

**DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS  
FOR  
FORT CEDAR GARAGE CONDOS PHASE 2 ASSOCIATION**

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THIS DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR FORT CEDAR GARAGE CONDOS PHASE 2 ASSOCIATION is made on the date evidenced below by the owners of the real property identified herein.

**RECITALS**

- A. The Property is a commercial building in Iron County, Utah, which is more particularly described on Exhibit “A” attached hereto (the “**Property**”).
  
- B. The Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive commercial center. Therefore, the Property will be subject to the following covenants, conditions, restrictions, and easements, which, along with the Association’s Articles and Bylaws, provide for a governance structure and a system of standards and procedures for development, maintenance, and preservation of the Property as a commercial center.
  
- C. This project is not a cooperative.

**DECLARATION**

The Declarant does hereby declare that the property described in Exhibit A is subject to the following covenants, conditions, and restrictions, easements, charges, assessments, and lien which are all for the purpose of protecting the value and desirability of the property and which shall be construed as covenants of equitable servitude and shall run with the land and be binding on the property and all parties having any right, title and interest in the property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE 1  
Definitions**

1.1 **Act** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.2 **Articles** shall mean the Articles of Incorporation for the Association filed with the Utah Division of Corporations and Commercial Code.

1.3 **Association** shall mean the Fort Cedar Garage Condos Phase 2 Association.

1.4 **Building or Building** shall mean that certain Building that has been constructed on the Property.

1.5 **Bylaws** mean the Bylaws of the Association. The Bylaws are attached to this Declaration as Exhibit B.

1.6 **Common Areas and Facilities** means the areas designated “Common Area” on the Plat and shall specifically include, but not be limited to:

- a. the real property within the Project as described on the Plat;
- b. the portion of the Property not specifically identified as a Unit on the Plat;
- c. all foundations, columns, girders, beams, supports, main walls, the wall space between units, roofs, stairways, exterior walkways, driveways, streets (if any), yards, planting areas, fences, service and parking areas, entrances, exits, halls, corridors and lobbies in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Areas and facilities or normally in common use;
- d. installations of central service, such as water, power, elevator, and any other equipment existing in common use, except that the heating and air conditioning system for each Unit shall be individually owned by the Unit Owner and the Association shall only have the obligation to regularly change the filters on such systems;
- e. the area specifically set forth and designated on the Plat as Common Area, Limited Common Area, or common ownership; and
- f. all Common Areas and Facilities, where or not specifically defined herein.

As used herein, “Limited Common Area” shall mean and refer to those areas designated as such on the Official Plat, the use of which shall be generally limited to use by and the benefit of the Owner or Owners of adjacent Unit(s) thereto and which are on the same level of the Building. However, no Owner may bar or restrict access to any Limited Common Area by another Owner or its guests, tenants, and invitees, for uses reasonably justified by the nature and use of the Building as a whole, including but not limited to for ingress and egress into and out of the Units and the Building, or from one Unit or portion of the Building to another.

1.7 **Common Expenses** shall mean all sums which are assessed against and expended on behalf of all Owners and all sums which are required by the Association to perform or exercise its functions, duties, or rights under the Act, this Declaration, the management agreement for the operation of the Project, if any, and such rules and regulations of the Association as may be adopted from time to time. By way of illustration, but not in limitation, Common Expenses shall include: (i) 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 Owners, and lawfully assess against the Owners in accordance with the Declaration; (iii) expenses declared to be Common Expenses by the Act, by this Declaration, or the Bylaws; (iv) and 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. All Common Expenses shall be assessed when possible on a pro rata share of the benefit.

1.8 **Condominium** means a single Unit in the Project that consists of a parcel number together with an undivided interest in the Common Areas and Facilities of the Project.

1.9 **Condominium Unit or Unit** shall mean a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in the Building as designated on the Plat and the percentage interest in the Common Area and Facilities 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 that Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, door and door frames, and trim, consisting of, among other items and, as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, including the heating and air conditioning equipment system servicing such Unit, and any structural members or any other property of any kind, including fixtures and appliances within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which such Unit is situated shall be considered part of the Unit. A Unit shall not include pipes, wires, conduits, or other utility lines running through it which are used 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 and Facilities.

The Unit number of each unit and the square footage of each unit are set forth in Exhibit C.

1.10 **Declarant** means the following and their successors and assigns:

1.11 **Declaration** means this document and any amendments hereto.

1.12 **Majority** or **Majority of the Unit Owners**, unless otherwise provided in this Declaration or lawful amendments to this Declaration, means the owners of more than fifty percent (50%) in the aggregate in interest of the undivided ownership of the Common Areas and Facilities.

1.13 **Management Committee** shall mean the committee charged by this Declaration with the responsibility and the authority on behalf of the Association to make and enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property. The Management Committee may exercise any other right or privilege given to its expressly by this

Declaration, the Articles, or the Bylaws, or every other right or privilege reasonably to be implied in the existence of any right or privilege given to it in such documents or reasonably necessary to effectuate any such right or privilege as well as all other rights and privileges allowed under law. The terms “Management Committee” or “Committee” are synonymous with the terms “Management Committee” or “Committee Members” as used in this Declaration, the Articles, and the Bylaws.

1.14 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association, by order of the Committee, to manage, in whole or in part, the business and affairs of the Association and the Project.

1.15 **Member** shall mean a member of the Association.

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

1.17 **Mortgagee** shall mean and included a mortgage under a first mortgage on any Unit, a beneficiary of a first deed of trust on any Unit, or a secured party of any other security instrument by which a Unit or any part thereof is encumbered in a first position.

1.18 **Person** means an individual, corporation, partnership, association, Committee Member, or other legal entity.

1.19 **Plat** means the final Official Plat map of the Property prepared and recorded on the records of the Iron County Recorder.

1.20 **Project** means all of the Units along with the Common Areas shown on the Plat.

1.21 **Property** means the land, whether leasehold or in fee simple, the building, if any, all improvements and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.

1.22 **Record, Recording, Recorded, and Recorder** have the meaning stated in Utah Code Annotated, Title 57, Chapter 3, Recording of Documents.

1.23 **Size** means the number of cubic feet, or the number of square feet of ground or floor space, within each unit as computed by reference to the Plat and rounded off to a whole number.

1.24 **Unit Number** shall mean the number, letter or combination thereof designating a Unit within the Project.

1.25 **Unit Owner** means the entity, person or persons, or group owning a Unit in fee simples and an appurtenant undivided interest in the fee simple estate of the Common Areas. Regardless of the number of parties participating in ownership, those parties shall be treated as a group as one “Unit Owner.”

## **ARTICLE 2**

### **Improvements, Units and Ownership**

2.1 **Description of Improvements.** The Improvements are described on the Plat. The Plat indicates the number of Units which are contained or to be contained in the Building which comprise the Improvements. The dimensions of the Units and other significant facts relating to the Common Areas are included in the Plat. The Unit Numbers and the square footage of each Unit are set forth in Exhibit C.

The Condominium Project consists of one (1) Building and initially consisting of five (5) units. There are also related Improvements consisting of parking facilities, landscaping and signage, and other Common Facilities.

2.2 **Division of Units.** In order to establish a plan for condominium ownership, this Condominium Project is hereby divided into the following freehold estates. There are initially five (12) separate designated and legally described freehold estates. Each of these freehold estates is identified on the Plat. The following is the Size of each Unit and the percentage of ownership of the Common Areas and Facilities:

See Exhibit C attached hereto and incorporated herein.  
(Exhibit C may be amended as provided for below.)

The Common Areas and Facilities shall remain undivided. No Unit may be further subdivided without the express written consent of the majority of the Management Committee, amendment of Exhibit C pursuant to section 12.5, and compliance with Cedar City subdivision ordinances, except that Declarant reserves the right to, without further consent of the Owners, unilaterally amend Exhibit C and subdivide any Unit or portion of a Unit owned jointly or individually by Declarant, their successors and assigns in compliance with Cedar City subdivision ordinances. Units may be combined in use if owned by the same Unit Owner, or if more than one Unit Owner formally agrees to do so, but such combination shall not be deemed to legally combine or merge said Units nor shall the Unit Owner have any greater interest in the Common Areas, any greater liability for assessments, or any greater voting power than is provided by summing the rights respective to each Unit Owned. No Unit Owner shall execute any deed, mortgage, lease or other instrument conveying, leasing, or otherwise encumbering title to the Unit without including therein all interest appurtenant thereto, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage or other such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of any interest

appurtenant to any Unit may be sold, transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Unit to which such interest is appurtenant.

2.3 **Transfer of Common Areas.** Any deed, mortgage, deed of trust, sales contract or other instrument conveying a Unit shall be conveyed with the appurtenant Percentage of Ownership interest in the Common Areas as set forth in Exhibit C hereto.

2.4 **Partition Not Permitted.** The Common Areas shall be owned in common by all the Owners of Units, and no Owner may bring any action for partition thereof.

2.5 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Unit. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof.

2.6 **Taxation of Units.** Each Unit within the Project, including each Unit's appurtenant percentage in the Common Areas, shall be deemed to be a parcel and shall, upon conveyance of any Unit by Declarant, be assessed separately for all taxes, assessments, and other charges of any political subdivision, or of any special improvement district, or of any other taxing or assessment 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 Unit Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

2.7 **Rules and Regulations.** The Management Committee may make reasonable rules and regulations governing the use of the Units and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. Such rules and regulations may include, without limitation, any rule or regulation which the Committee deems reasonable to protect the Property, the Building, and the Unit Owners, their tenants, guests, and invitees. The Association may suspend any Owner's voting rights in the Association during any period or periods during which such Owner fails to comply with such rules and regulations, or with any other obligations of such Owner under this Declaration. The Association may also take judicial actions against the Owner to enforce compliance with such rules, regulations, or other obligations, or to obtain damages for non-compliance, all to the extent permitted by law, and the Owner shall be responsible for all costs of enforcement and collection activities, including reasonable attorney fees.

2.8 **Title to the Common Area.** Each Unit Owner shall be entitled to an undivided interest in the Common Area and Facilities according to each Unit Owner's Percentage of Ownership as set forth in Exhibit C hereto. Said Percentages of Ownership shall be based upon the proportion of each Unit's usable space within the exterior walls of the Building to each other Unit's usable space.

2.9 **Owner's Easements of Enjoyment**. Every Owner has a right and easement of use and enjoyment in and to the Common Area. This easement is appurtenant to and passes with the title to every Unit, subject to:

- a. the right of the Association to suspend the voting rights and/or common utility service of a member for any period during which an assessment or portion thereof against his Unit remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of this Declaration, the Bylaws, and any published rules and regulations;
- b. the right of the Association, with the approval of seventy-five percent (75%) of each class of owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area or any interest therein to any private individual, corporate entity, public agency, authority, or utility;
- c. the right of the Association to grant easement for water, sewer, gas, telephone, electricity and drainage purposes;
- d. the right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure;
- e. the terms and conditions of this Declaration;
- f. the right of the Association, through its Committee Members, to adopt rules and regulations concerning use of the Common Area and other matters set forth in this Declaration; and
- g. the right of the Association to enter into agreements or leases which provide for 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 cash consideration.

### **ARTICLE 3** **Owners Association**

3.1 **Membership**. Each Unit Owner shall automatically upon becoming the owner of a Unit, be a member of the Association, and shall remain a member of said Association until such time as the ownership ceases for any reason, at which time membership in the Association shall automatically cease. Membership is appurtenant to and may not be separated from Unit ownership. The Management Committee or its delegate may require that a member provide proof of ownership as a condition to recognition. All Unit Owners are subject to all the rights and duties established in this declaration and in the Articles of Incorporation and Bylaws of the Association. Unless otherwise provided in these documents, the Declarant, for all unsold units in the project, enjoys the same rights as other owners.

3.2 **Voting**. Each Unit Owner shall be entitled to the number of votes set forth in Exhibit C. The assessments shall be charged by the Association based on the percentage of Ownership in the Common Areas of the Project. Under all circumstances, assessments levied to any Unit Owner shall be determined by his percentage ownership of the Common Areas. In the event there is more than one Owner of a particular Unit, the voting relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.3 **Management Committee**. The affairs of the Association shall be governed by a Management Committee composed of twelve (12) persons, with each Unit Owner having a position. The number of persons on the Management Committee may be changed by amendment of the Bylaws of the Association. The Management Committee shall have the power to manage the condominium project in accordance with the Act, this Declaration and the Bylaws.

a. **Indemnification**. The Management Committee, and each of them, shall be indemnified by the Association against any loss, damage, claims or liability, including reasonable counsel fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided, however, that no such person shall be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that persons own willful misconduct or gross negligence.

b. **Books and Records**. The Management Committee shall maintain current copies of the Declaration, Articles, Bylaws, Rules and other similar documents, as well as its own books, records and financial statements audited by a reputable certified public accountant which shall all be available for inspection by unit owners as well as by holders, lenders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Reasonable charges shall be made for the cost of copying, researching or extracting from such documents, in an amount to be determined by resolution of the Management Committee. The Management Committee shall keep detailed, accurate records in chronological order, of receipts and expenditures affecting the common areas and facilities.

c. **Rulemaking Power**. The Management Committee may, from time to time and subject to the provisions of this Declaration and the Bylaws, adopt, amend and repeal rules and regulations governing, among other things, use of any common areas under the jurisdiction of the Association, parking restrictions and limitations, limitations upon vehicular travel on the properties, and restrictions on other activities or improvements on the properties which create a hazard.

d. **Promulgation of Rules**. A copy of the Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner and



may be, but not be, recorded. Upon such mailing or other deliver, said Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration and the Bylaws.

e. Management Agreement. The Management Committee shall have the power to enter in to a management agreement, management contract or lease of facilities on behalf of the Association or the unit owners as a group. Notwithstanding this and any other provision of this Declaration any agreement reached by the Association must be terminable without penalty upon not more than 90 days notice.

3.4 Professional Management. The Management Committee may employ a professional manager or other persons as independent contractors, not as agent or employee of the Association, to perform all or any part of the duties and responsibilities of the Association. Any contract with a person or firm appointed as a Manager shall be terminable by the Management Committee for cause upon thirty (30) days written notice thereof. Any such contract to furnish goods or services for any Common Areas of the Association shall be limited to three (3) years, provided, however, that such contract may be renewable for successive one (1) year periods with the approval for each such period by a vote or written consent of a majority of the Management Committee.

#### **ARTICLE 4** **Assessments**

4.1 Assessments. To help promote the health, safety, and welfare of the Owners, the Association shall have the authority to levy assessments for the Common Expenses of the Project. The following are the basic items for which assessments may be levied, but the Association at its discretion shall have the authority to create additional items to insure should the health and welfare of the Unit Owners or their property:

- a. payment of taxes, insurance, and common utility charges;
- b. payment of repairs, replacements, and maintenance of the Common Areas and Facilities;
- c. establish an adequate reserve fund for the repair and replacement of the Common Areas and Facilities;
- d. payment of administrative expenses of the Association; and
- e. payment of Common Area monthly maintenance fees including, but not limited to, trash removal, janitorial services, window cleaning, landscape maintenance, parking lot cleaning, and Common Area water and power costs.

4.2 Personal Obligation and Lien. Each Unit Owner shall, by acquiring or in any way becoming vested with his interest in a Unit, be deemed to covenant and agree to pay the Association the monthly and all other assessments described in this Article, together with reasonably attorney fees, interest and costs of collection. All such amounts shall be, constitute, and remain:

a. The obligation of the person who is the Owner of such Unit at the time the assessment falls due; and

b. If the Unit Owner fails or refuses to pay when due, a charge and continuing lien upon the Unit with respect to which such assessment is made, pursuant to the Act.

No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney fees, which shall be a charge on the Unit at the time of conveyance, without prejudice to grantee's right to recover from the grantor the amounts paid by grantee therefore. Any such lien, however, shall be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date any such common expense assessments become due.

4.3 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of paying the Common Expenses and promoting the maintenance, health, safety, and welfare of the residents of the Project. The use made of the Association funds obtained from Assessments may include, without limitation, payment of the cost of: taxes insurance, management and supervision of the Common Areas, including personal property owned by the Association; establishing and funding a reserve to cover a major repair or replacement of improvements within the Common Areas; any expense necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under this Declaration.

4.4 **Monthly Assessments.** The amount of Monthly Assessments for any calendar year shall be as determined by the Association Budget for that calendar year, not accounting for Special Assessments, Additional Assessments, Individual Assessments, and such other assessments as permitted under this Declaration. Each Unit Owner's obligation for such assessments shall be determined by the Owner's fractional ownership interest in the Common Area,

4.5 **Basis of Monthly Assessments.** Each Unit which is certified for occupancy shall be assessed Monthly Assessments. Every Unit Owner shall pay his proportionate share of the Common Expenses. Assessments shall commence as to all Units in a phase on the first day of the month immediately following the first close of sale of a Unit in that phase. Payment thereof shall be in such amounts and in such intervals as the Management Committee determines in accordance with the Act, this Declaration, or the Bylaws. The total monthly assessments against all Units shall be based among other things, on the expense growing out of or connected with the maintenance and operation of the Common Areas (including management, grounds maintenance, taxes, insurance, lighting, heating, water, trash collection, snow removal, sewer service, repairs and maintenance, wages of Association employees, legal and accounting fees, and other related and necessary expenses; reasonable contingency for reserves; and any other expenses and

liabilities which may be incurred by the Associations for the benefit of the Unit Owners under or by reason of this Declaration).

4.6 **Apportionment of Monthly Assessments.** Expenses attributable to the Common Areas and to the Project as a whole shall be apportioned among all Unit Owners in proportion to their respective percentage interests.

4.7 **Special Assessments.** In addition to the monthly assessments authorized by this Article, the Association may levy in any assessment year a Special Assessment, payable over such a period of time as the Association 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 Project of any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. Any Special Assessment in excess of ten percent (10%) of the annual budget shall require consent of a majority of the Owners. Any amounts assessed pursuant hereto shall be assessed to Unit Owners in proportion to their respective percentage interest.

Notice in writing of the amount of such Special Assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given.

A Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

4.8 **Additional Assessments.** In addition to the monthly assessments and Special Assessments authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to Common Areas from the activities of the city of Cedar City in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise, is in the City up to and including the meters for individual Units and that they are installed and shall be maintained to City specifications. Further, the City has required that the Association be responsible for repair, maintenance and reconstruction of sewer lines on the Property and the Committee shall have the authority to levy assessment for such purposes without the consent of the Owners.

4.9 **Individual Assessments.** Each Unit Owner shall also be assessed from time to time for (i) all fines, penalties and damages to which said Unit Owner is subject as a result of a violation of the terms of this Declaration and the rules and regulations prescribed by the Management Committee; (ii) for damages caused to the Common Areas by the negligence or willful misconduct of such Unit Owner; and (iii) for any other liability, indebtedness, or other obligation of the Unit Owner to the Association arising under the provisions of this Declaration. Notice of all Individual Assessments shall be given by the Management Committee to the Unit Owner assessed within fifteen (15) days of the adoption of the Individual Assessment. Individual Assessments shall be due and payable within thirty (30) days following written notice thereof by the Committee and shall bear interest thereafter at the rate of eighteen percent (18%) per annum.

4.10 **Late Fees** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Committee Members shall set by resolution) until paid. In addition, a late fee of \$100.00 for each delinquent installment shall be imposed.

4.11 **Lien for Assessments**

a. Each monthly assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date. Failure of the Association to give timely notice of any Assessment shall not affect the liability of the Owner for such assessment. The Owner shall be responsible for all costs, expenses and attorney fees incurred in collection of delinquent assessments.

b. All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. Such lien shall be superior to all other liens and encumbrances on such Unit, except only: (i) valid tax and Special Assessment liens on the Unit in favor of any governmental assessing authority; and (ii) encumbrances on the interest of the Unit Owner recorded in the official records of the Iron County Recorder prior to the date a notice (as provided therein) is recorded which by law would be a lien prior to subsequently recorded encumbrances and all amounts advanced pursuant to such encumbrances and secured by the lien thereof in accordance with the terms of such instrument.. All other Mortgages and lienors shall be deemed to consent that such liens shall be inferior to the future liens for assessments, as provided herein, whether or not such consent be specifically set forth in the instruments creating such liens.

c. To evidence a lien for sums assessed pursuant to this Article, the Association shall prepare a written notice of lien setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Unit Owner and a description of the Unit. Such a notice shall be signed by the President of the Association and shall be recorded in the official records of the Office of the County Recorder of Iron County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by power of sale of judicial foreclosure by the Association in the same manner in which deeds of trust or mortgages on real property are foreclosed in the State of Utah. In any such sale or foreclosure, the Unit Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien and all reasonable attorney fees. All such costs, expenses and fees shall be secured by the lien being foreclosed. The Unit Owner shall also be required to pay to the Association any assessments against the Unit that shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale, and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the Unit as the Owner thereof.

d. A release of notice of lien shall be executed by the President of the Association and recorded in the official records of the Office of the County Recorder of Iron County, State of Utah, upon payment of all sums secured by such lien that has been made the subject of a recorded notice of lien.

4.12 **Foreclosure/Suit.** The Association may, at its option, enforce a foreclosure sale of any Unit Owner's Unit for nonpayment of any assessment or file suit. Each holder of a first mortgage (or deed of trust) on a Unit and any purchaser from it who comes into possession of the Unit by virtue of foreclosure of the mortgage, or by deed or assignment in lieu of foreclosure, or pursuant to power of sale or otherwise will take the Unit free of, and shall not be liable for, any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit.

4.13 **Statement of Account.** Upon payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), or such higher amount as the Act may allow, and upon written request of any Owner or any Mortgagee, prospective Mortgage or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to a Unit; the amount of the current yearly assessment and the date that such assessment becomes or became due; the amount of any credit for advance payments or prepaid items, including, but not limited to, such Owner's shares of prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied within ten (10) days, or such longer period allowed by the Act, all unpaid assessments that became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee that acquires its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligation of the purchaser shall be released automatically if the statement is not furnished within the ten (10) day period provided herein and thereafter an additional written request is made by such purchaser and is not complied with by the Association within ten (10) days, and the purchaser subsequently acquires the Unit.

4.14 **Legal Actions Brought by the Association.** The Committee Members may, in the name of the Association, (a) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fees.

4.15 **Sale of Unit by Association.** A power of sale is hereby conferred upon the Association, which it may exercise. Under the power of sale the Unit of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were

beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Committee Member for purposes of power of sale foreclosure.

4.16 **Non-Use/Abandonment**. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas and Facilities or by abandonment of the Unit.

## **ARTICLE 5** **Insurance**

5.1 **Project Insurance and Property Damage**. The Association shall keep in force at all times:

a. A blanket multi-peril (Special Form) policy for the full replacement value of the Building, excluding items such as land, tenant improvements, landscaping, contents, and other such items

b. A comprehensive General Liability policy of insurance covering all of the Common Areas in the Project with a Separation of Interests clause which would preclude the company from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owner, with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, including liability for property of others and such other risks as are customarily covered in similar projects.

5.2 **Additional Requirements**. Any Insurance obtained pursuant to the preceding section shall provide that:

a. the name of the insured shall be the Association as the Committee Member for the Unit Owners and shall have standard mortgage clauses;

b. insurance coverage obtained and maintained pursuant to the requirements of the preceding section may not be brought into contribution with insurance purchased by the Unit Owner or their mortgages, and the coverage shall in any event be primary;

c. coverage must not be prejudiced by any act or neglect of the Unit Owners when such act or neglect is within the control of the Association or by failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

d. coverage may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to any and all insureds, including holders of first mortgages who have filed written requests for such notices including its name and address and the Unit number on which it holds the mortgage; and;

e. any provision that the carrier may elect to restore damage in lieu of a cash settlement shall not be exercisable without the prior written approval of the Association or when in conflict with any requirement of law.

5.3 **Use of Proceeds** Except as provided by statute, in case of substantial loss (three-fourths or more of the Units and/or Common Areas) wherein the Condominium Project is destroyed or substantially damaged unless at least three-fourths (3/4) of such First Mortgagees and Unit Owners of the Condominium Project have given their prior written approval, the Association shall not be entitled to use hazard insurance proceeds for losses to any condominium property other than the repair, replacement or reconstruction of such condominium property. If, the First Mortgagees and Unit Owners of the Condominium Project do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the manager or management committee shall record, with the county recorder, a notice setting forth such facts, and upon the recording of such notice:

- a. the property shall be deemed to be owned in common by the unit owners;
- b. the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;
- c. any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and
- d. the property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first pay in out of the respective shares of the unit owners, to the extent sufficient for the purposes, all liens on the undivided interest in the property owned by each unit owner.

5.4 **Premiums.** Any insurance premium shall be a part of the Common Expenses.

5.5 **Individual Unit Owner's Insurance.** Insurance obtained by the Association shall not prejudice the rights of the individual Unit Owners to obtain insurance, and said Unit Owners shall insure their personal property and installed fixtures.

## **ARTICLE 6** **Damage & Condemnation**

Damage to or destruction of all of any portion of the Common Areas and condemnation of all of any portion of the Common Areas shall be handled in the following manner:

A. Subject to section 5.3, in the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Committee shall upon receipt of the insurance proceeds, contract to rebuild, restore, or repair such damaged or destroyed portions of the development to its former condition;

B. Each Unit Owner hereby appoints the Management Committee as an attorney-in fact to represent the Unit Owner in purchasing and maintaining negotiations, settlements,

agreements, and related proceedings resulting from damage or destruction to the project, or from condemnation or liquidation of all or a part of the project, or from termination of the project. Proceeds from a settlement will be paid to the Association for the benefit of the Unit owners and their mortgage holders. Any losses, awards, or proceeds from the condemnation, destruction, or liquidation of all or a part of the project, or from the termination of the project, shall be allocated among unit owners based on the relative value of each unit and in accordance with the par value of each unit;

C. If the cost of effecting total restoration of such Common Areas exceeds the amount of insurance proceeds and reserve funds, the Association shall, if and to the extent a Special Assessment is approved as provided for in section 4.7, cause the same to be repaired and reconstructed substantially as they previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each Unit and its respective Owner;

D. To the extent of funds available for restoration, any restoration or repair of such Common Areas shall be performed substantially in accordance with the original plans and specifications subject to such changes within the scope of such original plans and specifications as may be approved by the Committee;

E. Each Member shall be liable to the Association for any damage to the Common Areas or Improvements thereon sustained by reason of the negligence or willful misconduct of said Member or the Persons deriving their right and easement of use and enjoyment of the Common Areas from said Member, or of his respective patrons and guests, both minor and adult. In the event of such damage to the Common Areas or Improvements thereon, the Committee may either assess a penalty under the Rules and Regulations established by the Committee in an amount sufficient to pay all costs of the Association attributable to such damage, including deductibles and increase in insurance premiums, if any, or the Committee may repair the damage to the Common Areas or Improvements thereon with the proceeds from the Association's insurance and assign to the Association's insurance company its claims against the Member who, by his own acts or the acts (both minor and adult) of his patrons, guests, invitees, or assignees, damaged the Common Areas or Improvements thereon. In the case of joint ownership of a Unit, the liability of the Owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary.

F. If at any time the Common Areas, or any part thereof, shall be taken or condemned by any authority having the power of eminent domain, the Association shall represent the Unit Owners in these proceedings, negotiations, settlements or agreements. All compensation and damages shall be payable to the Unit Owners in proportion to the percentage of their Unit condemned and their fractional ownership in that part of the Common Areas condemned.



**ARTICLE 7**  
**Use Restrictions**

7.1 **Use of the Common Area.** The Common Area and Facilities shall be used only in a manner consistent with the community nature. Utility installation necessary and appurtenant to individual Units may be located in the Common Areas with the written consent of the Association. Any Unit Owner who causes damage to any common or limited common area shall be personally responsible for said damage and repair or restoration of the same.

7.2 **Use of Units.** All Units are restricted to use for professional and business offices. No Unit shall be used, occupied, or altered in violation of law so as to create a nuisance or interfere with the rights of any Unit Owner, or in any way that would result in an increase in the cost of insurance covering the Common Areas. No Unit owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Unit owners being first obtained

7.3 **Maintenance.** It shall be the responsibility of the Association to maintain, replace or repair:

- a. all exterior landscaping;
- b. all fixtures, floor coverings, railing, building supports, equipment and decor in all Common Areas;
- c. all portions of the Units which constitute a part of the exterior of the Building or which contribute to the support of the Building, including main bearing walls, but excluding painting, wall papering, decorating or other work on the interior surfaces of walls, ceilings and floors within the unit; and
- d. any damage created by work done directly by the Association, its agents or employees.

It shall be the responsibility of the Unit Owner to:

- a. maintain, repair or replace any portion of his Unit and Limited Common Area appurtenant to his Unit, which may cause injury or damage to other Units or to the Common Areas and Facilities;
- b. paint, wallpaper, decorate and maintain the interior surface of all walls, ceilings and floors within the Unit as well as the plumbing, heating, and air conditioning for his Unit;
- c. perform his responsibilities in such a manner and at such reasonable hours so as not to unreasonably disturb other Unit Owners in the Building; and

d. refrain from repairing, altering, replacing, painting, decorating, or changing the exterior of the Unit or any exterior appendages whether exclusively used by the Unit Owner or otherwise without obtaining the written consent of the Association.

7.4 **Heating and Air Conditioning Units.** It shall be the obligation of the Unit Owner at its sole cost to provide regular filter replacement of the heating and air conditioning equipment. The Unit Owners shall also be responsible to repair, maintain, and replace the heating and air conditioning equipment appurtenant to their individual Unit.

7.5 **Association's Right to Maintain Units.** In the event that any Unit shall develop an unclean or unsanitary condition or fall into a state of disrepair, and, in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the Owner, and without liability to the 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 as an Individual Assessment upon such Unit.

7.6 **Alteration or Improvement.** No structural alteration shall be made to any Unit. No alteration or improvement to any Unit which would alter the Common Areas may be made by any Unit Owner without the written consent of all Unit Owners. No application shall be filed with a governmental authority for a permit covering an addition, alteration or improvement to be made in a Unit which alters or affects the Common Areas unless approved and executed by all Unit Owners. Such approval and execution shall not, however, incur a liability on the part of the Association, or any of its Committee Members, officers, or members, to any person or entity, including but not limited to contractors, subcontractors, materialmen, architects, or engineers by reason of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing. The Association shall have the obligation to answer within thirty(30) days and failure to do so within that stipulated time shall mean that there is no objection to the proposed modification or alteration. The Association may require that the Unit Owner making such improvement, alteration or addition obtain such insurance coverages and in such amounts as the Association deems proper.

7.7 **Prohibited Uses.** No part of the Property shall be used for any residential purpose. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities that is in violation of any law, ordinance, or regulation of any governmental authority. No hazardous waste or substance shall be discharged or kept on the Property in such quantities and/or in containers as may be prohibited by Federal, State, or local law. The Unit Owner in violation of this provision shall hold harmless and indemnify Declarant and the Association from and against all charges, fines, penalties, claims, causes of action, and costs, including but not limited to attorney fees and costs.

7.8 **Signs.** Except for one "For Rent" or "For Sale" sign of not more than two (2) square feet, which may be placed in the window of a Unit, and directional signs, no signs of any type, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted without the approval of the Management Committee. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of Declarant or their 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.

7.9 **Quiet Enjoyment.** No noxious or offensive activities shall be carried on in any part of the Project nor any activity which shall interfere with the quiet enjoyment of each Unit Owner or his tenants, or clients, guests or invitees or which may be or may become an annoyance or nuisance.

7.10 **Garbage Removal.** All trash and garbage shall be removed regularly from each Unit and placed in the bin provided by the Association. Disposal of any hazardous or contaminated waste or substances and all pollutants must be removed according to applicable governmental regulations at the expense of the Unit Owner. The Declarant or Association may, at its discretion, levy a surcharge to any Unit Owner if the Unit Owner or the occupant or tenant is creating an excessive amount of garbage as to require additional dumping charges.

7.11 **Parking.** The Management Committee shall have the authority to determine policies for parking and use of the parking a reason the Common Area.

7.12 **Animals.** No animal of any kind, except animals that are legally recognized as service animals, shall be permitted on the Property.

7.13 **Compliance of Tenants.** Each Unit Owner or his manager shall be responsible to ensure that his tenants, guests and invitees comply with every provision of this Declaration.

## **ARTICLE 8** **Easements**

8.1 **Utilities.** There is hereby created a blanket easement upon, across, and under the Building and all of the Common Areas for the maintenance, repair and replacement of all utilities accessing the Condominium Project. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Building and all of the Common Areas to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said Public utilities may affix and maintain electrical and/or telephone wire, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be Installed or relocated on the properties in such a way as to unreasonably encroach upon or limit the use of the Common Areas or any structure thereon. In the initial exercise of easement rights under this section, a utility shall make reasonable efforts to occupy and use the same physical

location or lane as other utilities. After a utility service has initially exercised its easement rights under this section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

8.2 **Police, Fire, and Ambulance Services.** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the common areas and facilities and units in the performance of their duties.

8.3 **Maintenance by the Association.** An easement is hereby granted to the Association and any of its agents, employees, or assigns and to any maintenance company selected by the Association to maintain, repair or replace any items or equipment, on the Common Areas or within the individual Units. In the case of an emergency, the Association shall have the right to enter into any Unit in the Condominium Project to perform duties or repairs, and repair, in the event the same area neglected by the unit owner or for the purpose of repair to the Common Areas and facilities.

8.4 **Easement for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon a Unit or Units, 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 Areas, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building, by error in the Plat, by settling, rising or shifting of the earth, or by change in position caused by repair or reconstruction of the Projector any part thereof.

8.5 **Easement for Access to Units.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

8.6 **Easement for Access for Construction, Maintenance, Repair and Emergencies.** Some of the Common Areas are or may be located within the Units or may be conveniently accessed only through the Units. The Declarant and the Unit Owners shall have the irrevocable right, to be exercised by Declarant or the Association (or the agents of Declaration or the Association) as the Unit Owner's agent, to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the construction of other Units, including without limitation plumbing, electrical and drainage, where maintenance, repair or replacement of any of the Common Areas and Facilities located therein or accessible therefrom or from making emergency repairs therein necessary to prevent damage to the Common Areas or to another Unit or Units. The Association shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the construction, maintenance, repair, emergency repair, or replacement of any of the Common Areas or as a result of emergency repairs within another Unit at the instance of

Declarant or the Association or of Owners shall be an expense of the person or entity causing the 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 Association as an Individual Assessment.

8.9 **Other Easements.** The easements provided for in this Article shall in no way affect any other recorded easement.

## **ARTICLE 9 Rights of First Mortgagees**

Notwithstanding any other provision of this Declaration, the following provisions shall govern the rights of the First Mortgagees.

9.1 **Consent of Majority of First Mortgagees Required.** Any amendment of the Declaration affecting the following shall not be effective without consent of at least over fifty percent (50%) of the First Mortgagees: voting rights; assessments, assessment liens, or subordination of assessment liens, reserves for maintenance, repair and replacement of Common Areas; responsibility for maintenance and repairs; relocation of interests in the Common Area, or rights to its use; boundaries of any Unit; conversions of Units into Common Areas or vice versa; or the addition, annexation or withdrawal of property to or from the Property; insurance or fidelity bonds; leasing of Units; imposition of any restriction on an Owner's right to sell or Transfer his Unit; or any provision that expressly benefits mortgage holders, insurers or guarantors. Notwithstanding the foregoing, this section shall not in any case be applied to restrict the right of Declarant to unilaterally amend pursuant to section 12.5 below.

9.2 **Consent of Seventy-Five Percent (75%) of First Mortgagees Required.** Unless the Association shall receive the prior written approval of at least seventy-five percent (75%) of all First Mortgagees of the Units, the Association shall not be entitled to:

- a. by act or omission, seek to abandon or terminate the Condominium Project;
- b. change the pro rata interest or obligation of any Unit in order to levy assessments or charges, allocate distribution or hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Areas; and
- c. by act or omission, seek or abandon, partition, subdivide, encumber, sell or transfer the Common Areas, except to grant easements for utilities and similar or related purposes, as herein elsewhere reserved. Notwithstanding the foregoing, this section shall not in any case be applied to restrict the right of Declarant to unilaterally amend this Declaration pursuant to section 12.5 below.

9.3 **Notice of Matters Affecting Security.** The Association shall give written notice to any First Mortgagee of any Unit which makes written request for such notice, including its name and address and the number of the Unit on which it has a mortgage under the

circumstances enumerated in Article VI, or whenever any of the following matters come up for consideration or effectuation by the Association:

- a. abandonment or termination of the Condominium Project established by this Declaration;
- b. material amendment of this Declaration or Bylaws of the Association; or
- c. any delinquency in the performance of an obligation by a Unit Owner which is not cured within sixty(60)days.

**ARTICLE 10**  
**Assignment of Powers**

Any and all rights and powers of the Declarant herein contained may be delegated, transferred, or assigned. In the event of any such transfer of Declarant rights, the Declarant shall have assigned all of its rights herein and shall be relieved from and after the date of such transfer of all liability and obligations hereunder, and the Successor Declarant(s) shall have all the rights and obligations of Declarant contained herein.

**ARTICLE 11**  
**Limitation of Liability**

Neither Declarant nor the Association shall be liable for any failure of water service or other utility service to be obtained and paid for by the Association, or for any injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any part of the Building, or their drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the negligence or willful misconduct of the Association. No diminution or abatement of this assessment under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration, or with the law, ordinances, regulations, rules or orders of any governmental authority.

**ARTICLE 12**  
**General Provisions**

12.1 **Violation Constitutes Nuisance.** Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Declarant, the Association, or a Unit Owner or Owners. Remedies hereunder shall be deemed cumulative and not exclusive.

## 12.2 **Enforcement.**

a. Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Declarant, the Association and of the Unit Owner or Owners from time to time of any Unit of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Unit and portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Declarant, the Association, or a Unit Owner or Owners; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent Owner of said Unit shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise.

b. The Management Committee shall have the authority to promulgate rules and regulations for the governance of the Property, and persons with the Property. These rules of the Association shall be compiled and copies shall be made available by the Committee Members for inspection and copying at a reasonable cost.

c. Failure of the Association, Management Committee or of any Unit Owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association, Management Committee or any Unit Owner to do so thereafter. In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association, Management Committee, or enforcing owner a reasonable attorney's fee. The Management Committee may, after notice and hearing, levy a fine or penalty not to exceed ten percent (10%) of the amount of the maximum annual assessment against any owner and/or occupant, and/or Unit Owner's agent who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days' written notice. Any amounts levied or assessed hereunder shall be and constitute a continuing lien on such Owner's Unit and shall be enforceable as if such amounts were regular assessments made hereunder.

12.3 **Non-Liability of Committee.** The Management Committee, officers or members of the Association shall not be liable to any guest, invitee, lessee, tenant, Unit Owner, member or other individual for mistakes in judgment, or for any negligence or nonfeasance arising in connection with the performance or nonperformance of duties under this Declaration or the Bylaws.

12.4 **Severability.** All of the conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof shall be either affected or impaired; and the Association and Unit Owners, their successors, heirs, and assigns

shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

12.5 **Amendments**. Subject to the limitations in Article 9 above, the covenants, conditions and restrictions of this Declaration may be amended by an instrument signed by Unit Owners holding not less than seventy-five percent (75%) of the ownership of the Common Areas. Any amendment must be properly recorded in the records of Iron County, Utah to become effective. Notwithstanding the foregoing, the Declarant reserves the right to unilaterally amend the Declaration until such time as control of the Association shall pass to the owners of the units.

12.6 **Gender and Grammar**. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

12.7 **Topical Headings**. The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.

12.8 **Notices**. Any notice required to be sent under the provisions of this Declaration shall be conclusively deemed to have been given when deposited in the U.S. Mail, postage paid, to the last known address of the person who is entitled to receive it.

12.9 **Waivers**. No provision contained herein shall be deemed to have been waived by reason of any failure of the Association to enforce it irrespective of the number of violations that may occur.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand this \_\_\_\_\_ day of July, 2019.

[signatures on following pages]



\_\_\_\_\_  
Ruth H Heaton

STATE OF UTAH    )  
                          :SS.  
County of Iron    )

On this \_\_\_\_\_ day of January, 2020, personally appeared before me Jarom C Heaton, the signer of the foregoing Declaration, who duly acknowledged before me that he executed the same for the uses and purposes stated therein.

\_\_\_\_\_  
Notary Public

FORT CEDAR DEVELOPMENT, LLC

\_\_\_\_\_  
By: Ruth H Heaton  
Its; Managing Member

STATE OF UTAH     )  
                                  :SS.  
County of Iron     )

On this \_\_\_\_\_ day of July, 2019, personally appeared before me \_\_\_\_\_, who being personally known to me (or satisfactorily proved to me), and who being by me duly sworn did say that he is the Manager of Fort Cedar Development, LLC, a Utah limited liability company, and that he executed the foregoing Declaration on behalf said corporation being authorized and empowered to do so by the operating agreement of said Company, and he acknowledged before me that such Company executed the same for the uses and purposes stated therein.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

LEGAL DESCRIPTION OF THE PROPERTY

**EXHIBIT B**

**BYLAWS OF THE ASSOCIATION**

**EXHIBIT C**

**UNITS**

	Legal Description	Private Floor Space	Number of Votes
Unit 1			
Unit 2			
Unit 3			
Unit 4			
Unit 5			
Unit 6			
Unit 7			
Unit 8			
Unit 9			
Unit 10			
Unit 11			
Unit 12			
Total			