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Sweetwater Lift Lodge Resort  
PO Box 680356  
Park City, UT 84068

**AMENDED AND RESTATED DECLARATION OF CONDITIONS, COVENANTS AND  
RESTRICTIONS FOR SWEETWATER LIFT LODGE RESORT PARK CITY**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sweetwater Lift Lodge Resort Park City ("A&R Declaration") is made as of \_\_\_\_\_, 2016 by Park City Homeowners Timeshare, Inc., a Utah non-profit corporation ("Association"), and shall amend and restate in its entirety the following instruments (collectively, the "Existing Declarations"), which Existing Declarations applied to that certain real property more particularly described in Exhibit "A" attached hereto (the "Property") and, by this reference incorporated herein, contain six timeshare projects individually known as "Project 1", "Project 2", "Project 2A", "Project 3", "Project 5" and "Project 7", and collectively and commonly known as the "Sweetwater Lift Lodge Resort Park City" (individually, a "Project" and collectively, the "Projects"):

Project 1 - Declaration of Condominium for Sweetwater Park City Timeshare Project I dated November 17, 1978 and recorded November 20, 1978 as Entry No. 151128 in Book M123, Page 377-446, Official Records of Summit County Recorder, Utah; as amended by a First Amendment to Enabling Declaration of Sweetwater Park City Timeshare Project I dated April 4, 1979 and recorded April 23, 1979 as Entry No. 155209 in Book M131, Page 781-783, Official Records; as further amended by a Second Amendment to Enabling Declaration of Sweetwater Park City Timeshare Project I dated December 17, 1979 and recorded December 18, 1979 as Entry No. 162328 in Book M148, Page 217-220, Official Records; as further amended by an Amended Declaration of Condominium for Sweetwater Park City Timeshare Project I dated March 9, 1985 (sic) and recorded March 21, 1986 as Entry No. 248320 in Book 377, Page 758-787, Official Records (collectively, the "Existing Project 1 Declaration").

Project 2 - Declaration of Condominium for Sweetwater Park City Condoshare Project II dated July 5, 1979 and recorded July 6, 1979 as Entry No. 157345 in Book M136, Page 511-567, Official Records of Summit County Recorder, Utah; as amended by a First

Amendment to Enabling Declaration of Sweetwater Park City Condoshare Project II dated September 17, 1979 and recorded December 18, 1979 as Entry No. 162330 in Book 148, Page 221-224, Official Records; (collectively, the "Existing Project 2 Declaration").

Project 2A - Declaration of Condominium for Sweetwater Lift Lodge Park City Condoshare Project IIA (undated) and recorded January 6, 1981 as Entry No. 171888 in Book M176, Page 405-444, Official Records of Summit County Recorder, Utah; as amended by an Amended Declaration of Condominium for Sweetwater Lift Lodge Park City Condoshare Project IIA dated March 9, 1985(sic), and recorded March 21, 1986 as Entry No. 248322 in Book 377, Page 816-845, Official Records; (collectively, the "Existing Project 2A Declaration").

Project 3 - Declaration of Condominium for Sweetwater Park City Condoshare Project III dated November 1, 1979 and recorded November 2, 1979 as Entry No. 160991 in Book M145, Page 252-290, Official Records of Summit County Recorder, Utah; as amended by a First Amendment to Enabling Declaration of Sweetwater Park City Condoshare Project III dated December 27, 1979 and recorded December 27, 1979 as Entry No. 162655 in Book M149, Page 79-82, Official Records; as further amended by an Amended Declaration of Condominium for Sweetwater Park City Condoshare Project III dated March 9, 1985 (sic) and recorded March 21, 1986 as Entry No. 248323 in Book 378, Page 1-29, Official Records (collectively, the "Existing Project 3 Declaration").

Project 5 - Declaration of Condominium for Sweetwater Lift Lodge Park City Condoshare Project V dated December 22, 1980 and recorded January 6, 1981 as Entry No. 174800 in Book M176, Page 445-485, Official Records of Summit County Recorder, Utah; as amended by a First Amendment to Declaration of Condominium of Sweetwater Lift Lodge Park City Condoshare Project V dated September 24, 1981 and recorded September 24, 1981 as Entry No. 183870 in Book M199, Page 58-65, and again in Book 199, Page 108-115, Official Records; as further amended by an Amended Declaration of Condominium for Sweetwater Lift Lodge Park City Condoshare Project V dated March 9, 1985 (sic) and recorded March 21, 1986 as Entry No. 248324 in Book 378, Page 30-59, Official Records (collectively, the "Existing Project 5 Declaration").

Project 7 - Enabling Declaration for Top Sider Condominiums dated January 25, 1978 and recorded February 28, 1978 as Entry No. 144772 in Book M110, Page 197-236, Official Records of Summit County Recorder, Utah; as amended by a First Amended Declaration of Condominium for Sweetwater Park City Condoshare Project VII

(formerly Top Sider Condominiums) dated December 5, 1980 and recorded December 12, 1980 as Entry No. 173952 in Book M174, Page 457-494, Official Records; as further amended by a Second Amended Declaration of Condominium for Sweetwater Park City Condoshare Project VII dated March 9, 1985 (sic) and recorded March 21, 1986 as Entry No. 248325 in Book 378, Page 60-88, Official Records (collectively, the "Existing Project 7 Declaration").

WHEREAS, the Original Declarations were recorded by certain developers, as "Declarant", which no longer have any interest in the Property; and

WHEREAS, the Original Declarations provide that they may be amended by an affirmative vote of not less than 51% of the total votes in each Project; and

WHEREAS, the Association desires to amend and consolidate each of the Existing Declarations into a single instrument, in order to simplify and standardize the governing documents for the Projects, and to put safeguards in place to guard against fraudulent transfers to persons or companies who have no intention of paying Assessments, and the misuse of private owner identity information; and

WHEREAS, the Association, having achieved the requisite approval of the Members under the Existing Declarations, now desires to completely amend and restate the Existing Declarations, and declares that this A&R Declaration amends, replaces and completely supersedes the Existing Declarations, effective upon recordation of this A&R Declaration in the Official Records of Summit County, Utah.

NOW, THEREFORE, the Association hereby amends and restates in total the Existing Declarations and all previous amendments thereto and declares that all of the Property and the Dedicated Units are 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 in furtherance of a plan for the subdivision, improvement and sale of Timeshare Estates within the Projects, and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Projects and every part thereof (the "Vacation Ownership Program"). 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 A&R Declaration shall be enforceable by any

of the Owners of an interest in the Property, against any other Owner or Owners thereof, and shall also be enforceable by the Association through its Board of Directors.

## **ARTICLE I**

### **DEFINITION OF TERMS**

Whenever used in this A&R Declaration, the following terms shall have the following meanings:

1.1 Annual Report: means a report to the Owners comprising (a) a balance sheet relating to the Association as of the last day of the Association's fiscal year, (b) an operating statement for such fiscal year, (c) a statement of changes in financial position for such fiscal year, and (d) a list of the names and methods of contacting the members of the Board.

1.2 Assessments: shall mean either Annual Assessments, or Special Assessments, or both, as such terms are utilized in Article V.

1.3 Association: Park City Homeowners Timeshare, Inc., a Utah non-profit corporation, whose Members consisting of all Owners of Timeshare Estates in the Projects. Each Owner shall be and become a Member of the Association contemporaneously with his/her acquisition of a Timeshare Estate in accordance with this A&R Declaration. Transfer of a Membership shall be only by conveyance of a Timeshare Estate.

1.4 Board of Directors: shall refer to the governing body of the Association (sometimes referred to hereafter as the "Board").

1.5 Bonus Use: shall mean the right of an Owner to use and occupy the Dedicated Units within the Projects in addition to his allotted Vacation Week, in accordance with the procedures including advance reservation windows, and upon payment of nightly Bonus Use fees, as set forth in the Rules and Regulations.

1.6 Budget: means a pro forma operating statement setting forth the Common Expenses for a particular fiscal year.

1.7 Bylaws: means the duly adopted bylaws of the Association as the same may be amended, from time to time.

1.8 Common Areas: shall mean the six Projects, except for the interiors of the Dedicated Units.

1.9 Common Expenses: shall mean the estimated aggregate amount of expenses, as set forth in the annual Budget of the Association, to be incurred by the Association during the applicable fiscal year:

(a) To maintain, improve and repair the Projects;

(b) To operate and manage the Association;

(c) To provide for the collection of funds on an annual basis over the useful life of the Projects' components in an amount sufficient to meet the estimated Reserve Expenses;

(d) To provide for a contingency fund in the event that some Assessments may not be paid on a current basis; and

(e) To provide for the payment of the fees of the Managing Agent.

Without limiting the generality of the foregoing, Common Expenses shall include:

(i) All charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration and operation of the Vacation Ownership Program;

(ii) Taxes, assessments or other similar governmental charges, including without limitation possessory interest taxes and/or real property taxes assessed against the Property, the Dedicated Units, the Common Areas or the Common Furnishings or any other interests of the Owners to the extent such taxes are not payable by and separately levied by the applicable taxing authority;

(iii) Assessments and other similar governmental charges levied on or attributable to the Vacation Ownership Program, to the extent such assessments and other governmental charges are not separately levied by the applicable governmental agency against each Timeshare Estate;

(iv) Insurance obtained pursuant to this A&R Declaration;

(v) Any liability whatsoever for loss or damage arising out of or in connection with the Vacation Ownership Program or any fire, accident, or nuisance within the Projects;

(vi) The cost of repair, reinstatement, rebuilding and replacement of the Projects;

(vii) The cost of all basic utility services, including water, electricity, natural gas, garbage disposal, telephone and any other similar service attributable to the Projects or the Vacation Ownership Program;

(viii) The unpaid share of any Assessment levied during the previous fiscal year against any Timeshare Estate for which a default in payment thereof has occurred, to the extent that the same becomes uncollectible; and

(ix) Wages, accounting and legal fees, management fees, maid service, and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred with respect to the Vacation Ownership Program or the Projects.

Common Expenses shall not include any expense constituting a Personal Charge incurred by an individual Owner or Permitted User.

1.10 Common Furnishings: shall mean furniture and furnishings within each Dedicated Unit and within the Common Area or other personal property from time to time owned or held for use in common by all Owners during their respective Use Periods.

1.11 A&R Declaration: shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sweetwater Lift Lodge Resort Park City, as the same may be amended, changed or modified, from time to time.

1.12 Dedicated Unit: shall mean a Unit dedicated to timeshare use pursuant to this A&R Declaration. Only Timeshare Estates in Dedicated Units may sold to Members of the general public.

1.13 Designated Week: shall mean the fixed-numbered week each year to which an Owner has exclusive use of his Designated Unit, between check-in time and check-out time on the check-in date, as designated by the Board. The Designated Weeks are numbered consecutively each year with the first Designated Week in each year being numbered 01, and the 52nd Designated Week in each year being numbered 52.

1.14 Exchange Program: means a service provided by an independent organization, the Managing Agent or an entity affiliated with Managing Agent, whereby Owners of Timeshare

Estates in a Project and owners of time periods in other time sharing programs may exchange Use Periods in the Project for time periods in projects in other locations.

1.15 Exchange User: means an owner of a time period in another timesharing program who occupies a Dedicated Unit and uses the Common Areas pursuant to an Exchange Program.

1.16 General Account: means the separate operating account(s) with a bank and/or savings and loan association selected by the Association into which all cash and cash equivalent receipts of the Association shall be deposited.

1.17 Governing Instruments: means the Articles of Incorporation, Bylaws, this A&R Declaration, and the Rules and Regulations.

1.18 Management Agreement: shall mean a written agreement between the Association and the Managing Agent, setting forth the duties and responsibilities of the Managing Agent.

1.19 Managing Agent: shall mean the individual and/or entity to whom the Board of Directors has delegated management and control of the Projects pursuant to Paragraph 4.3 of this A&R Declaration.

1.20 Member: shall mean an Owner holding a Membership in the Association.

1.21 Membership: shall mean a membership in the Association.

1.22 Mortgage: shall mean and include a deed of trust as well as a mortgage securing a purchase money promissory note given by an Owner to a seller in order to secure a portion of the purchase price of a Timeshare Estate.

1.23 Mortgagee: shall mean a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust.

1.24 Mortgagor: shall mean a person or entity who mortgages his or its Timeshare Estate to another, i.e., the maker of a mortgage, and shall include the trustor of a deed of trust.

1.25 Owner: the record owner or owners, if more than one, of a Timeshare Estate in a Project.

1.26 Permitted User: means any person, other than an Exchange User, who occupies a Dedicated Unit or any part thereof with the permission of an Owner, including, without limitation, members of such Owner's family and his guests, renters, licensees or invitees. The Association and its Managing Agent may refuse accommodations at, or access to, the Projects to any Permitted User who fails to provide to the Association or Managing Agent written evidence of the permission granted by the Owner to such Permitted User.

1.27 Personal Charges: means any expense resulting from the act or omission of any Owner or his Permitted User other than the failure to pay Assessments and shall include, without limitation: the cost of long distance telephone charges or telephone message unit charges and other special services or supplies attributable to the occupancy of a Dedicated Unit during such Owner's Use Period; the cost to repair any damage to any portion of the Projects or to repair or replace any Common Furnishings on account of loss or damage caused by such Owner or his Permitted User(s); and the cost to satisfy any expense to any other Owner(s) or to the Association due to any intentional or negligent act or omission of such Owner or Permitted User, or resulting from the breach by such Owner or Permitted User of any provisions of the Governing Instruments (other than the provisions requiring the payment of Assessments), or any expense incurred by the Association in connection with a transfer or attempted transfer of a Timeshare Estate to a third party, as described in Paragraph 9.4. In amplification of the foregoing, the act or negligence of a Permitted User shall be deemed to be the act or negligence of the Owner who permits such Permitted User to use and occupy any portion of the Projects.

1.28 Project(s): shall have the meaning set forth in the introductory paragraphs, above, and all other improvements and amenities located upon the Property, more particularly described in Exhibit "A" attached hereto.

1.29 Reserve Account: means (a) one or more interest-bearing accounts with one or more banks and/or savings and loan associations selected by the Association or (b) one or more treasury bills and/or certificates of deposit, or other instruments backed by the full faith and credit of the United States, which accounts, treasury bills and/or certificates of deposit or other instruments shall contain funds collected as and for Reserve Expenses.

1.30 Reserve Expenses: means the specific capital expenditures required to be made at any time and from time to time

to provide for the repair, replacement or restoration of the Dedicated Units, Common Areas and Common Furnishings, or for such other purposes as prudent business practice requires.

1.31 Roster: means a compilation of the names and mailing addresses and other personal information of each Owner.

1.32 Rules and Regulations: shall mean rules and regulations adopted and approved by the Board of Directors pursuant to Paragraph 4.2(m) hereof.

1.33 Service Period: shall mean, with respect to each Dedicated Unit, a period of time during which routine maintenance and repairs shall be performed on the Unit as necessary. The Service Period shall be reserved by the Association which shall also determine which days and nights will comprise said period for each Dedicated Unit for each year, excepting any time periods during which a Unit is entitled to be occupied by an Owner. The term "Service Period" shall also include the period of time between check-out and check-in during which routine maintenance can be performed.

1.34 Statement of Status: means with respect to a Timeshare Estate, a written statement setting forth the amount of any delinquent Assessments, Personal Charges or any other amounts unpaid with respect to such Timeshare Estate and the use entitlement for the remainder of the year attributable to such Timeshare Estate.

1.35 Timeshare Estates: shall mean a fractional undivided fee interest in and to a Dedicated Unit within a Project, together with the right to use and occupy that Dedicated Unit during the Designated Week each year, as purchased by the Owner, and the right to use of the Common Areas during one or more Use Periods, as provided in this A&R Declaration.

1.36 Unit: shall mean one of the residential condominium units in a Project, as shown on the record of survey map for that Project, as described on Exhibit "A".

1.37 Unit Type: shall mean each of the different unit types (e.g., one bedroom, two bedroom) within a Project.

1.38 Use Period: shall mean that Designated Week during which an Owner is entitled to the use of his Dedicated Unit within a Project in accordance with the reservation procedures set forth

in this A&R Declaration and in the current Rules and Regulations of the Association.

1.39 Vacation Ownership Program: shall have the meaning attributed to said term, above, preceding the Definitions.

1.40 Voting Power: shall mean the votes of Members who are both (a) entitled to vote pursuant to the rights granted under Article III of this A&R Declaration, and (b) are eligible to vote having met the requirements necessary for the exercise of those rights as established under the Bylaws and this A&R Declaration.

The aforesaid definitions shall be applicable to this A&R Declaration and to any supplements or amendments thereto, (unless the context shall prohibit), filed or recorded pursuant to the provisions of this A&R Declaration.

## **ARTICLE II**

### **OWNERS' PROPERTY RIGHTS, USE RIGHTS**

2.1 Property Rights and Use Rights. Each Owner of a Timeshare Estate shall be conveyed an undivided fractional fee interest in and to a Project, together with the exclusive right to occupy his Designated Unit within the Project during his Designated Week each year. 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 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.

2.2 General Use Easement. Each Owner shall have a non-exclusive easement appurtenant to his properly reserved Dedicated Unit during his Use Period for ingress, egress, use and enjoyment on and over the Common Areas of a Project and all improvements thereon. Said easement shall be appurtenant to and shall pass with the title to each and every Timeshare Estate. In addition to the general right to use and enjoy and easements for ingress and egress granted herein, each and every Owner shall have a non-exclusive easement appurtenant to his Timeshare Estate for vehicular traffic over all private streets, if any, within a Project.

2.3. Delegation of Use Rights. Any Owner may delegate, in accordance with the Governing Instruments, his right to the use

and enjoyment of his Project and the facilities, to the members of his family, his tenants, or other Permitted Users.

2.4 Reservations. Reservations are not required, because Owners are automatically entitled to use of their Designated Week in their Designated Unit without having to make a reservation. However, the Board may require, in the Rules and Regulations, that Owners provide confirmation of their intention to use, or not to use, their Designated Week during any particular year, in order to inform the Managing Agent as to how many in-bound guests to expect each week. In the event an Owner forfeits his Use Period, or any portion thereof, either voluntarily or involuntary (due to loss of use privileges caused by nonpayment of Assessments or other violations of this A&R Declaration), the Board may authorize the Managing Agent to make other use of the forfeited Use Period, through rental or otherwise.

2.5 Bonus Use. All Owners shall have the right to use and occupy the Dedicated Units within their Project in excess of each such Owners allotted Use Period on a space available basis, as Bonus Use, in accordance with such policies, procedures and restrictions, and upon payment of such nightly Bonus Use fees, as determined by the Board as set forth in the Rules and Regulations. A Dedicated Unit shall be available for Bonus Use for the periods of time during which there are no timely confirmations for occupancy of such Unit by an Owner, or because of Association-owned Timeshare Estates or when use rights have been forfeited by an Owner for nonpayment of Assessments, or otherwise. Reservations for Bonus Use shall be on a "first-reserved, first-served" basis, and are subject to advance reservation windows, Bonus Use fees, and other conditions and restrictions as set forth in the Rules and Regulations.

2.6 Occupancy. No Owner shall occupy any Dedicated Unit or exercise any other rights of ownership with respect to any Dedicated Unit other than the rights provided to him in this Article II. Each Owner shall keep the Unit occupied by him and the Common Furnishings therein in good condition and repair during his Use Period(s), vacate the Unit at the expiration of his Use Period(s), remove all persons and property therefrom, excluding only the Common Furnishings, leave the Unit and the Common Furnishings therein in good and sanitary condition and repair and otherwise comply with such check-out and other procedures and regulations as may from time to time be contained in the Rules and Regulations. Any Owner may permit his assigned Unit to be occupied by his Permitted Users (but not in excess of the number of occupants permitted by the Rules and Regulations) for the purposes permitted by this A&R Declaration during his Use

Period(s), but such Owner shall be responsible for any loss, damage, destruction or violation of this A&R Declaration or the Rules and Regulations (except on the part of an Exchange User) which occurs during such occupancy as if such Owner were occupying the assigned Unit.

2.7 Failure to Vacate. If any Owner fails to vacate his Designated Unit at the end of his Use Period or Bonus Use period, or otherwise uses or occupies the Project during a period for which he has no confirmed reservation, or prevents another Owner or authorized occupant from using or occupying a Unit during such other person's Use Period, such Owner (hereinafter the "Detaining User") shall be: (i) subject to immediate removal and eviction from the Unit wrongfully occupied, (ii) 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 or guest otherwise entitled to use the Unit (or the Managing Agent if no other Owner or guest has reserved the Unit) for all costs and expenses incurred by him as a result of such conduct, including but limited to costs of alternative accommodations, travel costs, court costs, and reasonable attorney's fees incurred in connection with removing or evicting the Detaining User from the Unit. If an Owner, by his intentional or negligent act renders the Unit uninhabitable for the successive Use Period or Periods, such Owner shall be liable to the Owner or Owners of successive Use Periods just as if such Owner had refused to vacate the Unit at the end of his Use Period. For purposes of this section, the act or negligence of a guest or any Member of an Owner's family, shall be deemed to be the act of the Owner. If any Owner is unable to utilize a Unit in the Project during his reserved and confirmed Use Period, due to the intentional negligent or other act or failure to act by the Managing Agent or the 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 Unit during such Use Period, of which the Owner was deprived.

2.8 Use Restrictions. Except as required to prevent damage or injury to persons or property in an emergency, no Owner shall make or authorize any alterations, additions or improvements to the Project or any portion thereof, including, but not limited to, the Common Areas, the improvements, landscaping, or any personal property thereon, and the Common Furnishings, or paint, repaint, tile, paper or otherwise refinish or redecorate the inner surfaces of the walls, ceilings, floors, windows or doors bounding any Dedicated Unit which such Owner may from time to time occupy, or

remove, alter or replace any portion of the Common Furnishings without the prior written consent of the Association. The right to perform all of the foregoing acts has been delegated to the Association by this A&R Declaration. The foregoing prohibitions, however, shall not modify or affect the obligation of each Owner for the prudent care and ordinary maintenance and upkeep of all property subject to his use. Each Owner by accepting a deed or any other transfer of a Timeshare Estate hereby covenants and agrees to abide by the Rules and Regulations. Use and occupancy of the Projects is limited to private, timesharing use pursuant to procedures for reserving usage by Owners, Permitted Users and Exchange Users and other uses of the Projects by any Owner is prohibited, except as expressly provided in this Article II.

## 2.9 Association Easements.

(a) Easements for Management, Operation, Maintenance and Repair. The Association, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, shall have the right and is hereby granted, for so long as the Association or its successors and assigns shall be required hereunder to manage and maintain the Projects, a non-exclusive easement in gross in, over and through the Property and the Dedicated Units for the management, operation, repair and maintenance of the Projects and the management and operation of the Vacation Ownership Program; provided, however, that use of such easement shall not unreasonably interfere with or diminish the rights of Owners, Permitted Users or Exchange Users to occupy the Dedicated Units and the Common Areas, and to use the Common Furnishings. In amplification and not in limitation thereof, the Association and its successors and assigns shall have the right, during Service Periods and upon giving reasonable notice if a Dedicated Unit is occupied, to enter such Dedicated Unit for the purpose of cleaning, maid service, painting, maintenance and repair, and at any reasonably necessary time, whether or not in the presence of the Owner thereof, to enter upon any Dedicated Unit for the purpose of (1) making emergency repairs therein, (2) abating any nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Dedicated Unit, (3) protecting property rights and welfare of any Owner, Permitted User or Exchange User, or (4) for any other purpose reasonably related to the performance by the Association of its duties and obligations under the terms of this A&R Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and enjoyment of the rightful occupant of such Dedicated Unit and shall be preceded by reasonable notice to such occupant, whenever

the circumstances permit.

(b) Easement for Operation of Exchange Program. The Association, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors and other authorized personnel shall have the right and is hereby granted, for so long as the Association or its successors and assigns shall be required hereunder to manage and maintain the Projects, a non-exclusive easement in, over and through the Projects for the purpose of providing accommodations to Exchange Users under an Exchange Program.

(c) Easement for Rental of Dedicated Units by Association. The Association, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors and other authorized personnel, shall have the right and is hereby granted, a non-exclusive easement in gross in, over and through the Projects for the purpose of renting the Dedicated Units to the general public for the account of the Association under Paragraph 4.2(t) hereof.

2.10 Transfer of Interest. No Owner shall sell, assign, transfer, hypothecate or encumber less than all of his interest in his Timeshare Estate; provided, however, that nothing herein contained shall restrict (a) the Owner's ability to exchange his Timeshare Estate through an Exchange Program or (b) the manner in which title to the Timeshare Estate may lawfully be held under Utah law (e.g. joint tenants, tenants-in-common, or the like). Any sale, assignment, transfer, hypothecation or encumbrance by any Owner of less than all of his interest in his Timeshare Estate shall be null, void and of no effect. The transfer of any Timeshare Estate shall operate to transfer to the new Owner of the Timeshare Estate the interest of the prior Owner in all funds in the hands of the Association even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

2.11 Separate Mortgages. Each Owner shall have the right to mortgage or otherwise to encumber all, but not less than all, of his Timeshare Estate. Subject to the provisions of Article VI of this A&R Declaration, any Mortgage shall be subordinate to all of the provisions of the Governing Instruments and in the event of foreclosure, the provisions of such instruments shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding any other provision of this A&R Declaration, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof, shall impair,

defeat or render invalid the lien or priority of any prior Mortgage.

2.12 Partition and Subordination of Tenancy-in-Common Attributes.

(a) It is intended that this A&R Declaration shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Timeshare Estates and the Projects. Accordingly, all rights with respect to the use, possession, enjoyment, management or disposition of a Timeshare Estate or the Projects which an Owner might otherwise have as a tenant-in-common (including, but not limited to, any common law or statutory right jointly to use, possess or manage commonly owned property) are hereby unconditionally and irrevocably subordinated to this A&R Declaration for so long as this A&R Declaration shall remain in effect; provided, however, that in the event that an election to terminate this A&R Declaration is made pursuant to Paragraph 9.2 of this A&R Declaration, an Owner shall have the rights specified in such Paragraph.

(b) Except as provided in Paragraph 9.2 of this A&R Declaration, no Owner or other person or entity acquiring any right, lien or interest in the Projects shall seek or obtain, through any legal procedures, judicial partition of the Project or the sale thereof in lieu of partition. If, however, any Timeshare Estate is owned by two (2) or more persons as tenants-in-common or as joint tenants or as community property, nothing herein contained shall prohibit a judicial sale of the Timeshare Estate in lieu of partition as between such co-tenants or joint tenants.

2.13 Protection of Interest. Except as provided in Paragraph 2.11 of this A&R Declaration, no Owner shall permit his Timeshare Estate to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Timeshare Estate of any other Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Owner. In the event of a threatened sale of the Project or Projects or the Timeshare Estate of any Owner or any part thereof, or should the use and enjoyment of any portion thereof by any Owner be threatened by reason of any lien, claim or charge against the Timeshare Estate of any other Owner (the "Owner in Violation"), or should proceedings be instituted to effect any such sale or interference, any Owner (the "Curing Owner") acting on his own behalf or through the Association or the Association acting on behalf of any one or more Owners (if promptly indemnified to his or its satisfaction) may, but shall not be required to, pay or

compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Owner in Violation shall forthwith pay the amount so paid or expended to the Curing Owner or the Association, whosoever shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as he or it may have incurred. No Owner shall permit his interest in any funds from time to time in possession of the Association to be subjected to any attachment, lien, claim or charge or other legal process and each Owner shall promptly restore any funds held by the Association with respect to his Timeshare Estate to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge or other legal process and shall reimburse the Association for all reasonable attorneys' fees or other costs incurred in respect thereof.

2.14 Animals. Except as otherwise provided in the Rules, no animals, livestock, birds, fish, reptiles, or poultry of any kind shall be kept in or upon the Property, including, without limitation, any Dedicated Unit, except for those animals certified to provide aid to the disabled and accompanied by the disabled individual.

2.15 Recreational Vehicles.

(a) Only conventional passenger vehicles (and vehicles used by the Association or Managing Agent in the performance of its duties with respect to the Projects) are permitted to park on the Projects and only in designated areas. No vehicles of any type (other than emergency vehicles provided by the fire department or other emergency service provider in the course of providing such emergency service to the Projects) may be parked in any area designated as a fire lane. No commercial or recreational vehicles or equipment (unless used by the Association or Managing Agent in the performance of its duties with respect to the Projects) shall be permitted to remain upon the Projects; provided, however, that commercial or recreational vehicles may remain "temporarily" upon the Projects for deliveries and short periods for similar purposes (which shall be defined and regulated by the Board in its reasonable discretion). No motorized vehicle may be dismantled, rebuilt, repaired, abandoned, stored, disabled, serviced, washed, polished or repainted upon the Projects.

(b) As used in this Paragraph 2.15, "conventional passenger vehicles" shall be defined to be station wagons, family sedans, compacts, subcompacts, pick-up trucks, pick-up trucks with shell not extending above the cab level beyond one (1) foot, and passenger vans and passenger vans with extended tops not extending

above the top more than six (6) inches. Notwithstanding the foregoing, the Board may amend the foregoing definition of "conventional passenger vehicles" as the Board deems reasonable.

(c) As used in this Paragraph 2.15, "recreational vehicles or equipment" shall include, without limitation, trailers, boats, campers, trailer coaches, buses, house cars, camp cars, motor homes (if a size larger than seven (7) feet in height and/or greater than one hundred twenty-four (124) inches in wheel base length), or any other similar type of equipment or vehicle.

(d) As used in this Paragraph 2.15, "commercial vehicle" shall be defined as a truck of greater than one and one-half (1 1/2) ton capacity and/or any vehicle with a sign displayed on any part thereof advertising any kind of business or on which racks, materials, and/or tools are visible, or with a body type normally employed as a business vehicle whether or not a sign is displayed on any part thereof. The type of motor vehicle license plate shall not be material to the foregoing definition.

(e) Temporary parking shall mean parking of vehicles belonging to guests of Owners and commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading and unloading purposes.

(f) The Board may adopt rules for the regulation of the admission and parking of vehicles within the Projects, including the assessment of Personal Charges to Owners who violate or whose invitees violate such rules.

2.16 Offensive activity. No noxious or offensive activity or conduct shall be carried on or within any portion of the Property nor shall anything be done therein or thereon which may or would become an annoyance or nuisance to other owners or occupants. No portion of the Property, including, without limitation, each Dedicated Unit, shall be used for any trade, business or other commercial activity or solicitation except as expressly permitted by this A&R Declaration. No Owner shall cause or permit the display of any sign or advertising matter within any Dedicated Unit or any other portion of the Projects except as expressly permitted by this A&R Declaration.

2.17 Compliance with laws. No Owner, Permitted User or Exchange User shall permit anything to be done or kept in his assigned Unit or part thereof or within any other portion of the Projects which violates any applicable law, ordinance, statute, rule or regulation of any local, county, state or federal

government or agency thereof.

2.18 No Increased Insurance. Nothing shall be done or kept in any Dedicated Unit or within any other portion of the Projects which will increase the rate of insurance on the Association without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his assigned Unit, or do or place anything within the Projects, which would result in the cancellation of insurance of the Association.

2.19 Exclusions. The restrictions set forth in this Article II shall not and do not apply to any act done or proposed to be done upon the Projects, or any condition created thereon, by the Association or its agents, employees or contractors, in connection with the exercise of any easement reserved to the Association in section 2.9, above, or in any conveyance document.

### **ARTICLE III**

#### **THE ASSOCIATION**

3.1 Formation of Association. The Association has been formed for the purpose of administering, governing and benefitting the Timeshare Estates and the Projects. Each Owner shall be a Member of the Association and shall remain a Member until he ceases to be an Owner.

3.2 Membership Rights and Duties. Each Member shall have the powers, rights and duties set forth in the Governing Instruments, as said Governing Instruments may be amended from time to time. There shall be one (1) Membership in the Association for each of the Timeshare Estates in the Projects, which Membership shall be appurtenant to the Property. All of the Memberships in the Association shall pass automatically to the respective purchasers and successors in interest of Timeshare Estates in the Projects. Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of the governing instruments of the Association.

3.3 One Class of Membership. The Association shall have one class of voting Membership, as set forth in the Bylaws. When more than one person holds a Timeshare Estate, all such persons shall be Members. The vote for such Timeshare Estate shall be exercised as such Members among themselves shall determine, but in no event shall more than one (1) vote be cast with respect to any Timeshare Estate.

3.4 Membership Approval. Any provisions in the Governing Instruments calling for Membership approval of an action to be taken by the Association will require the vote or written assent of the prescribed percentage of the Voting Power.

3.5 Transfer of Membership. The 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 Association Membership may only be transferred, pledged or alienated to a bona fide purchaser (not a sham transfer) of the Timeshare Estate or to the Mortgagee (or third-party purchaser) acquiring title to 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 Association.

3.6 Membership Held as Security. Membership is not intended to 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.

3.7 Purpose of Association. The purpose of the Association is to further and promote the common interests and welfare of its Members, and to operate, preserve and maintain the Project. The Association shall be managed by a Board of Directors pursuant to the Bylaws.

## **ARTICLE IV**

### **POWERS OF THE ASSOCIATION**

4.1 Powers and Duties Generally. The operation and administration of the Vacation Ownership Program, the maintenance and repair of the Projects, including, without limitation, the Dedicated Units and the Common Areas, and any alterations and additions thereto, shall be vested in the Association. The Association, acting alone (through the Board, its officers, or other duly authorized representatives) may, subject to the provisions of the Governing Instruments, exercise any and all rights and powers herein enumerated and, except as specifically limited herein, all the rights and powers of a non-profit corporation under the laws of the State of Utah.

4.2 Specific Powers and Duties of the Association. The Association shall have the duty to maintain and repair the Projects, including, without limitation, the Dedicated Units and the Common Areas, to administer the affairs of the Owners and the

operation of the Vacation Ownership Program as provided herein, to acquire (by lease or purchase), maintain, repair and replace the Common Furnishings within the Dedicated Units and Common Areas, to levy, collect, and enforce the Assessments and Personal Charges enumerated in this A&R Declaration, and to pay, as agent, the expenses and costs enumerated in this A&R Declaration. The Association shall have the exclusive possession of each Dedicated Unit during the Service Periods for the performance of maintenance and repairs on such Dedicated Unit. The Association shall have the power to do all things that are required to be done by it pursuant to this A&R Declaration. The following powers and duties are in amplification and not limitation of the foregoing powers and duties.

(a) Bank Accounts. The Association shall have the power and duty to deposit all funds collected from Owners by the Association in connection with its rights and duties hereunder as follows:

All funds shall be initially be deposited in the Association's General Account(s). Funds deposited in the General Account(s) may be used by the Association only for the purposes for which the Association was established.

Within thirty (30) days after deposit in the General Account, all amounts collected for Reserve Expenses shall be deposited in the Reserve Account. The Association shall keep accurate books and records reflecting the amount in the Reserve Account attributable to each Owner. Interest, if any, earned on Reserve Account funds shall be accumulated therein and shall be used only for payment of Reserve Expenses and any taxes incurred by the Association as a result of the earning of such interest.

(b) Cleaning and Maid Service. The Association shall have the power and duty (i) to provide a full cleaning of each Dedicated Unit, as needed, during the Service Period, (ii) to provide a full cleaning and maid service during the Service Period immediately prior to check-in time for any Use Period, and (iii) to provide such cleaning as may be necessary during Service Periods so that the Dedicated Units are maintained in good order and repair.

(c) Collection of Damages. The Association shall have the power and duty to use reasonable efforts to collect from each Exchange User who by an intentional or negligent act causes any loss, damage or destruction to the Projects other than by ordinary wear and tear the cost of the repair, restoration or replacement of the Projects to the extent such loss, damage or destruction is

not covered by insurance proceeds paid to the Association, and to use reasonable efforts to collect from any Exchange User who is a Detaining User the amount for which such Exchange User would be liable under Paragraph 2.7 of this A&R Declaration if he were an Owner.

(d) Compensating Use. The Association shall have the power and duty to compensate each Owner who, through an error on the part of the Association or Managing Agent, is prevented from occupying his assigned Unit during his Use Period, by either (i) paying to such Owner a sum equal to 100% of the fair rental value of such assigned Unit during his Use Period or (ii) procuring alternate accommodations reasonably acceptable to such Owner for his Use Period. Whether such Owner is compensated through the method provided in subparagraph (i) or (ii) of this Paragraph shall be at the Association's discretion.

(e) Delegation. The Association shall have the power and duty to delegate the authority and responsibilities of the Association hereunder to one or more agents, including, without limitation, the Managing Agent as provided for in Paragraph 4.3 of this A&R Declaration.

(f) Financial Statements.

(i) The Association shall have the power and duty to cause to be regularly prepared financial statements for the Association and copies thereof to be distributed to all Owners as follows:

A Budget shall be distributed to Owners not less than fifteen (15) days nor more than sixty (60) days before the beginning of each fiscal year. The Budget shall contain at least the following information:

Estimated revenue and expenses on an accrual basis;

The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities of the Projects and for contingencies;

An itemized estimate of the remaining life of common facilities and the methods of funding to defray Reserve Expenses; and

A general statement setting forth the procedures used by the Board in the calculation and establishment of Reserve Expenses.

An Annual Report shall be distributed with the annual maintenance fee billings. The Annual Report shall be prepared by a Certified Public Accountant in any fiscal year in which the gross income to the Association exceeds \$75,000.00. If the Annual Report is not prepared by a Certified Public Accountant, the Annual Report shall be prepared by the Managing Agent or by an officer of the Association and shall be accompanied by the certificate of the person preparing the Annual Report that the Annual Report was prepared without audit from the books and records of the Association.

In lieu of the distribution of the Budget and the Annual Report, the Board may elect to distribute a summary of the Budget and the Annual Report to each Owner with a written notice, in conspicuous type on the front page of the summary, that the Budget and the Annual Report are available at the business office of the Association or online and that copies will be provided upon an Owner's request at the expense of the Association. Any such summary requested shall be mailed to the requesting Owner by first-class United States Mail, facsimile or electronic mail, for delivery within ten (10) days after the Owner's request, at the expense of the Association.

(ii) The Board shall take the following actions not less frequently than quarterly:

(A) cause a current reconciliation of the Association's operating accounts to be made and review the same;

(B) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(C) review the current year's actual reserve revenues and Reserve Expenses compared to the current year's Budget;

(D) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and

(E) review an income and expenses statement for the Association's operating and Reserve Accounts.

(g) Inspection of Books and Records.

(i) The Association shall have the power and duty to open, at any reasonable time during usual business hours, the books and records of the Association (excluding the Roster, the minutes of any executive session of the Board, and any privileged

communications) for inspection by any Owner upon the written demand by such Owner; provided, however, that the Association shall be obligated to open its books and records for inspection by an Owner only if the Owner requests such inspection for a purpose reasonably related to the Owner's interests as an Owner. The inspection may be made in person or by an agent or attorney and shall include the right to copy and make extracts.

(ii) The Board shall have the power and duty to establish reasonable rules with respect to (A) notice to be given to the custodian of records by a the person desiring to make the inspection or to obtain copies; (B) hours and days of the week when such an inspection may be made; and (C) payment of the cost of reproducing copies of documents requested by an Owner or Mortgagee.

Each director of the Association shall have the absolute right (subject to execution of a confidentiality agreement) at any time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director of the Association includes the right to make extracts and copies of documents.

(h) Insurance. The Association shall have the power and duty to obtain and pay the cost of:

(i) insurance against loss or damage to the real and personal property comprising the Projects, including, without limitation, the Common Areas, Dedicated Units and any of the Common Furnishings and contents thereof, and machinery used in the service of the Projects, by fire and other risks and hazards customarily covered by an insurance policy written on an all risk basis, including, to the extent available at a reasonable cost, earthquakes and environmental risks. The stipulated amount of such insurance shall be based on the full replacement cost thereof at the time and place of loss, and the Association shall either (A) annually update such stipulated full replacement cost amount to reflect the then-current estimated full replacement cost thereof, (B) procure and maintain an endorsement which provides for full reimbursement for the actual cost of repair or replacement thereof, without deduction for depreciation.

(ii) insurance against hazards such as burglary and theft covering the Common Furnishings.

(iii) To the extent available at a reasonable cost, insurance against loss in the operation of the Vacation Ownership

Program of earnings, continuing charges and expenses, and such other risks and hazards customarily covered by business interruption insurance policies. Such business interruption insurance shall be combined with insurance against loss due to extra expenses arising out of operating the Vacation Ownership Program and the cost of temporary quarters for Owners, Permitted Users and Exchange Users due to damage to the Projects and such other risks and hazards customarily covered by such extra expense insurance policies.

Comprehensive public liability insurance with limits of not less than \$1,000,000 per occurrence for bodily injury, and/or property damage arising out of or in connection with the use, ownership or maintenance of the Projects. The Association shall also procure and maintain excess/umbrella liability insurance with a per occurrence limit of not less than \$5,000,000.

To the extent available at a reasonable cost, directors' and officers' liability insurance, Workers' Compensation Insurance and any other insurance deemed necessary or desirable by the Association. Such other policies of insurance shall cover such risks, be written by such insurers, and be in such amounts as the Association shall deem necessary and proper under the circumstances. The Association shall cause to be covered by a fidelity bond or insurance providing for a blanket crime endorsement, any employee or agent of the Managing Agent or the Association who may have charge of funds of any Owner, Permitted User, Exchange User or of the Association. The loss coverage under any such bond or policy shall be in the amount required by law or, if there is no such legal requirement, a reasonable amount determined by the Board.

All insurance policies obtained by the Association hereunder shall name all Owners (as a class) and any Mortgagee or beneficiary under a prior Mortgage encumbering all or any Timeshare Estates, as additional insureds. Liability insurance shall contain appropriate waivers of subrogation against any Owner or member of such Owner's household, and a provision that no act or omission by an Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or operate as a condition to recovery by any other person under such policy.

(i) Levy and Collection of Assessments, Bonus Use Fees and Other Charges. The Association shall have the power and duty to determine, levy, collect and enforce Assessments against the Owners in the manner provided in Articles V and VI hereof in order

to pay the expenses of Vacation Ownership Program, including the fee of the Managing Agent and including a reasonable contingency amount, as determined by the Board, and do all things necessary to enforce each Owner's obligations hereunder. In allocating the Common Expenses, the Association shall recognize that certain of the Common Expenses may be most equitably allocated among the Dedicated Units in different ways, including, for example, variances in square footages of, and maximum occupancy levels for, the different Unit Types.

The Association shall collect from each Owner who occupies a Dedicated Unit for Bonus Use or is otherwise obligated to pay therefor in accordance with the provisions of the Rules and Regulations, a fee for Bonus Use in an amount to be set by the Board from time to time to cover the Association's costs of making a Dedicated Unit available for Bonus Use. Bonus Use fees collected by the Association shall be deposited in the General Account and may be used by the Association as the Board, in its discretion, shall determine.

(j) Maintenance and Repair. The Association shall have the power and duty to repair, maintain, repaint, furnish or refurnish the Projects, including, without limitation, the Dedicated Units and the Common Areas; to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings; and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Association deems necessary or proper for the management, operation, maintenance and repair of the Projects.

(k) Agenda and Policies. The Association shall have the power and duty to provide each Owner with (i) a list of the orders of business to be considered at the annual meeting of Members not less than fourteen (14) days prior to the date for such meeting, which list shall contain the name, address and a brief biographical sketch (if available) of each Member nominated to stand for election to the Board, and (ii) prior to the beginning of each fiscal year, a statement of the Association's policies and practices relative to the enforcement of its remedies against Owners for defaults in the payment of any amounts due to the Association, including, without limitation, the recording and foreclosing of liens against Timeshare Estates.

(l) Roster. The Association shall have the power and duty to compile the Roster and update the Roster no less frequently than every six (6) months. Except as otherwise required by §16-6a-710 and §16-6a-1605 of the Utah Revised Nonprofit Corporation Act, upon the written request of an Owner,

the Association shall, at the Board's option, either (a) furnish such Owner with a copy of the Roster and charge such Owner a reasonable fee therefor, (b) mail the requesting Owner's material to the other Owners at the requesting Owner's expense, (c) provide to the Owner an alternative means of allowing such Owner to communicate with the other Members for purposes of Association business, such as use of a third-party mailing house (at the requesting Owner's expense) or by offering to e-mail such Owner's communication to the Members to those Members who have agreed to be contacted by the Association by e-mail (but without providing such Owner the e-mail addresses of the Members), or (d) by any other reasonable means to allow the requesting Owner to communicate with other Members as to matters of Association business (including upcoming elections, candidacy for the Board of Directors, and position statements on issues before the Board). The Association shall not be responsible for the accuracy of the content of any such communication from one Member to the other Members.

Each Owner who requests and receives a copy of the Roster or who communicates with Members under this process shall agree not to make any use of the Roster to solicit money or property or for any other commercial purpose, or to distribute a copy of the Roster to any person who is not an Owner or for any purpose unrelated to any Owner's interest as an Owner and Member. Any Owner who uses or distributes the Roster in a manner prohibited under this Section shall, in addition to all other rights, powers and remedies available to the Association under this A&R Declaration, indemnify and defend the Association, the Board and the Managing Agent against and hold the Association harmless from any and all claims arising from or related to such Owner's use of the Roster. The Association shall not publish the Roster, shall not use or sell the Roster for commercial purposes, and shall not provide a copy of the Roster to any Owner or any third party except as otherwise allowed by this Paragraph.

(m) Rules and Regulations. The Association, through the vote or written assent of at least a majority of the Board, shall have the power and duty to adopt, publish and enforce, from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Projects which Rules and Regulations shall be consistent with the provisions of the Governing Instruments.

(n) Statements of Status; Project Documents.

(i) The Association shall have the power and duty to issue a Statement of Status within ten (10) days of the mailing or delivery of a request therefor by any Owner, Mortgagee,

prospective Mortgagee, purchaser or other prospective transferee of a Timeshare Estate. Such Statement of Status shall be binding upon the Association in favor of any person who may rely thereon in good faith.

(ii) The Association shall have the power and duty to provide, by mail or e-mail, a copy of the Governing Instruments within ten (10) days of the mailing or delivery of a request therefor by any Owner.

(iii) The Association shall have the power to charge a fee for providing the Statement of Status or the requested documents, which fee shall not exceed the reasonable cost of preparation and/or reproduction thereof.

(o) Taxes and Assessments. The Association shall have the power and duty to pay all taxes and assessments and other costs affecting or relating to the Projects or the Vacation Ownership Program not otherwise directly assessed against each Owner and shall have the power to discharge, contest or protest liens or charges affecting the Projects or the Vacation Ownership Program.

(p) Utilities. The Association shall have the power and duty to obtain and pay the costs of water, electrical, telephone, cable television, gas, refuse pick-up, garbage disposal and other utility services for the Projects.

(q) Exchange Program. Except as otherwise limited by this A&R Declaration, the Association shall have the power to enter into agreements with the Managing Agent or other organizations to provide for participation by Owners in one or more Exchange Programs and to collect and disburse funds in connection therewith.

(r) Legal and Accounting. The Association shall have the power to obtain and pay the cost of legal and accounting services necessary or proper in the operation and management of the Vacation Ownership Program, the maintenance and repair of the Projects, and the enforcement of the Governing Instruments.

(s) Right of Entry. The Association shall have the power (i) to enter any Dedicated Unit, during Service Periods and at any other reasonable time, upon giving reasonable notice if a Dedicated Unit is occupied, for the purpose of cleaning, providing maid service, painting, maintaining or repairing such Dedicated Unit and (ii) to enter any Dedicated Unit, at any reasonable time and whether or not in the presence of the occupant, for the purpose of (A) making emergency repairs therein, (B) abating any

nuisance or any dangerous, unauthorized, prohibited or unlawful activity being conducted or maintained in such Dedicated Unit, (C) protecting property rights and welfare of the Owners, or (D) for any other purpose; provided, however, that any action taken by the Association pursuant to subparagraphs (A) through (D) of this Paragraph must be reasonably related to the performance by the Association of its responsibilities under the terms of this A&R Declaration. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, use and/or enjoyment of the Owner, his Permitted User, or other occupant of such Dedicated Unit or part thereof and shall be preceded by reasonable notice to the Owner, his Permitted User, or other occupant thereof whenever the circumstances permit.

(t) Rental of Unreserved Dedicated Units. The Association shall have the power, subject to the provisions of Paragraphs 2.1 and 2.9(c) of this A&R Declaration, to rent Dedicated Units to the general public, on such terms as the Association may determine, both on its own account and for the account of Owners (if applicable) who have executed a rental agreement with the Association in form acceptable to the Association, all as more particularly provided in the Rules and Regulations and in any rental program materials prepared by the Association in connection therewith. Rentals by the Association for its own account may be made as to Dedicated Units which are not timely confirmed by Owners, or to which an Owner's use rights have been forfeited, or as to Dedicated Units which the Association has reason to believe, based on historical occupancy information, are unlikely to be reserved by Owners. In addition to the Association's foregoing rental rights, the Association shall have the right to reserve and to rent Use Periods relating to Timeshare Estates owned by the Association, which may be reserved and utilized by the Association on the same basis as any other Owner's use of its own Timeshare Estate, on such terms and conditions as the Association may elect.

(u) Other Necessary Acts. The Association shall have the power to do all other things or acts deemed by the Association to be necessary, desirable or appropriate for the operation and maintenance of the Vacation Ownership Program.

4.3 Authority and Duty to Engage Managing Agent. The Association shall have the authority to engage and the obligation to use its best efforts to engage and maintain a reputable firm as the Managing Agent for the Projects and the operation of the Vacation Ownership Program pursuant to a Management Agreement, which shall include at least the following provisions:

(a) Delegation of authority to the Managing Agent to carry out the duties and obligations of the Association to the Owners;

(b) Authority of the Managing Agent to employ subagents, if applicable;

(c) An initial term of not more than five (5) years with automatic renewals for successive three-year periods after expiration of the first term, unless the Association with the consent of a majority of the Voting Power determines not to renew the Management Agreement and gives appropriate notice to the Managing Agent of such determination;

(d) Termination for cause at any time by the Board;

(e) A provision for arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association if requested by or on behalf of the Managing Agent;

(f) Not less than ninety (90) days' prior written notice to the Association of the Managing Agent's intent to resign;

(g) Enumeration of the powers and duties of the Managing Agent in the operation and maintenance of the Project;

(h) Compensation to be paid to the Managing Agent;

(i) Records to be maintained by the Managing Agent;

(j) A requirement that the Managing Agent provide a policy for fidelity insurance or bond for the activities of the Managing Agent, payable to the Association, in the amount required by law;

(k) Errors and omissions insurance coverage for the Managing Agent, if available at reasonable cost;

(l) Delineation of the authority of the Managing Agent and persons authorized by the Managing Agent to enter into the Dedicated Units for the purpose of cleaning, maid service maintenance and repair including emergency repairs, and for the purpose of abating a nuisance or dangerous, unlawful or prohibited activity being conducted in the Dedicated Unit;

(m) Description of the duties of the Managing Agent, including but not limited to (i) collection of Assessments; (ii) maintenance of all books and records concerning the Projects; (iii) scheduling occupancy of the Dedicated Units, when purchasers

are not entitled to use specific Use Periods, so that all Owners will be provided the opportunity for the use and possession of the Dedicated Units; and

(n) organizing regular and special Board meetings and the annual meeting of the Members of the Association.

4.4 Limited Liability. Neither the Association nor the Managing Agent shall be responsible for the acts, omissions or conduct of any Owner, Permitted User, or Exchange User, or for the breach of any of the obligations of any Owner, Permitted User, or Exchange User.

4.5 Conflicts of Interest. If any Board member is aware that the Association is about to enter into any business transaction that would constitute a "conflicting interest transaction" as such term is defined in Section 16.6a-825 of the Utah Revised Nonprofit Corporation Act, such Board member shall disclose all material facts within such Board member's knowledge that bear on the advisability of such transaction from the standpoint of the Association.

4.6 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 shall give at least ninety (90) days' prior written notice to the Association of its intent to resign;

(ii) that prior to the expiration of the period of said notice, the 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 A&R Declaration with its own personnel; provided, however, that if the Association shall fail to make reasonable efforts to meet the foregoing requirements during such ninety (90) day notice, the Managing Agent's resignation shall be effective at the end of such ninety (90) day notice; 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 Projects to the successor Managing Agent designated by the Board.

4.7 The terms of the Management Agreement shall provide such limitations on the powers of said Managing Agent to enter into

contracts with third parties to furnish goods or services to the Association.

## ARTICLE V

### ASSESSMENTS AND PERSONAL CHARGES

5.1 Creation of Personal Obligations For Assessments. Each Owner accepting the conveyance of a Timeshare Estate, whether or not it shall be so expressed in the deed thereto, shall be deemed to have covenanted and agreed for each Timeshare Estate owned, to pay to the Association the Annual Assessment and all Special Assessments which shall be established, made and collected as hereinafter provided. Personal Charges shall not be deemed to be Assessments for any purposes hereunder. Assessments, together with interest thereon, costs and reasonable attorneys' fees shall be the personal obligation of each Owner at the time each Assessment becomes due and payable and shall be a lien and charge upon the Timeshare Estate against which such Assessment is made. Subject to the provisions of Section 6.2(b) of this A&R Declaration, the personal obligation for delinquent Assessments shall not pass to successors-in-title unless expressly assumed. No Owner may waive or otherwise avoid liability for the Assessments by non-use of his Timeshare Estate or any part thereof or any abandonment thereof.

5.2 Purpose of Assessments. Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, to maintain, repair and improve the Projects, to pay for the operation and administration of the Vacation Ownership Program, and to reimburse expenses incurred by the Association and other expenditures incurred in the performance of the duties of the Association as set forth in this A&R Declaration.

5.3 Limitation on Annual Assessments. The Annual Assessment for any Timeshare Estate in any fiscal year shall not exceed one hundred twenty percent (120%) of the Annual Assessment for that Timeshare Estate for the preceding fiscal year, without the consent of a majority of Voting Power of the Association. Increases in the Annual Assessment attributable to increases in real property taxes against all or any portion of the Property shall be excluded in determining whether the Annual Assessment exceeds one hundred twenty percent (120%) of the Annual Assessment in the preceding fiscal year.

5.4 Annual Assessment. The Annual Assessment for each Timeshare Estate shall be paid, for each fiscal year, either (A)

in one lump sum due on or before the date determined by the Board of the Association, or (B) in installments payable no more frequently than monthly, or in such manner as determined by the Board. Whether such Annual Assessment is paid through the method provided in (A) or (B) of the foregoing sentence shall be at the Association's discretion. That portion of the Annual Assessment which is attributable to Reserve Expenses shall be deposited in the Reserve Account.

5.5 Special Assessments. If the Annual Assessments collected or to be collected for a particular fiscal year are, or will be, inadequate to meet all expenses incurred by the Association hereunder (other than for items constituting Personal Charges) for any reason, including without limitation nonpayment by any Owner of any Assessment on a current basis, the Association shall immediately determine the approximate amount of such inadequacy, prepare and distribute a supplemental budget and upon the consent of a majority of the Board, shall levy against each Timeshare Estate, in accordance with the method for determining the Annual Assessment, a Special Assessment. Any Special Assessment shall be payable in one lump sum or periodically, as determined by the Association.

5.6 Reserves. The Annual Assessments shall include reasonable amounts as determined by the Board, taking into consideration the Reserve Account Study (defined in Paragraph 5.7(a), below), collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Paragraph or otherwise, shall be deposited by the Board in a separate bank account(s) or certificate(s) of deposit to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

(a) The Board shall not expend funds designated as reserve funds for any purpose other than:

the repair, restoration, replacement or maintenance of the Common Areas for which the reserve fund was established; or

litigation involving use of reserve funds for the purposes set forth in subparagraph (i) above.

(b) Notwithstanding the provisions of subparagraphs (a) (i) and (a) (ii) above, the Board:

(i) may authorize the temporary transfer of money from the reserve account to meet short term cash flow requirements or other expenses of the Association if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided pursuant to the provisions of the Bylaws dealing with Board meetings, and which notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered, and if the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the monies will be repaid to the reserve account;

(ii) shall cause the transferred funds to be restored to the reserve account within one (1) year of the date of the initial transfer; however, the Board may, upon making a documented finding that a delay of restoration of the funds to the reserve account would be in the best interests of the Association, delay the restoration until such time it reasonably determines to be necessary; and

(iii) shall exercise prudent fiscal management in delaying restoration of the transferred funds to the reserve account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits specified in subparagraph (b)(ii) above. Any such Special Assessments shall not be subject to the five percent (5%) limitation specified in Paragraph 5.5, above.

(c) Withdrawal of funds from the Association's Reserve Account shall require the signatures of either (i) two (2) members of the Board; or (ii) one (1) member of the Board and an officer of the Association who is not also a member of the Board.

5.7 Maintenance of Adequate Reserves. In order to assure that the Association maintains adequate reserves,

(a) The Board shall, at least once every three (3) years, cause a study to be conducted of the Reserve Account requirements by an authorized reserve study specialist (the "Reserve Account Study") if the current replacement value of the major components of the Common Areas that the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Budget for any fiscal year;

(b) The Board shall annually review the Reserve Account Study and consider and implement necessary adjustments to its

analysis of the reserve account requirements as a result of that review;

(c) The Board shall cause the Reserve Account Study to include at a minimum:

identification of the major components of the Common Areas that the Association is obligated to repair, replace, restore or maintain which, as of the date of the Reserve Account Study, have a remaining useful life of less than thirty (30) years;

identification of the probable remaining useful life of the components identified in subparagraph (i) above as of the date of the Reserve Account Study;

an estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subparagraph (i) during and at the end of its useful life; and

an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the Reserve Account Study; and

(d) The Board shall not authorize the expenditure of reserve funds for uses other than the repair, restoration, replacement or maintenance of the Common Areas for which the reserve fund was established which cumulatively exceeds five percent (5%) of the budgeted gross expenses for the current fiscal year without concurrently authorizing a Special Assessment as provided in Paragraph 5.5, above, which will restore reserves to adequate levels as determined by the Reserve Account Study.

#### 5.8 Personal Charges.

(a) Personal Charges are not Assessments and the remedies available to the Association against any Owner for non-payment of such Owner's Personal Charges are those remedies provided in Paragraph 6.1 and Subparagraph 6.2(a) of this A&R Declaration.

(b) Personal Charges shall be paid by each Owner as follows:

If the Association is able to determine the amount of Personal Charges at check-out time (for example, Personal Charges constituting long distance telephone charges, optional

maid service, etc.), such Personal Charges shall be payable at the termination of the Owner's Use Period.

Except as provided in Paragraph 9.6 of this A&R Declaration, Personal Charges which are not ascertainable at the time of termination of an Owner's Use Period shall be payable as determined by the Association.

5.9 Creation of Personal Obligation for Assessments. 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 Association (i) Annual Assessments or charges, and (ii) Special Assessments. The personal obligation for delinquent Assessments shall not to each Owner's successors in title unless forgiven by action taken by the Board of Directors.

## **ARTICLE VI**

### **EFFECT OF NON-PAYMENT OF ASSESSMENTS-**

#### **REMEDIES OF THE ASSOCIATION**

6.1 In General. In the event that any Owner, Exchange User, or Permitted User(s), should fail to comply with any of the provisions of the Governing Instruments, the Association or any other Owner(s) shall have full power and authority to enforce compliance with the Governing Instruments in any manner provided for therein, by law or in equity, including, without limitation, the right to enforce the Governing Instruments by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of the Governing Instruments, to enforce the liens provided for herein and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Timeshare Estate of any Owner in any lawful manner. In the event the Association or any Owner(s) shall employ an attorney to enforce the provisions of the Governing Instruments against any Owner, Exchange User, or Permitted User, the party engaging the attorney shall be entitled to recover from the Owner, Exchange User, or Permitted User violating any such provisions reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner, Exchange User, or Permitted User which become delinquent shall bear interest at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, commencing on the date such payment becomes delinquent, or if

advanced or incurred by the Association, or any other Owner, Exchange User, or Permitted User pursuant to authorization contained in this A&R Declaration, commencing 30 days after repayment is requested. Each Owner, Exchange User or Permitted User who becomes delinquent in the payment of any amount due the Association shall pay to the Association a late charge in an amount set by the Board for each payment which is delinquent. All enforcement powers of the Association shall be cumulative. Each Owner, Exchange User, or Permitted User accepting the conveyance of a Timeshare Estate shall be deemed to have covenanted and agreed that the Association shall have all of the rights, powers and remedies set forth in this Article VI and elsewhere in this A&R Declaration.

6.2 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Paragraph 6.1 of this A&R Declaration, the Association shall have the following rights and powers:

(a) Suspension of Privileges. If any Owner or his Permitted User, shall be in breach of the Governing Instruments, including but not limited to the failure of such Owner to pay any Assessment or Personal Charges attributable to, or incurred in connection with, an Timeshare Estate on or before the due date therefor, subject to the limitations hereinafter set forth in this Subparagraph 6.2(a), the Association may suspend the right arising from the ownership of such Timeshare Estate of such Owner, and his Permitted User to reserve or occupy any Dedicated Unit, may suspend such Owner's right arising from the ownership of such Timeshare Estate to participate in any vote or other determination provided for herein, and may assess monetary penalties as may be provided in the Bylaws. If any Exchange User shall be in breach of the Governing Instruments, including, but not limited to the failure of such Exchange User to pay any Personal Charges on or before the due date therefor, subject to the limitations hereinafter set forth in this Subparagraph 6.2(a), the Association may suspend the right of such Exchange User to reserve or occupy any Dedicated Unit and to participate in any vote or other determination provided for herein and may assess monetary penalties as may be provided in the Bylaws. The Association may delegate to the Managing Agent the power, in accordance with the preceding sentence, to suspend the privileges of any Owner, Exchange User, or Permitted User during the period of time that such Owner, Exchange User, or Permitted User is delinquent in the payment of an Assessment or Personal Charge duly levied by the Association. No such suspension, except a suspension of voting or use privileges for the failure of such Owner, Exchange User, or Permitted User to pay any Assessments or Personal Charges, any

portion thereof or any other amount(s) due hereunder on or before the due date therefor, or imposition of monetary penalties shall be made except after a meeting of the Board at which a quorum of the Board is present, duly called and held for such purpose in the same manner as provided in the Bylaws for the noticing, calling and holding of a meeting of the Board. Written notice of such meeting, the purpose thereof, including the reasons for the suspension sought or the monetary penalties sought to be imposed, and whether the Owner, Exchange User, or Permitted User's defense shall be oral or written, shall be given to the Owner, Exchange User, or Permitted User against whom such activity is to be taken at least thirty (30) days prior to the holding of such meeting. Such notice shall be given as provided at Paragraph 9.3 of this A&R Declaration. Such Owner, Exchange User, or Permitted User shall be entitled to appear at such meeting and present his case, either orally or in writing as designated by the Board, as to why his privileges should not be suspended or monetary penalties imposed. The decision as to whether such privileges should be suspended or monetary penalties imposed shall be made by a majority of the members of the Board present at such meeting. Written notice of suspension or monetary penalties imposed, the reasons therefor and the length or amount thereof shall be given to the affected Owner, Exchange User, or Permitted User and the suspension or penalties shall become effective on the date such notice is given, which date shall be not less than five (5) days after the date of such meeting. If such suspension of privileges or imposition of monetary penalties is based on the failure of an Owner, Exchange User, or Permitted User to pay Assessments, Personal Charges or any other amount(s) due hereunder when due attributable to, or incurred in connection with, a Timeshare Estate, the Owner shall be given written notice of the suspension immediately after the decision to suspend has been made, and the suspended privileges of such Owner, Exchange User or Permitted User with respect to such Timeshare Estate shall be reinstated automatically at such time as the Owner, Exchange User or Permitted User shall have paid to the Association, in cash or by cashier's or certified check, all amounts past due as of the date of such reinstatement and all monetary penalties imposed, together with accrued and unpaid interest and any late charges imposed which are attributable to, or were incurred in connection with, such Timeshare Estate. If such suspension of privileges or imposition of monetary penalties is based on any act or omission other than the failure of an Owner, Exchange User, or Permitted User to pay Assessments, Personal Charges or any other amount(s) due hereunder when due, the suspended privileges shall be automatically reinstated upon the earlier of expiration of the period stated in the suspension notice or payment of the monetary penalties imposed.

(b) Enforcement by Lien. Subject to the provisions of Subparagraph 6.2(c) and Paragraph 6.3 of this A&R Declaration, and in accordance with Utah Code Ann. §57-8a-301 et seq, there is hereby created a claim of lien, with power of sale, on each and every Timeshare Estate to secure the prompt and faithful performance of each Owner's obligations under the Governing Instruments for the payment to the Association of any and all Assessments levied against any and all Timeshare Estates under this A&R Declaration, together with interest thereon at the rate of eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, from the date such payment becomes delinquent, and all late charges and costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of such Assessment or performance secured, the Association or any authorized representative may, but shall not be required to make a written demand for payment to the defaulting Owner. Said demand shall state the date and amount of the delinquency with respect to which the Owner is in default. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid or default is not cured within ten (10) days after delivery of such demand, or within one hundred (100) days after the date of delinquency or default if no written demand is made, the Association may, subject to the notice requirements set forth in Subparagraph 6.2(b), below, elect to file and record a notice of default and claim of lien (a "Notice of Default") (with a copy to the Mortgagee of such defaulting Owner if such Mortgagee has requested a copy and furnished its name and address to the Association) on behalf of the Association against the Timeshare Estate of the defaulting Owner in the Office of the County Recorder. Such a Notice of Default shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

A legal description of the Timeshare Estate;

The name of the defaulting Owner;

The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

A statement that the Notice of Default is made by the Association pursuant to this A&R Declaration; and

A statement that a lien is claimed and will be

foreclosed against the Timeshare Estate in an amount equal to the amount stated.

The lien claimed in such a Notice of Default shall immediately attach to and become effective against the Timeshare Estate upon recordation of such Notice of Default in the Office of the Summit County Recorder. A copy of the Notice of Default with the recording date shown thereon, shall be sent by registered or certified mail with postage prepaid (i) to all record Owners of the Timeshare Estate owned by the defaulting Owner no later than ten (10) calendar days after recordation of the Notice of Default and (ii) to each Mortgagee of such defaulting Owner no later than ten (10) business days after recordation of the Notice of Default if such Mortgagee has requested a copy and furnished its name and address to the Association or has recorded in the Office of the Summit County Recorder a request for a copy of the Notice of Default in conformance with Utah law. The recordation of a duly executed original or copy of such Notice of Default, and mailing a copy thereof to the defaulting Owner, shall not constitute a condition precedent to nor delay the attachment of the lien. The lien claimed in such a Notice of Default shall attach to the Timeshare Estate without notice at the beginning of the first day of any period for which any Assessment is levied. After the expiration of thirty (30) days following the recordation of such Notice of Default, the lien may be foreclosed by appropriate action in court or in the manner provided for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law by Utah Code Ann. §§57-8a-301 to 304, for the enforcement of a judgment as the laws of the State of Utah may from time to time be changed or amended. The Association shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale, to purchase, acquire, lease, hold, mortgage and convey any Timeshare Estate acquired at such sale subject to the provisions of this A&R Declaration. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this A&R Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Assessments hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Timeshare Estate free from the sums or performance claimed (except as stated in this Subparagraph) but otherwise subject to the provisions of

the Governing Instruments; and no such sale or transfer shall relieve such Timeshare Estate or the purchaser thereof from liability for any Assessments, other payments or performance thereafter becoming due or from the lien therefor as provided for in this Subparagraph. All sums assessed hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon; but if such sum should prove uncollectible, then it shall be deemed to be a Basic Expense, collectable from all of the other Owners, including the purchaser thereof at foreclosure, and shall be shared among such Owners in the same manner as other Common Expenses are shared.

Upon the timely curing of any default for which a Notice of Default was filed by the Association, the officers of the Association are hereby authorized to record an appropriate release of such lien in the Office of the San Diego County Recorder.

(c) Notice of Lien. Prior to the attachment of a lien against a Timeshare Estate the Association shall notify the defaulting Owner in writing and by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal amount owed, and late charges and the method of calculation for such late charges, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable cost of collection. Any payments made by the Owner to satisfy charges owed by such Owner shall first be applied to the principal amount owed and only after the total principal amount is paid in full shall such payments be applied to interest and any remaining fees and costs including, without limitation, late charges, costs of collection, and attorney's fees.

6.3 Subordination to Certain Encumbrances. The lien provided for herein shall be prior to all encumbrances made by an Owner or imposed by legal process upon any Owner except taxes, bonds, assessments and other levies which by law are prior thereto, whether the notice of lien is recorded prior or subsequent to any such encumbrances, including the lien of any prior Mortgage. The sale or transfer of any Timeshare Estate, including foreclosure of a prior Mortgage, shall not defeat or affect the lien provided for herein, except that any persons who obtain an interest through foreclosure of a prior Mortgage and their successors in interest shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of such foreclosure. No sale or transfer of a Timeshare Estate shall relieve such Timeshare Estate or the purchaser thereof from liability for any Assessment(s) thereafter becoming due or from

the lien thereof.

6.4 Action at Law. The Association may bring an action at law against the Owner personally obligated to pay the same in accordance with the applicable provisions of Utah law. The Assessment lien and the rights to foreclose shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by applicable Utah law, including but not limited to, a suit to recover a money judgment for unpaid Assessments.

## **ARTICLE VII**

### **SCOPE OF ENFORCEMENT**

7.1 The limitations, restrictions, conditions and covenants set forth in this A&R Declaration constitute a general scheme for (a) the maintenance, protection and enhancement of the value of the Projects; and (b) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

7.2 Each remedy provided for in this A&R Declaration shall be cumulative and not exclusive. The 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 A&R Declaration or any amendment thereto; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the 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.

7.3 The result of or condition caused by any violation of any of the provisions of this A&R Declaration is and shall be 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.

7.4 The Association shall have no power to cause the absolute forfeiture of an Owner's right, title, or interest in a Project on account of the Owner's failure to comply with this A&R

Declaration, the 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 Association as hereinbefore set forth in Article VI.

7.5 The 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 A&R Declaration, the Bylaws, and the Rules and Regulations by an Owner, his guests, and persons under his control for among other things:

(a) failure to vacate a Dedicated Unit upon expiration of a Use Period;

(b) damage to any part or facility of the Projects;

(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; or

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

7.6 Except as provided in Section 6.2(a) and (b), no action to enforce this A&R 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 five 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. Written notice of the meeting of the Board shall be given to the Owner against whom suspension is sought at least fifteen (15) days prior to the holding of such a meeting. All such meetings, and the attendance thereat by subject Owner, may be held by conference telephone provided all parties can hear one another.

7.7 In the event the Association or any Owner(s), should commence litigation to enforce any of the provisions of this A&R 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 VIII

### DAMAGE, DESTRUCTION, OR CONDEMNATION

8.1 In General. In the event of (a) any damage or destruction of all or any major part of the Projects or any of the Dedicated Units other than by normal wear and tear, (b) any physical deterioration of any part of the Projects or any of the Dedicated Units (whether or not caused by normal wear and tear) rendering such portion functionally obsolete and no longer reasonably habitable, or (c) any taking of any part of the Projects through condemnation, whether such loss results from an insured or uninsured casualty, the Board shall determine whether or not the portion of the Projects affected by the damage, destruction, or condemnation (the "Destroyed Areas") should be repaired, restored or replaced.

8.2 Substantially Similar Reconstruction. If the Board decides to replace the Destroyed Areas by reconstruction substantially similar to that which was destroyed, it shall obtain firm bids from two (2) or more responsible contractors and shall accept the bid it considers most favorable. If a bid is accepted, the Board may levy a Reconstruction Assessment on all of the Owners in accordance with the method set forth below for the amount required to make up any deficiencies between the total insurance and condemnation proceeds and the contract price for such repair and rebuilding (the "Reconstruction Shortfall"): For each Timeshare Estate, the Reconstruction Assessment against such Timeshare Estate shall be an amount determined by dividing the Reconstruction Shortfall by a number determined by multiplying the total number of Dedicated Units which are subject to this A&R Declaration by 51; and

8.3 Substantially Dissimilar Reconstruction; Deannexation. The Board may elect to replace the Destroyed Areas by reconstruction substantially dissimilar to that which was destroyed, and to sell the affected Property, but only upon the approval of a majority vote of the Owners who hold title to a Timeshare Estate in the Dedicated Units within the Destroyed Areas (the "Affected Owners"). The Board may also elect to deannex the affected Property from the scope of this Declaration, and to sell

the Property so deannexed, but only upon approval by a majority vote of the Affected Owners. In such event, all costs of reconstruction shall be the responsibility only of the Affected Owners.

8.4 No Reconstruction. If the Board decides not to replace the Destroyed Areas, for any reason, and to deannex and sell the affected Property, it shall apply the net proceeds of any insurance policies, any condemnation award, and any residual resale proceeds from the sale of the Project suffering the damage or destruction, and disburse such net proceeds to the Affected Owners (or their mortgagees) in proportion to their ownership interest in the applicable Project, after setting off any amounts owned by each such Affected Owner to the Association for delinquent Assessments, or otherwise.

8.5 Damaged Caused by Owner, Permitted User. Notwithstanding the preceding options, (i) if the loss, damage or destruction was caused by the intentional or negligent act, or failure to act, of any Owner, or his Permitted User(s), the cost of such repair shall be a Personal Charge of, and be paid by, such Owner as provided in Paragraph 5.8 of this A&R Declaration to the extent such loss, damage or destruction is not covered by insurance. If the loss, damage or destruction was caused by an intentional or negligent act or omission to act of any Exchange User, the Association shall, use reasonable efforts to collect from such person the cost of such repair to the extent such loss, damage or destruction is not covered by insurance. The insurance proceeds available to the Association on account of said damage or destruction shall be paid to the Board. All insurance monies recovered on account of such damage or destruction, less the cost, if any, of such recovery, shall be applied to the payment of the cost of repairing, replacing and rebuilding, and shall be paid out from time to time by the Board as such work progresses upon the written certification of the architect or engineer if applicable, or the contractor in charge of such work, stating that the sum requested is justly due to those persons rendering services or furnishing materials in connection with such work. Notwithstanding the foregoing provisions, no Reconstruction Assessment which exceeds the budgeted gross expenses of the Association for the fiscal year in which it is levied may be levied without the consent of a Majority of the Voting Power.

## **ARTICLE IX**

### **MISCELLANEOUS PROVISIONS**

9.1 Amendment. This A&R Declaration may be amended with the vote or written assent of the a majority of those Members who cast votes and who collectively own at least twenty five percent (25%) of the total Voting Power of the Association. Any amendment authorized pursuant to this Subparagraph shall be evidenced by an instrument in writing, signed and acknowledged by any officer of the Association. Any amendment under the provisions of this Paragraph 9.1 shall be binding upon every Owner and every Timeshare Estate whether the burdens thereon are increased or decreased, and such amendment shall be effective upon its recordation in the Office of the Summit County Recorder. Notwithstanding the foregoing, no amendment to Article VIII shall be made without the vote or written consent of the required percentage of votes as described in that Article.

9.2 Termination.

(a) Subject to the provisions of Article VIII of this A&R Declaration, and Subparagraph 9.2(b), below, this A&R Declaration shall remain in effect for a period of fifty (50) years from the date of recordation hereof and thereafter shall automatically remain in effect for successive periods of ten (10) years each.

(b) This A&R Declaration may be terminated at any time after fifty (50) years from the date of recordation of this A&R Declaration, with the consent of a not less than seventy-five percent (75%) of the Owners electing to terminate the A&R Declaration and authorizing the Association, as trustee for all Owners, to sell the interests of the Owners in the Property subject to the rights of any Mortgagees of the Owners. In the event of such termination, each Owner, by accepting the conveyance of a Timeshare Estate, whether or not it shall be so expressed in the original deed, hereby confers upon the Association, as trustee, the power and authority to sell, convey or otherwise transfer the interests of the Owners in the Property, and this A&R Declaration shall terminate upon the consummation of such sale and the recordation of an instrument stating that this A&R Declaration is terminated pursuant to this Subparagraph 9.2(b). Notwithstanding the termination of this A&R Declaration as hereinabove provided in this Subparagraph 9.2(b) and the termination thereby of all of the covenants, conditions, restrictions, easements, rules and regulations, liens and equitable servitudes created by this A&R Declaration, the existence of the Association shall continue for so long as reasonably required to provide for the collection and disbursement of the proceeds from the sale, conveyance or transfer of interests of the Owners in the Property.

(c) In the event that no conveyance, sale or transfer of the interests of the Owners in the Property shall have been effected by the Association within nine (9) months after the events described in Subparagraph 9.2(b) have occurred, any Owner shall have the right to petition a court of competent jurisdiction for the sale of the interests of the Owners in the Property in lieu of partition. Such court shall recognize and give effect to any agreement, document or instrument made or entered into by the Association within said nine (9) month period, and pursuant to which the interests of the Owners in the Property shall be conveyed, sold or transferred.

(d) The net proceeds from a sale of the interests of the Owners in the Property (i) by the Association pursuant to the power of sale conferred upon the Association, as set forth in Subparagraph 9.2(b), or (ii) by a referee appointed to do so pursuant to a decree of partition obtained pursuant to Subparagraph 9.2(c), above, shall be distributed by the Association, as trustee, to each Owner with respect to each Timeshare Estate, subject to the rights of each Owner's Mortgagee and in accordance with the method for determining the Annual Assessment; provided, however, that there shall be deducted from the amount due any Owner, the amount, if any, of all sums due to the Association from such Owner.

9.3 Notices. Notices provided for in this A&R Declaration shall be in writing and shall be deemed sufficiently given either when delivered (a) personally at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery), (b) forty-eight (48) hours after deposit of same in any United States post office box in the state to which the notice is addressed, (c) seventy-two (72) hours after deposit of same in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth below, or (d) by electronic mail, website posting, or other form of written or electronic communication, if such form of notice has been approved previously by the receiving Owner. Any notice to an Owner required under this A&R Declaration shall be addressed to the Owner at the last address for such Owner appearing in the records of the Association or, if there be none, at the address of the Projects.

Notices to the Association shall be addressed to the Projects.

Notices to the Managing Agent shall be addressed to the last address designated by the Managing Agent by written notice to the Board. The addresses and addressees for purposes of this

Paragraph 9.3 may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee as stated by notice or as provided herein, if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

9.4 Right of First Refusal. In the event any Owner wishes to sell or transfer his Timeshare Estate, the Association or its assignee shall have the option to acquire the Timeshare Estate, upon the same conditions as are offered by the Owner to a third person. Any attempt by the Owner to consummate any sale or transfer of the Timeshare Estate prior to satisfaction of the requirements set forth below and without waiver of the right of first refusal by the Association shall be wholly null and void, and shall confer no title or interest whatsoever upon any transferee; provided however, any deed may be validated by subsequent approval by the Association in the event of a sale or transfer without prior approval as herein provided.

Should an Owner wish to sell or transfer his Timeshare Estate, he shall deliver to the Association a written notice (the "Owner Notice") containing a copy of the executed purchase agreement between buyer and seller, together with all other documents or agreements relating to the transaction, including, but not limited to, any documents pursuant to which the Owner is making any payment of consideration to the transferee, any affiliate of transferee or any other party in connection with the proposed transaction (collectively the "Transaction Documents"), all of which shall be executed subject to the Association's waiver of its right of first refusal and consent to the sale or transfer. This right of first refusal specifically entitles the Association to exercise all terms of the Transaction Documents, whether contained in one agreement or multiple documents, including the right to receive any consideration paid by the Owner as part of the Transaction Documents. The Association shall have fourteen (14) days from receipt of the Owner Notice to request supplemental information ("Supplemental Information") that it deems necessary in order to fully evaluate the transaction. The Owner shall submit to the Association, within five (5) days from receipt of any request by the Association, any Supplemental Information as may be required by the Association.

The Association, within fourteen (14) days after receiving the Owner Notice and all Supplemental Information, shall either consent to the transaction specified in the Owner Notice, or by written notice to be delivered to the Owner's last known address (or mailed to the place designated by the Owner in the Owner

Notice), designate the Association, or one or more persons, who are willing to acquire the Timeshare Estate upon the same terms as those specified in the Owner Notice, and the Owner shall close the transaction in accordance with the Transaction Documents. If the Owner does not supply the Supplemental Information that is requested by the Association on a timely basis, then the Association is under no obligation to respond to the Owner Notice. Such failure to respond shall not be deemed to be a waiver of the right of first refusal. Except as set forth herein, failure of the Association to exercise the right of first refusal within the fourteen (14) day period shall be deemed consent by the Association to the transaction specified in the Owner Notice, and the Owner shall be free to make or accept the offer specified in the Owner Notice, and transfer the Timeshare Estate pursuant thereto to the prospective transferee named therein in accordance with the Transaction Documents submitted to the Association.

In the event the sale or transfer to a third party is approved by the Association but is not ultimately consummated, the Owner may not sell or transfer his Timeshare Estate without further complying with the terms and conditions of this section.

The consent of the Association shall be in proper recordable form and shall be delivered to the Owner. Should the Association fail to act, as herein set forth, and within the time provided herein, the Association shall, nevertheless, thereafter prepare and deliver its written approval in proper recordable form, as aforesaid, and no conveyance of title or interest whatsoever shall be deemed valid without the consent of the Association as herein set forth.

The provisions hereof may not be amended without the consent of the Association. Without limiting the generality of the Association's right to amend as contained herein, the Association specifically reserves the right to amend this paragraph in order to set forth such additional terms and conditions as may be necessary to carry out the purposes hereof.

The provisions hereof shall be a covenant running with the land and shall apply to all Owners, their heirs, successors and assigns who acquired their Timeshare Estate subject to the right of first refusal whether such Owner acquired the Timeshare Estate prior to or subsequent to the recording of this document.

9.5 Notification of Sale of Timeshare Estate. No later than thirty (30) days after the sale or transfer of any Timeshare Estate under circumstances whereby the transferee becomes the Owner thereof, the transferor or the transferee shall notify the

Association in writing of (a) the name and address of the transferee and transferor, (b) the date on which such sale or transfer is to be or was consummated, (c) a statement executed by the transferee that the transferee has received from the Owner, and acknowledges receipt of, a copy of the Governing Instruments and a Statement of Status, (d) a statement executed by the transferee that the transferee has received a copy of the then effective Association budget, (e) a statement executed by the transferee that the transferee agrees to be bound by all of the provisions of the Governing Instruments, and (f) the name and address of any Mortgagee of such transferor and transferee. Any outstanding and unpaid Assessments and Personal Charges shall be paid to the Association prior to the transfer of such Timeshare Estate. Any outstanding and unpaid Assessments shall be the obligation of the transferee unless paid prior to transfer by the transferor. Unless and until such notice is given and any unpaid Assessments and Personal Charges have been paid to the Association on behalf of the transferor, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to (i) receipt of any such notification by the Association or the Managing Agent and (ii) the payment of Assessments and Personal Charges by the transferor, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

9.6 Severability. If any provision of this A&R Declaration, or any paragraph, sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this A&R Declaration and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected thereby.

9.7 Successors. The provisions of this A&R Declaration shall be binding upon all parties owning a Timeshare Estate or having or acquiring any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Timeshare Estate upon ceasing to own such Timeshare Estate and paying all sums and performing all obligations hereunder insofar as the same relate to each Timeshare Estate up to the time his ownership interest terminated.

9.8 Violation or Nuisance. Every act or omission whereby any provision of the Governing Instruments is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or

abated whether or not the relief sought is for negative or affirmative action by the Association or any Owner.

9.9 Interpretation. The captions of the Articles, Paragraphs and Subparagraphs hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this A&R Declaration. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

9.10 No Waiver. The failure to enforce any provision of this A&R Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All that real property located in Summit County, Utah, described as follows, being a part of Block 18 and Block 26 of Snyders Addition:

Parcels 1-18 (Phase I), as shown on the Record of Survey Map recorded November 20, 1978 as Entry Number 151130,

Parcel 19 (Phase II), as shown on the Record of Survey Map recorded July 6, 1979 as Entry Number 157396,

Parcels 20 and 21 (Phase IIA), as shown on the Record of Survey Map recorded January 6, 1981 as Entry Number 274889,

Parcels 22-24 (Phase III), as shown on the Record of Survey Map recorded December 27, 1979 as Entry Number 162654,

Parcels 25-30 (Phase 5) as shown on the Record of Survey Map recorded January 6, 1981 as Entry Number 174891, and

Parcels 31-41 (Phase VII) as shown on the Record of Survey Map recorded February 28, 1978 as Entry Number 144771,

each as recorded in the Office of the County Recorder of Summit County, Utah, as such Record of Survey Maps may have been amended from time to time.