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BK 4555 PG 427

When recorded, return to:

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
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FEE \$65.00 Pgs: 25
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CITY

01-418-0209 thru 0216

Tax Parcel No(s). _____

**DECLARATION OF CONDOMINIUM FOR THE
DAKAR CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made and executed by DGS INVESTMENT, LLC, a Utah limited liability company ("**Declarant**"), pursuant to the provisions of Title 57, Chapter 8, Utah Code Annotated, as amended. Declarant is the owner of the Property described below, upon which Declarant intends to develop a commercial condominium project. Declarant hereby submits the Property to the covenants, conditions, restrictions, terms and provisions hereof, which shall be enforceable equitable servitudes and shall run with the land constituting the Property.

1. DEFINITIONS. The following terms shall have the meanings as used herein:

"Act" shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.).

"Amendment" shall mean any amendment to this Declaration made in accordance with this Declaration and the Act.

"Articles" shall mean the Articles of Incorporation of the Association.

"Assessment" shall mean those Assessments described in Section 20 to fund the Common Expenses, and include Regular Assessments, Special Assessments and any other assessments levied by the Association. **"Regular Assessments"** shall mean the annual Assessments levied by the Association to pay the budgeted Common Expenses. **"Special Assessments"** shall mean Assessments that the Association may levy from time to time, in addition to the Regular Assessments, for unexpected Common Expenses or other purposes as provided herein.

"Association" shall mean Dakar Condominium Association, Inc., a Utah non-profit corporation, organized for the purposes set forth in this Declaration.

"Board" shall mean the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws. The Board shall constitute the "management committee" defined under the Act.

"Building" shall mean the Building described in Section 2.

"Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

“Common Areas and Facilities” shall mean all portions of the Project other than the Units, as described in Section 5 hereof, including the Limited Common Areas and Facilities.

“Common Expenses” shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration or by the Act.

“Common Expense Fund” shall mean one or more deposit or investment accounts of the Association into which Assessments are deposited.

“Cost of Living Index” shall mean the Consumer Price Index, all Urban Consumers – U.S. City Average – All Items (1982-84=100). Declaration may select any other comparable index which measures changes in the cost of living.

“Declarant” shall mean the original Declarant named herein as well as any successor in interest as defined by the Act.

“Development Rights” shall mean the right under the Act to (1) convert portions of the Project into one or more Units and/or Common Areas and Facilities, including Limited Common Areas and Facilities, pursuant to Section 6 hereof, if any; and (2) exercise any of the rights set forth in Section 10 hereof.

“Interest” shall mean the undivided interest in the Common Areas and Facilities appurtenant to each Unit, which is based upon the square footage of such Unit as described in Section 5 hereof and is set forth in Exhibit B hereto, as such Exhibit may be amended as provided herein.

“Limited Common Areas and Facilities” shall mean any portion of the Common Areas and Facilities allocated by this Declaration or the Act, or as may be shown on the Plat, if any, for the exclusive use of one or more, but fewer than all, if the Units.

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

“Member” shall mean and refer to a member of Association, and **“Membership”** shall mean membership in the Association.

“Mortgage” shall mean any mortgage, deed of trust or other security instrument (including the seller’s rights under a contract for deed” by which a Unit or any part thereof or interest therein is encumbered. A **“First Mortgage”** is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

“Mortgagee” shall mean any person or entity named as the mortgagee, beneficiary or holder of the seller’s interest under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A **“First Mortgagee”** shall mean any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage. Any and all Mortgagee protections contained in this Declaration shall also protect the Declarant as the holder of a First Mortgage of a Unit or any interest therein.

"Owner" shall mean any person or entity, including Declarant, at any time owning a Unit or an interest in a Unit (including, to the extent permitted by law, those purchasing an interest pursuant to a contract for deed who have given written notice of their purchase and a copy of their contract to the Association). The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

"Plat" shall mean the Condominium Plat of the Dakar Condominiums, recorded in the office of the Recorder, as it may be amended from time to time pursuant to this Declaration and the Act. The Plat shall be amended to reflect such changes to the Project as are permitted and effected under this Declaration. Such amendments to the Plat are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. **"Supplemental Plat"** shall mean any amendment to the Plat made in accordance with this Declaration and the Act.

"Project" shall mean the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act. The Project shall be known as the Dakar Condominiums.

"Property" shall mean the certain real property situated in the County of Davis, State of Utah, described in Section 2 below.

"Recorder" means the Official Recorder of Davis County, Utah.

"Total Votes of the Association" shall mean the total number of votes appertaining to all Units, as described in Section 8 hereof.

"Unit" shall mean the physical portion of the Project designed for separate ownership and occupancy as described in Section 4 hereof.

"Unit Number" shall mean the number, letter or combination of numbers and letters that identifies a Unit.

2. **DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS.** The Property is legally described on Exhibit A attached hereto. The initial improvements shall consist of a one-story office warehouse building with surface parking with an approximately 14,100 square foot footprint (the **"Building"**). The Building will contain certain Units as described in Section 7, and shall be principally constructed of wood and concrete, with block and stucco exterior and a membrane roof, and such other materials as allowed by current building codes. The Building will be supplied with telephone, television, electricity, water and sewer service. The Project also includes the Common Areas and Facilities described herein.

3. **SUBMISSION TO ACT.** Declarant hereby submits the Property, the Building and all other improvements thereon to the provisions of the Act. All of said Project is and shall be held, conveyed, encumbered, lease, subleased, rented, used and improved as a condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, all, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvements of the Project and division thereof into Units. Each and all of the provisions hereof shall be deemed to run with a

benefit and burden the land and shall benefit and bind Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. The Declarant and the Association are each hereby granted a limited license to use the name "Dakar Condominiums" in connection with the administration, sale and operation of their respective interests in the Project.

4. **DESCRIPTION OF UNITS.** The boundary lines of each Unit are as set forth on the Plat and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls; floors, ceilings and roofs (except the interior finished surfaces thereof); foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Plat and **Exhibit B** hereto contain the Unit Number of each Unit in the Project.

5. **DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES.**

(a) The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, except as otherwise provided herein, the foundation, columns, girders, beams supports, exterior and bearing walls, roofs, halls, corridors, elevators, stairwells, lobbies fire escapes and entrances and exits of the building; the grounds in the Project designated as part of the Common Areas and Facilities on the plat, including all landscaping, walkways, parking areas and drive aisles; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units (each Unit shall have its own separate power and gas meters, and water consumed in the Units shall be a Common Expense); all ducts, flues, chutes, wires and conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Plat or any Supplemental Plat; and all repairs and replacements of any of the foregoing. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control.

(b) The Interest appurtenant to each Unit in the Project is based upon the square footage of such Unit. **Exhibit B** to this Declaration shows the square footage of each Unit measured from the exterior finished surface of each perimeter wall of the Unit and from the

center line of each party wall of the Unit, as well as the Interest appurtenant to each Unit. The Interest appurtenant to each Unit shall be determined by dividing the square footage of that Unit by the total square footage of all Units in the Project. Except as otherwise provided in this Declaration; the Interest appurtenant to each Unit shall have a permanent character and shall not be altered; provided, however, Declarant reserves the right to adjust the Interests following the addition of new Units as provided for herein. The sum of the Interests allocated to all Units shall at all times equal one hundred percent. Declarant is authorized to round the Interest of one or more Units in order to cause the total to equal one hundred percent. Unless specifically designated otherwise on the Plat or a Supplemental Plat, all of the hallways and stairwells of the Building shall be Common Areas and Facilities. The Association shall have the right and obligation to design, maintain, replace and otherwise control all landscaping on the Common Areas and Facilities. The Owners may not repair, replace, maintain or otherwise alter in any manner the landscaping of the Common Areas and Facilities.

6. DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES.

Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of the other Owners. Mechanical systems (including heating, ventilation and air conditioning systems), hallways and other common walkways serving only separate Units shall be Limited Common Areas and Facilities with respect to the Units they serve, if any. The Limited Common Areas and Facilities shall be those areas designated as such on the Plat, in this Declaration, as it may hereafter be amended, or as provided for by the Act, and the use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as so indicated. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

7. NATURE AND INCIDENTS OF OWNERSHIP.

(a) Each Unit is and shall hereafter be a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

(b) Each Owner shall have the exclusive right to paint, repaint, title, paper, carpet, or otherwise decorate the surfaces of the walls, ceilings, floors and doors inside its Unit. Each Owner shall keep the interior of its Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereof, in a clean and sanitary condition and in a state of good repair. In the event that any Unit or Limited Common Area accessible from a Unit should develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following notice from the Association, or in the event any Common Areas and Facilities are most easily accessible from a Unit, the Association shall have the right, at the expense of the Owner if to remedy the Owner's failure in its obligation to maintain, and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair.

(c) With the written consent of the Board, two or more Units may be utilized by the Owners thereof as if they were one Unit. To the extent permitted in the written consent of the Board, any walls, floors or other structural separates between any two such Units, may for as

long as the two Units are utilized as one Unit, be utilized by the Owners thereof as Limited Common Areas and Facilities, except to the extent that any such structural separates are necessary or contain facilities necessary of the support, use or enjoyment of other parts of the Project. At any time, upon the request of the Owner of one of such adjoining Units, any opening between the two Units that, but for joint utilization of the two Units, would have been occupied by the structural separation, shall be closed, at the equal expense of the Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas and Facilities.

(d) Units may be subdivided or combined as set forth in the following paragraphs:

(i) No Units shall be subdivided and/or combined either by agreement or legal proceedings, except as provided in this Section. An Owner or Owners may propose subdividing or combining Units by submitting the proposal in writing to the Board, the Mortgagees of the subject Units and, if required by applicable law, appropriate governmental agencies. The proposal must include complete plans and specifications for accomplishing the subdivision or combination and proposed amendments of this Declaration and the Plat.

(ii) A proposal that contemplates subdivision of a Unit will be accepted only if approved in writing by the Board, the Mortgagees of the Units to be subdivided, and appropriate governmental agencies to the extent required by applicable law. The Board may approve the proposal as to form and legal sufficiency. Appropriate governmental agencies, if required, may approve the proposal as to applicable planning and zoning requirements. No proposal shall be approved unless the resulting Units provided adequate facilities and means of ingress and egress to comply with applicable zoning and condominium statues and regulations.

(e) A proposal to subdivide Units shall provide for reallocation of the appurtenant basement Unit as well as the percentage ownership in the Common Areas as Facilities among the resulting Units on the basis otherwise provided herein, so that the combined percentages of ownership of the resulting Units are identical with the percentage ownership of the subdivided Units prior to the subdivision. The Owners of the Units to be subdivided or combined shall be responsible for all costs associated with the proposal and its implementation including but not limited to costs of amendment of this Declaration and Plat and recording the same to effect the proposal; review of the proposal, including reasonable attorneys' fees incurred by the Board, the Mortgagees and appropriate governmental agencies; and the cost of any modifications to the Project to implement the proposal.

(f) Upon approval of the proposal, the Owners making the proposal may proceed according to the proposed plans and specifications; provided that the Board may, in its discretion, require the Board administer the work, or that provisions for the protection of other Units or Common Areas and Facilities and/or reasonable deadlines for completion of the work be inserted in the contracts for the work. The changes in the Plat, if any, and the changes in this Declaration shall be placed of record, at the requesting Owner's expenses, as amendments thereto.

(g) The exterior surfaces of the Units shall not be altered or modified without the prior written approval of the Board unless such changes or modifications are consistent with any written rules or regulations for the exterior surfaces established by the Board. In the absence of such written rules or regulations, no exterior alterations, improvements, or remodeling, whether structural or cosmetic, will be made without the prior written approval of the Board.

(h) Each Unit shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district of any other taxing or assessing authority. All such taxes, assessments, and other charges of each respective Unit shall be separately levied against the Owner thereof. No forfeiture or sale of any Unit for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit.

8. **VOTING.** At any meeting of the Association, each Owner, including Declarant, either in person or by proxy, shall be entitled to vote the number of votes appurtenant to its Unit(s). The number votes appurtenant to each Unit shall be calculated based on the size of the Unit, as set forth in **Exhibit B**, as such Exhibit may be amended from time to time. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

9. **TITLE TO UNITS.**

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

(b) Title to a part of a Unit may not be separated from any other part thereof during the period of ownership, and each Unit, and the interest appurtenant to each, shall always be conveyed, devised, encumbered and otherwise effected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant Membership as herein set forth.

(c) The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof.

(d) Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof except the Interest appurtenant to his interest in a Unit. Any Mortgage of any unit shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

(e) No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has, in writing, expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given

by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in this Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or may part thereof by payment to the holder of the lien of fraction of the total sums secured by such lien which is attributable to his Unit.

(f) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe a Unit by the name of the Project, the recording date for this Declaration, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the appurtenant Interest, and to incorporate all the rights incident to ownership of the Unit and all of the limitations on such ownership as described in this Declaration.

10. ADDITIONAL DEVELOPMENT RIGHTS. The following additional Development Rights are hereby granted or reserved by Declarant:

(a) Declarant hereby reserves an easement throughout the Project and all portions thereof for a period of ten (10) years from the recording of this Declaration for the purpose of completing all improvements contemplated by this Declaration and the Plat.

(b) Declarant hereby reserves the right to maintain sales offices, management offices, and signs advertising the Project, in any of the Units that it owns or on the Common Areas and Facilities for a period of ten (10) years from the recording of this Declaration.

(c) There is hereby established a period of Declarant control of the Association during which period Declarant or persons designated by it shall have the authority to appoint and remove Association officers and members of the Board. The period of Declarant control shall terminate the later of: (a) eight (8) years from and after the recording of this Declaration; or (b) after conveyance of Units to which three-fourths of the Interests appertain.

11. RESTRICTION ON USE. The Units and Common Areas and Facilities, except as otherwise permitted in writing by the Board, shall be used in accordance with the following restrictions;

(a) The Units within the Project may be used only as business offices and warehouse space, professional offices, restaurants, retail businesses, health and fitness facilities, as approved by the Association; provided, however, that if the particular use of any Unit increases the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, the Owner of such Unit shall be assessed for and shall pay the amount of such increase.

(b) All customers, clients, patrons, and licensees of Owners of Units shall be permitted to enter upon the Project and shall have a non-exclusive easement across the Common Areas and Facilities to the extent reasonably necessary for access to such Units.

(c) No noxious, offensive or illegal activity shall be carried on in or upon any part of the Project, nor shall anything be done on or placed in or upon any part of the Project that is or may become a nuisance or may cause embarrassment, disturbance or annoyance to Owners.

(d) No activities shall be conducted or improvements constructed in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

(e) No signs, flags or advertising devices of any nature, including without limitation political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as may be necessary temporarily to caution or warn of danger in the Association's opinion, or except as may be used by Declarant as part of its sales program, or as approved by the Board and appropriate governmental agencies (if required by law) with respect to the Units.

(f) The interior window coverings in Units shall present a uniform appearance from the outside of the Units. All interior window coverings shall be installed or employed in each Unit by the Board or with the prior inspection and written approval of the Board. The Board shall have the right to establish rules requiring window coverings to present a uniform appearance from the exterior of the Building. Owners shall not erect or display any signs, banners or similar items on, from or in their Units without the prior written consent of the Board.

(g) Except as otherwise provided in this Declaration, no Unit or portion thereof may be combined with any other Unit or portion thereof or further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

(h) No Owner shall, without the prior written consent of the Board, do any act that would impair the structural soundness or integrity of any Building or the safety of property, impair any easement or other appurtenance to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities.

(i) There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Units, except with prior written consent of the Board.

(j) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would result in the cancellations of that insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Board. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof that would be in violation of any statute or rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee, or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all

loss resulting from any such damage or waste caused by him\ or his guests, lessees, licensees, or invitees.

(k) No Owner shall violate the rules and regulations for the use of Units and Common Areas and Facilities as adopted from time to time by the Association.

12. **ASSOCIATION.** Every Owner shall be a Member of the Association. One Membership shall exist for each Unit, shall be inseparably appurtenant thereto and shall automatically transfer therewith but only therewith. If title to any Unit is held by more than one Owner, the Membership related to such Unit shall be shared by all such Owners in the same proportionate interests and by the same type of tenancy in which they hold title to such Unit. No person other than an Owner shall be a Member. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Board, which shall be composed as provided in the Bylaws. The Board shall be elected as provided in this Declaration and in the Bylaws. Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

(a) To make and enforce all rules and regulations covering the operation, use and maintenance of the Project, the Units, and the Common Areas and Facilities. **ALL OWNERS ARE GIVEN NOTICE THAT USE OF THE COMMON AREAS IS LIMITED BY THE RULES AND REGULATIONS AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER LOT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RULES AND REGULATIONS MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF LOTS ARE ON NOTICE THAT THE BOARD MAY HAVE ADOPTED CHANGES TO THE RULES AND REGULATIONS. COPIES OF THE CURRENT RULES AND REGULATIONS MAY BE OBTAINED FROM THE ASSOCIATION.**

(b) To engage the services of the Manager, accountants, attorneys, or other employees or agents to pay to said persons a reasonable compensation therefore.

(c) To operate, maintain, repair, improve and replace the Common Areas and Facilities.

(d) To determine and pay the Common Expenses.

(e) To assess and collect the proportionate share of Common Expenses from the Owners, as provided herein.

(f) To grant easements and licenses and enter into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

(g) To open bank accounts and borrow money on behalf of the Association and to designate the signatories therefor.

(h) To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

(i) To bring, prosecute and settle litigation for itself, the Association and the Project.

(j) To obtain insurance for the Association with respect to the Units and Common Areas and Facilities, workers' compensation insurance, and any other insurance it deems necessary or appropriate to protect the Owners and the Association.

(k) To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

(l) To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation, furniture, furnishings, fixtures, maintenance, equipment, appliances and office supplies.

(m) To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws.

(n) To do all acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

(o) To prepare, adopt, amend and disseminate budgets and other information from time to time.

(p) To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project and enter into contracts with other entities. Such contracts may, among other things, obligate the Association to pay assessments and other costs associated with the maintenance of roads and other amenities that benefit the Association.

(q) Subject to the limitations of the Act, and any other applicable law, the Board may delegate to the Manager by written agreement all of the foregoing powers, duties and responsibilities referred to in this Section.

(r) The Board may convey or subject to a Mortgage all or portions of the Common Areas and Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Association so approve. However, all Owners of Units to which any Limited Common Areas and Facilities are appurtenant must agree to convey those Limited Common Areas or Facilities or subject the same to any Mortgage. Any such agreement shall comply with all other applicable provisions of the Act.

(s) Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

(t) When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages.

Notwithstanding the foregoing, neither the Board nor the Manager shall sell any property of the Association except as permitted by the Act. The Board may enter into a contract with the Manager for the management of the Project.

13. MAINTENANCE, ALTERATION AND IMPROVEMENT. The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association, including such maintenance, repair, and replacement obligations as the Association may have under any recorded restriction and easement agreement or other covenants, conditions or restrictions (the "REAs"), and the cost thereof shall be a Common Expense. The Association shall also maintain, replace and repair all common porches and decks, balconies as described herein, and all conduits, ducts, plumbing, and wiring and other central facilities for the furnishing of heat, air conditioning, gas, light, power, water and sewer service. The REAs provide for the maintenance of roads and other amenities that benefit the Association and shall be included as a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged as a Common Expense. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall

be made with a little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

14. **INSURANCE.** Commencing not later than the time of the first conveyance of a Unit to an Owner other than Declarant, the Association shall maintain, to the extent reasonably available, insurance as follows:

(a) The Association shall maintain property insurance on the Common Areas and Facilities insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance, without regard to any deductibles, shall not be less than one hundred percent (100%) of the replacement value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies.

(b) The Association shall maintain general liability insurance in an amount determined by the Board, but not less than \$1,000,000 for any one person injured in any one occurrence and not less than \$5,000,000 for property damage in each occurrence covering all occurrences commonly insured against for death, bodily injury and property damage arising out or of in connection with the use, ownership or maintenance of the Units and the Common Areas and Facilities.

(c) The insurance maintained under paragraph (a) of this Section shall include the Units but need not include improvements installed by Owners or the personal property of Owners. The Association may carry any other insurance it deems appropriate to protect the Association or the Owners. Where applicable, insurance policies carried by the Association shall provide the following:

(i) Each Owner, or the Association, as agent for each of the Owners, shall be an insured person under the policy with respect to liability or loss arising out of his Interest o Membership.

(ii) The insurer waives its right to subrogation under the policy against any Owner or members of his household.

(iii) 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 under the policy by another person.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, then the Association's policy provides primary insurance.

(d) All Owners as a class shall be named as additional insureds in any policy issued to the Association.

An insurance policy issued to the Association shall not prevent an Owner from obtaining insurance for his own benefit. Any loss covered by the property policy described above shall be adjusted with the Association, but the insurance proceeds for that loss shall be payable to an

insurance trustee designated for that purpose by the Association and not to the Association or any Mortgagee. The insurance trustee shall hold any insurance proceeds in trust for the Association, Owners and Mortgagees as their interests may appear. Subject to the provisions of **Section 16** of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, and Mortgagees shall not be entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated. An insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, on written request, to any Owner or Mortgagee. The insured issuing the policy shall not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each Mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. This Section does not prohibit the Board from acquiring additional or greater amounts of coverage as it reasonably deems appropriate. The Board shall require the Manager to obtain and maintain fidelity bonding of the Manager and employees of the Association having control of, or access to, the funds of the Association with loss coverage ordinarily not less than the maximum amount of funds of the Association over which the principals under the bond may reasonably be expected to have control or access at any time.

15. DESTRUCTION OR DAMAGE. In case of fire or any other disaster that causes damage or destruction to all or part of the Project, the Board, with the help of an independent appraiser, shall determine the percentage that was destroyed or substantially damaged. If less than two-thirds (2/3) of the Project was destroyed or substantially damaged, the Board shall arrange for the prompt repair and restoration thereof, using the proceeds of insurance on the Project for that purpose, and the Owners shall be liable for assessment for any deficiency in proportion to their respective Interests. Reconstruction of the Project shall mean restoring to substantially the same condition existing prior to the damage or destruction, with each Unit and the Common Areas and Facilities having approximately the same vertical and horizontal boundaries as before, unless the destruction or damage is by reason of eminent domain, in which event the provisions of **Section 17** hereof shall apply. If two-thirds (2/3) or more of the Project is destroyed or substantially damaged, the Board shall, within one hundred (100) days after such destruction or damage, call a special meeting of the Association for the purpose of deciding whether or not the Project shall be repaired and restored. If Owners holding three-fourths (3/4) or more of the Total Votes of the Association, in person or by proxy, vote to repair or restore the Project, the Board shall promptly arrange for the reconstruction of the Project using the proceeds of insurance therefrom for that purpose, and the Owners shall be liable for any deficiency in proportion to their respective Interests. At such election, if Owners holding three-fourths (3/4) or more of the Total Votes of the Association do not vote either in person or by proxy to make provision for reconstruction, the Board shall record with the Recorder a notice that complies with **Section 57-8-31** of the Act setting forth such facts, and upon the recording of such notice (i) the Project shall be deemed to be owned in common by the Owners as tenants in common, each Owner owning an undivided interest in the Project equal to his Interest; (ii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Project; and (iii) the Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the Project, shall be considered as one fund and shall be divided among all Owners in an amount equal to the ownership interest owned by each Owner in the

Project, after first paying out of the respective shares of the Owners, to the extent sufficient for such purposes, all sums necessary to satisfy liens on the undivided interest in the Project owned by each Owner.

16. **TERMINATION.** In the event that such fraction or percentage of the Project is destroyed or substantially damaged so as to bring into effect the provisions of **Section 15** above and the Owners do not vote to reconstruct the Project as provided therein, the project shall be removed from the provisions of the Act without further agreement one hundred and one (101) days after such destruction or damage. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership of any Unit, its consent shall also be required to remove the Project from the provisions of the Act. After removal of the Project from the Act, the Owners shall own the Project and all assets of the Association as tenants in common and the respective Mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Owners. Such undivided interests of the Owners shall be in the same proportions as their Interests. This Section cannot be amended without consent of all Owners and Mortgagees, provided that the consent of any Mortgagee which fails to respond to a written request for consent within 15 days after receipt thereof shall be irrevocably deemed given.

17. **EMINENT DOMAIN.** Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Owner shall be entitled to notice thereof and the Board shall, and the Owners at their respective expense may, participate in the proceedings incident thereto. With respect to the Common Areas and Facilities, including Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's Interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his Interest. This provision does not prohibit a majority of the Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to **Section 16** above and shall be deposited with the Board, as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damaged or awards with the Board, as trustee. In the event an Owner refuses to so deposit his award with the Board, then, at the option of the Board, either a Special Assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner. In the event the Project is removed from the provisions of the Act pursuant to **Section 16** above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners' respective Interests. In one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance its Mortgage and the excess, if any, shall be distributed to the Owner.

(b) If the taking destroys or so reduces the size of a Unit that it cannot be made rentable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner approved by the Board. The Interests appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the Interests among the remaining Owners.

Changes in Units, in the Common Areas and Facilities, and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section shall be evidenced by an Amendment to this Declaration and the Plat, which need not be approved by the Owners.

18. **MORTGAGE PROTECTION.** The Board shall maintain a roster of Owners, which roster shall include the mailing addresses of all Owners. The Board will also maintain a roster containing the name and address of each First Mortgagee of a Unit if the Board is provided notice of such First Mortgage by way of a certified copy of the recorded instrument evidencing the First Mortgage and containing the name and address of the First Mortgagee and a statement that the Mortgage is a First Mortgage. The First Mortgagee shall be stricken from the roster upon request by such First Mortgagee or upon receipt by the Board of a certified copy of a recorded release or satisfaction of the First Mortgage. Notice of such removal shall be given to the First Mortgagee unless the removal is requested by the First Mortgagee. The Board shall give to any First Mortgagee on the roster written notification of any default by the mortgagor of the respective Unit in the performance of such mortgagor's obligations under this Declaration that is not cured within thirty (30) days. Except as otherwise required by the Act, a First Mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the First Mortgage or foreclosure of the First Mortgage, or by way of deed or assignment in lieu of foreclosure shall take the property free of any claims for unpaid Assessments or charges against the mortgaged Unit which accrued prior to the time such First Mortgagee comes into the possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessment or charges to all Units, including the mortgaged Unit. Furthermore, upon such foreclosure or deed or assignment in lieu of foreclosure, any rights with respect to any Unit which have been suspended with respect to the defaulting Owner shall be reinstated. Except as otherwise required by the Act, any liens created under the Act, pursuant to this Declaration or the Bylaws, upon any Unit shall be subject and subordinate to and shall not affect the rights of a First Mortgagee under a First Mortgage on such Unit made in good faith and for value; provided, however, that any lien created after a foreclosure sale shall have the same effect and be enforced in the same manner as provided in the Act, this Declaration and/or the Bylaws. No amendment to this paragraph shall adversely affect a First Mortgagee who has recorded a valid First Mortgage prior to the recordation of any such amendment.

19. **AMENDMENT.** Except as otherwise provided in this Declaration or by the Act, the provisions of this Declaration may be amended only by the affirmative vote or written assent of at least a majority of the Total Votes of the Association. The percentage of votes necessary to amend a specific clause in this Declaration shall not be less than the percentage of affirmative votes or written assents required for action to be taken under that clause. Any amendment shall be evidenced by an instrument containing a certification from an officer of the Association designated for that purpose, or in the absence of such designation, by the President of the Association that the appropriate consent has been obtained, and shall be duly recorded with the Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves as long as it has any interest hereunder, and the Association shall thereafter have, the right, unilaterally and without the approval or consent of any other Owner or Mortgagee (or, as to Developer, the Association), to amend any provisions of this Declaration to comply with the then existing statutes, regulations or other requirements of the Utah Department of Commerce-Real Estate Division or any other federal, state or local regulatory authority affecting the Project. Also notwithstanding anything to the contrary contained or implied herein, as long as Declarant owns any Unit, Declarant shall have the right, unilaterally and without the approval or consent of any other Owner or Mortgagee or the Association, to amend this Declaration and the Plat to further divide and/or adjust the boundary lines between any Units owned by Declarant and alter the dimensions and interior elements and configuration thereof. Declarant shall also have, as long as it has any interest in the Property, the right, unilaterally and without the approval or consent of any other Owner or Mortgagee or the Association, to amend and/or supplement the Flat and/or Declaration to correct any technical errors, clarify any provision to more fully express the intent of the Declarant for development and management of the Project and/or alter the Common Areas and Facilities, including, without limitation, adding, removing and otherwise modifying such access points to the Project as Declarant may deem appropriate, provided that such actions comply with applicable governmental regulations.

20. **ASSESSMENTS.** The Association shall make and collect Assessments from the Owners for their respective shares of Common Expenses pursuant to the Bylaws and subject to the following provisions:

(a) Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as such Owner's Interest. Two separate and distinct funds shall be created and maintained hereunder; one for operating expenses and one for capital expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Assessments under this Section shall be the Common Expense Fund. Assessments shall include both Regular Assessments and Special Assessments. Until the Association makes an Assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an Assessment has been made by the Association, Regular Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Assessments shall be levied against each separate Unit, and shall commence as to all Units on the first day of the month following the closing of the first sale of a Unit.

(b) The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Assessment is due.

(c) In addition to the Regular Assessments, the Association may levy in any calendar year Special Assessments applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, or a described capital improvement upon any Common Areas and Facilities, including the necessary fixtures and personal property related thereto, and other costs, expenses of operation or shortfalls in the collection of Assessments from the Owners. The portion of any Special Assessment levied against a particular Unit shall be equal to the Interest appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Assessments shall not apply when the Special Assessment against an Owner is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument for the Project. The Board shall provide notice by first class mail to all Owners of any Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due.

(d) All Assessments shall be due as determined by the Board. Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. Furthermore, the Board may assess Owners who do not pay their Assessments when due a late fee in the amount of \$5.00 per day, plus interest, adjustable from year to year at the discretion of the Board pursuant to the Cost of Living Index. Any payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' Interests are reallocated, Assessments and any installments thereof not yet due shall be recalculated in accordance with the reallocated Interests.

(e) There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation with the Recorder of a written notice of lien by the Board or the Manager. Such lien shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded before the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens and charges in favor of the state or any political subdivision thereof for taxes and other governmental assessments or charges past due and unpaid on the Unit. Such lien may be enforced by judicial foreclosure or by non-judicial foreclosure in the same manner in which mortgages and deeds of trust on real property maybe foreclosed in the State of Utah. A lien for unpaid Assessments shall be enforced in accordance with the provisions of this Section or the then applicable provisions of the Act. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. A judgment or decree in any action brought hereunder must include costs and reasonable attorneys' fees for the prevailing party.

(f) The Board upon written request shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit. This statement must be

furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith. The Board shall include in the Assessments amounts representing sums to be used for the replacement of or additions to the capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section and shall be set up as capital accounts for each Unit. In the event of transfer of a Unit, the capital account for such Unit shall be deemed transferred to the transferee of the Unit. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Board may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Board shall exercise prudent fiscal management in the timing of restoring any 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 limit specified above. Any such Special Assessment shall not be subject to the limitations otherwise set forth in this Section. If the current replacement value of the major components of the Common Areas and Facilities which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half of the total budgeted Common Expenses for any fiscal year, then at least once every three (3) years the Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

(i) Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

(ii) Identification of the probable remaining useful life of the items identified in subparagraph (a), above, as of the date of the study.

(iii) An estimate of the cost of repair, replacement, restoration or maintenance of each item identified iii subparagraph (a), above, during and at the end of its useful life.

(iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each item during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

For the purposes of this Section, the term "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to

repair, replace or restore those major components which the Association is obligated to maintain. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such Assessments to the extent of the amount so paid.

21. **EASEMENTS.** If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted. Declarant shall have a transferable easement over, across and within the Property for the purposes of (i) completing construction of the Project and improvements therein as shown on the Plat and for doing all things reasonably necessary or appropriate in connection therewith, (ii) connecting the Building to other adjoining structures or buildings, and (iii) constructing pedestrian bridges, walkways or other connecting devices capable of adjoining the Building, and other buildings which may be constructed in the Project, to other structures or buildings to be constructed in the Project. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to his Unit(s) and to any Limited Common Areas and Facilities appurtenant to his Unit(s), and shall have the right to the horizontal, vertical and lateral support of his Unit(s). The Owners and occupants of each Unit shall have a perpetual, non-exclusive easement for pedestrian ingress and egress to and from such Unit to and from the stairwell access area closest to such Unit. The Association and the Manager shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Common Areas and Facilities for use by the Owners and the Association. The Project is subject to and benefited by easements, rights-of-way and other encumbrances as set forth in the REAs. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

22. **NOTICES.** Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Board for the

purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Board. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Board addressed to:

To Declarant:

Greg Stuart
DGS Investment, LLC
175 East 400 South, Suite 700
Salt Lake City, Utah 84111

23. **NO WAIVER.** The failure of the Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agents or designees of the payment of any Assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

24. **ENFORCEMENT.** All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of this Declaration, the REAs, the Bylaws and the rules and regulations of the Association and decisions issued pursuant thereto. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Board or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of a Unit or the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an Opportunity to present a written or oral defense to the charges in a hearing. The Board shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Board. The Board may delegate to the Manager, the power and authority to carry out disciplinary actions duly imposed. The Association shall not have the power to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of this Declaration or the rules and regulations of the Association for the Project except pursuant to (a) the judgment of a court, or (b) a foreclosure for the failure of an Owner to pay Assessments duly levied by the Association.

25. **AGENT FOR SERVICE OF PROCESS.** The agent for service of process under the Act shall be Gregory A. Stuart.

26. **SEVERABILITY.** Invalidation of any of the provisions contained in this Declaration, or any application thereof, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or any other application thereof and the remainder of this Declaration and all otherwise valid applications of the provisions hereof shall remain in effect, and any invalid provisions hereof shall be construed, and this Declaration shall be deemed amended, as if such provisions were replaced with enforceable provisions which effectuates, as nearly as possible, the manifest intention of this Declaration. Included therein, if any time period set forth herein or any rights granted to Declarant hereunder are determined by a court of competent jurisdiction to exceed those permitted by law, the same shall be modified so that they instead apply to the maximum extent legally permitted from time to time.

27. **CAPTIONS.** The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of provision hereof.

28. **CONTROLLING LAW.** This Declaration and the Plat shall be construed and controlled by and under the laws of the State of Utah.

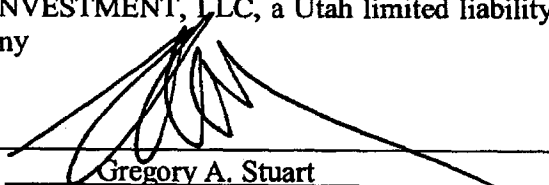
29. **CONSTRUCTION.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

30. **EFFECTIVE DATE.** This Declaration shall take effect when recorded.

IN WITNESS WHEREOF, the undersigned has executed this instrument the date of notarization appearing below.

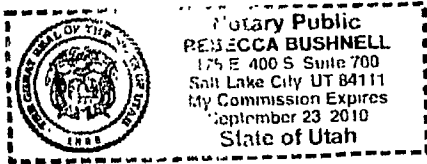
DECLARANT:

DGS INVESTMENT, LLC, a Utah limited liability company

By: 
Name: Gregory A. Stuart
Its: Manager

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on the 21st day of April, 2008, by Gregory A. Stuart, the Manager of DGS INVESTMENT, LLC, a Utah limited liability company.



Rebecca Bushnell
Notary Public
Residing At: Salt Lake City
My Commission Expires: Sept. 23, 2010

EXHIBIT "A"

LEGAL DESCRIPTION OF DAKAR CONDOMINIUMS

BEGINNING AT A POINT THAT IS NORTH 89°19'22" EAST 39.29 FEET AND NORTH 00°40'26" WEST 17.71 FEET FROM THE WEST QUARTER CORNER OF SECTION 2, TOWNSHIP 1 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE SOUTH 00°40'26" EAST 17.71 FEET; THENCE SOUTH 89°19'22" WEST 4.63 FEET; THENCE SOUTH 00°16'20" EAST 201.56 FEET; THENCE SOUTH 05°23'15" WEST 63.59 FEET; THENCE NORTH 89°56'00" EAST 193.00 FEET; THENCE NORTH 282.41 FEET; THENCE WEST 183.57 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

DAKAR CONDOMINIUMS MEMBERSHIP INTEREST

<u>Unit No.</u>	<u>Square Footage</u>	<u>Percentage Interest</u>
209	1,930.95	14.09%
210	1,969.45	14.37%
211	1,969.45	14.37%
212	1,969.45	14.37%
213	1,969.45	14.37%
214	1,969.45	14.37%
215	1,930.24	14.08%
	<i>13,708.44</i>	<i>100%</i>