

DECLARATION
AND
COVENANTS CONDITIONS AND RESTRICTIONS
OF
ESTANCIA RESORT CONDOMINIUMS
(A UTAH EXPANDABLE CONDOMINIUM PROJECT)

This Declaration is made on the date hereinafter set forth by Estancia Resort Development, LLC, a Utah limited liability company located 2513 S. 2260 E. St George, UT 84790, (the “Declarant”), and is made pursuant to the Condominium Ownership Act and other statutory provisions of the Utah Code Annotated.

RECITALS

A. The Declarant is the owner of the following described real property in Washington County, Utah (the “Property”):

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

B. The Declarant is in the process of constructing upon the Property a condominium project consisting of various improvements and amenities, all of such construction is to be performed in accordance with the Record of Survey Map and/or Plat Map filed in the office of the County Recorder for Washington County, Utah (herein also referred to as the “Estancia Resort Condominiums” or the “Estancia Resort Condominium Project”), a copy of which is attached hereto as Exhibit B and incorporated by this reference.

C. The Declarant desires and intends to sell fee title to individual Units within the Property, together with an undivided ownership interest in the Common Areas and facilities appurtenant thereto, to various purchasers, subject to the covenants, limitations, and restrictions herein contained, and those otherwise of record.

E. The Declarant further desires and intends that administration of the Property subject to this Declaration be governed by the Bylaws of Estancia Resort Owners Association, Inc., a copy of which is attached hereto as Exhibit C and incorporated by this reference.

F. The Declarant desires and intends to have the Condominium Ownership Act, Utah Code Annotated §57-8-1, et seq., govern.

DECLARATION

NOW, THEREFORE, the Declarant hereby declares, and expressly subjects the Property to all of the following:

1. DEFINITIONS.

The terms used herein shall have the following meaning unless the context otherwise requires:

1.1 Articles shall mean the Articles of Incorporation for the Association filed with the State of Utah Division of Corporations.

1.2 “Association” or “Estancia Resort Owner’s Association, Inc.” (hereinafter the "Association") shall mean that certain non-profit Utah corporation formed or to be formed which is comprised of each and all of the Unit Owners, acting as a group in accordance with this Declaration and the Bylaws of such Association, which Unit Owners shall collectively own all Common Area property.

1.3 “Board of Directors” shall mean and refer to those persons duly elected thereto by the Unit Owners in accordance with the provisions of Article 6 hereof and the By-Laws. As used in this Declaration, the By-Laws, or Rules and Regulations, the terms "Board of Directors" or "Board" shall mean the Board acting as agent for the Association, and shall not confer any personal rights or obligations on the members thereof.

1.4 “Building” or “Buildings” shall mean those certain building(s) that have been or will be constructed on the Property, as such building(s) are shown on the Map. Buildings shall be further identified as Building 1, Building 2, Building 3 and Building 4.

1.5 “Bylaws” shall mean the Bylaws of the Association that is or will be formed as further defined herein.

1.6 “Common Area” shall mean and refer to all of the following:

1.6.1 The real property which is submitted by this Declaration to the terms of the Utah Condominium Ownership Act, U.C.A. '57-8-1 et. seq., (hereinafter referred to as "the Act"), including all easements and appurtenances.

1.6.2 Those Common Area and Facilities specifically set forth and designated as such on the Map as defined below.

1.6.3 All exterior walk-ways, driveways, retaining walls, service streets, street entrances, grounds, yards, gardens, fences, all open areas, all parking areas, entry features and signs, canopies, balconies, swimming pools, play areas, barbeque areas, picnic areas, splash pad areas, decks, terraces and other similar areas existing for common use.

1.6.4 All exterior walls, footings, foundations, roofs and structural components of floors and ceilings, but not including the finish in any Units, nor floor coverings.

1.6.5 All installations and facilities for central services such as power, light, gas, water and sewer and all other apparatuses and installations existing for common use,

including without limitation, security lighting and common area electrical water and sewer systems, but not including any parts or components of the electrical, plumbing, sewer or HVAC systems which are within the Unit or which serve only one Unit.

1.6.6 All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

1.6.7 All Common Area and facilities as defined in the Act whether or not expressly listed herein.

1.6.8 All other parts of the Property normally in common use or necessary or convenient to its use, existence, maintenance, safety or management.

1.7 “Common Expenses” or “Assessments,” shall mean and refer to all items, things and sums which are lawfully assessed against Unit Owners via this Declaration, the Act, the By-Laws, or such Rules and Regulations pertaining to the Property as the Board of Directors may from time to time adopt. They shall include all sums that are assessed against and expended in behalf of all Unit Owners. By way of illustration, but not in limitation, Common Expenses shall include: (i) expenses related to the enforcing the covenants, conditions, restrictions, reservations and easements created hereby; and those expenses of administration, maintenance, operation, repair and replacement of those components of the Common Areas that must be maintained and/or replaced on a periodic basis, together with such reserves as may be from time to time established for the same by the Association; (ii) expenses agreed upon by the Association, or the Unit Owners, and lawfully assessed against the Unit Owners in accordance with the Declaration; (iii) expenses declared to be Common Expense by the Act, by this Declaration or the Bylaws; (iv) any valid charge against the Project as a whole; (v) taxes and insurance; and (vi) any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration or the Act; (vii) reserves for any such costs, expenses or liabilities incurred in furtherance of hereof.

1.8 “Condominium Project” or “Project” shall mean the real estate condominium project created on the Property by this Declaration, consisting of the Buildings and all other improvements thereon, including all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use therewith which have become subject to this Declaration, known as the Estancia Resort Condominiums.

1.9 “Condominium Unit” or “Unit” shall mean and refer to one of the separate residential units, owned by a Unit Owner, intended for independent use, consisting of rooms or spaces located in a Building as designated on the Map and the Percentage Interest appurtenant thereto. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, among other items, and as appropriate, wallpaper, paint, flooring, carpeting and tile which are wholly contained within its vertical and horizontal perimeters and the surfaces of any floors, ceilings, or coverings which bound it. A Unit shall not include pipes, wires, conduits, or other utility lines running through it that are utilized for or which serve more than one Unit, and shall not include

any load-bearing walls or floors comprising a part of the Building in which the Unit is located. Each Unit shall include its appurtenant Percentage Interest in the Common Areas.

1.10 “Declarant” shall mean and refer to Estancia Resort Development, LLC and any successor and assign either by operation of law or through a voluntary conveyance transfer, or as a result of the foreclosure on an encumbrance granted by Declarant, or assignment, comes to stand in the same relation to the Project as did its predecessor.

1.11 “Declaration” shall refer to this instrument and all modifications, amendments and/or supplements made in accordance with the Act and the provisions hereof.

1.12 “Expandable Condominium Project” shall mean the Project, and the “Additional Land” (which shall be identified as the remainder of that certain tract of land identified in Exhibit A, that may be used to construct additional Buildings, subject to the terms, conditions and restrictions of the Act). Expansion of the Condominium Project by the Declarant is without limitation, except as set forth in this Declaration, and shall be effective without the prior approval of the Association or any Unit Owner. Although the construction of four (4) Buildings is presently contemplated, there is no guarantee or assurance that such building will occur.

1.13 “Limited Common Area” shall mean and refer to all areas, if any, so designated on the Map, and the use of which is restricted to one Unit in particular.

1.14 “Management Committee” or “Committee” shall mean the committee charged by this Declaration with and having the responsibility and authority on behalf of the Association to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Project. The Management Committee or Committee is also synonymous with the term Trustees or Directors as used in the Bylaws and Articles and the members of such Committee shall be the Board of Directors, unless otherwise appointed therein.

1.15 “Manager” shall mean and refer to that person, firm or company, if any designated from time to time by the Association to manage, in whole or in part, the business and affairs of the Association and the Project.

1.16 “Map” shall mean and refer to the Record of Survey Map of the Estancia Resort Condominium Project filed for record by the Declarant in the records of the County Recorder of Washington County, Utah. A copy of said Map is attached hereto as Exhibit B and incorporated by this reference.

1.17 “Member” shall mean a member of the Association.

1.18 “Mortgage” shall mean and include a mortgage, deed of trust or other security instrument by which a Unit or any part thereof is encumbered.

1.19 “Mortgagee” shall mean and refer to any person named as the Mortgagee or beneficiary under any Deed of Trust under which the interest of any Unit Owner is encumbered.

1.20 “Percentage Interest” shall mean the undivided percentage interest of each Unit Owner in the Common Areas and Facilities of the Property. The Percentage Interest which is appurtenant to a Unit shall be equal to the ration between the size of such Unit and the aggregate size of all units in the Project. The Percentage Interest of Unit is set forth in Exhibit D and attached hereto and incorporated herein by this reference.

1.21 “Person” shall mean an individual, corporation, partnership, association, trustee or other legal entity.

1.22 “Property” shall mean that Property identified on Exhibit “A” attached hereto and incorporation herein, together with all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.23 “Record of Survey Map” and “Map” shall mean shall mean and refer to the Record Survey Map recorded in the Official Records of the County Recorder of Washington County, State of Utah, recorded concurrently with this Declaration, prepared by _____, a duly registered and licensed Utah Land Surveyor having certificate number _____ and all modifications, amendments and/or supplements thereto recorded in accordance with the Act and this Declaration including, but not limited to the provision of Article ___ Expandable Condominiums below.

1.24 “Rules and Regulations” shall mean reasonable rules and regulations for the Association which have been or will be promulgated by the Board of Directors or the Management Committee outlined below.

1.25 “Size” shall mean the area of floor space within a Unit, in square feet, rounded to a whole number, reduced by area within any garage and one-half (1/2) of the area contained in any loft or second story comprising part of a Unit. Declarant’s determination of the Size of a Unit, as set forth in this Declaration or in any amendment or supplement hereto, shall be conclusive and not subject to challenge.

1.26 “Unit Owner” or “Owner” shall mean and refer to any person or entity, including the Declarant, at any time owning a Unit including an undefined interest in the Common Area as defined herein. "Unit Owner" or "Owner" shall not refer to a Mortgagee as herein defined, unless such Mortgagee has acquired title pursuant to foreclosure, or any proceeding in lieu of foreclosure.

1.27 “Unit Number” shall mean the number, letter or combination thereof which designates a Unit.

2. SUBMISSION TO CONDOMINIUM OWNERSHIP.

The Declarant hereby submits the Property as further defined in Exhibit “A,” including the Common Area of the Property, together with all appurtenances thereto to the provisions of the Condominium Ownership Act, Utah Code Annotated §57-8-1, et. seq., as a condominium project to be known as the “ESTANCIA RESORT CONDOMINIUMS.”

Declarant hereby declares that the Property and every part thereof is and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied, and otherwise affected in any manner, subject to the provisions of this Declaration. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of ownership, and are further declared to be for the benefit of the Property and every part thereof, and for the benefit of each Unit Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as an equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained.

All present and future Owners, tenants, visitors, Mortgagees, and occupants of Units shall be subject to, and shall comply with the provisions of this Declaration.

Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any Unit or accepting a mortgage on one of the Units, shall constitute an agreement that the provisions of the Declaration, and amendments thereto, are accepted and ratified by such Owner, tenant, Mortgagee, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across, through and under the Property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or for any successor or assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct and complete each of the units in any Building and all of the other improvements described in this Declaration or in the Map recorded concurrently herewith or hereafter, and to do all things reasonably necessary or proper in connection therewith; (ii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant or as such assignee or successor may reasonably determine to be appropriate; (iii) to construct and complete each of the Units, Buildings and other improvements to be constructed upon any Additional Land or portion thereof intended to be included within the Project; and (iv) to, without approval of the Owners, either enter into joint-use agreements for common areas and facilities with or merge and consolidate the Association and Board of Directors with the homeowners associations of adjoining parcels consisting of similar condominium developments.

3. IMPROVEMENTS ON LAND.

3.1 The Property. The Project consists of two (2) parcels containing approximately five (5) acres zoned for resort and nightly rentals.

3.2 Improvements. All details involving the description and location of the Buildings, number of Units and other like details are shown on the Map. A brief description of the major improvements contained in the Project include four (4) three-story buildings without basements. The Project also contains other improvements such as outdoor lighting, walkways, landscaping and fencing, a swimming pool, barbeque/picnic areas and grass areas. Each

building is composed of the following building materials: Exterior walls consisting of stucco and stone; clay tile roofing materials; interior walls of stick lumber construction with walls finished with sheet rock according to applicable building codes.

3.3 Common Area. The Common Area consists of those areas defined in Section 1.6 above as denoted on the Map.

4. NATURE AND INCIDENTS OF OWNERSHIP.

4.1 Ownership. Each Unit consists of a fee simple interest in a Unit within a Building, and a Percentage Interest in the Common Area owned by the Association. Exhibit D, attached hereto and incorporated by this reference, sets forth the representative Percentage Interest in the Common Area appurtenant to each Unit. Such Percentage Interest in the Common Area is hereby declared to be appurtenant to the respective Units and every transfer, sale, gift, devise, bequest, encumbrance or conveyance of a Unit shall be presumed to be of the entire Unit, together with any and all of the appurtenant rights created by law or by this Declaration.

4.1.1 Computation of Percentage Interests. The Percentage Interest which is appurtenant to a Unit shall be equal to the ratio between the Size of such Unit and the aggregate Size of all Units in the Project. Declarant reserves the right to make minor adjustments in some or all of the Percentage Interest which result from the strict application thereof for the purpose, but only for the purpose, of assuring that the total of all Percentage Interests equals One Hundred percent (100%). Percentage Interests shall be for all purposes, including but not limited to, voting and participation in Common Expenses. For Combined Units, the size of the Units so combined shall establish the Size and the Percent Interest.

4.1.2 Right to Combine Units. With the prior written consent of the Board, two (2) Units may be utilized by the Owner or Owners thereof as if they were one (1) Unit. To the extent permitted in the written consent of the Board, any walls, floors or other structural separations between any two such Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two are utilized as one Unit, be utilized by the Owner or Owners of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units which, but for the joint utilization of the two Units, would have been occupied by such structural separations, shall be closed, at the equal expense of the Owner or Owners of each of the two Units and the structural separations between the two Units shall thereupon revert to Common Areas.

4.1.3 Rights to Interiors. A respective Unit Owner shall have an exclusive right to paint, repaint, tile, wax, paper, decorate or otherwise maintain the interior surfaces of the walls, ceilings, floors, and doors (including trim) forming the boundaries of his or her Unit, and the walls, ceilings, floors and doors within such boundaries at their sole cost and expense.

4.2 Unit Subdivision Not Allowed. Except as provided herein, no Unit Owner shall subdivide or in any manner cause his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map, whether by deed, plat or otherwise.

4.3 Modification Rights. No Owner shall have the right to modify any of the Common Area which includes but is not limited to the exterior and structural components of a Unit.

4.4 Inseparability. No part of a Unit or the legal rights comprising the ownership of a Unit may be separated from any other part thereof during the period of ownership prescribed herein, so that each Unit and the Percentage Interest appurtenant to such Unit shall always be transferred and conveyed together. See also Section 4.6 below.

4.5 Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

4.6 Partition Rights. No part of the Common Area associated with a Unit, or of the legal rights comprising ownership in Common Area, may be separated from any other part of a Unit. Each Unit, and the accompanying Percentage Interest in the Common Area, shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another. No Unit Owner or any other Person may bring an action for partition thereof, except as provided under the terms of the Act.

4.7 Access to Units. Each Unit Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his or her Unit, and to Limited Common Areas, if any, and such rights shall be appurtenant and pass with the title to each Unit.

4.8 Easement for Light and Air. Each Unit Owner shall be entitled to, and Declarant hereby grants to each Unit Owner an easement for the light and air allowed by the design of the project as set forth on the Map. No other structures or improvements which may be made subsequently to the project shall interfere with the Unit Owner's easement as granted herein.

4.8 Common Area. Common Area shall be owned in common by the Association, and no Unit Owner may bring any action for partition thereof.

4.9 Use of Common Area. Subject to the limitations contained in this Declaration, any Unit Owner, tenants of a Unit Owner or their guests, licensees and invitees shall have the non-exclusive right to use and enjoy the Common Area.

4.10 Encroachment. If any part of the Common Area encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does hereby exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and hereby does exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or the Units.

Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Map, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

4.11 Agency of Board of Directors. Each Owner hereby appoints the Board of Directors as their agent, to have access to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area, including making emergency repairs therein necessary to prevent damage to the Common Area or any other Unit. The Board of Directors shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Area or as a result of emergency repairs at the insistence of the Board of Directors or of Owners shall be an expense of the Association; provided however, that if such damage is the result of negligence of the individual Unit Owner, then such Unit Owner shall be financially responsible for all of such damage. Such damage shall be repaired, and the Property shall be restored substantially to the same condition as existed prior to the damage. Amounts owing by Owners pursuant hereto shall be collected by the Board of Directors by assessment as provided herein.

4.12 Owner Access. Each Owner shall have a right of ingress and egress over, upon and across the Common Area necessary for access to his/her Unit. Each Owner shall have a right to the horizontal and lateral support of a Unit, and such rights shall be pertinent to and pass with the title to each Unit.

4.13 Board Access. The Board of Directors shall have a non-exclusive easement to make such use of the Common Area as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Area, maintenance and storage facilities for use by the Association.

4.14 Utility Easements. Easements are reserved throughout the Property as may be required for utility services.

4.15 Association's Right in Common Areas. In addition to the other rights and obligations set forth herein, the Association shall have the non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions for which it is obligated or permitted under the terms of this Declaration. Additionally, subject to and apart from the Declarant's exclusive rights reserved in Article 2, the Association, with approval of 66% of each class of member, shall have the right to (i) enter into agreements which provide for the use of the Common Areas and Facilities by a similar Association in consideration for use of the Common Areas and Facilities of the other Association, or for case consideration and/or (ii) merge with other non-profit corporations providing similar services with a similar purpose.

4.16 Easements Reserved by Declarant and Association. The Association shall have power to grant and convey to any third party and the Declarant hereby reserves unto itself easements and rights of way, including but not limited to rights of ingress and egress, in on over

and/or under the Common Areas and Facilities for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, television, power satellite, internet and other purposes, public sewers, storm drains and pipe, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements of facilities to provide common utility services to the Project, the Additional Land or upon lands owned by Declarant, its successors or assigns, appurtenant to the Project. Further, Declarant reserves unto itself a transferable easement over and upon the Common Areas and Common Facilities, access roads or other similar property within the Project for the purpose of constructing, developing, maintaining improving or expanding the Project or other properties owned by Declarant, its successors or assigns, which are adjacent to the Project. Such easement shall entitle Declarant to use all access roads within the Project and to tie into any and all utility lines, sewage and drainage systems within or traversing the Project or Additional Lands.

4.17 Governmental Easements. An easement to access and rights of ingress and egress over, across, through or under the Common Areas and Limited Common Areas for the purpose of providing police and fire protection, transporting school children and providing other governmental, municipal or utility service to the Project is hereby granted in favor of the City of St. George, State of Utah.

5. UNITS AND THE CONVEYANCE OF A UNIT.

5.1 Conveyances. Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Map, in substantially the following fashion:

UNIT ____, BUILDING ____, as shown in the Declaration and on the Record of Survey Map for "ESTANCIA RESORT CONDOMINIUMS" appearing in the records of the County Recorder of Washington County, State of Utah, as amended or supplemented from time to time, together with an undivided interest in and to the Common Area as the same are established and identified in the Declaration and Map referred to above.

SUBJECT TO: All liens for current and future assessments and charges imposed or levied pursuant to the Declaration of Covenants, Conditions and Restrictions of Estancia Resort Condominiums; mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; all easements and rights-of-way of record; all easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Record of Survey, Map or otherwise existing; an easement for every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described tract; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

Such description shall be construed to describe the Unit, together with the appurtenant undivided interest in the Common Area and to incorporate all the rights and limitations incident to such ownership contained in this Declaration, in the By-Laws, and in any Rules and Regulations.

5.2 Binding Effect. Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent owners, whether or not it be so expressed in the deed by which any Owner acquired a Unit.

5.3 Municipal Powers. All Common Area shall have a public utility and drainage easement for the purposes of installation and maintenance of improvements. The City of St. George reserves the right to require the Estancia Resort Owners' Association to assess its members to repair parking lot, landscaping, etc. where needed to repair or replace public utilities.

5.4 Maintenance of Units. Each Unit Owner is required to keep the interior of his or her Unit (including but not limited to the interior walls, windows, doors, ceiling, floors and other fixtures) in a clean and sanitary condition and in a good state of repair. In the event that a Unit Owner fails to do so, and further fails to remedy the same within three (3) days following written notice from the Association, the Association shall have the right and power, at the sole and exclusive expense of the Unit Owner, and without liability to the Unit Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair. All such costs incurred by the Association shall be collected by the Association pursuant to the provisions of this Declaration and the Bylaws.

5.5 Separate Mortgages by Owners. Each Unit Owner shall have the right separately to mortgage or otherwise encumber his or her Unit, but shall not have the right to encumber the Common Areas or Limited Common Areas in any manner, except the Percentage Interest therein appurtenant to his or her Unit. **Any mortgage or other encumbrance of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure, the provisions of this Declaration shall be binding upon any Owner whose title is derived through an act of foreclosure by private power of sale, judicial foreclosure or otherwise.**

5.6 Taxation of Units. Each Unit within the Project, including each Unit's appurtenant Percentage Interest in the Common Areas, shall be deemed to be a parcel and shall upon conveyance of any Unit by Declarant, be assessed separately for any and all taxes, assessments, and other charges of any political subdivision or any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the Percentage Interest Appurtenant to such Units. All such taxes, assessments and other charges of each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessment or other governmental charges shall divest or in any other way affect the title to any other Unit.

5.7 Mechanic's Liens. No labor performed or material furnished or used in connection with any Unit with consent of at the request of an Owner or his agent or

subcontractor shall create any right to file a notice of mechanic's lien against the Unit of any other Owner no expressly consenting to or requesting the same, or against any interest in the Common Areas, except those interests appurtenant to the Unit for whom such labor shall have been performed and such materials shall have been furnished.

6. BOARD OF DIRECTORS RIGHTS AND OBLIGATIONS.

6.1 Description of Board of Directors of the Association. The business, property and affairs of the Association shall be managed by a Board of Directors initially composed of three members. The initial Board shall serve for a period of no longer than two (2) years, unless otherwise elected pursuant to the terms of the By-laws. At all times thereafter the Board shall be made up of not less than five (5) and not more than seven (7) members. The officers of the Association shall be a President, Vice-President, and Secretary/Treasurer who shall be elected from the Board by the Directors and/or appointed in accordance with the Bylaws. Until the first regular Meeting of the Association is held pursuant to the By-Laws, the Declarant alone shall select the five Board of Directors members. Until the first regular meeting of the Association is held, the members of the Board of Directors and the officers of the Association shall be:

<u>Members of Board of Directors</u>	<u>Position</u>
Dave Nasal	President
Dwain Schallenberger	Vice-President
Steven Park	Secretary

In the event a Board seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Board for the balance of the term associated with the vacated seat. In all other cases of vacancy, the remaining Board members shall elect a replacement as provided in the Association's Bylaws.

6.2 Implied Powers. The Board of Directors may exercise any right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

6.3 General Powers. The Board of Directors shall have the rights and obligations set forth in Articles and Bylaws.

6.4 Management Power. The Board of Directors shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Board of Directors shall be responsible for repair or replacement of Common Area and shall have the exclusive right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the Board of Directors shall be borne as provided in this Declaration and in the Association's Bylaws.

6.5 Employment Power. The Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable,

as well as such other personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Board of Directors or by any person or entity with whom or which it contracts. The Board of Directors may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property, the enforcement of this Declaration, the Bylaws, or any Rules and Regulations. The Board of Directors may arrange with others to furnish lighting, water, snow removal, parking lot cleaning services, grounds maintenance and other common services. The cost of such services shall be borne as provided in this Declaration and in the Association's By-Laws.

6.6 Ownership Powers. The Board of Directors may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Association.

6.7 Rule-Making Power. The Board of Directors may make Rules and Regulations governing the use of Units and of the Common Area and the penalties, including fines, for non-compliance with said Rules and Regulations. Any Rules and Regulations adopted shall be consistent with the rights and duties established in this Declaration.

6.8 Enforcement Power. The Board of Directors may suspend an Owner's voting rights for the period during which such Owner fails to comply with the Rules and Regulations, or with the obligations of an Owner under this Declaration; after sending such Owner a notice of non-compliance, at least ten (10) days prior to any meeting at which action may be taken by the Owners. The Board of Directors may also take judicial action against any Owner to enforce compliance with the Rules and Regulations, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law. The Board of Directors may also levy reasonable fine against any Owner for failing to comply with the provisions of this Declaration, the Bylaws, and/or the Rules and Regulations governing the Units and Common Area.

7. ASSESSMENTS.

7.1 Covenant. Declarant, for each Unit owned by it within the Property, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall hereby covenant and agree with each other and with the Association to pay to the Association for the purposes provided in this Declaration, all assessments, all special assessments, and other fees as provided in this Declaration, the Association's Bylaws, or Rules and Regulations.

7.2 Budget of Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses from the maintenance and operation of the Common Area or furnishing among other things, expenses of management; grounds, maintenance; taxes and special assessments levied by governmental authorities until the Units are separately assessed as provided herein; premiums for all insurance which the Board of Directors is required or permitted to maintain; common lighting; water charges; trash collection; repairs and

maintenance; wages for Board of Directors employees; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Board of Directors for the benefit of the Owners under or by reason of this Declaration. All such assessments shall be made based on the Common Area Ownership Percentage as described on Exhibit D hereof.

7.3 Utilities. Each Unit Owner will be responsible for paying his/her water, gas, electric, sewer and garbage collection service costs. Water, gas, electric, sewer and garbage collection services for the Common Area may be metered separately or together with individual Units. If jointly metered with individual Units the portion attributable to the Common Area shall be a Common Area expense.

7.4 Common Area Expenses. Expenses attributable to the Common Area as a whole shall be apportioned among all Units in proportion to their respective undivided interest in the Common Area as set forth on Exhibit D. For this purpose, Declarant shall be considered to own only the undivided interest in Common Area based upon Units not conveyed by Declarant.

7.5 Assessments. Annual assessments shall be made on a calendar year basis. The Board of Directors shall give written notice of each annual assessment with respect to a Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Board of Directors. Each annual assessment shall be due and payable in monthly installments on the first day of each and every month, and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due, if not paid within thirty (30) days.

7.6 Special Assessments. In addition to annual assessments, the Board of Directors may levy in any assessment year a special assessment, payable over such a period as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the property or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This paragraph shall not be construed as an independent source of authority for the Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners proportionately. Notice in writing of the amount of such special assessments and the time for their payment shall be given promptly to the Owners. Payment shall be due on the dates and in the manner provided in the notice. Any special assessment or part thereof shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

7.7 Collection. All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein and reasonable attorney's fees in the event of non-payment shall be a charge on the Unit and shall be secured by a continuing lien on such Unit in favor of the Association. Such lien shall have such priorities as established by law.

7.8 Liens. To establish a lien for any unpaid assessment, the Board of Directors may prepare a written notice of lien as set forth by statute. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Pursuant to Utah Code Ann. §57-8-45, such lien may be enforced either by judicial foreclosure by the Board of Directors, as provided by law, or by non-judicial foreclosure, as provided by law, by a trustee to be appointed by the Board of Directors by executing a Substitution of Trustee pursuant to Utah Code Ann. §57-1-22. The lien shall also secure the cost of preparing and recording the notice of lien, and the Owner shall also be required to pay to the Board of Directors any assessments against the Unit which shall become due during the period of foreclosure sale or other legal sale. The Board of Directors may bid on the Unit at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

7.9 Release of Liens. A release of lien shall be executed by the Board of Directors, or the trustee, as applicable, and recorded in the office of the County Recorder of Washington County, Utah, upon payment of all sums secured by a lien, including costs of preparing the notice of lien, recording fee of notice of lien and release of lien, which has been made the subject of a recorded notice of lien.

7.10 Other Lien Holders. An encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Article, and upon such payment such encumbrancer shall be subrogated to all rights of the Board of Directors or trustee with respect to such lien, including priority.

7.11 Notice. The Board of Directors, or the trustee, as applicable, shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than one hundred and twenty (120) days after the same shall have become due; provided however, that such encumbrancer first shall have furnished to the Board of Directors or trustee written notice of such encumbrance.

7.12 Owner's Obligation. The amount of any annual or special assessment against any Unit, together with interest and costs as herein provided and reasonable attorney's fees, shall be the personal obligation of the Owner thereof to the Association. Any such suit to recover a judgment of such personal obligation shall be maintainable by the Board of Directors in the Association's name without foreclosing or waiving the lien securing the same. No Owner may void or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of a Unit.

7.13 Statements. Upon payment of a reasonable fee not to exceed fifty dollars (\$50) and upon written request of any Owner, or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Board of Directors shall issue a written statement setting forth the amount of unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a

request, both the lien and unpaid assessments, and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days, and that purchaser subsequently acquires the Unit.

7.14 Liability of Purchaser. Subject to the provisions of subsection 7.1 and 7.13, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

8. USE OF UNITS.

XX

8.2 Use of Common Area. There shall be no obstruction of Common Area by Owners and/or their guests/customers without the prior written consent of the Board of Directors. The Board of Directors may, by Rules and Regulations, prohibit or limit the use of the Common Area as may be reasonably necessary for protecting the interests of all Owners or protecting the Units or the Common Area. Nothing shall be kept or stored on any part of the Common Area without the prior written consent of the Board of Directors, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Area except upon the prior written consent of the Board of Directors.

8.3 Specific Restrictions on Use of Common Area. Nothing shall be done or kept in the Common Area which would result in the cancellation of the insurance on the Property or increase the rate of the insurance on the Property, over what the Board of Directors, but for such activity, would pay, without the prior written consent of the Board of Directors. Nothing shall be done or kept in any Units or in the Common Area or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner. No obnoxious, destructive or offensive activity shall be carried on in any Unit or in the Common Area, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully possessing a Unit.

8.4 Use Rules. No Owner shall violate the Rules and Regulations as adopted from time to time by the Board of Directors.

8.5 Appearance. Each Owner shall keep the interior of his/her Unit in a clean, sanitary and attractive condition, and good state of repair.

8.6 Alterations. No alterations, plumbing, electrical or similar work within the Common Area shall be done by any Owner without the prior written consent of the Board of Directors.

8.7 Use by Declarant. Notwithstanding any provisions to the contrary herein contained, and except if it unreasonably interferes with an Owner's ability to conduct its business, it shall be expressly permissible for Declarant to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of units during the period of construction and sale of said units and upon such portion of the premises as Declarant deems necessary. This shall include but not be limited to a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the properties into a commercial complex and to encourage the marketing thereof, the Declarant shall have the right of use of Common Area and facilities thereon without charge during the sales and construction period to aid in its marketing activities.

9. SHARED STRUCTURAL COMPONENTS.

9.1 Party Walls. Each wall or floor which is built as a part of the original construction of the Units upon the properties and placed on the dividing line between the Units shall constitute a party wall or floor, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

9.2 Repairs. The cost of reasonable repair and maintenance of a party wall or floor shall be shared by the Owners who make use of the wall or floor in proportion to such use.

9.3 Restoration. If a party wall or floor is destroyed or damaged by fire or other casualty, any Owner who has used the wall or floor may restore it, and if the other Owners thereafter make use of the wall or floor, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

9.4 Negligence. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts causes the party wall or floor to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

9.5 Subsequent Owners. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

10. SIGNS.

10.1 Location. Any signs attached or affixed to individual Units shall be placed in the designated location and will conform in all respects to the Association's rules and regulations as administered by the Board of Directors or Sign Committee if so delegated under the Bylaws.

10.2 Restrictions. Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, and excluding reasonably sized signs identifying any Owners' or lessee's

business activities, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any unit or any portion of the properties other than the area of each unit designated for signs without specific written approval from the Board. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth hereinafter and in its Articles of Incorporation, Bylaws and Rules and Regulations, as the same may be amended from time to time.

11. INSURANCE.

The Board of Directors may elect to obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Utah. The cost, if any, of insurance coverage obtained by the Board of Directors shall be included in the annual assessment as set forth in Article 7 hereof.

11.1 Casualty Coverage. The Association shall purchase casualty insurance to cover specific losses to property. The amount of the Association Policy ("Umbrella Policy") shall cover casualty on the Common Area in such amounts as shall provide for full replacement thereof in the event of damage or destruction, all in the manner in which a corporation owning similar commercial buildings would, in the exercise of prudent business judgment, obtain such insurance. This Umbrella Policy shall be considered a secondary policy which first requires any primary policy held by any Owner to pay up to its policy limits. The Umbrella Policy is experience rated and premiums will to the Association will be raised based on actual claims submitted under the policy.

The Umbrella Policy shall cover loss or damage which may be incurred on the part of the Association or its members, to the following:

11.1.1 All Common Areas and facilities dedicated to common use.

11.1.2 The Structure of the individual Units.

11.1.3 Exterior surfaces of walls and roofs.

11.1.4 Structural components including but not limited to framing, trusses, subfloor (i.e. cement slab or floor joists and decking).

11.1.5 Utility, conduit and plumbing lines within the walls.

11.1.6 Losses to a structure due to fire and smoke.

11.2 Liability Coverage. The Board shall also purchase comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection. Coverage shall, at a minimum, include liability for personal injuries and activities in connection with the ownership, operation, maintenance and other use of the Property. Workers' compensation or employer's liability insurance and all other similar insurance in respect to

employees of the Board of Directors in the amounts and in the forms now or hereafter required by law.

11.3 Deductibles. The Board of Directors may comply with the above requirements by the purchase of said policies and may elect such "deductible" provisions as in the opinion of the Board of Directors are consistent with good business practice.

11.4 Claims. Any claim filed for payment under the Umbrella Policy shall first be submitted to the Board of Directors. The Board of Directors, in their sole discretion, shall submit said claim to the underwriter.

11.5 Indemnity. All members shall be responsible for any loss or damage not defined above and shall further indemnify the Association and its Board of Directors from any and all claims, demands, causes of action including attorney's fees, arising out of any insurance matter; and the Owner shall be personally responsible for any loss or damage including but not limited to the following:

11.5.1 Any loss or damage not specified in Section 11.1 above which is attributable to an individual Unit.

11.5.2 Any deductible on the overall policy. The Owner is responsible for payment of the deductible even where paid out on any loss set forth in Section 11.1.

11.5.3 Any loss of personal property, fixtures, or nonstructural improvements within an individual unit including but not limited to carpets or floor coverings, furnishings, cabinetwork, wall coverings, window dressings, decoration of any type and paint.

11.5.4 Any loss incurred inside the exterior unfinished walls of an individual unit except those specified in Section 11.1 above.

11.5.6 Any loss due to flooding or other water damage, earthquake, volcanic eruption or other disaster not specifically covered in the overall policy held by the Association.

11.5.7 All losses or damage due to acts of war or nuclear disaster.

11.6 Fidelity Bond. The Board of Directors may purchase a fidelity bond in the amount of 150% of the Association's estimated annual operating expenses and reserves, to insure against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

11.7 Other Insurance. The Board of Directors may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Property, including any personal property of the Board of Directors located thereon.

11.8 Casualty Insureds. Casualty insurance shall be carried in a form or forms naming the Association as the insured, as trustee for the Owners and for Declarant while an Owner. Such policies shall provide a standard, non-contributory mortgagees clause in favor of each first Mortgagee which shall have given notice to the Board of Directors of such first mortgage. Each policy also shall provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days prior written notice is first given to each Owner, to Declarant, and to each first mortgagee. All policies of insurance shall, if possible, provide that the insurance there under shall be invalidated or suspended only in respect to the interest of any particular Owner guilty of breach of warranty, act, omission, negligence or noncompliance with any provision of such policy, including payment of the insurance premium applicable to that Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy. All policies of insurance shall, if possible, provide further that the insurance under any such policy as to the interest of all other insured Owners not guilty of any such act or omission, shall not be invalidated and shall remain in full force and effect.

11.9 Liability Insureds. Public liability and property damage insurance shall name the Association as the insured, as trustee for the Owners and for Declarant while an Owner, and shall protect each Owner and the Declarant against liability for acts of the Board of Directors in connection with the ownership operation, maintenance or other use of the Property. Such policies of insurance shall provide that all insureds (including the Declarant, Owners, and Board of Directors, and officers of the Association) shall be considered as separately insured and coverages shall be afforded each such insured in the same manner as though separate policies had been issued to each such insured and the insurance afforded any person or organization as insured under this policy shall not in any way be prejudiced by the inclusion therein of more than one person and/or organization as insured, but the inclusion of more than one insured under the policy shall not operate to increase the limits of the company's total liability under the policy.

11.10 Unit Owner Responsibility. Casualty and public liability insurance coverage within each individual Unit shall be the responsibility of the respective Owners.

11.11 Proceeds. The Board of Directors shall receive the proceeds of any casualty insurance payment received under policies obtained and maintained. To the extent that reconstruction is required, the proceeds shall be used for the purpose of reconstructing the Common Area, but not for the reconstruction of a Unit Owner's individual property or improvements.

11.12 Individual Policies. Notwithstanding the provisions of subparagraphs 11.1 and 11.2 above, each Owner may obtain insurance at his/her own expense providing coverage upon a Unit, personal property, personal liability, and covering such other risks as may be deemed appropriate, but each such policy shall provide that it does not diminish the coverage for liability arising under insurance policies which cover the Board of Directors, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the normal practice without additional premium charge.

12. CASUALTY DAMAGE OR DESTRUCTION.

12.1 Appointment of Agent. All of the Owners irrevocably constitute and appoint the Board of Directors their true and lawful agent in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction. Acceptance of a deed from the Declarant or from any Owner shall constitute appointment of the Board of Directors as an attorney in fact for the limited purposes as herein provided.

12.2 Power of Agent. As attorney in fact, the Board of Directors shall have full and complete authorization, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements, as used in the succeeding subparagraphs, means restoring the Property to substantially the same condition in which it existed prior to damage, with each Unit, and the Common Area having substantially the same vertical and horizontal boundaries as before.

12.3 Purchase by Association. In the event any Mortgagee should not agree to rebuild, the Board of Directors shall have the option to purchase such mortgage on behalf of the Association by payment in full of the amount secured thereby. The Board of Directors may obtain the funds for such purpose by special assessments under Section 7 of this Declaration.

12.4 Repair/Reconstruction. As soon as practicable after receiving estimates, the Board of Directors shall diligently pursue completion of the repair or reconstruction of the part of the Property damaged or destroyed, but only if the Property is damaged or destroyed to the extent of 75% or less than the value thereof, the Owners shall, at a meeting within 100 days after such damage or destruction duly called by the Board of Directors for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed. Unless Owners representing at least 80% of the undivided interest in the Common Area agree to the withdrawal of the Property from the provisions of the Act and this Declaration and to its subsequent disposal, the Property shall be repaired, rebuilt or restored to substantially the same condition it was in immediately prior to destruction or damage. The Board of Directors may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Property or may be in accordance with any other plans and specifications the Owners may approve, and the location of any building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Article 4 shall apply under the provisions of this Section.

12.5 Insurance Proceeds. The proceeds of any insurance collected shall be available to the Board of Directors for the purpose of repair or reconstruction. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Directors may levy in advance a special assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in this Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

12.6 Priority of Payment. The insurance proceeds held by the Board of Directors and the amounts received from assessments provided for in Articles 7 and 11 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair of reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the assessments the Board of Directors made under Section 7 of this Declaration.

12.7 Withdrawal. If 80% of the Owners and all holders of first mortgages on Units agree not to rebuild, as provided herein, the Property may be removed from the provisions of the Act as prescribed herein. Withdrawal shall be in accordance with the Utah Statutes.

13. MORTGAGEES.

13.1 Rights of Mortgagees. Notwithstanding all other provisions hereof:

13.1.1 The liens created hereunder upon any Unit shall be subject to and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) where such interest was made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien on the interest of the purchaser at such foreclosure sale to secure all assessments made pursuant to this Declaration after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the manner as provided herein. All other mortgages shall have such rights and priorities as established by law.

13.1.2 No amendment to this paragraph shall affect the rights of the holder of any such mortgage who does not join in the execution thereof.

14. MISCELLANEOUS PROVISIONS.

14.1 Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. No activity will be permitted which shall in any way interfere with the quiet enjoyment or business activities of each Owner or which shall in any way increase the rate

of insurance. The Association shall be responsible for policing and correcting violation of this by other provisions of these Declarations.

14.2 Duty of Owner to Pay Taxes on Individual Unit. Under the Act each Unit and its appurtenant percentage of interest in the Common Area in the Property is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as a result thereof no taxes will be assessed or levied against the property as such. Accordingly, each Unit Owner will pay and discharge any and all taxes and assessments which may be assessed on such Unit Owner's Unit.

14.3 Payment of Taxes on Common Area. The Association shall be responsible for the payment of all taxes on Common Area only if they are not included in the Unit Owners property tax. In this event, such property taxes shall be paid by assessment against the Unit Owners, within the meaning of Section 7 above.

14.4 Parking. No motor vehicle which is inoperable shall be allowed on the Property. Any motor vehicle which remains parked over 72 hours shall be subject to removal by the Association, at the owner's expense. If parking spaces are designated on the site for individual businesses, each such space is for the exclusive use of the Unit Owner with the corresponding identification. If parking areas are not designated on the Map with unit numbers, the Association may assign vehicle parking space for each Unit. Recreational vehicles, boats, travel trailers and similar property may not be parked at any time on the Property unless permitted by rule of the Association.

14.5 External Apparatus. Except for reasonable signage as permitted by this Declaration, no Owner shall cause or permit anything including, but not limited to, awnings, canopies or shutters, to hang or be otherwise affixed to the exterior walls, roof, or any part thereof.

14.6 Exterior Television or Other Antennas. No exterior radio or other antennas shall be placed or maintained upon any of said Units without prior written approval of the Directors. For all other Units, no exterior radio or other antennas shall be placed or maintained upon any Unit without prior written approval of the Directors.

14.7 Amendments. The Owners, at any time, have the right to amend this Declaration and/or the Map upon the approval of Owners representing not less than two-thirds (2/3) of the undivided interest in the Common Area.

Notwithstanding anything to the contrary contained in this Declaration, until the close of sale on 65% of the total square footage of the Property, or five (5) years from the date of recordation of this Declaration, whichever occurs first, Declarant shall have, and is hereby vested with, the right to unilaterally amend this Declaration or the Map, so long as the amendment involved is consistent with law and does not attempt to divest any property rights of any Owner or first Mortgagee.

14.8 Indemnification of Board of Directors. Each member of the Board of Directors shall be entitled to be indemnified and held harmless by the Unit Owners to the fullest extent provided by Utah law against all cost, expenses, and liabilities whatsoever, including attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of being or having been a member of the Board.

14.9 Severability. If any provision, paragraph, sentence, clause, phrase, or word of this Declaration should, under any circumstance, be invalidated, such invalidity shall not affect the validity of the remainder of the Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected

thereby.

14.10 Topical Headings and Conflict. The headings appearing at the beginning of the paragraphs of this Declaration are only for convenience of reference and are not intended to describe, interpret, define or otherwise affect the content, meaning or intent of this Declaration of any paragraph or provision hereof. In case any provisions hereof shall conflict with Utah law, Utah law shall be deemed to control.

14.11 Voting of the Association. All voting shall be conducted in accordance with the Articles and Bylaws of the Association.

14.12 Service of Process Under Declaration. In any action brought for or against the condominium project outlined herein, process shall be served on Estancia Resort Development, LLC located at 2513 S. 2260 E. St George, UT 84790.

EXECUTED by the Declarant this _____ day of _____, 2014.

Declarant:

Estancia Resort Development, LLC, a Utah limited liability company

Dave Nasal, Manager

STATE OF UTAH)

SS.

WASHINGTON COUNTY)

On this _____ day of _____, 2014, personally appeared before me Dave Nasal, the Manager of Estancia Resort Development, LLC, and being duly authorized to do so, executed the foregoing instrument for the purposes set forth therein.

Notary Public

Exhibit A

LEGAL DESCRIPTION

Exhibit B

PLAT MAP

Exhibit C

BYLAWS

Exhibit D

INTEREST IN COMMON AREA

1. Common Area Ownership/Vote. The undivided interest in the common area which is held by each Unit Owner shall be determined based on the following:

Undivided Interest in Common Area = Number of interior Square Feet of each Unit / Total Interior Square Footage within the project including all current phases.