

NOTICE OF AMENDED AND RESTATED DECLARATION OF ESTABLISHMENT OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
FOR THE PARK REGENCY

This Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions (the "Declaration"), which amends and restates in total the original Declaration of Establishment of Conditions, Covenants and Restrictions (the "Initial Declaration") recorded in the office of the county recorder in Summit County, State of Utah, in Book 428, Pages 166 through 228 on April 17, 1987, Entry No. 270116 and affecting that certain real property located at 1710 Prospector Square, Park City, Utah commonly known as the Park Regency (the "Property") and more particularly described in Exhibit "A" attached hereto, is filed by the Park Regency Timeshare Association (the "Timeshare Association").

WITNESSETH

WHEREAS, Glen Ivy Resorts, Inc., a California corporation, filed the Initial Declaration, but no longer has an interest in the Property; and

WHEREAS, Certain amendments have been filed amending the Initial Declaration; and

WHEREAS, The Timeshare Association desires to further amend and restate the Initial Declaration;

NOW, THEREFORE, The Timeshare Association hereby amends and restates in total the Initial Declaration and declares that all of the property described above, is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following protective restrictions, limitations, conditions, covenants, reservations, liens and charges, all of which are declared and agreed to be both in furtherance of a plan for the subdivision, improvement, and sale of Timeshare Estates within the Timeshare Project, and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Timeshare Project and every part thereof. Each and all of the restrictions herein contained shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the described property, or any part thereof. The provisions of this Declaration shall be enforceable by any of the Owners of an

interest in the Property, against any other Owner(s) thereof, and shall also be enforceable by the Timeshare Association (as herein defined), which shall be created for the purpose of governing this Timeshare Project, through its Board of Directors.

ARTICLE I

DEFINITION OF TERMS

1.1 WHENEVER USED IN THIS DECLARATION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1.1.1 DECLARATION: This Amended and Restated Declaration of Establishment of Conditions, Covenants and Restrictions for the Park Regency Timeshare Association, as the same as may be amended, changed or modified, from time to time.

1.1.2 TIMESHARE ESTATES: An undivided one fifty first (1/51st) interest as tenant in common in a Condominium Unit within the Timeshare Project and an undivided appurtenant ownership interest in the Common Areas and Facilities and Limited Common Areas and the right to occupy the specified unit type together with the common furnishings therein and Commons Areas and Facilities for one week (7 days) each year, as provided in this Declaration.

1.1.3 UNDIVIDED INTEREST: A 1/51st undivided fractional fee interest in and to a Condominium Unit which interest shall be inseparably coupled with a membership in the Timeshare Association.

1.1.4 TIMESHARE PROJECT: Those Condominium Units and Common Areas which are annexed from time to time to timeshare use as provided for in this Declaration, and all other improvements and amenities located upon the Property.

1.1.5 OWNER: The record Owner or Owners, if more than one, of a Timeshare Estate in the Timeshare Project.

1.1.6 TIMESHARE ASSOCIATION: An Owners' association consisting of all Owners of Timeshare Estates in the Timeshare Project. Each Owner shall automatically and without any further documentation be and become a Member of the Association immediately upon recordation of a Timeshare Estate.

1.1.7 MEMBER: An Owner holding membership in the Timeshare Association.

1.1.8 BOARD OF DIRECTORS: The governing body of the Timeshare Association (referred to hereafter as the "Board").

1.1.9 TIMESHARE BYLAWS: The duly adopted Bylaws of the Timeshare Association as the same may be amended, from time to time.

1.1.10 CONDOMINIUM PROJECT: Those Eighty-four (84) Condominium Units and all other improvements and amenities located upon the real property more particularly described in Exhibit "B" attached hereto.

1.1.11 COMMON AREAS AND FACILITIES:

(a) That portion of the property not specifically included in the respective Timeshare Units as herein defined, including, but not limited to, the parking areas, swimming pool, spa, lobby, offices, the maintenance rooms and the laundry rooms; common hallways, walkways, driveways, any utility, pipe, line or system servicing more than a single Condominium Unit, and all ducts, wires, conduits, and other accessories used therewith;

(b) All foundations, columns, girders, stairways, yards, landscaping, fences, service and parking areas and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the foregoing or normally in common use;

(c) All parking rights and rights of ingress and egress appurtenant to the Property by reason of its being a part of the Prospector Square Subdivision.

(d) Those areas specifically set forth and designated in the Map as "Common Area" or "Limited Common Area";

(e) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein.

1.1.12 COMMON FURNISHINGS: The furniture and furnishings within each Timeshare Unit or other personal property from time to time owned or held for use in common by all Owners during their respective Use Periods.

1.1.13 CONDOMINIUM UNIT: Shall mean one (1) of the eighty-four (84) residential units within the Condominium Project, as shown in Exhibit "B" attached hereto.

1.1.14 TIMESHARE UNIT: A Condominium unit annexed to the Timeshare Project.

1.1.15 USE PERIOD: The time period or periods during which an Owner has reserved the use of a Timeshare Unit within the Timeshare Project in accordance with the reservation

procedures set forth in this Declaration and in the current Rules and Regulations of the Timeshare Association.

1.1.16 BONUS USE: The right of an Owner to use and occupy the Timeshare Units within the Timeshare Project in addition to his allotted Vacation Week.

1.1.17 VACATION WEEK: A seven (7) day period commencing on Saturday at 3:00 p.m., and terminating at 11:00 a.m., the following Saturday. There are fifty-two (52) Vacation Weeks in each year. The Vacation Weeks are numbered consecutively with the first Vacation Week in each year being numbered 01, and the fifty-second Vacation Week in each year being numbered 52. Vacation Week 01 shall begin on the first Saturday of each calendar year.

1.1.18 DESIGNATED VACATION WEEK: A Vacation Week wherein the Owner will be entitled to occupy a specified unit Type during a specific Vacation Week.

1.1.19 SEASONS: In addition to the creation of 52 consecutively numbered Vacation Weeks, the year has been divided into two (2) seasons as follows:

Prime Season. The Prime Season shall be made up of twenty-four (24) Vacation Weeks. The first sixteen (16) weeks shall begin on the first Saturday of each calendar year and shall end on the seventeenth (17th) Saturday of each calendar year. The remaining eight (8) weeks shall begin on the forty-fifth (45th) Saturday of each calendar year and shall end on the first (1st) Saturday on the calendar year immediately following thereafter.

High Season. The High Season shall be made up of twenty-eight (28) weeks beginning on the seventeenth (17th) Saturday of each calendar year and ending on the forty-fifth (45th) Saturday of each calendar year.

1.1.20 SERVICE PERIOD: A period of seven (7) days and nights in the High Season (which need not be consecutive), during which routine maintenance and repairs shall be performed on each Timeshare unit. This Service Period shall be reserved by the Timeshare Association which shall also determine which days and nights will comprise said Service Period for each Timeshare unit for each year. The days reserved by the Timeshare Association for the Service Period may change from year to year.

1.1.21 MORTGAGE: A Deed of Trust or a Mortgage.

1.1.22 MORTGAGOR: The person or entity who mortgages his or its property to the mortgagee including the trustor of a Deed of Trust.

1.1.23 INSTITUTIONAL LENDER: A mortgagee which is a bank, a savings or loan association, an established mortgage company, or other entity chartered under federal or state laws as such; a corporation or insurance company, or any federal or state agency.

1.1.24 VOTING POWER; The votes of

(a) Members who are both:

(i) entitled to vote pursuant to rights granted under paragraph 4.1.4 of this Declaration, and

(ii) are eligible to vote having met the requirements necessary for the exercise of those rights as established under the Bylaws, Articles, or this Declaration; and

(b) Members who are entitled to vote pursuant to rights granted under paragraph 4.1.4 of this Declaration, but whose voting interests have been assumed by the Board pursuant to paragraph 8.1.2 below.

1.1.25 MANAGING AGENT: The individual(s) and/or entity to whom the Board of Directors has delegated management and control of the Timeshare Project pursuant to Article 6.1 of this Declaration.

1.1.26 MAP: The Record of Survey Map recorded as Entry No. 270092 in Book 428 at Page 61, et seq. of the official records of the Summit County Recorder.

1.1.27 COMMON EXPENSES:

(1) All sums described in the Act, this Declaration, the Bylaws or in the Rules and Regulations which are lawfully assessed against the Owners or any of them in accordance with the Act, this Declaration, the Bylaws or such Rules and Regulations;

(2) All expenses of operation, administration, maintenance, repair and replacement of the Common Areas and Facilities including, but not limited to, such aggregate sum as

the Board shall from time to time estimate, in its best judgment, is needed during each year or other appropriate time period to pay all budgeted expenses and other cash requirements arising out of or in connection with operation, administration, maintenance, repair and replacement of the Common Areas and Facilities, including but not limited to:

(i) all costs and expenses of operation of the Timeshare Association, all costs of management of the Timeshare Association, all costs of management of the Common Areas and Facilities, all costs of enforcement of the Act, this Declaration, the Bylaws and the Rules and Regulations, all costs of repair and reconstruction of the Common Areas and Facilities, all insurance premiums, all Utility Services, all wages and salaries, all legal and accounting fees, all management fees and all other expenses and liabilities incurred by the Board under or by reason of this Declaration;

(ii) the payment of any deficit remaining from any previous year or time period;

(iii) the creation, maintenance or expansion of an adequate reserve or contingency fund for maintenance, repairs and replacement of those Common Areas and Facilities that must be replaced on a periodic basis, and for unforeseen emergencies; and

(iv) all other costs and expenses relating to the Timeshare Project;

(3) Assessments lawfully and properly levied upon the Timeshare Project by the Prospector Square Property Owners Association;

(4) Expenses agreed upon as Common Expenses by appropriate Timeshare Association action; and

(5) All other expenses declared to be Common Expenses by the Act, this Declaration, the Bylaws or the Rules and Regulations.

1.1.28 LIMITED COMMON AREA. Those portions of the Common Areas and Facilities reserved for the exclusive use of certain Owners, as specified herein and as more particularly identified in the Map.

1.1.29 RULES AND REGULATIONS. The rules and regulations promulgated by the Board and in force from time to time.

1.1.30 UTILITY SERVICES. Services that include, but are not limited to, hot and cold water, electricity, sewage disposal, garbage disposal services and all other similar services provided to the Project which are not separately billed or metered to the individual Units by the utility or party furnishing such service.

1.2 The aforesaid definitions shall be applicable to this Declaration and to any supplements or amendments thereto, (unless the context shall prohibit), filed or recorded pursuant to the provisions of this Declaration. Those definitions contained in the Act, to the extent they are applicable hereto and not inconsistent herewith, shall be and are incorporated herein by this reference and shall have the same effect as if expressly set forth herein and made a part hereof.

## ARTICLE II

### SUBMISSION TO CONDOMINIUM OWNERSHIP

2.1 Description of Improvements. The Condominium Units have been constructed on the Property in accordance with the information contained in the Map. The one (1) building on the Property consists of three (3) stories with underground parking, is of wood-frame and concrete construction, with wood and stone veneer, and contains a total of fifty-two (52) one-bedroom, one bath Condominium Units, twenty-four (24) one-bedroom with bunk room, one bath Condominium Units, and six (6) two bedroom, two bath Condominium Units. The Timeshare Project also includes a swimming pool and spa and an underground parking area containing twenty-two (22) parking spaces. Electricity and gas have a common meter for the Property. Each Condominium Unit is carpeted and contains window coverings, a refrigerator, garbage disposal, range and microwave oven. Water, sewage, heating and garbage disposal charges are not separately metered, but are treated as Common Expenses. The project will be subject to the easements which are reserved through the Timeshare Project and as may be required for utilities.

2.2 The Timeshare Association hereby submits the Property and Improvements to the provisions of the Act as a Condominium Project, with said submission to become effective upon the recording of this Declaration in the office of the recorder of the county in which the Property is situated. This Declaration is submitted in accordance with the terms and the provisions of the Act and shall be construed in accordance therewith. It is the intention of the Timeshare Association that the provisions of the Act shall apply to the Property and the Improvements constructed

thereon.

### ARTICLE III

#### OWNER'S PROPERTY RIGHTS

3.1 Each Owner of a Timeshare Estate shall be "conveyed" an Undivided Interest in and to a Timeshare Unit in the Timeshare Project, together with the exclusive right to occupy a Timeshare Unit of a specific Unit Type within the Timeshare Project during a Designated Vacation Week or properly reserved Use Period within a specific Season. Such interest shall, for all purposes, constitute real property and may be individually conveyed, leased and encumbered and may be inherited or devised by will and be subject to all types of juridic acts as if it were solely and entirely independent of all other Timeshare Estates, and the separate Timeshare Estates shall have the same incidents as real property and may be held and owned by more than one person in any real property tenancy relationship recognized under the laws of the State of Utah. No more than 10% of the Timeshare Units shall be conveyed as Designated Vacation Weeks.

3.2 Each Owner shall have a non-exclusive easement appurtenant to his properly reserved Timeshare unit during his Use Period for ingress, egress, use and enjoyment on and over the common areas of the Condominium Project and all improvements thereon. Said easement shall be appurtenant to and shall pass with the title to each and every Timeshare Estate.

3.3 In addition to the general right to the use and enjoyment of the easements for ingress and egress granted herein, each and every Owner shall have a nonexclusive easement appurtenant to his Timeshare Estate for vehicular traffic over all private streets, if any, within the Condominium Project.

3.4 Any Owner may delegate, in accordance with the Bylaws, this Declaration and the Rules and Regulations, his right to the use and enjoyment of the Timeshare Project and the facilities, to the members of his family, his tenants, or contract purchasers.

3.5 No Owner may exempt himself from personal liability for assessments duly levied by the Timeshare Association, nor release the Timeshare Estate owned by him from the liens and charges imposed thereon by waiver of the use and enjoyment of his Timeshare Estate.

3.6 The Owners of the Timeshare Estates, by the acceptance of their respective deeds, covenant and agree as follows:

3.6.1 No Owner shall have the right to either partition, or seek to partition, his Timeshare Estate and there shall be no judicial partition of the Timeshare Project, or any part thereof. If any Timeshare Estate shall be owned by two (2) or more persons as tenants in common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Timeshare Estate in lieu of partition as between such cotenants or joint tenants.

3.6.2 Each Owner may use the Common Areas and Facilities in accordance with the purpose for which they were intended and without rendering or encroaching upon the lawful rights of other Timeshare Estate Owners. The Common Areas and Facilities shall remain undivided and no Owner or any other person shall bring any action for partition or division of any part thereof.

3.6.3 Subsequent to the recording of the Declaration and while the Property remains subject to it, no lien shall thereafter arise or be effective against the Timeshare Project. During such period, liens or encumbrances shall arise or be created only against each Condominium Unit, Timeshare Unit or Timeshare Estate and the percentage of undivided interest in the Common Areas and Facilities appurtenant to such unit in the same manner and under the same conditions as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership; provided that no labor performed or materials furnished with the consent or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien pursuant to the lien law against any Condominium Unit, Timeshare Unit or Timeshare Estate of any other Owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the Owner of any Unit in the case of emergency repairs. Labor performed or materials furnished for the Common Areas and Facilities, if authorized by the Owners, the Managing Agent or in accordance with the Act, the Declaration, the Bylaws or the Rules and Regulations, shall be deemed to be performed or furnished with the express consent of each Owner and shall be the basis for the filing of a lien pursuant to the lien law against each affected Timeshare Unit.

In the event a lien against two or more Timeshare Estates becomes effective, the Owners of the separate interests may remove their Timeshare Estates and the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Timeshare Estates from the lien by payment of the fractional or proportional amount attributable to each of the

interests affected. Such individual payment shall be computed by reference to the percentages appearing in the Declaration. Subsequent to any payment, discharge or other satisfaction, the interest and the percentage of undivided interest in the Common Areas and facilities appurtenant thereto shall be free and clear of the lien so paid, satisfied or discharged. Partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any interest and the percentage of undivided interest in the Common Areas and Facilities appurtenant thereto not so paid, satisfied or discharged.

3.6.4 Each Timeshare Owner shall be entitled to the exclusive use and occupancy of the Limited Common Areas reserved to his Timeshare Unit as shown on the Map, subject, however, to the same restrictions on use which apply generally to the Common Areas and Facilities and to the Rules and Regulations. Such right to use the Limited Common Areas shall be appurtenant to and contingent upon use of the Unit associated therewith, and even though not specifically mentioned in the instrument of transfer, shall automatically pass to the grantee or transferee of such unit. Such right of use shall not be revocable, nor may it be voluntarily or involuntarily relinquished, waived or abandoned.

3.7 Reservation of Use Periods by Owners may be made up to one (1) year in advance of the commencement date of the desired Use Period, but in no event may be made less than fourteen (14) days prior to the commencement of the desired Use Period. All reservations shall be made in writing or by telephone, and are subject to confirmation by the Managing Agent.

3.8 An Owner who has not purchased a Designated Vacation Week will have to reserve his Use Period within a particular Season on a "first-reserved, first-served" basis.

3.8.1 Each Owner may split the use of his Vacation Week or Designated Vacation Week into two (2) or three (3) Use Periods during that Season; provided, however, that no Use Period shall be for less than two (2) nights, nor more than seven (7) nights.

3.8.2 Each Owner electing to split a Vacation Week or Designated Vacation Week into two (2) or three (3) Use Periods shall be subject to a per check-in special service charge, in an amount to be set by the Board of Directors.

3.9 All reservations shall be accepted on a "first-reserved, first-served" basis. A rotating reservation list will be maintained by the Managing Agent and shall contain the names

of all Owners reserving weeks with high demand. High demand weeks shall consist of all Vacation Weeks containing a national or state holiday, including, but not limited to, Christmas Day, New Year's Day, Thanksgiving Day, Memorial Day, Labor Day, Veteran's Day, Independence Day, Presidents Day and Martin Luther King, Jr. Day. The Owners whose names are at the top of the list will be entitled to make reservations for high demand weeks. After reserving the high demand week, the reserving Owner's name will be moved to the bottom of the list, thus ensuring each Owner an equal opportunity to reserve a high demand week. An Owner of a Designated Vacation Week during a high demand week shall not be subject to the foregoing restriction and shall be guaranteed occupancy of a Timeshare Unit during his Designated Vacation Week.

3.10 All Owners shall be entitled to Bonus Use on a space available basis. A Timeshare Unit shall be available for Bonus Use for the periods during which there are no timely reservations for occupancy of such Timeshare Unit by an Owner. A charge for such Bonus Use shall be assessed by the Timeshare Association in accordance with rates set by the Board of Directors.

3.10.1 Reservations for Bonus Use shall be on a "first-reserved, first served" basis, but in no event shall a reservation for Bonus Use be made more than fourteen (14) days in advance of the Bonus Use Period.

3.10.2 The right to utilize a Timeshare Unit during a Bonus Use Period shall be subject to receipt of confirmation of such use by the Managing Agent.

3.11 If any Owner fails to vacate his properly reserved Timeshare Unit at the end of his Use Period or Bonus Use Period, or otherwise uses or occupies the Timeshare Project during a period for which he has no confirmed reservation, or prevents another Owner from using or occupying a properly reserved Timeshare Unit during such other Owner's Use Period, such Owner (hereinafter the "Detaining Owner") shall be: (i) subject to immediate removal and eviction from the Timeshare Unit wrongfully occupied, (ii) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal or eviction (to the extent that such notices may be waived under Utah law), and (iii) responsible to reimburse the Owner otherwise entitled to use the Timeshare Unit (or the Managing Agent if no other Owner has reserved the Timeshare Unit) for all costs and expenses incurred by him as a result of such conduct, including but not limited to costs of alternative accommodations, travel costs, court costs, and reasonable attorney's fees incurred in

connection with removing or evicting the Detaining Owner from the Timeshare Unit. If an Owner, by his intentional or negligent act renders the Timeshare Unit uninhabitable for the successive Use period(s), such Owner shall be liable to the Owner(s) of successive Use periods just as if such Owner had refused to vacate the Timeshare Unit at the end of this Use Period. For purposes of this Article, the negligent act of a guest or any member of an Owner's family, shall be deemed to be the negligent act of the Owner.

3.11.1 If any Owner is unable to utilize a Timeshare unit during his reserved and confirmed Use Period, due to the willful negligence or other act or failure to act by the Managing Agent of the Timeshare Association with regard to the reservation, confirmation, or occupancy of same, such Owner shall be entitled to receive a compensating Use Period(s) or monetary compensation in an amount equal to the fair market value for the use of the Timeshare Unit during the Use Period of which the Owner was deprived.

#### ARTICLE IV

##### TIMESHARE OWNERS' ASSOCIATION

##### A UTAH NONPROFIT CORPORATION

4.1 The Park Regency Timeshare Association, Inc. is a Utah nonprofit corporation (the "Timeshare Association"), formed for the purpose of administrating, governing and benefiting the Timeshare Estates. The Timeshare Association has the powers, rights and duties hereinafter set forth:

4.1.1 There shall be one (1) membership in the Timeshare Association for each Undivided Interest in the Timeshare Project, which membership shall be appurtenant to the land.

4.1.2 All of the memberships in the Timeshare Association shall pass automatically to the respective purchasers of Timeshare Estates in the Timeshare Project.

4.1.3 Each member shall comply with the provisions of this Declaration, the Bylaws of the Timeshare Association, and any Rules and Regulations which may be prescribed by the Board of Directors.

4.1.4 The Timeshare Association shall have one class of voting membership. Where a Timeshare Estate is held by one individual or entity alone, that individual or entity is

entitled to one vote in the Timeshare Association. In the case of joint ownership of a single Timeshare Estate, the vote for such Timeshare Estate shall be exercised as such Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any one Timeshare Estate.

4.1.5 Any provisions in the governing instruments calling for membership approval of action to be taken by the Timeshare Association will require the vote or written assent of the prescribed percentage of Voting Power.

4.1.6 The voting rights attributed to any given Timeshare Estate in the Timeshare Project as provided for herein, shall not vest until the assessments provided for herein have been paid by the Timeshare Association as against said Timeshare Estate.

4.1.7 The Timeshare Association membership held by any Owner of a Timeshare Estate shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance, of such Timeshare Estate. In the event of such sale or encumbrance, the Timeshare Association membership may only be transferred, pledged or alienated to a bona fide purchaser of the Timeshare Estate or to the Mortgagee (or third-party purchaser) of such Timeshare Estate upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Timeshare Association.

4.1.8 Membership in the Timeshare Association shall not apply to those persons or entities who hold an encumbrance on a Timeshare Estate as security for the performance of an obligation to pay money.

4.1.9 The purpose of the Timeshare Association is to further and promote the common interests and welfare of its Members, and to operate, preserve and maintain the Timeshare Project.

## ARTICLE V

### POWERS OF THE TIMESHARE ASSOCIATION

5.1 The Timeshare Association, in its sole and absolute discretion, and as more fully set forth in its Bylaws, shall have the right and power to perform the following acts:

5.1.1 To manage, operate, control, repair, replace, or restore, all the improvements and Common Furnishings within Timeshare Units.

- 5.1.2 To levy and collect assessments.
- 5.1.3 To pay the taxes and assessments, if any, which may be levied by any governmental authority on the Timeshare Project of any part hereof.
- 5.1.4 To maintain a bank account(s) for funds coming under the control of the Timeshare Association.
- 5.1.5 To adopt Rules and Regulations not inconsistent with the provisions of this Declaration, including, but not limited to, Rules and Regulations relating to the use of the Timeshare Project.
- 5.1.6 To enforce the provisions of this Declaration; provided, however, nothing contained in this paragraph shall be construed to prohibit enforcement of this Declaration by any Owner.
- 5.1.7 To contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring the Owners, the Timeshare Association, members of the Board, and other persons.
- 5.1.8 To contract, provide and pay for (i) maintenance, utility, gardening and other services benefiting the project; (ii) payment of persons necessary to accomplish the obligations of the Timeshare Association; and (iii) legal and accounting services.
- 5.1.9 To contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and improvements of the Timeshare Project, which right and power shall be subject to the right of the Members to approve or disapprove special assessments that may be necessary to effect same.
- 5.1.10 To contract for and pay for reconstruction of any portion or portions of the Timeshare Project damaged or destroyed, which right and power shall be subject to the right of the Members to approve or disapprove special assessments that may be necessary to effect same.
- 5.1.11 To delegate its powers to others where such delegation is proper.
- 5.1.12 To prosecute or defend in the name of the Timeshare Association and on behalf of the Members of the

Timeshare Association, any action affecting or relating to the Timeshare Project or the personal property thereon, specifically including any action exercising the power of eminent domain by governmental agencies or those private agencies entitled to exercise that power under Utah law, or any other action the subject matter of which all the Owners have an interest in. The Timeshare Association is further authorized to grant easements and rights-of-way for public utility facilities in the absence of the exercise of eminent domain.

5.1.13 Subject to the vote or written consent of a majority of the Voting Power of the membership, to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.1.14 Do any and all things that a non-profit corporation organized under the laws of the state of Utah may lawfully do, and generally may do and perform any and all other acts which may either be necessary for, or incidental to, the exercise of any of the foregoing powers.

5.1.15 To acquire by gift, purchase or otherwise, own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage, or otherwise dispose of real and/or personal property in connection with the business of the Timeshare Association, provided, however, that the Timeshare Association shall not acquire or sell any real property by purchase or lease without first obtaining the vote or written consent of a majority of the Voting Power of the Timeshare Association membership.

5.1.16 To suspend indefinitely a Member's voting rights and the right to use the recreational facilities for any period during which any assessment against his Timeshare Estate remains unpaid and delinquent: and for a period not to exceed thirty (30) days for any single infraction of the Rules and Regulations of the Timeshare Association; provided that any suspension of such voting rights or right to use the recreational facilities, except for failure to pay assessments, shall be made only by the Timeshare Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Timeshare Association.

5.1.17 To take any and all lawful action which may be advisable, proper, authorized or permitted by the Timeshare Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Timeshare Project, or any portion thereof, and to do and perform

any and all acts which may be either necessary for, or incidental to, the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

5.1.18 To enter a Timeshare Unit through its duly authorized agents or employees, to effect emergency or other necessary repairs which the occupying Owner has failed to perform, to perform cleaning and maid services, and to abate known or suspected nuisances or other dangerous or unlawful activities. The Timeshare Association shall make a reasonable attempt to give notice to the occupying Owner or his permitted user prior to entering the Timeshare Unit to effect any necessary emergency repair.

5.1.19 Notwithstanding any of the foregoing, the Timeshare Association, acting through its Board, may not enter into any contract binding the Timeshare Association for a term longer than one (1) year from the effective date thereof without the vote or written consent of a majority of the Voting Power of the membership of the Timeshare Association except as hereinafter provided.

## ARTICLE VI

### MANAGEMENT OF THE TIMESHARE PROJECT

6.1 The management and complete control of the Timeshare Association's affairs and the Timeshare Project itself will be the responsibility of the Board of Directors (hereinafter referred to as the "Board"), which is to consist of Members of the Timeshare Association who will be elected by the total voting Power thereof. Said management and control of the Timeshare Project shall, however, be delegated to a Managing Agent approved by a majority of the Board members.

6.2 The Board shall have all the rights and powers of the Timeshare Association as they are set forth in Article V of this Declaration and as are further provided in the Bylaws. If any Board member is aware that the Association is about to enter into any business transaction directly or indirectly with such Board member, any member of such Board member's family, or any entity in which such Board member has any legal, equitable or fiduciary interest or position, including without limitation as a director, officer, member, partner, beneficiary or shareholder, such Board member shall: (a) immediately inform all other Board members of such Board member's interest or position, (b) disclose all material facts within such Board member's knowledge that bear on the advisability of such transaction from the standpoint of the

Association, and (c) not be entitled to vote on the decision to enter into such transaction. The Managing Agent shall be responsible for and have the right and power to perform all duties, tasks, and responsibilities delineated in Article V of this Declaration and as further provided in the Bylaws.

6.3 Irrespective of the apparent powers of the Managing Agent, the Managing Agent shall be responsive to the dictates of the Board, this Declaration, and Rules and Regulations.

6.4 The Board shall be responsible for the acquisition and selection of a reputable Managing Agent.

6.4.1 The agreement used in employing such Managing Agent ("Management Agreement"), shall be for a maximum term of five (5) years and shall provide for termination for cause upon thirty (30) days written notice and without cause upon ninety (90) days written notice.

6.4.2 The terms of the Management Agreement shall provide for automatic renewal prior to its expiration unless either party, not then in default, shall give to the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the term of the Agreement, or any automatic renewals thereof. Any such notice of non-renewal by the Timeshare Association shall require the consent of a majority of the Board.

6.4.3 In the event that the Managing Agent disputes termination for cause by the Timeshare Association, the dispute shall be submitted to arbitration in accordance with the commercial rules of the American Arbitration Association.

6.4.4 The terms of the Management Agreement shall provide that the resignation of the Managing Agent shall require all of the following:

(i) that the Managing Agent give at least ninety (90) days prior written notice to the Timeshare Association of its intent to resign;

(ii) that prior to the expiration of the period of said notice, the Timeshare Association shall have entered into a Management Agreement with another management firm, or shall have made a determination to discharge the duties delegated to the Managing Agent under this Declaration to its own personnel; provided, however, that if the Timeshare Association shall fail to make reasonable efforts to meet the foregoing requirements, the Managing Agent's resignation shall be effective

at the end of such ninety (90) day notice period, and

(iii) that on or before the effective date of the Managing Agent's resignation, the Managing Agent shall turn over all books and records related to the management and operation of the Timeshare Project to the Timeshare Association or if so directed by the Timeshare Association to the successor Managing Agent.

6.4.5 The terms of the Management Agreement shall provide limitations on the powers of said Managing Agent to enter into contracts with third parties to furnish goods or services to the Timeshare Project. The Managing Agent shall be precluded from entering into a contract on behalf of the Timeshare Association for the furnishing of goods or services for a term of longer than one (1) year without the vote of a majority of the Voting Power except as follows:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by a public utilities commission, in which case the term of the contract shall not exceed the shortest term for which the utility company will contract at the regulated rate.

(ii) Prepaid casualty and/or liability insurance policies, provided, however, that a policy shall not be for a term of more than three (3) years and must permit short-rate cancellation by the insured.

(iii) Leases of the Common Furnishings.

6.4.6 The terms of the Management Agreement shall provide that the Managing Agent shall procure and maintain a fidelity bond and an errors and omission insurance policy evidencing coverage for theft, omissions or misappropriation of property and/or other malfeasance by the Managing Agent and/or any of its directors, officers, or employees in an amount satisfactory to the Department of Real Estate in the State of Utah.

## ARTICLE VII

### ASSESSMENTS, TAXES AND PAYMENT OF COMMON EXPENSES

7.1 Each Owner of any Timeshare Estate by acceptance of a Deed therefor whether or not it shall be so expressed in the same, is deemed to covenant and agree, to pay to the Timeshare Association (i) annual assessments or charges, and (ii) special assessments. The personal obligation for delinquent assessments

shall pass to their respective successors in title unless expressly forgiven by action taken by the Board of Directors.

7.2 The annual assessments levied by the Timeshare Association through the Board shall be used exclusively to promote the recreation, health, safety, welfare and maintenance of the Timeshare Project and the facilities therein. The Timeshare Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements that must be replaced on a periodic basis, such reserve to be refunded by annual assessments.

7.3 Both regular and special assessments, except as may otherwise be provided in Paragraph 12.4 of this Declaration, shall vary depending on the Owner's Unit Type and shall be collected on a semi-annual basis, or such other basis as may be determined by the Board.

7.4 The Board of Directors shall abide by the provisions herein contained for establishing maximum annual assessments following conveyance of the first Timeshare Estate as provided in the approved Timeshare Project budget.

7.4.1 From and after January 1 of the year immediately following the conveyance of the first Timeshare Estate to an Owner, the maximum regular assessment may be increased effective January 1 of each year thereafter by the Board without a vote of the membership, provided that any such increase shall not be more than twenty percent (20%) of the previous year's assessment. Regular assessments shall be assessed and paid semi-annually and such semi-annual assessments shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

7.4.2 An increase in the regular assessment attributable to an increase in real property taxes against the Timeshare Project shall be excluded in determining whether that regular assessment is more than twenty percent (20%) greater than the regular assessment per Timeshare Estate for the preceding fiscal year.

7.4.3 After consideration of current maintenance costs and future needs of the Timeshare Association, the Board of Directors may fix the regular monthly assessments at a lesser amount than provided for above.

7.5 In any fiscal year, the Board of Directors may not, without the vote or written consent of a majority of the Voting Power of the Timeshare Association, levy special assessments for

the purpose of defraying in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Timeshare Association for that fiscal year. Except for special assessments provided for in Paragraph 7.6, hereof, all special assessments shall be levied against the Owners of each Timeshare Estate on the same basis as regular assessments.

7.6 The above provisions with respect to special assessments do not apply in the case where the special assessment against a Member is a remedy utilized by the Board to reimburse the Timeshare Association for costs incurred in bringing the Member and his Timeshare Estate into compliance with the provisions of this Declaration and/or Bylaws or in the case where the special assessment is for the repair or reconstruction of a Timeshare Unit(s) the cost of which does not exceed ten percent (10%) of the budgeted gross expenses of the Timeshare Association for the fiscal year in which such assessment is levied.

7.7 Any action authorized under Paragraph 7.5 shall be taken at a meeting duly called for that purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite percent for passage, members who were not present in person or by proxy, may give their assent in writing, provided the same is obtained by the Board of Directors not later than thirty (30) days from the date of such meeting.

7.8 The annual assessments provided for herein shall commence as to all Timeshare Estates on the first day of the month following the conveyance of the first Timeshare Estate to an individual Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Timeshare Estate at least forty-five (45) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner thereto. The due dates shall be established by the Board of Directors. The Timeshare Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Timeshare Association setting forth whether the assessments on a specified Timeshare Estate have been paid.

7.9 No Owner may exempt himself from liability for his

contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Timeshare Estate.

7.10 It is understood that under the Act each Condominium Unit, together with its percentage of undivided interest in the Common Areas and Facilities in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. Each Timeshare Estate Owner will, accordingly, pay and discharge any and all taxes which may be assessed against their Timeshare Estate in the fractional or proportional amount attributable to each of the interests affected.

#### 7.11 Payment of Common Expenses.

7.11.1 Unit Owner Obligation. Each Owner shall pay the Timeshare Association his allocated portion of the Common Expenses upon the terms, at the time, and in the manner herein provided without any deduction on account of any set-off or claim which the Owner may have against the Board or the Timeshare Association. If the Owner shall fail to pay any installment of Common Expenses within ten (10) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date when such installment shall become due to the date of the payment thereof, together with all costs and expenses, including attorney's fees, incurred in any proceedings brought to collect such unpaid Common Expenses.

7.11.2. Determination of Common Expenses. The Board may, from time to time, up to the close of year or other time period for which the Common Expenses have been fixed or determined, increase or diminish the amount previously fixed or determined for such year. It may include the Common Expenses for any year, any liabilities or items of expense which accrued or became payable in the previous year, or which might have been included in the Common Expenses for a previous year, but were not included therein; and also any sums which the Board may deem necessary or prudent to provide a reserve against liabilities or expenses then accrued or thereafter to accrue although not payable in that year. However, without the vote or written assent of a majority of the Voting Power of the Timeshare Association, the Board may not fix an amount under this Article per condominium which is more than twenty percent (20%) greater than the amount fixed the immediately preceding fiscal year nor levy special assessments to defray the cost of any action or undertaking on behalf of the Timeshare Association which in the

aggregate exceed five percent (5%) of the budgeted gross expenses of the Timeshare Association for that fiscal year.

7.11.3. Allocation. The portion payable with respect to each Timeshare Estate in and for each year or for a portion of a year shall be a sum equal to the aggregate amount of the Common Expenses for such year, or portion of year, determined as aforesaid, multiplied by the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Timeshare Unit, as shown in the map and multiplied by the fractional interest in the Timeshare Unit held by the Owner of the Timeshare Estate. Such assessments, together with any additional sums accruing under this Declaration, shall be payable monthly in advance, or in such payments and installments as shall be provided by the Board. The foregoing is only an estimate, however, and may be revised by the Board as experience is accumulated.

7.11.4. Reserve Fund. The Board and the Timeshare Association shall establish an adequate reserve fund to cover the cost of reasonably predictable and necessary major repairs and replacements of the Common Areas and Facilities and shall cause such reserve to be funded by regular monthly or other periodic assessments against the Timeshare Estates rather than by special assessments.

7.11.5. Finality. The Board shall have discretionary powers to prescribe the manner of maintaining and operating the Timeshare Project subject to the following limitations:

(a) The Board shall fix the Common Expenses to be paid by the Owners of the Timeshare Association under this Declaration;

(b) The Board shall not, without the vote or written assent of a majority of the Voting Power of the Timeshare Association:

(1) Enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Timeshare Association for a term longer than one (1) year with the following exceptions:

(A) A management contract for a term not to exceed five (5) years;

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the

term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(C) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured;

(D) Lease Agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more;

(E) Agreements for cable television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more;

(F) Leases of furnishings of Units in the Project; and

(G) Agreements for burglar alarm services and equipment.

(2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Timeshare Association for that fiscal year;

(3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(4) Pay compensation to members of the governing body or to officers of the Timeshare Association for services performed in the conduct of the Timeshare Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Timeshare Association.

(c) The Board shall make available to any member of the Timeshare Association or his duly appointed representative, the membership register, books of account and minutes of meetings of the members of the Board of Directors and committees of the Board of Directors of the Timeshare Association, at any reasonable time and for a purpose reasonably related to his interest as a member,

at the office of the Timeshare Association or at such other place within the Timeshare Project as the Board shall prescribe:

The Board of Directors shall establish reasonable rules with respect to:

(1) notice to be given to the custodian of the records by the member desiring to make the inspection;

(2) hours and days of the week when such an inspection may be made;

(3) payment of the cost of reproducing copies of documents requested by a member.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Timeshare Association and the physical properties owned or controlled by the Timeshare Association. The right of inspection by a director includes the right to make extracts and copies of documents.

Every such reasonable determination by the Board within the bounds of the Act and this Declaration, shall be final and conclusive as to the Owners, and any expenditures made by the Board within the bounds of the Act and this Declaration, shall, as against the Owner, be deemed necessary and properly made for such purpose.

Neither any member of the Association nor any member of the Board may use the membership register for any improper purpose. An improper purpose includes any purpose that is unrelated to a member's interest as a member and more specifically includes, but is not limited to, using the membership register to solicit money or property, to promote a commercial endeavor, or to sell such information, without the consent of the Board.

7.11.6. Lease or Sublease. If an Owner shall at any time let or sublet his Timeshare Unit and shall default for a period of one (1) month in the payment of any assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant or subtenants of the Owner occupying the unit so much of the rent due or becoming due and payable as is necessary to cure said default and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant or subtenant and the Owner to the extent of the amount so paid.

7.11.7. Personal Liability. Each monthly assessment and

each special assessment of Common Expenses shall be separate, distinct and personal obligations of the Owner of the Timeshare Estate against which the same is assessed at the time the assessment is made and shall be collectible as such. Suit to recover a money judgment for unpaid Common Expenses may be maintained without foreclosure or waiving the lien (described hereafter) securing the same. If not paid when due, the amount of any assessment, whether regular or special, assessed to a Timeshare Estate plus interest at eighteen percent (18%) per annum, costs of action and reasonable attorney's fees, shall become a lien upon such Timeshare Estate upon recordation of a notice thereof as provided by the Act. The said lien for non-payment of Common Expenses shall have priority over all other liens and encumbrances, recorded or unrecorded, except only:

(a) tax and special assessment liens on the Timeshare Unit in favor of any assessing unit, or special district; and

(b) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

7.11.8. Grantee Liability. In any conveyance, except to a Mortgagee as hereinafter set forth, the grantee of a Timeshare Estate shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the date of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. However, any such grantee shall be entitled to a statement from the Manager or Management Committee setting forth the amounts of the unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the Timeshare Estate conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth.

7.11.9. Delinquent Assessment Certificate. A certificate executed and acknowledged by the Manager or Board stating the unpaid Common Expenses then outstanding with respect to a Timeshare Estate shall be conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner or encumbrancer or prospective Owner or encumbrancer of a Timeshare Estate upon request at a reasonable fee initially not to exceed Ten Dollars (\$10.00). Unless the request for a certificate of indebtedness shall be complied with within ten (10) days, all unpaid Common Expenses which become due prior to the date of

making such request shall be subordinate to the lien or interest held by or obtained by the person making the request. Any encumbrancer holding a lien on a Timeshare Estate may pay any unpaid Common Expenses payable with respect to such Timeshare Estate and upon such payment that encumbrancer shall have a lien on that Timeshare Estate of the same rank as the lien as his encumbrance for the amounts paid.

7.11.10 Release of Lien. Upon payment or other satisfaction of delinquent assessments concerning which a notice of assessment has been recorded, the Board shall cause to be recorded in the same manner as the notice of assessment a further notice stating the satisfaction and release of the lien thereof.

7.11.11 Enforcement of Lien. A lien for non-payment of assessment may be enforced by sale by the Board or by a bank, trust company, title insurance company or attorney authorized by the Board, such sale to be conducted in accordance with the provisions of the 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. In any foreclosure or sale, the Owner shall be required to pay the costs and expenses of such proceedings including reasonable attorney's fees.

7.11.12 Redemption Period Rental. In the event of foreclosure, the Owner, if he is an owner-occupier and desires to remain in the Unit during any redemption period, shall be required to pay a reasonable rental for the unit and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the rental without regard to the value of the security. The Board or Manager shall have the power to bid on the Timeshare Estate at foreclosure or other sale and to hold, lease, mortgage and convey the Timeshare Estate.

#### 7.12 Special Assessments.

Each and every special assessment levied against an Owner under the Rules and Regulations shall constitute a special assessment, collectible in the same manner as other Common Expenses in accordance with Articles VII and VIII hereof except that any monetary penalty imposed by the Timeshare Association as a disciplinary measure for failure of a member to comply with the governing instruments or as a means of reimbursing the Timeshare Association for costs incurred in the repair of damage to Common Areas and Facilities for which the member was allegedly responsible or in bringing the Member and his subdivision interest into compliance with the governing instruments may not be characterized nor treated in the governing instruments as an

assessment which may become a lien against the Member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Title 57 of the Utah Code.

In the event the Board, pursuant to the Rules and Regulations, takes appropriate disciplinary action against an Owner for failure to comply with the governing instruments including but not limited to the imposition of monetary penalties or temporary suspension of an Owner's rights, no action shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner and the Owner has been given the opportunity to present a written or oral defense to the charges not less than fifteen (15) days before the effective date of the disciplinary action. The Board shall determine whether such defense shall be written or oral and the Association shall take no disciplinary action until the affected Owner shall be notified in person by telegram, telephone or certified mail of the decision of the Board. All such meetings, and the attendance thereat by the subject Owner, may be held by telephone conference provided all parties can hear one another.

## ARTICLE VIII

### EFFECT OF NON-PAYMENT OF ASSESSMENTS

#### REMEDIES OF THE TIMESHARE ASSOCIATION

8.1 Delinquent Owner. Any Owner who does not pay an assessment provided for in this Declaration when due shall be delinquent ("Delinquent Owner").

8.1.1 Late Fee and Interest. With respect to each assessment not paid within fifteen (15) days after its due date, the Timeshare Association may, at its election, require the Delinquent Owner to pay a "Late Charge" in a sum to be determined by the Board, but not to exceed Fifty Dollars (\$50.00) per each delinquent assessment. If any such assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the then legal rate.

8.1.2 Suspension of Rights. After giving the Delinquent Owner an opportunity to be heard, as provided in Article 10.6, the Board of Directors may (1) suspend the Delinquent Owner's right of occupancy of a Timeshare Unit, and the right to use the Common Areas and Common Furnishings, (2) suspend the Delinquent Owner's voting rights and/or (3) assume the voting rights of the Delinquent Owner during the period of

time that the Delinquent Owner is delinquent in the payment of regular or special assessments duly levied by the Timeshare Association. If the Board assumes the voting rights of the Delinquent Owner and, as of the Record Date prior to any meeting, the Delinquent Owner is still delinquent, then the Board shall vote the interests of the Delinquent Owner as the Board, in its discretion, may determine. The Board shall give written notice to the Delinquent Owner of the suspension of his rights and privileges immediately after any decision to suspend has been made.

8.1.3 Lien. The amount of any delinquent assessment, together with said interest, costs and reasonable attorney's fees in the event enforcement is commenced, shall be and become a lien upon the Delinquent Owner's Timeshare Estate where the Timeshare Association causes to be recorded with the county recorder of Summit County, a notice of claim. The Timeshare Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or it may foreclose the lien provided for hereinabove upon compliance with the notice provisions set forth in Paragraph 8.2 hereof. In either event, there shall be added to the amount of such assessment the Late Charge, the cost of preparing and filing the Complaint in such action, and in the event a judgment is obtained, such judgment shall include interest and reasonable attorney's fees, together with the costs of suit. Each Owner vests in the Timeshare Association or its assigns the right and power to bring all actions at law or lien foreclosure proceedings against such Owner(s) for the collection of such delinquent assessments.

8.2 No action shall be brought to foreclose said assessment lien or to proceed under the power of sale herein provided until thirty (30) days after the date a notice of claim or lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the said Timeshare Estate and a copy thereof is recorded by the Timeshare Association in the Office of the County Recorder of Summit County. Said notice of claim must recite a good and sufficient legal description of such Timeshare Estate, the record Owner or reputed Owner thereof, the amount claimed (which may at the Timeshare Association's option include interest on the unpaid assessment at the then legal rate, reasonable attorneys' fees and collection expenses incurred in connection with the debt secured by said lien), and the name and address of the claimant.

8.3 Any such sale provided for above is to be conducted in accordance with the provisions of the civil Code of the State of Utah applicable to the exercise of powers of sale in Mortgages

and Deeds of Trust, or in any other manner permitted by law. The Timeshare Association after a vote by at least a majority of the Voting Power, may, through its duly authorized agents, have the power to bid on the Timeshare Estate at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

8.4 Upon the timely curing of any default for which a notice of claim of lien was filed by the Timeshare Association, the Board of Directors shall file or record, as the case may be, an appropriate release of such notice upon payment of the defaulting Owner of a fee to be determined by the Timeshare Association, but not to exceed Twenty-Five Dollars (\$25.00) to cover the costs of preparing and filing or recording such release.

8.5 The Assessment lien and the rights of foreclosure and sale shall be in addition to, and not in substitution for, all other rights and remedies which the Timeshare Association and its assigns may have hereunder and by law, including, but not limited to, a suit to recover a money judgment for unpaid assessments.

## ARTICLE IX

### USE RESTRICTIONS

9.1 In addition to all other covenants contained herein, the use and enjoyment of the Timeshare Project and each Timeshare Unit therein shall be subject to the following:

9.1.1 No part of the Timeshare Project shall ever be used or caused to be used directly, or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purposes, except as is so provided in Article XVIII Paragraph 18.2.

9.1.2 No noxious or offensive activity shall be carried on in any Timeshare Unit or any part of the Timeshare Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Timeshare Unit, or which shall in any way increase the rate of insurance.

9.1.3 Each Owner shall: (i) keep the Timeshare Unit and all Common Furnishings in good condition and repair during his Use Period(s); (ii) vacate the Timeshare Unit at the expiration of his Use Period(s) and remove all persons and personal property therefrom, excluding Common Furnishings; (iii) leave the Timeshare Unit in good and sanitary condition and

repair; and (iv) otherwise follow such reasonable check-out and other procedures as may from- time to time be contained in Rules and Regulations promulgated by the Managing Agent or the Board.

9.1.4 Each Owner shall be responsible for: (i) the cost of long-distance telephone charges as set by the Board or other special services allocatable to the occupancy of a Timeshare Unit during such Owner's Use Period(s); (ii) the cost to repair any damage to the Timeshare Unit or to repair or to replace any property contained therein on account of loss or damage occurring during his Use Period(s); and (iii) the cost necessary to satisfy any expense to any of the other Owners due to any intentional or negligent act or omission of his family, guests, or invitees or resulting from his breach of any provision of this Declaration; and (iv) the cost of any room service ordered during such Owner's Use Period.

9.1.5 Except as otherwise provided in this Declaration, no Owner shall decorate or make improvements, or repairs to a Timeshare Unit, the Common Furnishings, or the Common Area, or contract to do so, or subject the Timeshare Unit, the Common Furnishings, or the Common Area to any liens for the decoration thereof or the making of improvements, or repairs thereto.

9.1.6 No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted within the Timeshare Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Timeshare Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Timeshare Project.

## ARTICLE X

### SCOPE OF ENFORCEMENT

10.1 The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Timeshare Project; and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants shall run with the land.

10.2 Each remedy provided for in this Declaration shall be cumulative and not exclusive. The Timeshare Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants,

reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto: provided, however, that with respect to assessment liens, the Timeshare Association shall have the exclusive right to the enforcement thereof. Failure by the Timeshare Association or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.3 The result of, or condition caused by, any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby.

10.4 The Timeshare Association shall have no power to cause the absolute forfeiture of an Owner's right, title, or interest in the Timeshare Project on account of the Owner's failure to comply with this Declaration, Bylaws, or the Rules and Regulations except pursuant to:

(a) the judgment of a court of competent jurisdiction, or

(b) the foreclosure or sale under a power of sale for failure of an Owner to pay assessments duly levied by the Timeshare Association as set forth in Article VII.

10.5 The Timeshare Association may impose reasonable monetary penalties, suspend rights of use and occupancy, and take such other disciplinary action, except as provided above, for violations of this Declaration, the Bylaws, and the Rules and Regulations by an Owner, his guests, and/or persons under his control for among other things:

(a) failure to vacate a Timeshare Unit upon expiration of a Use Period.

(b) damage to any part or facility of the Timeshare Project.

(c) permitting a Timeshare Estate to be subject to a lien other than the lien of non-delinquent property taxes or assessments, claim or charge which could result in the sale of Timeshare Estates of other Owners.

(d) creating a disturbance that interferes with the use and enjoyment of the Timeshare Project by other Owners.

10.6 Notwithstanding anything to the contrary contained

hereinabove, no action to enforce this Declaration shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to the Owner against whom enforcement is sought and said owner has been given the opportunity to present a written or oral defense to the charges not less than fifteen (15) days before the effective date of the disciplinary action. The Board shall determine whether such defense shall be written or oral and the Timeshare Association shall take no disciplinary action until the affected Owner shall be noticed in person by telegram, telephone or certified mail of the decision of the Board. All such meetings, and the attendance there at by the subject Owner, may be held by telephone conference provided all parties can hear one another.

10.7 In the event the Timeshare Association or any Owner(s) should commence litigation to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation such attorneys' fees and costs (other than nominal) as the court may adjudge reasonable and proper.

## ARTICLE XI

### INSURANCE

11.1 A master or blanket public liability and property damage insurance policy covering the Timeshare Project shall be purchased by the Board of Directors as promptly as possible following its election and shall be maintained in force at all times, the premiums thereon to be paid out of the monies collected from the regular assessments. The minimum amount of coverage shall be a One Million Dollar (\$1,000,000.00) umbrella policy for personal injury and Five Hundred Thousand Dollars (\$500,000.00) for property damage. The policy shall name as insureds, all Owners as a class, and the Timeshare Association, as agent for each of the Owners. The Managing Agent shall also be a named insured on such policy during such time as its agency shall continue. The insurance policy shall contain a cross-liability endorsement to cover negligent injury by one Owner to another and a waiver by the insurer of its right to subrogation under the policy against any Owner or member of Owner's household. The insurance policy shall also contain provisions whereby no act or omission by an Owner or member of Owner's household, unless acting within the scope of his authority on behalf of the Timeshare Association, will void such policy or operate as a condition to recovery under the policy by any other person.

11.2 A master or blanket fire insurance policy shall also be purchased by the Board as promptly as possible following its election and shall thereafter be maintained in force at all times, the premiums thereon to be paid out of the monies collected from the regular assessments. Said insurance shall insure against loss from fire or any other hazard therein covered, for the full replacement value of all furnishings, contents and improvements within the Timeshare Project. Such policy shall contain extended coverage and replacement cost endorsements. It shall also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause and determinable cash adjustment clause or similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to reconstruct. The policy shall be in such amounts as shall be determined from time to time by the Board of Directors. The policy shall name as insureds all Owners and the Timeshare Association as the agent for each of the Owners, and all mortgagees of record, as their respective interests may appear. The Managing Agent shall also be named as insured on such policy, during such time as its agency shall continue.

11.2.1 Said policy shall cover all Timeshare Units including, but not limited to, insurance for such property as wall and floor coverings, cupboards, cabinets, fixtures and built-in appliances and personal property.

11.3 All insurance proceeds payable under Paragraph 11.1 or 11.2 of this Article and subject to the rights of mortgagees under Paragraph 11.5 hereof, shall be paid to the Board, to be held and expended for the benefit of Owners, mortgagees and others, as their respective interests shall appear, and be paid out in accordance with Article XII hereof.

11.4 The Board of Directors shall require that all directors, officers, and employees of the Timeshare Association handling or responsible for Timeshare Association funds shall be covered by a fidelity bond. The premiums on such bond shall be paid by the Timeshare Association.

11.5 With respect to insurance coverage under Paragraph 11.1 or 11.2 hereof, any mortgagee of record shall have the option to apply insurance proceeds payable to it in reduction of its obligations secured by its Mortgage.

11.6 The Board shall review the insurance carried by the Timeshare Association at least once annually, for the purpose of determining the amount of the casualty and fire insurance

referred to in Articles 11.1 and 11.2 above. The Board shall obtain a current appraisal of the full replacement value of furnishings and improvements in the Timeshare Project, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

## ARTICLE XII

### DESTRUCTION OF IMPROVEMENTS

12.1 The Timeshare Association will be responsible for: (1) maintaining the Common Areas and Facilities; and (2) reconstructing and restoring the buildings and other improvements, including, but not limited to, maintenance and repair of the Common Areas and reconstructing and restoring the buildings and other improvements, including the Condominium and Timeshare Units, after damage or destruction. Decisions and actions of the Timeshare Association pursuant to the Declaration and Utah Code are binding on all Owners. For example, its decision whether or not and how to reconstruct any Timeshare Unit is final and binding on the Owners of all Timeshare Estates in that Timeshare Unit. Each Owner has the right to vote on these matters as a member of the Timeshare Association in accordance with the Bylaws and Articles of Incorporation of the Timeshare Association. The costs incurred are assessed to each Timeshare Estate as a common expense. Owners must pay a proportionate share of these costs.

12.2 In the event of total or partial destruction of the furnishings and improvements in the Timeshare Project, and if the available proceeds of the insurance carried pursuant to Article XI, are sufficient to cover not less than eighty-five percent (85%) of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt, unless within ninety (90) days from the date of such destruction, seventy-five percent (75%) of the membership present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) days from the date of said destruction, a certificate declaring the intention of the Owners to reconstruct.

12.3 If the proceeds of such insurance are less than eighty-five percent (85%) of the cost of reconstruction, such reconstruction may, nevertheless, take place, if, within ninety (90) days from the date of said destruction, sixty-six and two-thirds percent (66-2/3%) of the membership present and entitled

to vote in person or by proxy, at a duly constituted meeting elect to reconstruct and refurnish.

12.4 If the Owners decide to reconstruct, either pursuant to Paragraphs 12.1, 12.2, or 12.3, each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be determined by the square footage floor area of the Unit Type(s) of Timeshare Estate(s) owned. In the event of failure or refusal by any Owner to pay his proportionate share for a period of sixty (60) days after notice to him, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions contained in Article VII.

12.5 If the Owners decide to reconstruct, the Board of Directors shall obtain bids from at least two (2) reputable contractors. The Board of Directors shall have the authority to enter into a written contract with the contractor chosen by the Board for such reconstruction and the insurance proceeds held by the Board shall be disbursed to said contractor according to the terms of that contract. It shall be the obligation of the Board to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

12.6 If the vote of the Owners shall be insufficient to authorize reconstruction, either pursuant to Paragraph 12.1, 12.2, or 12.3 above:

12.6.1 Subject to the rights of mortgagees set forth in Article XI, any insurance proceeds available for such reconstruction shall be distributed among the Owners and their individual lenders by the Board, as their respective interests may appear. The proportionate interests of each Owner in said proceeds in relation to other Owners shall be based upon the square footage floor area of the Unit Type(s) of the Timeshare Estate(s) owned.

12.6.2 The Board shall have the duty, within one hundred twenty (120) days of the date of such loss, to execute, acknowledge and record a certificate setting forth the decision of the Owners not to reconstruct, and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Timeshare Project to the status of unimproved land or to show the elimination of one or more of the Timeshare Units as a result of such destruction.

12.7 Upon recordation of such certificate, the right of any Owner to partition his Timeshare Estate through legal action

shall forthwith revive.

12.8 In the event of a dispute among the Owners with respect to the provisions of this Article, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to the Board and all Owners as promptly as possible after reference to arbitration is made, giving all Owners an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in this matter shall be final and conclusive upon all Owners. The arbitrator may include in his decision an award for costs and/or attorneys fees against any one or more of the parties to the arbitration.

### ARTICLE XIII

#### CONDEMNATION

13.1 In the event that an action for condemnation is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply:

13.1.1 If such action or proposed action is for the condemnation of the entire Timeshare Project, upon the consent of seventy-five percent (75%) of the Owners the Timeshare Project may be sold to such governmental body prior to judgment and the proceeds of such sale shall be distributed to the Owners. The share of the sale proceeds to be distributed to the Owners and their respective lenders shall be distributed between such Owners and their respective lenders in an equitable manner based upon the square footage floor area of the Unit Type(s) of the Timeshare Estate(s) owned. Lacking such consent, the compensation for the taking shall be distributed in like manner, unless said judgment shall, by its terms, apportion such compensation among the individual Timeshare Estate Owners.

13.1.2 If such action or proposed action is for the condemnation of only a portion of the Timeshare Project, the compensation for the taking shall be distributed to the Owners pursuant to the unanimous decision of the Voting Power of the Timeshare Association and in accordance with its terms made at a special meeting of the Timeshare Association called for the specific purpose of making such a decision. The Board shall initiate procedures established under this Declaration, Bylaws, Articles or applicable Rules and Regulations to call said special meeting immediately upon learning of an action or a proposed action for the condemnation of only a portion of the Timeshare Project.

13.1.3 In the event a unanimous decision cannot be reached under subparagraph 13.1.2, the issue shall be submitted to binding arbitration in accordance with the commercial rules of the American Arbitration Association.

#### ARTICLE XIV

##### ACCOUNTINGS

14.1 The Timeshare Association or its Managing Agent shall maintain books of account of all its receipts and expenditures. Each Owner for good cause and upon reasonable and adequate notice to the Managing Agent shall be entitled at reasonable times to inspect the books of the Association, to have such books examined at such Owner's expense by an attorney or an accountant representing such Owner, and to make excerpts or copies of such books or portions thereof. In addition, each such Owner, at his own expense, shall have the right to have such books independently audited by an accountant.

14.2 A pro forma operating statement ("Budget") for each fiscal year shall be distributed to each Owner not less than forty-five (45) days before the beginning of the fiscal year. The Budget shall contain (i) an estimate of the Timeshare Association's revenue and expenses for the upcoming fiscal year on an accrual basis, (ii) the amount of total cash reserves of the Timeshare Association currently available for replacement or major repair of Common Areas and facilities and for contingencies, (iii) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement of additions to, major components of the Common Areas and facilities for which the Association is responsible, and (iv) a general statement setting forth the procedures used by the governing body to calculate and establish reserves to defray the costs of repair, replacement, or additions to major components of the Common Areas and facilities for which the Timeshare Association is responsible.

14.3 A balance sheet, as of the accounting date, which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Timeshare Estate, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed to each Owner within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the number of the Timeshare Estate and the name of the record Owner assessed.

14.4 An annual report consisting of the following shall be mailed to each Owner within one hundred twenty (120) days after the close of the fiscal year:

14.4.1 A balance sheet as of the end of the fiscal year.

14.4.2 An operating (income) statement for the fiscal year.

14.4.3 A statement of changes in financial position for the fiscal year.

14.4.4 Any information required to be reported under the Utah Code.

14.4.5 For any fiscal year in which the gross income to the Timeshare Association exceeds Seventy-Five Thousand Dollars (\$75,000.00), a copy of the review of the Annual Report prepared in accordance with generally accepted accounting principles by an independent accountant licensed by a Board of Accountancy (hereinafter "Independent Accountant"). The term "review", for the purposes of this Paragraph 14.4.5, shall have the same meaning as is given that term in the codification of statements on standards for accounting and review services issued by the accounting and review services committee of the American Institute of certified Public Accountants, AR section 100 et seq. or its successor sections, if any.

14.4.6 A statement of policies and procedures that will be employed by the Board to enforce the collection of delinquent assessments.

14.5 The annual report referred to in Paragraph 14.4 above shall be prepared by an independent accountant for each fiscal year.

14.6 If the report referred to in Paragraph 14.4 above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Timeshare Association that the statements were prepared, without audit, from the books and records of the Timeshare Association.

14.7 The minutes of any meeting of the Board of Directors shall be made available by the Timeshare Association to the Members following approval of said minutes by the Board at the next meeting of the Board.

14.8 A list of the orders of business to be considered at

the annual meeting of Members shall be distributed to the Members no less than thirty (30) days prior to the meeting date. This list shall include the name, address and a brief biographical sketch, if available, of each Member who has announced his or her intention to stand for election to the Board of Directors.

14.9 In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement of the Timeshare Association's policies and practices for enforcing its remedies against Members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against such Members' interest.

14.10 Within ten (10) days of receipt of any written request therefor, the Board shall furnish any Owner or prospective Owner with a copy of this Declaration, the Articles of Incorporation, Bylaws, and Rules and Regulations of the Timeshare Association as amended to date, together with a copy of the Timeshare Association's most recent annual financial report as described in Paragraph 14.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorney's fees or other charges under this Declaration levied in connection with such Owner's interest as of the date the statement is issued. The Board may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

## ARTICLE XV

### RIGHTS OF LENDERS

15.1 No breach of any of the foregoing limitations, restrictions, conditions, or covenants shall defeat or render invalid the lien of any Deed of Trust made in good faith and for value as to a Timeshare Estate: provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said Timeshare Estate is acquired by a trustee's sale or otherwise.

15.2 Each and every lien created by or pursuant to this Declaration is and shall be subordinate, inferior, and subject to the lien or charge of any real property Deed of Trust encumbering any Timeshare Estate and given for value.

15.2.1 First Mortgage Priority. The lien or claim against a Timeshare Estate for unpaid assessments or charges levied by the Timeshare Association pursuant to this Declaration

or the Act shall be subordinate to a First Mortgage affecting such Unit. A Mortgagee who obtains title to a Timeshare Estate pursuant to his Mortgage shall not be liable for such Timeshare Estate's unpaid assessments which accrue prior to the acquisition of title to such Timeshare Estate by the Mortgagee and shall take the same free of such lien or claim for unpaid assessments or charges, but only to the extent of assessments or charges which accrue prior to the acquisition of title to such Timeshare Estate by Mortgagee (except for claims for a pro rata share of such prior assessments or charges resulting from a pro rata reallocation thereof to all Timeshare Units including the Timeshare Estate in which the Mortgagee is interested). No assessment, charge, lien or claim which is described in the preceding sentence as being subordinate to a Mortgage or as not a burden to a Mortgagee coming into possession pursuant to his Mortgage or deed or assignment in lieu of foreclosure shall be collected or enforced by the Timeshare Association from or against a Mortgagee, as successor in title to a Mortgagee of the unit affected or previously affected by the Mortgage concerned (to the extent any such collection or enforcement would prejudice the interests of the Mortgagee or successor in title to the Mortgage interested In such Timeshare Estate).

15.2.2 Any subsequent Owner of a Timeshare Estate shall be bound by such limitations, conditions, restrictions and covenants, whether such Owner's title was acquired in a trustee's sale or otherwise. A Lender who acquires title by a trustees' sale shall not be obligated to cure any breach of title if such breach was or is non-curable or was a type of breach the cure of which is not practical or feasible.

15.3 Notice of Failure to Cure. From and after the time a Mortgagee makes written request to the Timeshare Association, the Timeshare Association shall notify such Mortgagee in writing in the event that the Owner of the Timeshare Estate encumbered by the mortgage held by such Mortgagee neglects for a period of sixty (60) or more days to cure any failure on his part to perform any of his obligations under this Declaration.

15.4 Examination of Records. Any Mortgagee shall have the right, at its request and expense and upon reasonable notice, to examine the books and records of the Timeshare Association or of the Timeshare Project. From and after the time a Mortgagee makes written request to the Timeshare Association therefor, the Timeshare Association shall furnish to such Mortgagee copies of such annual operating reports and other reports or writings summarizing or reflecting the financial position or history of the Timeshare Project as may be prepared for distribution to or

use by the Board, Manager, the Timeshare Association or the Owners.

15.5 Notice of Damage. From and after the time a Mortgagee makes written request to the Timeshare Association, the Association shall notify such Mortgagee in writing in the event that there occurs any damage or loss to, or any taking or anticipated condemnation of: (a) the Common Areas and Facilities involving an amount in excess of, or reasonably estimated to be in excess of, Ten Thousand Dollars (\$10,000.00); or (b) any Unit involving an amount in excess of, or reasonably estimated to be in excess of Ten Thousand Dollars (\$10,000.00). Said notice shall be given within ten (10) days after the Timeshare Association learns Of such damage, loss, taking or anticipated condemnation.

15.6 Mortgagee Approval of Amendment. Except with respect to combination or division of units which may be accomplished without consent of any Mortgagee, no amendment to this Article which has the effect of diminishing the rights, protection or security afforded to Mortgagees shall be accomplished or effective unless seventy-five percent (75%) of all of the Mortgagees of the individual Timeshare Units of record, as of ten (10) days prior to the date of mailing of said notice of such amendment to all of the Mortgagees of the Timeshare Estates have given their prior written approval to such amendment. The Mortgagees shall have forty-five (45) days in which to object to such amendment. Should any Mortgagee fail to object or otherwise respond within the forty-five (45) day period, all objections shall be deemed to have been waived.

15.7 Limits of Right of First Refusal. No "right of first refusal" is contained in this Declaration. In the event this Declaration is subsequently amended to include a right of first refusal, such right of first refusal shall not impair the rights of a First Mortgagee to (a) foreclose or take title to a Timeshare Estate pursuant to the remedies provided in the First Mortgagee's Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by the mortgagor or trustor under said Mortgage; or (c) sell or lease a Timeshare Estate acquired by said First Mortgage.

## ARTICLE XVI

### AMENDMENT

16.1 This Declaration may be amended only by an affirmative vote of not less than sixty-six and two-thirds percent (66 2/3%) of the Voting Power and provisions of this Declaration shall not be amended to allow amendments by vote of less than sixty-six and two-thirds percent (66 2/3%) of the Voting Power, provided, however, that the percentage of the Voting Power necessary to

amend a specific provisions shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. All amendments shall become effective upon: (i) obtaining the requisite percentage approval of the membership, (ii) the preparation and execution by the officers of the Board of a "Notice of Amendment" which specifically delineates the desired changes, and (iii) the recordation thereof in the recorders office of the County of Summit.

16.2 Each amendment made pursuant to the preceding paragraph shall, from and after its effective date, be effective as to all of the Timeshare Project and the Owners/Members and their successors in interest.

## ARTICLE XVII

### RENTAL OF TIMESHARE UNITS TO GENERAL PUBLIC

17.1 The Timeshare Association hereby reserves the exclusive right to rent all Timeshare Units not sold and conveyed to members of the general public or those Timeshare Units not timely reserved by an Owner. Such rentals shall be at such rates and under such terms and conditions as the Board shall prescribe. All revenues, income, and other monies attributable to such rentals shall inure to the benefit of the Timeshare Association.

## ARTICLE XVIII

### GENERAL PROVISIONS

18.1 The provisions of this Declaration shall run with the land and bind the Timeshare Project, and shall inure to the benefit of and shall be enforceable by the Timeshare Association or the Owner of any interest subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of the (10) years, unless an instrument, signed by the President and Secretary of the Timeshare Association pursuant to the affirmative vote of seventy-five percent (75%) of the then Owners of the Timeshare Estates at a duly convened Member's meeting has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

18.2 The right of Timeshare Association (and its sales agents and representatives) to the non-exclusive use of the

Timeshare Project for display and exhibit purposes in connection with the sale and/or rental of Timeshare Estates shall not unreasonably restrict the Members in their use and enjoyment of the Timeshare Project or facilities thereon.

18.3 A Timeshare Estate may pass under the estate of a deceased person to more than one person; provided, however, that only one living individual shall be entitled to have membership privileges in the Timeshare Association derived from such ownership.

18.4 In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court or competent jurisdiction, the remaining portions of the Declaration shall, nevertheless, be and remain in full force and effect.

18.5 Invalidation of anyone of these covenants, conditions, or restrictions, by judgment or court order, shall in no way affect other provisions hereof which shall remain in full force and effect.

18.6 The singular shall include the plural and the plurals the singular unless the context requires otherwise and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

18.7 Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

IN WITNESS WHEREOF, THE UNDERSIGNED, HAS HEREUNTO SET ITS HAND AND SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

The Park Regency Timeshare Association, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_, President