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CVB Inc.  
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Logan, Utah 84321

Ent 1146185 Bk 1893 Pg 529  
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Cache County, UT  
Michael Gleed, Rec. - Filed By NLG  
For RYAN REEVES

**DECLARATION OF PROTECTIVE EASEMENT,  
COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**MALOUF SLEEP CONDOMINIUMS**

*A Utah Condominium Project*

This Declaration of Covenants and Restrictions (hereinafter "Declaration") is made and executed this 28th day of April, 2016 by MPI GROUP, LLC, a Utah limited liability company (referred to herein as the "Declarant").

**RECITALS**

- A. Declarant is the record title owner of the following described parcel of land which is located in Cache County, State of Utah, as more particularly described on Exhibit "A" hereto.
- B. Declarant has constructed or will construct on the Land certain buildings and other improvements as shown more specifically on the Plat (as defined below);
- C. Declarant shall execute and record the Plat in the office of the Cache County Recorder concurrently with the recording of this Declaration;
- D. Declarant, by recording this Declaration and the Record of Survey Plat as required by statute, intends to submit the Land, buildings and other improvements presently existing or to be constructed upon the Land to the provisions of the Utah Condominium Ownership Act, Utah Code Annotated §§ 57-8-1, et. seq., and to impose upon said Land mutually beneficial covenants, conditions and restrictions pursuant to a general plan of improvement for the benefit of all Condominium Units in the Project as well as the Owners thereof;
- E. The administration of the Project shall be governed by this Declaration, and the Articles of Incorporation and Bylaws of the Association as from time to time in effect;

NOW, THEREFORE, pursuant to the foregoing, Declarant hereby makes the following Declaration:

## **ARTICLE I**

### **DEFINITIONS**

Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.01. “Act” shall mean the Utah Condominium Ownership Act. Utah Code Annotated, as amended, Section 57-8-1, et. seq.

1.02. “Association” shall mean MALOUF SLEEP CONDOMINIUM OWNER ASSOCIATION, INC, a Utah nonprofit corporation, operating pursuant to the Articles of Incorporation and Bylaws thereof, and this Declaration.

1.03. “Board of Directors” or “Board” shall mean and refer to the Board of Directors as then constituted of the Association.

1.04. “Bylaws” shall mean and refer to the Bylaws of the Association.

1.05. “Common Area and Facilities” or simply the “Common Area” shall mean and refer to:

- (a) All physical portions of the Project, except the actual Units;
- (b) Those portions of the Project specifically set forth and designated on the Plat as intended for common ownership;
- (c) All elevators, stairways outside a Unit, foundations, columns, girders, beams, supports, main walls, exterior retaining walls, roofs, exterior walkways, streets, yards, gardens, fences, balconies, all parking spaces, installation of central services and installation of all utility service lines, including but not limited to electrical, gas, water, sewer, cable TV, and such other services and facilities as may be provided for in the future, and all other parts of the real property necessary or convenient to its existence, maintenance, and safety of the common areas or normally in common use;
- (d) All common areas and facilities as defined in the Condominium Act, whether or not expressly listed herein or indicated on the Plat; and all other parts of the Project normally in common use, or necessary or convenient to the use, existence, maintenance, safety or management of the other common areas;
- (e) Generally all furniture, furnishings, equipment, facilities, and other property (real, personal, or mixed) and interests therein at any time leased, acquired, owned, or held by the Association for the use and benefit of all of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration, with monies from the Common Expense Fund. Common facilities (the “Common Facilities”) shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.06. “Common Expense Fund” shall mean the fund created or to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.

1.07. “Condominium” or “Condominium Unit” shall mean (i) the fee simple interest in and to a Unit; and (ii) the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas and Limited Common Areas appurtenant to such Unit, as set forth in Exhibit “B”, attached hereto and incorporated herein by reference.

1.08. “Declarant” shall mean MPI GROUP, LLC, a Utah limited liability company.

1.09. “Declaration” shall mean and refer to this Declaration of Covenants and Restrictions as the same may be hereafter modified, amended, supplemented or expanded in accordance with the provisions hereof.

1.10. “First Mortgagee” shall mean a Mortgagee under a mortgage or beneficiary under a trust deed which is a bank or savings and loan association or established mortgage company, other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency which has a first mortgage or trust deed lien on any Unit in the Project. “Eligible First Mortgagee” shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 14.01.

1.11. “Improvements” shall mean any one or more of the buildings or other improvements from time to time constituting part of the Project or located upon the Land.

1.12. “Land” shall mean the Land upon which the Project is situated, as more particularly described in Exhibit “A” hereto.

1.13. “Lease” shall mean any agreement for the leasing or rental of the Land.

1.14. “Limited Common Areas” shall mean any Common Area designated as restricted common area for use of a certain Unit or Units to the exclusion of the other Units in the Project. Structural separations between Units or the space which would be occupied by such structural separations may become Limited Common Areas for the exclusive use of the Owner or Owners of the Units on either side thereof as provided in Section 4.05 hereof. Any balconies, porches, loading bay parking areas, or storage facilities that are identified on the Plat with the same number or other storage facilities that are identified on the Plat with the same number or other designation by which a Unit is identified shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number of designation. Notwithstanding the forgoing, the Project contains a considerable amount of Limited Common Area that is intended to give the Unit to which it is assigned preferential, but not exclusive, use, such as any parking stalls or landscaping included in the Limited Common Areas. Lastly, any vehicle entrances and driving lanes across the parking lots that included as a portion of the Limited Common Area shall not be deemed to give the exclusive right to use to any particular Owner.

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

1.16. “Plat” shall mean the recorded plat for the MALOUF SLEEP CONDOMINIUMS – AMENDED, recorded contemporaneously with this Declaration, and any supplemental plats pertaining to the Project and recorded or to be recorded in the office of the County Recorder of Cache County, State of Utah.

1.17. “Mortgage” shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

1.18. “Mortgagee” shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage or Deed of Trust, or (iii) any insurer or guarantor of such person or entity under such Mortgage or Deed of Trust.

1.19. “Mortgage Servicer” shall mean a Mortgagee who services any Mortgage or Deed of Trust on any individual Condominium in the Project.

1.20. “Owner” or “Unit Owner” shall mean the person or persons including Declarant, owning in fee simple a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Cache County, State of Utah.

1.21. “Project” shall mean the Land and Improvements submitted by this Declaration and the Plat to the provisions of the Act.

1.22. “Total Votes of the Association” shall mean the total number of votes appertaining to all Condominiums in the Project, as shown in Exhibit “B”, attached hereto.

1.23. “Unit” shall mean an individual Condominium, consisting of enclosed rooms occupying part of a building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows, and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Plat, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be part of the Unit.

1.24. “Unit Number” shall mean and refer to the number, letter, or combination thereof which designate a Unit on the Plat.

## **ARTICLE II**

### **SUBMISSION AND DIVISION OF PROJECT**

2.01. Submission to Act. Declarant hereby submits the Land and all Improvements now or hereafter made in or upon the Land to the provision of the Act. All of said Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a fee simple Condominium Project to be known as MALOUF SLEEP CONDOMINIUMS, a Utah Condominium Project. All of said Land is and shall be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Land and division thereof into Condominiums; further, each and all of the provisions hereof shall be deemed to run with the Land and shall be a burden and a benefit on the Land and shall be binding upon Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the Land and improvements comprising the Project, and to their respective personal representatives, heirs, successors, and assigns.

2.02. Division into Condominiums. The Project is hereby divided into TWO (2) Condominiums as set forth on the Plat, with each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas and Limited Common Areas, as set forth in Exhibit “B”, attached hereto.

### **ARTICLE III**

#### **IMPROVEMENTS**

3.01. Improvements. The Improvements and other facilities constructed or to be constructed on the Land are described on the Plat.

3.02. Description of Units. The Plat contains the Unit Number, location, square footage and dimensions of each Unit in the Project and all other information necessary to identify each such Unit; however, the final dimensions of each Unit is subject to change.

3.03. Description of Common Areas. The Plat contains a description of the Common Areas.

3.04. Description of Limited Common Areas. The Plat contains a description of the Limited Common Areas of the Project. The Plat also designates the Unit or Units to which a portion of the Limited Common Areas are reserved, as well as the remainder of the Limited Common Areas that are not reserved to the Owner thereof from time to time and not to any particular Unit or Units.

### **ARTICLE IV**

#### **NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

4.01. Interior of Units. Each Owner shall have the exclusive right to paint, repair, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors, and doors within such boundaries. Each Owner shall also have the right to construct partition walls, fixtures, and improvements within the boundaries of his Unit; provided, however, that such partition walls, fixtures and improvements (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located, and (iv) shall not encroach upon the Common Areas or any part thereof, unless the Association shall consent in writing to such encroachment.

4.02. Exterior of Units. Each Owner shall have the exclusive right to decorate the exterior surfaces of the walls and doors within such Owner's Unit boundaries; provided, however, that such decorations (i) shall comply with all applicable laws, ordinances, and building codes, (ii) shall not interfere with facilities necessary for the support, use, or enjoyment of any other part of the Project, (iii) shall not impair the structural soundness or integrity of the Building in which it is located, (iv) shall not encroach upon the Common Areas or Limited Common Areas or any part thereof, unless the Association shall consent in writing to such encroachment, and (v) shall comply with the requirements of Section 4.03 below and any requirements imposed by the Association.

4.03. Architectural Control.

(a) To maintain a degree of protection to the investment that other Owners may make, and to maintain consistent of design throughout the Project, all exterior improvements shall be approved by the Board. No resurfacing, awning, building, wall, or other structure, or alteration of any kind, including exterior color scheme, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications have been approved in writing by the Board. All subsequent additions to or changes or alterations in any exterior surface, building, fence, wall, or other structure, including exterior color scheme, shall be subject to the

prior written approval of the Board. Once approved by the Board, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the Board.

(b) The Board shall have final control for approval of all color and material plans. There is no time limit for beginning construction; however, upon commencement, the construction time for the exterior portion of any structure shall not exceed six (6) months from start to finish.

(c) Exterior antennas are prohibited. Exterior lighting, whether attached to or detached from a Unit, must be approved by the Board.

(d) No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Unit, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Unit so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Normal construction activities and parking in connection with the building of improvements on a Unit shall not be considered a nuisance or otherwise prohibited by this Declaration, but Units shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of lumber and other building materials will be piled only in such areas as may be approved by the Board. In addition, any construction equipment and building materials stored or kept on any Unit during construction of improvements may be kept only in areas approved by the Board, which may require screening of the storage areas.

(e) Except as provided in this Section 4.03(e) and Section 6.12, no signs of any kind shall be displayed on the Units to public view on any Unit except one sign of not more than five square feet advertising the property for sale or rent and one sign of not more than two square feet identifying the name and/or address of the Owner's Unit. No flashing lights shall be permitted. Lights used to illuminate signs shall be so directed as to reflect the light away from, and not be obtrusive to, other Units and the vision of passing motorists. Notwithstanding the forgoing, the Association may establish rules and regulations relating to signs and such rules and regulations may supersede the restrictions imposed herein.

(f) Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project.

(g) No Unit within the Project shall contain any fireplace or any window mount evaporative cooler or air conditioner.

(h) Unit patios and/or balconies shall not be used as general storage areas.

4.04. Maintenance of Units. Each Owner shall keep the interior and exterior of his Unit, including without limitation, walls, windows, ceilings, floors, and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair and adequately painted or otherwise finished. In the event that any such Unit shall develop an unsanitary or unclean or unsafe 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 by 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 such condition or state of disrepair.

4.05. Right to Combine Units. With the written consent of the Association, which consent shall not be unreasonably withheld, two or more Units may be utilized by the Owner or Owners thereto as if they were one Unit. To the extent permitted in the written consent of the Association, any walls, floors, or other structural separations between any two such Units, or any space that 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 Units are 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 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 joint utilization of the two Units, would have been occupied by structural separation, 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 become Common Areas.

4.06. Title. Title to a Condominium within the Project may be held or owned by any person or entity, or any combination thereof, and in any manner, in which title to any other real property may be held or owned in the State of Utah, including without limitation joint tenancy or tenancy in common.

4.07. Ownership of Common Area. The undivided interest in the Common Areas appurtenant to each Unit in the Project shall be as set forth in Exhibit "B" attached hereto. The percentages appurtenant to each Unit as shown in said Exhibit "B" shall have a permanent character and shall not be altered except with the unanimous written consent of all Owners expressed in an amendment to this Declaration duly recorded. Except as otherwise provided in this Declaration, any Owner shall be entitled to nonexclusive use of the Common Area (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of the other Owners and is not contrary to any rules and regulations promulgated by the Association. Except as otherwise provided in this Declaration, any Owner shall have the exclusive right to use and enjoy Limited Common Areas that may be designated for exclusive use by such Owner.

4.08. Inseparability. Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance, or other disposition of a Condominium, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium; together with all appurtenant rights created by law or by this Declaration, including appurtenant Membership in the Association as hereinafter set forth.

4.09. No Partition. The Common Areas shall be owned in common by all the Owners, and no Owner may bring any action for partition thereof.

4.10. Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance of any Condominium 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 foreclosure by private power of sale, judicial foreclosure, or otherwise.

4.11. Special Taxation. Each Condominium within the Project including each Unit and appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah 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 undivided interests in Common Areas appurtenant to such Units. All such taxes, assessments, and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Condominiums.

4.12. Mechanics' Liens. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Land, the Project or Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished.

4.13. Description of Condominium. Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership.

## **ARTICLE V** **EASEMENTS**

5.01. Easements for Encroachments. If any part of the Common Areas or Limited Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas or Limited Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of the Common Areas or Limited Common Areas or any part of a Unit shall hereafter encroach on real property now owned by Declarant outside the boundaries of the Land, an easement for such encroachment shall and does exist. Such encroachment shall not be considered to be encumbrances either on the Common Areas or Limited Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Building or any improvements constructed or to be constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction on the Project, or any part hereof, in accordance with the provisions of this Declaration.

5.02. Easements for Maintenance, Cleaning and Repair. Some of the Common Areas and Limited Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Limited Common Areas from time to time during such reasonable hours as may be



necessary for the maintenance, cleaning, repair or replacement of any Common Areas and Limited Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or Limited Common Areas or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection, or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.03. Right to Ingress, Egress, and Support. Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium.

5.04. Association's Right to Use. The Association shall have an easement to make such use of the Common Areas and Limited Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including without limitation the right to construct and maintain in the Common Areas (other than Limited Common Areas) facilities for use by Owners generally or by the Association and its agents exclusively.

5.05. Blanket Utility Easement. Declarant hereby grants a blanket utility easement assuring permanent access for installation and maintenance of any and all utilities over, under and/or through the Land.

5.06. Easements Deemed Created. All conveyances of Condominiums within the Project hereafter made, whether by Declarant or otherwise, shall be constructed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## **ARTICLE VI** **RESTRICTIONS ON USE**

6.01. Units. All Units within the Project shall be used exclusively for commercial purposes and for no other purpose. Occupancy of a Unit for commercial use, whether by the Owner, a Tenant under a short or long term lease or rental agreement, or time period occupancy, shall all be deemed to be commercial occupancy.

6.02. No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on, in or upon any part of the Project which is or may become a nuisance or which may cause disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.03. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas or Limited Common Areas.

6.04. Parking. Parking shall be permitted only in areas of the Project designated for such use as evidenced by parking stalls painted upon parking surfaces or by signs otherwise designating specified areas for such parking. No parking shall be permitted upon any roadway, upon any lawns or upon any other area of the Project unless such area shall be specifically designated for such purpose. The Board of

Directors shall designate specific parking stalls for the exclusive use of Owners and their guests, as well as parking stalls for the non-exclusive use of Owners and their guests.

6.05. No Alterations. No Owner shall, without the prior written consent of the Board of Directors in each specific instance, make or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas and Limited Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Buildings or other improvements, or jeopardize the safety of persons or property or impair any easement or hereditament appurtenant to the Project.

6.06. No Obstruction. No Owner shall obstruct the Common Areas or Limited Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Board of Directors shall consent thereto in writing.

6.07. No Overloading. No Owner shall bring anything into his Unit or permit anything to be done in his Unit that will cause damage to the Building. No Owner shall overload the floor of his Unit. No Owner shall permit the use or operation in his Unit of any equipment, machinery, or other apparatus that will in any manner injure, vibrate, or shake the Building or portions thereof.

6.08. Prohibition of Damage and Certain Activities. Except with the prior written consent of the Board of Directors, nothing shall be done or kept in any Unit, in the Common Areas or Limited Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which increase the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or Limited Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority or the Association. No damage to, or waste of, the Common Areas or Limited Common Areas or any part thereof shall be committed by any Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensees, or invitees of such Owner.

6.09. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Association for the governance of the Units, the Common Areas and Limited Common Areas, and the Project, as such rules and regulations may be modified, amended, and construed by the Association in the sole discretion of its Board of Directors.

6.10. Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provisions, covenants, conditions, or restrictions upon completion of the construction.

6.11. Declarant's Right to Sell Units. Until Declarant, or any entity designated by the Declarant in a writing delivered to the Association, has completed and sold all of the Units within the Project, the Unit Owners shall not interfere with the completion of the contemplated improvements and the sale of all remaining Units. Declarant, or any other entity designated by the Declarant in a writing delivered to the Association, may make such use of the unsold Units and the Common Areas and Limited

Common Areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office and models, the showing of the Units, and the display of signs.

6.12. Signs. No signs or other advertising shall be displayed which are visible from the exterior of any Unit, or on the Common Areas or Limited Common Areas, including "For Sale" signs or "For Rent" signs, except in conformity with the Rules and Regulations established by the Board of Directors. No Owner will display any sign advertising a Unit as either "For Sale" or "For Rent" for as long as the Declarant, or any entity designated by the Declarant in a writing delivered to the Association, is continuing to market and sell previously unoccupied Units.

6.13. Leasing of Units. No lease of any Unit shall be for less than the whole thereof.

## **ARTICLE VII** **THE ASSOCIATION**

7.01. Membership. Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the Memberships appurtenant to the Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Condominium is held. An Owner shall be entitled to one Membership for each Condominium owned by him. Each Membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium within the Project cannot be separated from Membership in the Association appurtenant thereto, and any attempted devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's Membership in the Association and rights appurtenant thereto separate to Condominium ownership shall be null and void ab initio. No person or entity other than an Owner may be a Member of the Association, and Membership in the Association may not be transferred except in connection with the transfer of a Condominium.

7.02. Board of Directors. Until such time as the responsibility for appointing the Board of Directors of the Association is turned over to the Owners in accordance with Utah Law, Declarant shall have the exclusive right to appoint and to remove all such Directors. This exclusive right shall terminate after the first to occur of the following:

(a) Seven (7) years from the date on which the first Condominium in the Project is conveyed; or

(b) The date of the sale of Condominiums to which three-fourths (3/4) of the undivided interest in the Common Areas in the Project have been conveyed.

The termination of the exclusive right shall not, however, affect Declarant's rights, as a Unit Owner, to exercise the votes allocated to Units which Declarant owns.

7.03. Right to Bind Association. Until such time as the responsibility for electing the Board of Directors of the Association is turned over to the Owners in accordance with Section 7.02., the Board of Directors or officers of the Corporation shall not have any authority to enter into any contracts, agreements or leases on behalf of the Association, either directly or indirectly, unless such contracts, agreements or leases may be terminated by the Association at any time without cause or penalty after such transfer of control upon ninety (90) days prior written notice.

7.04. Votes. The number of votes appurtenant to each respective Condominium shall be set forth in Exhibit "B". The number of votes appurtenant to each Condominium as set forth in said Exhibit "B" shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration.

7.05. Amplification. The provisions of this Article VII may be amplified by the Articles and Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

## **ARTICLES VIII CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF DIRECTORS**

8.01. The Common Areas and Limited Common Areas. The Board of Directors, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in the Declaration, shall be responsible for the exclusive management and control of the Common Areas and Limited Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in good, clean, attractive, safe, and sanitary condition, order, and repair; provided, however, that unless otherwise stated herein or on the Plat, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit, if any, in a clean, sanitary and attractive condition. The Association shall be responsible for the maintenance and repair of the roofs and foundations of the Improvements, other improvements and grounds, including without limitation repair and replacement of roofs and fences, and maintenance of landscaping, walkways, driveways, and parking areas. The Board of Directors shall also be responsible for maintenance, repair, and replacement of Common Areas and Limited Common Areas within the Improvements, including without limitation landings, stairways, utility lines, Common Facilities, and all improvements and other items located within or used in connection with the Common Areas and Limited Common Areas. The specification of duties of the Board of Directors with respect to particular Common Areas and Limited Common Areas shall not be construed to limit its duties with respect to other Common Areas or Limited Common Areas. All goods and services procured by the Board of Directors in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

8.02. Manager. If desired by the Board of Directors, the Board of Directors may retain the services of an experienced, professional Manager to manage the Project. Appropriate fidelity bond coverage shall be required for any employee of the Manager who handles funds for the Association. The Board of Directors may by written contract delegate in whole or in part to a Manager such of the duties, responsibilities, functions, and powers hereunder of the Board of Directors as are delegable under the Act. The services of any Manager retained by the Board of Directors shall be paid for with funds from the Common Expense Fund. Any management agreement or contract providing for services of Declarant for the Project will be terminable by the Board of Directors for cause upon thirty (30) days written notice thereof, and such Agreement may be terminated by either party without cause and without payment of a termination fee on ninety (90) days written notice. The terms of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods.

8.03. Miscellaneous Goods and Services. The Board of Directors may, on behalf of the Association, obtain and pay for the services of such personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The

Board of Directors may, on behalf of the Association, obtain and pay for the legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board of Directors may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds, and other goods and services common to the Units.

8.04. Real and Personal Property. The Association may acquire and hold real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise; provided that any acquisition or disposition of any real, personal or mixed property by the Association wherein the value of such property exceeds \$5,000.00 must be approved by a vote of at least fifty-one percent (51%) of the Total Votes of the Association at a meeting duly called for that purpose. All such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall be part of such fund.

8.05. Rules and Regulations. The Board of Directors may make reasonable rules and regulations governing the use of the Units, the Common Areas, and Limited Common Areas, and all parts of the Project, which rules and regulations shall be consistent with the rights and duties established for any Owner to enforce compliance with such rules and regulations or other obligations of such Owner arising hereunder, or to obtain such damages for noncompliance therewith, as permitted by law. In the event of judicial action, the Association shall be entitled to recover its costs, including reasonable attorney's fees, from the offending Owner.

8.06. Granting Easements. The Board of Directors may, without the vote or consent of the owners or of any other person, grant or create, on such terms as it deems advisable, easements, licenses and rights-of-way over, under, across, and through the Common Areas and Limited Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the property maintenance or operation of the Project.

8.07. Statutory Duties and Powers. All duties, responsibilities, rights, and powers imposed upon or granted to the Board of Directors or to the Manager under the Act shall be duties, responsibilities, rights, and powers of the Board of Directors.

8.08. Implied Rights. This Association may exercise any right, power, or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

8.09. Heating and Cooling Fixtures. Notwithstanding anything in this Declaration to the contrary, all heating, cooling and air conditioning fixtures (including permanently installed piping, ducts and wiring that serves only one Unit) shall be maintained, repaired and kept up at the expense of the Owner(s) whose Unit(s) such fixtures service.

## **ARTICLE IX**

### **ASSESSMENTS**

9.01. Agreement to Pay Assessments. Declarant, for each Condominium owned by it within the Project, and for and as the owner of the Project and every part thereof, hereby covenants and each Owner of any Condominium by the acceptance of instruments of conveyance and transfer therefor,

whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article IX. So long as a Condominium shall be owned by Declarant and shall remain vacant and not occupied for actual use by Declarant its guest or invitees, whether for compensation or otherwise, the Association may enter into an agreement with Declarant for the payment of such portion of the costs and expenses actually incurred by the Association in the operation of the Project attributable to the existence of such Condominium or Condominiums owned by Declarant in lieu of payment of assessments for Condominiums sold to parties other than Declarant.

9.02. Annual Assessments. Annual assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Common Area Expense.

(i) Assessments. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for maintenance and operation of the Common Area, Limited Common Area and Facilities and/or furnishing utility services and other common items to the Units. Such estimated expenses may include, without limitation, the following: the expenses of management; premiums for all insurance that the Association is required or permitted to maintain including fees for a Manager (if any); utility charges, including charges for utility services to the Units to the extent not separately metered or billed (and it is anticipated that all utilities will not be separately metered); legal and accounting fees; any deficit remaining from a previous period; creation or an adequate contingency reserve, major maintenance reserve, and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas, Limited Common Areas and Facilities that must be replaced on a periodic basis, and such reserve shall be funded by monthly payments rather than extraordinary special assessments; and any other expenses and liabilities which may be incurred by the Association for the benefit of all the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 9.02. shall be part of the Common Expense Fund.

(ii) Apportionment. Expenses attributable to the Common Expense shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas. Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(b) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following; provided the first fiscal year shall begin on the date of this Declaration. On or before December 15 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any), and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.



(c) Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner as to the amount of the annual assessment against his Condominium on or before December 31 each year for the fiscal year beginning on January 1 next following. Each annual assessment shall be payable in twelve (12) equal monthly installments, one (1) such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. The Owners shall commence payment of the full monthly assessments against their respective Condominiums no later than sixty (60) days after the conveyance of the first Condominium in the Project or phase. All unpaid installments of any annual assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date each such installment became due until paid. The failure of the Board of Directors to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(d) Inadequate Funds. In the event that the Common Expense Fund is inadequate at any time for whatever reason, including non-payment of any Owner's assessment, the Board of Directors may on behalf of the Association levy additional assessments in accordance with the procedure set forth in Section 9.03. below, except that the vote therein specified shall be unnecessary.

9.03. Special Assessments. In addition to annual assessments authorized by this Article, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, Special Assessments, payable over such periods as the Board of Directors may determine for the purpose of defraying, in whole or in part, the cost of any or any part thereof, or of any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners; no payments shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.04. Lien for Assessments. All sums assessed to Owners of any Condominium within the Project pursuant to the provisions of this Article IX, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium, and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Cache 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 sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of

sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the owner shall be required to pay the costs and expenses of such proceedings (including reasonable attorney's fees) and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors shall have the right and power in behalf of the Association to bid in at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Condominium in the name of the Association.

9.05. Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or the non-exclusive portions of the Limited Common Areas or by abandonment of his Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

9.06. Statement of Account. Upon payment of a reasonable fee not to exceed \$25.00 and upon written request of any Owner, Mortgagee, or prospective purchaser of a Condominium, the Board of Directors shall issue a written statement setting forth the following: The amount of the unpaid assessments, if any, with respect to such Condominium; the amount of the current annual assessment and the date or dates upon which installments thereof become due; credit for advanced payments or prepaid items, including without limitation the Owner's share of prepaid insurance premiums. Such statements shall be conclusive upon the Association in favor of persons who rely thereon in good faith. In the event that the Board of Directors fails upon written request to issue such a written statement, any unpaid assessments with respect to such Condominium which became due prior to the written receipt of such written request by the Board of Directors shall become subordinate to a lien held by the person or entity requesting such statement.

9.07. Personal Liability of Purchaser. Subject to the provisions of Section 9.06, a purchaser of a Condominium shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Condominium up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

9.08. Reserves and Working Capital. The Association shall establish the following funds:

(a) Capital Reserve Fund. The Association may establish and maintain an adequate capital reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and Facilities and to the Limited Common Areas the Association may be obligated to maintain. The reserve fund shall be maintained out of regular assessments for common expenses. The purpose of the capital reserve fund is to insure that the Association will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Association, or to pay the cost of periodic anticipated major repairs or improvements due to normal wear and tear to the Common Areas and facilities and to the Limited Common Areas. Amounts paid into the capital reserve fund are not



to be considered adverse payment of any regular assessment. Each budget shall disclose that percentage of the annual assessment which shall be added to the capital reserve fund and each owner shall be deemed to make a capital contribution to the Association equal to such percentage multiplied by each installment of the annual assessment paid by such Owner.

(b) Working Expense Fund. The Association may also establish and maintain for the initial months of the Project, a working expense fund equal to at least two (2) months' Common Area charges for each Condominium. The purposes of this fund are to provide for the normal day-to-day expenses of operating the Association and the Project. Each Condominium's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Condominium. The working expense fund must be budgeted for separately and maintained in a segregated account for the use and benefit of the Association. The contribution to the working expense fund for each unsold Condominium in a legal phase of the Project shall be paid to the Association within sixty (60) days after the date of conveyance of the first Condominium in such legal phase of the Project.

9.09. Amendment of Article. This Article IX shall not be amended unless approved by an affirmative vote of no less than sixty percent (60%) of the Total Votes of the Association.

## **ARTICLE X** **INSURANCE**

10.01. Types of Insurance. The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) Hazard Insurance. The Association may obtain, maintain and pay for as Common Expense a "master" or "blanket" multi-peril policy of property insurance covering the entire Project, including, without limitation, fixtures and Building service equipment to the extent that they are part of the Common Areas and Facilities, Limited Common Areas, common personal property and supplies belonging to the Association, and any fixtures, equipment or other property owned by the Association. Such master policy of hazard insurance shall provide, as a minimum, protection against the following:

(i) Loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(ii) All other perils customarily covered with respect to projects similar to the Project in construction, location, and use, and any other perils for which coverage is commonly required by private institutional mortgage investors for such projects, including all perils normally covered by the standard "all risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of the Project and all property covered by the policy. In addition, such master policy of hazard insurance shall include the following endorsements, if available: an Agreed Amount and Inflation Guard Endorsement; and if the Project should hereafter become subject to a construction code provision which would require the Association to incur a significant expense in order to effect code required changes in the undamaged portions of the Project in the event of the partial destruction of the Project by an insured peril, Construction Code Endorsements (e.g., a Demolition Cost

Endorsement, a Contingent Liability from Operation of Building Laws Endorsement and an Increased Cost of Construction Endorsement).

(b) Public Liability Insurance. The Association may obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas and Common Facilities, commercial spaces and public ways (if any) in the Project, whether or not they are leased to a third party. Such insurance policy shall contain a Severability of Interest Endorsement or equivalent coverage which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner. The scope of coverage shall include, without limitation:

(i) Legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Facilities and legal liability arising out of lawsuits related to employment contracts of the Association; and

(ii) Additional coverages as may be required to include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location and use, any other coverage in the kinds and amounts required by private institutional mortgage investors for such projects, including, but not limited to, host liquor liability, contractual and all-written contract insurance, and comprehensive automobile liability insurance. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location and use; provided, however, that such coverage shall be for at least \$1,000,000.00 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence.

(c) Workman's Compensation Insurance. The Association shall obtain and maintain workmen's compensation and employer's liability insurance and all similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law.

(d) Flood Insurance. The Project is not located in either an area identified by the Secretary of Housing and Urban Project or the Federal Emergency Management Agency as an area having special flood hazards for which flood insurance is not available because the community in which the Project is located is ineligible for participation in the National Flood Insurance Program or an area having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program. In the event that at some future time the Project should be declared to be in an area having special flood hazards and for which flood insurance is available under the National Flood Insurance Program, the Association shall at that time obtain and maintain at all times a blanket policy for flood insurance.

10.02. Insurance Policy Requirements. The Hazard, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 10.01.(a), (b), and (e) shall be subject to the following:

(a) The named insured under any such policies shall be set forth therein substantially as follows: "MALOUF SLEEP CONDOMINIUM OWNER ASSOCIATION, INC, a Utah Non-Profit Corporation, for the use and benefit of the individual Owners (designated by name of an

authorized representative of the Association), including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee (each of which shall be referred to as "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be paid in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of the policies according to the undivided interest in the Common Areas appurtenant to each Owner's respective Condominium in the percentage of common ownership. Evidence of insurance shall be issued to each Owner and Mortgagee upon request;

(b) Insurance coverage obtained and maintained pursuant to the requirement of Section 10.01.(a), (b) and (e) shall be primary in the event any Owner has insurance covering the same loss;

(c) Insurance coverage must not be prejudiced by an act or neglect of individual Owners when such act or neglect is not within the control of either such Owners collectively or the Association;

(d) Coverage may not be canceled, changed in a way which is adverse to Mortgagee, or substantially reduced or modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to any and all insured parties;

(e) All policies must contain a waiver of subrogation by the insurer as to any and all claims against the Association, or the Owner of the Unit;

(f) Each hazard insurance policy shall be written by a hazard insurance carrier which has a current financial rating by Best's Insurance Reports of Class B+/VI or better;

(g) Policies shall be deemed unacceptable where (i) under the terms of the carrier's charter, bylaws or policy, contributions or assessments may be made against the Association or an Owner; or (ii) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders, or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Owner from collecting insurance proceeds;

(h) All policies shall contain or have attached the standard mortgagee clause, or equivalent endorsement (without contribution), which is commonly accepted by private institutional mortgage investors in the area in which the Project is located. If Mortgage Servicer is named as Mortgagee in the mortgagee clause, Mortgage Servicer's name shall be followed by the phrase "its successors and assigns." The standard mortgage clause in each policy must be endorsed to provide that any proceeds shall be paid to the Association, or any Insurance Trustee, for the use and benefit of the Owners and their first mortgage holders as their interests may appear;

(i) Policies shall be in compliance with and consistent with applicable local and State insurance law. Each insurer and any reinsurer must be specifically licensed or authorized by law to transact business within the State of Utah.

10.03. Evidence of Insurance. The Board of Directors shall provide the Mortgage Servicer with a copy of the "master" or "blanket" policy of multi-peril property insurance, and where applicable, a copy of any flood insurance, and appropriate certificate or memorandum of insurance.

10.04. Additional Coverage. The provisions of the Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

10.05. Owner's Own Insurance. Each Owner, at his own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire or other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expenses providing such other coverage upon his Condominium, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this Article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, Declarant, the Manager, other Owners, and their respective servants, agents and guests.

10.06. Review of Insurance. The Association shall review annually the coverage and policy limits of all insurance on the Project and adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy of policies on the Project, or by such other qualified appraisers as the Association may select.

10.07. Insurance Trustee, Power of Attorney. Notwithstanding anything to the contrary in this Declaration, the Hazard, Public Liability and Flood Insurance policies obtained by the Association pursuant to Section 10.01. (a), (b), and (c) may name as an insured, on behalf of the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"). All such policies obtained by the Association must provide for recognition of any Insurance Trust Agreement, and the Insurance Trustee, or such other authorized representative, shall have exclusive authority to negotiate losses under any such policy. Each Owner appoints the Association, or the Insurance Trustee (in the event a trustee is designated hereafter to represent the Association), as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any Insurance Trustee must hold or otherwise properly dispose of any proceeds of insurance in trust for the owners and their first mortgage holders, as their interests may appear.

**ARTICLE XI**  
**DAMAGE OR DESTRUCTION**

11.01. Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his attorney-in-fact as herein provided. As attorney-in-fact, the Association 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 an Owner which may be necessary or appropriate to exercise the powers herein granted.

11.02. Definition of Repair and Reconstruction. Repair and reconstruction of the improvements as used herein mean restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.03. Procedures. Subject to Section 14.01 below, in the event all or any part of the Project is damaged or destroyed and subject to the provisions of Article XIV below, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to any institutional holder of any first mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas or Limited Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct that part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance-Less than 75% Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 9.03. hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance-75% or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed as provided in Section 11.03.(c) hereof if, but only if, either not enough Eligible First Mortgagees

approve the termination of the Project pursuant to Section 14.02.(a) or, within one hundred (100) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the termination of the Project is approved by a sufficient number of Eligible First Mortgagees pursuant to Section 14.02.(a) and the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, the Association shall record in the office of the County Recorder of Cache County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

- (i) The Project shall be deemed to be owned in common by the Owners;
  - (ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;
  - (iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and
  - (iv) The Project shall be subject to an action for partition at the suit of the Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit "B" hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.
- (f) In no event shall an Owner of a Unit or any other party have priority over the institutional holder of any first mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

11.04. Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Limited Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications, unless other action is first approved in writing by a sufficient number of Eligible First Mortgagees pursuant to Section 14.02.(f).

11.05. Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Sections 11.03.(c) and (d) hereof shall constitute a fund for the payment of costs of repair and

reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of Ownership of the Common Areas.

11.06. Amendment of Article. This Article XI shall not be amended unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by duly executed and recorded instruments.

## **ARTICLE XII** **CONDEMNATION**

12.01. Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas and facilities or Limited Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas or Limited Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

12.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board of Directors on behalf of the Association as herein provided.

12.03. Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

12.04. Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(a) Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas or Limited Common Areas shall be allocated among and distributed to all Owners



(including Owners whose entire Units have been taken) in proportion to their respective undivided interests in the Common Areas;

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken, in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

(iv) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute, or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article XII or any other provisions in this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement, or proceeds from any eminent domain or condemnation proceedings.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate, but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a Member of the Association and all voting rights and the undivided interest in the Common Areas and Limited Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas;

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board of Directors that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the fair market value of such remaining portion of the Unit shall be determined by the Board of Directors and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the diminution in fair market value of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;



(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Area; and

(iv) The Board of Directors shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.04.(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by its provisions specified in Article XI hereof for cases of Damage or Destruction; provided, however, that the provisions of said Article dealing with sufficiency or insufficiency of insurance proceeds shall be applicable.

### **ARTICLE XIII** **OBSOLESCENCE**

13.01. Adoption of Plan. Subject to the provisions of Section XIV hereof, Owners holding sixty percent (60%) or more of the Total Votes of the Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project. Written notice of adoption of such a plan shall be given to all Owners and First Mortgagees.

13.02. Payment for Renewal and Reconstruction. The Association shall levy a special assessment sufficient to provide funds to pay the estimated expenses of renewal or reconstruction. Such special assessment shall be allocated and collected as provided in Section 9.03. hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected prove insufficient to pay the actual expenses of such renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for the renewal or reconstruction, such excess shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

13.03. Sale of Project. Subject to the provisions of Section XIV hereof, the Owners may at any time, by an affirmative vote of at least seventy-five percent (75%) of the Total Votes of the Association, at a special meeting of the Members of the Association duly called for such purpose, elect to sell or otherwise dispose of the Project. In such event, the Board of Directors shall forthwith record in the office of the County Recorder of Cache County, State of Utah, a notice setting forth such facts, and upon the recording of such notice by the Board of Directors, the Project shall be sold or otherwise disposed of by the Board of Directors as attorney-in-fact for all of the Owners. Such action shall be binding upon all Owners and each Owner shall have the duty to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary or appropriate to effect such sale or other disposition of the Project. The proceeds of such sale or disposition shall be apportioned among the Owners in proportion to their respective undivided interests in the Common Areas, and such apportioned proceeds

shall be paid into separate accounts, each such account representing one Condominium. Each such account shall remain in the name of the Association, and shall be further identified by the Condominium designation and the name of the Owner. The Board of Directors, as attorney-in-fact, shall use and disburse the total amount of each such account, without contribution from one account to another, first to the payment of valid tax and special assessment liens on the Condominium in favor of any governmental assessing authority, second to the payment of any First Mortgagee holding a first mortgage lien on the Condominium, third to the payment of assessments made pursuant to this Declaration, fourth to the payment of other holders of liens or encumbrances on the Condominium in the order of priority of their liens, and the balance remaining, if any, to the respective Owners.

13.04. Amendment of Article. This Article XIII shall not be amended unless the Owners of seventy-five percent (75%) of the Condominiums in the Project and at least seventy-five percent (75%) of the First Mortgagees which have a first mortgage lien on any Unit in the Project, based on one vote for each mortgage, unanimously consent and agree to such amendment by duly executed and recorded instruments.

#### **ARTICLE XIV** **MORTGAGE PROTECTION**

14.01. Notice of Action. Upon written request made to the Association by a First Mortgagee, or an issuer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, issuer or governmental guarantor, and the Unit Number or address of the Unit, any such First Mortgagee issuer or governmental guarantor shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first mortgage held, insured, or guaranteed by such First Mortgagee, issuer or governmental guarantor;

(b) Any default in the performance by the Owner of a Condominium which is held or is subject to a First Mortgage held, insured, or guaranteed by such First Mortgagee, insurer, or governmental guarantor, of any obligation under this Declaration, including, without limitation, any delinquency in the payment of assessments or charges owed by such Owner, which default remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 14.02. below.

14.02. Matters Requiring Prior Eligible First Mortgagee Approval. The prior written consent of Owners entitled to vote a least sixty percent (60%) of the Total Votes in the Association (unless pursuant to a specified provision of this Declaration the consent of Owners entitled to vote a greater percentage of the Total Votes in the Association is required, in which case such specific provision shall control), and Eligible First Mortgagees holding First Mortgages on Condominiums subject to First Mortgages held by Eligible First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project (whether by act or omission); provided that any election to terminate the legal status of the Project following the substantial destruction or a substantial taking of the Project through condemnation shall only require the prior written consent of Eligible First Mortgagees holding First Mortgages on the remaining Condominiums, whether such remaining Condominiums are existing in whole or in part, having at least fifty-one percent (51%) of the votes of the remaining Condominiums subject to First Mortgages held by Eligible First Mortgagees;

(b) Add or amend any material provision of the Declaration, Articles, Bylaws or Plat which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only):

- (i) Voting
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Areas;
- (iv) Fidelity Bonds or Insurance;
- (v) Rights to use of the Common Areas and Common Facilities;
- (vi) Responsibility for maintenance and repair of the several portions of the Project;
- (vii) Boundaries of any Unit;
- (viii) Any provisions which are for the express benefit of First Mortgagees.

Any Eligible First Mortgagee who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request.

(c) Change the prorata interest or obligations of any individual Condominium for the purpose of:

- (i) Levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards; or
- (ii) Determining the pro rata ownership of each Condominium in the Common Areas.

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or Limited Common Areas. (The granting of easements by the Association for public utilities or for other public purposes consistent with the intended use of the Common Areas and Limited Common Areas by the Owners shall not be deemed a transfer within the meaning of this clause);

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(e) Except as provided in Section 14.02.(a), use hazard insurance proceeds for losses to any portion of the Project (whether to Units or to Common Areas or Limited Common Areas) for other than the repair, replacement or reconstruction of the Project. In addition, the prior written approval of Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51%) of the votes of Condominiums subject to First Mortgages held by Eligible First Mortgagees shall be required to effect any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, which will not be substantially in accordance with the Declaration and the original architectural plans and specifications of the Project.

14.03. Prior Liens Relate Only to Individual Condominiums. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

14.04. Subordination of Common Expense Lien. Any lien which the Association may have on any Condominium in the Project for the payment of common expense assessments attributable to such Condominium and any fees, late charges, taxes or interest levied by the Association in connection therewith shall be subordinate to the lien or equivalent security interest of any first mortgage on the Condominium recorded prior to the date on which any such common expense assessments became due.

14.05. Information Made Available to Owners, Lender, and Holders, Insurers and Guarantors of any First Mortgages. Any Owner, lender or holder, insurer or guarantor of any First Mortgage shall, upon request, be entitled to inspect current copies of the Declaration, Bylaws, other rules and regulations concerning the Project and the books, records and financial statement of the Association during normal business hours. Additionally, any holder, insurer or guarantor shall, upon request and without cost, receive an annual audited financial statement of the Association and written notice of all meetings of the Association and may designate a representative to attend such meetings.

14.06. Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, no provision of the Declaration, Articles, or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Unit of any insurance proceeds.

14.07. Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles, or Bylaws or any amendment thereto, shall entitle the Owner of a Unit, or any other party to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of an award or settlement.

14.08. First Mortgagee Rights in Event of Foreclosure. Each holder of a first mortgage lien on a Unit who obtains title to the Unit pursuant to the remedies provided in the Mortgage, or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the acquisition of title to such Unit by the Mortgagee, except for claims for a pro rata share of such assessments or charges as a common expense to all Units in the Project, including the mortgaged Unit.

14.09. No Right of First Refusal. No "right of first refusal" shall be included in or added by amendment to the Declaration, Articles or Bylaws.

## **ARTICLE XV**

### **COMPLIANCE WITH DECLARATION AND BYLAWS**

15.01. Compliance. Each Owner shall comply strictly with the provision of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolution of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or for both, maintainable by the Association or, in a proper case, by the aggrieved Owner.

15.02. Enforcement and Remedies. The obligations, provision, covenants, restrictions, and conditions contained in this Declaration, or in any supplemental or amended declaration, with respect to the Association or Condominiums within the Project shall be enforceable by Declarant or by any Owner of a Condominium within the Project, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. The obligations, provisions, covenants, restrictions, and conditions contained in this Declaration, or in any Supplemental or further Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid. No summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

16.01. Intent and Purpose. The provisions of this Declaration, and any Supplemental or amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision, restriction, covenant or condition contained in this Declaration, or in any Supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

16.02. Construction. The provisions of this Declaration shall be in addition and supplemental to the provisions of the Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to expand, limit, or otherwise affect the meaning or interpretation of this Declaration or any provision hereof. The provisions hereby shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provisions hereof.

16.03. Notices and Registration of Mailing Address. Each Owner shall register from time to time with the Association his current mailing address. All notices, demands, and other communications to any Owner as provided for in this Declaration shall be in writing and shall be sufficient for all purposes if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the owner at his

registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices, demands, and other communications to the Association as provided for in this Declaration shall be in writing and shall be sufficient for all purpose if personally served or if sent by first class U.S. mail, postage prepaid, addressed to the Association at its offices, or to such other address as the Association may hereafter specify to the Owners in writing. Any notice, demand, or communication referred to in this Declaration shall be deemed to have been given and received when personally served or when deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section, as the case may be.

16.04. Audit. Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association. The Association, at the expense of the Common Expense Fund, may obtain an audit, on all books and records pertaining to the Project, and copies thereof shall be furnished to the Owners.

16.05. Amendment. Except as otherwise provided herein, this Declaration may be amended if Owners holding at least sixty percent (60%) of the Total Votes in the Association consent and agree to such amendment. Upon any such affirmative vote, the amendment will be evidenced by instruments which are duly recorded in the office of the County Recorder of Cache County, State of Utah and executed by the Association on behalf of the Owners.

16.06. Effective Date. This Declaration shall take effect upon recording.

16.07. Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in or upon the Project, or resulting from electricity, water, rain, snow, or ice which may leak or flow from outside or from any parts of the Building or its drains, pipes, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules, or order of any governmental authority.

16.08. Owner's Obligations. All obligations of an Owner, under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Condominium. The Owner of a Condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys such Condominium. Further, no Unit Owner may exempt himself from liability for common expenses by waiver of use or enjoyment of any of the Common Areas, Limited Common Areas and facilities or by abandonment of his Unit.

16.09. Termination. In addition to the prior written approval of the percentage of Eligible First Mortgagees specified in Section 14.02., the Total Votes in the Association shall be required before the Project may be abandoned or terminated, except as provided by law and in this Declaration in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or eminent domain.

16.10. Service of Process. The name and address of the person to receive service of process on behalf of the Project, in the cases provided by the Act, are MALOUF SLEEP CONDOMINIUMS OWNER ASSOCIATION, INC., c/o Preston Frischknecht, 1525 West 2960 South, Logan, Utah 84321.

Notwithstanding any other provision of this Declaration, a successor to any person designated to receive service of process under this Section 16.10 may be appointed by the Board of Directors without the vote of the Owners, with such appointment to be effective upon the recording of an acknowledgment executed by such successor setting forth the name and address of the successor and a statement that the successor accepts his/her/its appointment under this Section 16.10.

[INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW]

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

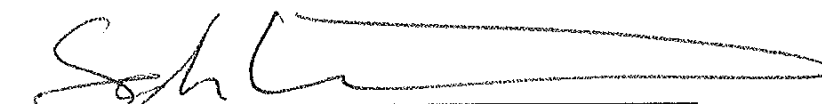
**DECLARANT:**

MPI GROUP, LLC, a Utah limited liability company



STATE OF UTAH       )  
                                  : ss.  
County of Cache       )

On the 28<sup>th</sup> day of April, 2016, personally appeared before me Sarah Williamson, the signer of the within instrument, who duly acknowledged to me that he executed the same as a managing member of MPI GROUP, LLC.

  
NOTARY PUBLIC

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**EXHIBIT "A"**

**(Legal Description of the Land)**

All of Lot 5, Northwest R.D.A. Subdivision as shown by the official plat thereof.

Parcel # 04-154-0005

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**EXHIBIT "B"**

1. Each Unit will have an undivided interest in and to the Common Areas as follows:

|        |     |
|--------|-----|
| Unit 1 | 63% |
| Unit 2 | 37% |

2. The number of votes allocated to each Unit is as follows:

|        |          |
|--------|----------|
| Unit 1 | 63 votes |
| Unit 2 | 37 votes |

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**EXHIBIT "C"**  
**BYLAWS**  
**OF**  
**MALOUF SLEEP CONDOMINIUM OWNER ASSOCIATION, INC.**

**ARTICLE I.**  
**DEFINITIONS**

1.01 Declaration. As used herein, "Declaration" means the Declaration of Protective Easements, Covenants, Conditions and Restrictions, as the same may be amended from time to time, recorded in the Official Records of Cache County, for the MALOUF SLEEP CONDOMINIUMS.

1.02 Owner. As used herein, the term "Owner" shall be as set forth in the Declaration.

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

**ARTICLE II.**  
**OFFICES**

The Association is a Utah nonprofit corporation, with its principal office located at 1525 West 2960 South, Logan, Utah 84321.

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

3.01 Voting. Each Unit in the MALOUF SLEEP CONDOMINIUMS shall be entitled to vote as outlined in the Declaration, with the owner of such residence being entitled to cast said vote.

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

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

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

ARTICLE IV.  
ADMINISTRATION

4.01 Annual Meeting. The annual meeting of the Owners shall be held at a time designated by the Board in the month of July in each year, or at such other date designated by the Board, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

4.02 Special Meetings. Except as otherwise prescribed by statute or the Declaration, special meetings of the Owners, for any purpose, may be called by the president or by a majority of the Directors and shall be called by the president at the request of Owners entitled to vote 20 percent or more of the total votes of all Owners.

4.03 Place of Meeting. The Board may designate the Association's principal offices or any place within Cache County, Utah, as the place for any annual meeting or for any special meeting called by the Board.

4.04 Notice of Meeting. Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each Owner entitled to vote at such meeting not less than ten (10) nor more than thirty (30) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Board may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

4.05 Informal Action by Owners. Any action required or permitted to be taken at a meeting of the Owners may be taken with or without a meeting provided that signed written consents from 100 percent of all Owners entitled to vote are obtained.

ARTICLE V.  
BOARD

5.01 Number and Election of Directors. The Board will consist of not less than three (3) nor more than seven (7) Directors unless the number of Members is fewer than three (3), in which case the number of Directors shall be no less than the number of Members. Thereafter, subject to the terms and conditions of Sections 5.02 below, each Director will hold office for a term of one (1) year, and the Owners shall elect the Directors at the annual meetings. Directors shall be "Trustees" for purposes of the Utah Revised Nonprofit Corporation Act.

5.02 Removal of Directors . Each Director may be removed, with or without cause, by a sixty-seven percent (67%) or greater vote of all Owners of the Units.

5.03 Replacement of Directors .

a. A vacancy on the Board created by the removal, resignation, or death of a Director appointed or elected by the Owners shall be filled by a Director elected by the Owners.

b. Any Director elected or appointed pursuant to this Section 5.03 shall hold office for the remainder of the unexpired term of the Director that Director replaced.

5.04 Resignations. Any Director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

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

5.06 Special Meetings. Special meetings of the Board may be held at any place within the State of Utah or by telephone, provided that each Director can hear each other Director, at any time when called by the president, or by two or more Directors, upon the giving of at least three (3) days' prior notice of the time and place thereof to each Director by leaving such notice with such Director or at such Director's residence or usual place of business, or by mailing it prepaid and addressed to such Director at such Director's address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the Directors shall be required.

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

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

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

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ARTICLE VI.  
OFFICERS AND AGENTS

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

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

6.03 Vacancies. A vacancy in any office, however occurring, shall be filled by the Board for the unexpired portion of the term.

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

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

6.06 Secretary. The secretary shall:

- a. keep the minutes of the proceedings of the Owners meetings and of the Board meetings;
- b. see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration, and as required by law;
- c. be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;
- d. maintain at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Unit owned by each Owner, and, if such Unit is mortgaged, the name and address of each mortgagee; and

e. in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to it by the president or by the Board. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

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

## ARTICLE VII. EVIDENCE OF OWNERSHIP, REGISTRATION OF MAILING ADDRESS, AND LIEN HOLDERS

7.01 Proof of Ownership. Any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Unit. Such copy shall remain in the files of the Association. An Owner shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Owners unless this requirement is first satisfied.

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

7.03 Address of the Association. The address of the Association shall be the address listed in the articles of incorporation. Such address may be changed from time to time upon written notice to all Owners.

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ARTICLE VIII.  
SECURITY INTEREST IN MEMBERSHIP

Owners shall have the right irrevocably to constitute and appoint a holder of a mortgage or deed of trust their true and lawful attorney-in-fact to vote their Membership in the Association at any and all meetings of the Association and to vest in such holder any and all rights, privileges, and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by such holder with the secretary of the Association. A release of the mortgage or deed of trust covering the subject Unit shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors or grantors of a deed of trust, of their duties and obligations as Owners or to impose upon the holder of a mortgage or deed of trust the duties and obligations of an Owner.

ARTICLE IX.  
AMENDMENTS

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

9.02 Owners. Subject to any rights conferred upon holders of a security interest in the Declaration, the Owners may, by the vote of the holders of at least sixty-five percent (65%) of the votes of the Owners, unless a greater percentage is expressly required by law, the Articles, the Declaration, or these Bylaws, make, alter, amend, or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

ARTICLE X.  
RULES AND REGULATIONS

The Owners may adopt other rules and regulations as they deem necessary pertaining to the MALOUF SLEEP CONDOMINIUMS .

ARTICLE XI.  
MISCELLANEOUS

11.01 Fiscal Year. The fiscal year of the Association shall be such as may from time to time be established by the Board.

11.02 Other Provisions. The Declaration contains certain other provisions relating to the administration of the MALOUF SLEEP CONDOMINIUMS, which provisions are hereby incorporated herein by reference.