet; thence South 219.25 feet to a point in the Lynne Canal; thence North 88 degrees 45' West 251.48 feet along said canal to the point of beginning.

Contains 1.00 Acre

EXHIBITC

A part of the Northeast Quarter of Section 21 and the Northwest Quarter of Section 22, Township 6 North, Range 1 West, Salt Lake Base & Meridian, U.S. Survey:

Beginning at a point 119.05 feet South 89 degrees 46' East along the Quarter Section Line and 25.01 feet North from the West Quarter corner of said Section 22; and running thence North 219.25 feet; thence West 155.46 feet; thence North 30 degrees 00' West 118.69 feet; thence North 48 degrees 04'52" East 114.58 feet; thence South 27 degrees 06'13" East 192.57 feet; thence East 148.80 feet; thence South 45.00 feet; thence East 10.90 feet; thence South 01 degree 22' West 184.70 feet; thence North 88 degrees 45' West 113.53 feet to the point of beginning.

Contains 1.000 Acre

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EXIDBITD

A part of the Northeast Quarter of Section 21 and the Northwest Quarter of Section 22, Township 6 North, Range 1 West, Salt Lake Base & Meridian, U.S. Survey:

Beginning at a point 226.05 feet South 89 degrees 46' East along the Quarter Section line and 252.61 feet North from the West Quarter corner of said Section 22, and running thence West 148.80 feet; thence North 27 degrees 06'13" West 192.57 feet; thence North 48 degrees 04'52" East 85.74 feet; thence North 53 degrees 53'52" East 213.79 feet; thence South 354.67 feet to the point of beginning.

Contains 1.277 Acre

EXHIBITE

UNITS 1 THRU 23, BLDG. A, MILLSTONE MANOR, PHASE I (13-187-0001 THRU 0023) UNITS 24 THRU 48, BLDG. B, MILLSTONE MANOR, PHASE 2 (13-191-0001 THRU 0023) UNITS 47 THRU 68, BLDG. C, MILLSTONE MANOR, PHASE 3 (13-194-0001 THRU 0020) UNITS 67 THRU 88, BLDG. D, MILLSTONE MANOR, PHASE 4 (13-198-0001 THRU 0022)