

# Weber County Vacation Application

Application submittals will be accepted by appointment only. (801) 399-8791, 2380 Washington Blvd. Suite 240, Ogden, UT 84401

Date Submitted / Completed  
February 11, 2013

Fees (Office Use)

Receipt Number (Office Use)

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Preferred Method of Written Correspondence  
 Email  Fax  Mail

## Property Information

Address  
Powder Ridge Condominium Project

Land Serial Number(s)  
23-123-001  
to  
23-123-0031

Vacation Request  
 Easement  Road  Subdivision  Subdivision Lot

Current Zoning  
CVR1

Subdivision Name  
Powder Ridge Condominiums

Lot Number(s)  
23-123-001 to 23-123-0031

Project Narrative

SEE ATTACHED EXHIBIT "A"

## Property Owner Affidavit

**SEE ATTACHED OWNER AFFIDAVIT**

I (we), \_\_\_\_\_, depose and say that I (we) am (are) the owner(s) of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary)

Authorized Representative Affidavit

SEE ATTACHED AFFIDAVIT

I (We), \_\_\_\_\_, the owner(s) of the real property described in the attached application, do authorize as my (our) representative(s), \_\_\_\_\_, to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

\_\_\_\_\_  
(Property Owner)

\_\_\_\_\_  
(Property Owner)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the signer(s) of the Representative Authorization Affidavit who duly acknowledged to me that they executed the same.

\_\_\_\_\_  
(Notary)

PROPERTY OWNER AFFIDAVIT

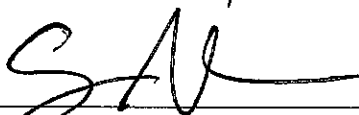
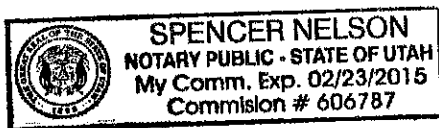
I, Dave Edwards in my capacity as President of Powder Ridge Village Owners Association, Inc. (the "Association"), depose and state that the Association is the owner of the property identified in this application and that the statements herein contained, the information provided in the attached plans and other exhibits are in all respects true and correct to the best of my knowledge.

POWDER RIDGE VILLAGE OWNERS ASSOCIATION, INC., a Utah Corporation



Dave Edwards, President

Subscribed and sworn to me this 11th day of February, 2013.

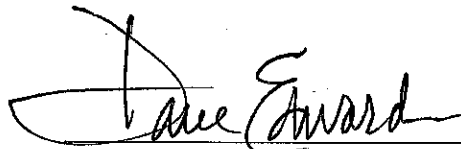


Notary Public

AUTHORIZED REPRESENTATIVE AFFIDAVIT

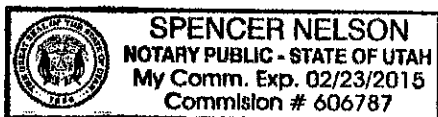
I, Dave Edwards in my capacity as President of Powder Ridge Village Owners Association, Inc. (the "Association"), the owner of the property described in the attached application, do authorize as the Association's representative, Jeffrie L. Hollingworth, to represent the Association regarding the attached application and to appear on the Association's behalf before any administrative or legislative body in the County considering this application and to act in all respects as our agent in matters pertaining to the attached application.

POWDER RIDGE VILLAGE OWNERS ASSOCIATION, INC., a Utah Corporation



Dave Edwards, President

Subscribed and sworn to me this 11th day of February, 2013.



Notary Public

**Exhibit A**  
To  
Application For Vacation of Plat

The Powder Ridge Condominium Project was developed in 1988 near the Powder Mountain Ski Resort (the "**Time Share Project**") and consists of six buildings and a community center. The Time Share Project is governed by the Amended and Restated Declaration of Condominium for Powder Ridge Condominiums Phase I Amended, dated September 17, 2003 (the "**Declaration**") which is attached as Exhibit 1 to this Application. The Powder Ridge Owners Association, Inc. (the "**Master Association**") oversees and governs the Time Share Project. Under Section 11.1 of the Declaration, the Mater Association is responsible for the exclusive management, control, operation and maintenance of the Common Areas within the Time Share Project.

Section 22.2 of the Declaration previously allowed for the "Right to Construct" thirty "Future Units" on the area within the Time Share Project designated as the "Convertible Land". The Convertible Land is legally described in Section 22.2 of the Declaration as Parcel A and Parcel B, and is shown on the Powder Ridge Condominiums Phase 1 Amended plat map (the "**Condominium Plat Map**") which is attached to this Application as Exhibit 2. "Future Units" are defined in Section 1.19 of the Declaration as the thirty units designated (by building foot print) on the Condominium Plat Map.

Section 22.2(l) of the Declaration provides that the Right to Construct on the Convertible Land expired five years from the date the Declaration was recorded. The Declaration was recorded October 23, 2003, so the Right to Construct on the Convertible Land expired on October 23, 2008. The provisions of Section 22.2(l) further provide that on the expiration date (October 23, 2008) all portions of the Convertible Land shall be deemed part of the Common Areas.

In August, 2007, the Master Association, Powder Ridge Developers I Limited, a Utah limited partnership ("**PRDI**"), and Dennis Griffiths entered into a letter of intent whereby the Master Association was willing to consider Mr. Griffiths and PRDI's proposal to construct different units than were otherwise allowed under the Declaration. As part of this preliminary evaluation process, the letter of intent required PRDI and Mr. Griffiths to provide detailed designs, plans, materials and performance guaranties, including evidence of funding. Mr. Griffiths and PRIDI represented to the Master Association that before they could provide the Master Association with the detailed funding information, Mr. Griffiths and PRDI's lender needed to see an amendment to the Condominium Plat Map showing where the proposed units would be located. As an interim step in the discussions, the Master Association signed an amendment to the Condominium Plat Map showing the location of PRDI's and Mr. Griffith's proposed 30 unit development on the Convertible Land. A copy of the plat amendment is attached to this Application as Exhibit "3".

The letter of intent was specific in several regards. Construction on the Convertible Land was prohibited unless and until the Master Association had approved plans and specifications,

bonds had been put in place, and the Declaration had been amended. The Convertible Land would remain subject to the provisions and restrictions of the Declaration, unless and until all of the requirements of the letter of intent were met and the various documents were signed and recorded. The proposed amendment (attached as Exhibit 3 to this Application) was to be unwound if these requirements were not fulfilled.

Mr. Griffiths and PRDI failed to provide the items identified in the letter of intent by, among other things, failing to obtain bonds, failing to provide the Master Association with plans and specifications, failing to provide evidence of funding, failing to seek to amend the Declaration and failing to enter into a development agreement. PRIDI and/or Mr. Griffiths did, however, move forward with unauthorized and prohibited excavation of a large hole and foundation. The Master Association demanded that the prohibited construction cease and it did.

The large hole and partial foundation are very close to the Time Share Project's community center. The Master Association has secured this area with fencing and maintains the possession and control of the hole and partial foundation. The Master Association has stabilized the area next to the community center.

It is the Master Association's understanding that Powder Ridge Land IV, Dennis A. Griffith and Giffith Bros. ST&G Benefit Plan as Trustors, signed a Deed of Trust and Assignment of Rents, dated August 10, 2007 in favor of Harbor Real Asset Fund, LP as beneficiary and recorded with the Weber County Recorder as Entry No. 2284183 (the "**Harbor Trust Deed**"), a copy of which is attached to this Application as Exhibit "4". The Harbor Trust Deed states that it covered several parcels of land outside of the Time Share Project. The Harbor Trust Deed also identified the "Right to Construct." It appears the Harbor Trust Deed was foreclosed and Harbor Real Asset Fund, LP or its related entity HRAF Holdings, LLC (collectively "**Harbor**") claims to own the land surrounding the Time Share Project. The Master Association does not claim an ownership interest in any of the property outside the Time Share Project.

Harbor subsequently filed for bankruptcy under Chapter 11 of the Bankruptcy Code. Based on Harbor's filings with the bankruptcy court it was unclear whether Harbor claimed any right to the expired construction rights under the Declaration. Counsel for the Master Association wrote Harbor's counsel requesting clarification. Harbor did not respond to the Master Association's written request so the Master Association filed a limited objection to Harbor's proposed plan of reorganization which objected to Harbor's proposed reorganization plan to the extent Harbor purported to claim any ownership or construction rights within the Time Share Project. Harbor did not take a position one way or the other and instead proposed that the confirmation order contain a provision making it clear the Master Association's rights with respect to the land within the Time Share Project are not impacted by the bankruptcy court's confirmation order. A copy of the Bankruptcy Court's order confirming Harbor's plan of reorganization is attached as Exhibit 5 to this Application and the relevant language is contained in Footnote 1 below<sup>1</sup>.

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<sup>1</sup> Paragraph 13 of the Bankruptcy Court's order provides as follows:

The Right to Construct future units on the Convertible Land was at all times subject to and governed by the Declaration. The Right to Construct on the Convertible Land, even when it existed, could not be encumbered by a mortgage or deed of trust, as was purportedly done under the Harbor Trust Deed.

The Declaration clearly provides that the Right to Construct on the Convertible Land expired on October 23, 2008 and at that time the Convertible Land became part of the Common Areas of the Time Share Project. Under the Declaration, the Master Association has the exclusive right to manage and control the Common Areas of the Time Share Project.

Thus the Master Association possesses the right and authority to seek vacation of the plat amendment (attached as Exhibit 3 hereto) and return the configuration of Time Share Project back to prior and accurate Condominium Plat Map (attached as Exhibit 2 hereto).

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“Nothing set forth herein shall be construed to impair, modify, alter or restrict the ability of Powder Ridge Village Owners Association, Inc. or its successors and assigns to bring a quiet title action and/or declaratory relief action against the Debtors in the United States Bankruptcy court or some other court of competent jurisdiction to seek a determination from the court of the rights and other legal relations of the parties concerning the ownership of, and the rights and obligations of the parties concerning, that certain real property defined as the “Convertible Land” and the “Additional Land,” as those terms are more fully described and explained in that certain *Limited Objection to First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* filed by Powder Ridge Village Owners Association, Inc. on December 29, 2011, as Docket Entry 308.”

# EXHIBIT “1”

⑥  
WHEN RECORDED, PLEASE RETURN TO:

ORE  
404 E 4500 S. # R-34  
SLC, UT 84107

1985630



AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM

FOR

POWDER RIDGE CONDOMINIUMS PHASE 1 AMENDED

31  
23-122-0001 to 0033  
F

EX 1985630 PG 1 OF 36  
DOUG CROFTS, WEBER COUNTY RECORDER  
23-OCT-03 4:28 PM FEE \$176.00 DEP JPH  
REC FOR: HOME ABSTRACT 176.00



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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
POWDER RIDGE CONDOMINIUMS PHASE 1 AMENDED

This Amended and Restated Declaration of Condominium for Powder Ridge Condominiums Phase 1 Amended, hereinafter referred to as the "Amended Declaration," is made and executed this 17 day of September, 2003 by the Powder Ridge Village Owners Association, Inc., a Utah non-profit corporation, hereinafter referred to as the "Master Association."

RECITALS

A. The original developer, All Year Paradise, Inc. ("Declarant") previously filed for record that certain Declaration of Condominium for Powder Ridge Condominiums on October 4, 1988 as Entry No. 1059661, in Book 1548, at page 1453, Weber County Recorder's Office (the "Original Declaration").

B. The Declarant also recorded in the office of the County Recorder of Weber County, State of Utah on September 28, 1988 as Entry No. 1058214, in Book 30, at Pages 92-95, a map entitled "Phase I Powder Ridge Condominiums" (the "Original Map").

C. Powder Mountain Investment, L.L.C., a Utah limited liability company ("PMI") and Richard T. Huffman and Ellen B. Huffman (the "Huffmans"), as their respective interests may appear, are the successors in interest to the Declarant under the Original Declaration. Prior to the date of this Amended Declaration, uncertainty existed as to the status of such parties' rights. This Amended Declaration is intended to confirm the right of such parties to construct thirty (30) Future Units to be located within Buildings 3A, 3B, 3C and 3D and parking facilities therefor as depicted on that certain amended map (the "Amended Map") recorded simultaneously with this Amended Declaration and on Schedule II of Exhibit A to this Amended Declaration.

D. The Master Association and the Owners intend, by recordation of this Amended Declaration, to create two additional Timeshare Units, to be known as Units 9A5 and 9A6, located within Building 9A as depicted on the Amended Map.

E. For the purpose of acquiring real property for parking and recreational facilities, and to simplify the boundaries of the Project, the Master Association and the Owners desire to amend the boundaries of the Project by adding needed land to the Project in exchange for certain land presently deemed excess by the Master Association and heretofore included within the Project.

F. The Master Association and the Owners desire to adopt this Amended Declaration to: grant certain conditional rights to construct thirty (30) Future Units to be located within Buildings 3A, 3B, 3C and 3D (as stated in Recital C), to immediately create the two additional Timeshare Units (as stated in Recital D), to amend the boundaries of the Property on which the Project is located (as stated in Recital E), to clarify ambiguities in the Original Declaration and to update the terms and provisions of the Original Declaration to ensure consistency with the Act.

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This Amended Declaration amends in its entirety, restates, supersedes, and completely replaces the Original Declaration, any prior amendments thereto, and any and all prior Declarations of Condominium for Powder Ridge Condominiums or any part thereof ("Prior Declarations"). Upon recording of this Amended Declaration, the terms and provisions of the Original Declaration and any and all Prior Declarations shall be terminated and any real property not specifically set forth in Section 2.1 hereof shall be deemed to be released from any and all provisions of the Original Declaration and all Prior Declarations.

G. The general provisions of this Amended Declaration have been approved by the required affirmative vote of at least fifty-one percent (51%) of the total votes of the Powder Ridge Village Owners Association, Inc., a Utah nonprofit corporation, pursuant to Section 18.6 of the Original Declaration. Section 6.1 hereof, Articles XXII and XXIII, and Schedules I and II of Exhibit A attached hereto have been approved by the affirmative vote of at least two-thirds (2/3) of the total votes of the Powder Ridge Village Owners Association, Inc., pursuant to §57-8-7 of the Act. The creation of Units 9A5 and 9A6 and the amendment of the Project boundaries as reflected on the Amended Map have been approved by the affirmative vote of at least seventy-five percent (75%) of the total votes of the Powder Ridge Village Owners Association, Inc.

H. The terms, covenants, conditions and restrictions contained in this Amended Declaration, including the foregoing Recitals and Exhibit A hereto, shall be enforceable equitable servitudes and shall run with the land.

NOW, THEREFORE, for the foregoing purposes, and in accordance with the terms and provisions of the Original Declaration, the Original Declaration is hereby amended and restated in its entirety as follows:

## ARTICLE I

### DEFINITIONS

1.1 Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Amended Declaration and the foregoing Recitals shall have the meanings set forth in this Article I.

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

1.3 "Additional Land" shall mean that certain parcel of land more particularly described in Article XXIII of this Amended Declaration which may be added to the Project in accordance with and subject to the provisions of said Article XXIII and the Act.

1.4 "Additional Units" shall mean Units constructed or which may be constructed on the Additional Land in accordance with and subject to the provisions of Article XXIII of this Amended Declaration.

1.5 "Amended Map" shall mean the amended record of survey map of Powder Ridge Condominiums Phase I Amended recorded in the office of the Weber County Recorder simultaneously with this Amended Declaration, together with any amendments thereto.

1.6 "Amended Declaration" shall mean this Amended and Restated Declaration of Condominium for Powder Ridge Condominiums Phase 1 Amended, as the same may be amended from time to time.

1.7 "Buildings" shall mean those certain six (6) Buildings identified as Buildings 2A, 2B, 2C, 9A, 10A and 10B on the Amended Map. Buildings 10A and 10B each contain four (4) Units and Buildings 2A, 2B, 2C and 9A each contain six (6) Units. The term Buildings shall also include Buildings 3A, 3B, 3C and 3D when completed. If Building 3A is completed, it will contain seven (7) Units. If Building 3B is completed, it will contain eight (8) Units. If Building 3C is completed, it will contain eight (8) Units. If Building 3D is completed, it will contain seven (7) Units.

1.8 "Committed to Maintenance" shall mean a Unit in the Project that is subject to the Furniture and Maintenance Assessments.

1.9 "Common Areas" shall mean "common areas and facilities" as defined in the Act, including all physical portions of the Project, except all Units.

1.10 "Common Expense" shall mean all expenditures made by or financial liabilities of the Master Association, together with any allocations to reserves, including but not limited to all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Common Facilities and all expenses denominated as Common Expenses by this Amended Declaration or by the Act.

1.11 "Common Assessments" shall mean those assessments levied by the Master Association to fund the Common Expenses.

1.12 "Common Expense Fund" shall mean the fund of the Master Association into which is deposited the Common Assessments.

1.13 "Common Facilities" shall mean all furniture, furnishings, equipment, fixtures and all other personal property, from time to time, owned or leased by the Master Association for use at the Project. "Common Facilities" shall not include furnishings, furniture, appliances, fixtures, decorations, accessories, supplies and equipment designated as Timeshare Furnishings solely for use in the Timeshare Units. Common Facilities shall be deemed to be part of the Common Areas except as otherwise expressly provided in this Amended Declaration.

1.14 "Convertible Land" shall mean a building site which is a portion of the Common Areas, described by metes and bounds in Article XXII of this Amended Declaration, within which Future Units and parking facilities therefor may be created in accordance with the provisions of this Amended Declaration and the Act.

1.15 "Expandable Area" shall mean the Additional Land described in Article XXIII of this Amended Declaration and identified on the Amended Map as Expandable Area.

1.16 "Furniture and Maintenance Assessments" shall mean assessments levied by the Timeshare Association against the Timeshare Units and Timeshare Interests to fund the Furniture and Maintenance Expenses.

1.17 "Furniture and Maintenance Expense" shall mean all expenditures made by or financial liabilities of the Timeshare Association, together with any allocations to reserves, including but not limited to all expenses arising out of or connected with the operation of all Timeshare Units and expenses for Timeshare Furnishings.

1.18 "Furniture and Maintenance Expense Fund" shall mean the fund of the Timeshare Association into which is deposited Furniture and Maintenance Assessments.

1.19 "Future Units" shall mean the thirty (30) Units designated on the Amended Map and on Schedule II of Exhibit A hereto which are not completed as of the date of this Amended Declaration, but which PMI and the Huffmans have the right to construct in Buildings 3A, 3B, 3C and 3D on the Convertible Land pursuant to and subject to the provisions of Article XXII of this Amended Declaration.

1.20 "Limited Common Areas" shall mean any Common Areas designated in this Amended Declaration or on the Amended Map for exclusive use of one or more but fewer than all of the Units.

1.21 "Maintenance Fee" shall mean the applicable combination of (a) Common Assessments (b) Furniture and Maintenance Assessments, and (c) any other assessments, appropriately levied against the various Units and Timeshare Interests pursuant to this Amended Declaration.

1.22 "Manager" shall mean the person, firm, or company, if any, designated from time to time by the Master Association or Timeshare Association to manage, in whole or in part, the affairs of the Master Association and the Timeshare Association, respectively.

1.23 "Master Articles" shall mean the Amended and Restated Articles of Incorporation of the Master Association.

1.24 "Master Association" shall mean the Powder Ridge Village Owners Association, Inc., a Utah nonprofit corporation.

1.25 "Master Board" shall mean the board of directors of the Master Association, appointed or elected in accordance with this Amended Declaration, the Master Articles and Master Bylaws.

1.26 "Master Bylaws" shall mean the Bylaws of the Master Association, recorded herewith in the Office of the County Recorder for Weber County, State of Utah.

1.27 "Mortgage" shall mean any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof or interest therein is encumbered.

1.28 "Mortgagee" shall mean (i) any person or entity, or combination thereof, named on the Mortgage or beneficiary under any Mortgage by which the interest of any Owner is encumbered, or (ii) any successor to the interest of such person or entity, or combination thereof, under such Mortgage.

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1.29 "Original Declaration" shall mean that certain Declaration of Condominium for Powder Ridge Condominiums filed of record on October 4, 1988 as Entry No. 1059661, in Book 1548, at page 1453, Weber County, Utah Recorder's Office.

1.30 "Original Map" shall mean that certain map, entitled "Phase I Powder Ridge Condominiums" filed of record on September 28, 1988 as Entry No. 1058214, in Book 30, at Pages 92-95, Weber County, Utah Recorder's Office.

1.31 "Owner" shall mean any person, persons, entity, or entities or any combination thereof, at any time owning a Unit or a portion thereof or interest therein within the Project, including Timeshare Owners and Residential Owners. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes).

1.32 "Prior Declarations" shall mean any and all Declarations of Condominium for Powder Ridge Condominiums or any part, phase, or version thereof, which may have been filed of record in the Weber County, Utah Recorder's Office prior to the Original Declaration.

1.33 "Project" shall mean the Property, the Units, the Common Areas and all improvements submitted by this Amended Declaration to the provisions of the Act.

1.34 "Property" shall mean that certain real property situated in the County of Weber, State of Utah, more particularly described in Article II hereinafter, on which the Units and other improvements are, or pursuant to the provisions of this Amended Declaration may become, located.

1.35 "Residential Unit" shall mean a Unit which is not Committed to Maintenance.

1.36 "Residential Owner" shall mean any person or entity or combination thereof, at any time owning a Residential Unit within the Project.

1.37 "Rules and Regulations" shall mean such Rules and Regulations as the Master Association and/or the Timeshare Association shall, at the discretion of their respective boards of directors, establish from time to time, in addition to the provisions of this Amended Declaration and their respective Articles and Bylaws, to govern the use of the Project.

1.38 "Scheduled Occupant" shall mean a person entitled to use a Timeshare Unit during a properly scheduled time.

1.39 "Special Common Assessments" shall mean assessments which the Master Association may levy from time to time for unexpected Common Expenses or other purposes as provided herein.

1.40 "Special Furniture and Maintenance Assessments" shall mean assessments which the Timeshare Association may levy from time to time for unexpected Furniture and Maintenance Expenses or other purposes as provided herein.

1.41 "Timeshare Act" shall mean the Utah Timeshare and Camp Resort Act (Title 57, Chapter 19, Utah Code), as amended.

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

1.43 "Timeshare Association" shall mean the Powder Ridge Timeshare Association, Inc., a Utah nonprofit corporation.

1.44 "Timeshare Board" shall mean the board of directors of the Timeshare Association, appointed or elected in accordance with this Amended Declaration and the Timeshare Bylaws.

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

1.46 "Timeshare Furnishings" shall mean all furniture, furnishings, equipment, facilities, and personal property within Timeshare Units for the exclusive use and benefit of Timeshare Owners, and all furniture, furnishings, equipment, facilities, and personal property hereafter acquired for such use with funds from the Furniture and Maintenance Fund by the Timeshare Board.

1.47 "Timeshare Interest" shall mean a "time share estate" as defined in the Timeshare Act and shall mean a 1/52<sup>nd</sup> undivided interest in a Timeshare Unit which is separately owned by a Timeshare Owner together with an annually recurring right respectively to occupy and use, on an exclusive basis, a comparable but not identical Timeshare Unit in the Project.

1.48 "Timeshare Owner" shall mean any person, persons, entity, or entities or any combination thereof, at any time owning a Timeshare Interest within the Project.

1.49 "Timeshare Unit" shall mean a Unit that is Committed to Maintenance.

1.50 "Total Votes of the Master Association" shall mean the total number of votes appertaining to all Units in the Project as shown in Exhibit A attached hereto.

1.51 "Total Votes of the Timeshare Association" shall mean the total number of votes appertaining to all Timeshare Units in the Project.

1.52 "Unit" shall mean a separate physical space within the Project intended to be occupied from time to time as a dwelling and shall include Residential Units and Timeshare Units. Each Unit is specifically designated on the Amended Map and referred to in the Amended Declaration and shall consist of enclosed rooms occupying part of a Building. Each Unit shall be bounded by the interior surfaces of the walls, floors, ceilings, windows, doors, and built-in-fireplaces, if any, along the perimeter boundaries of the air space within the Unit, as said boundaries are shown on the Amended Map, together with all fixtures and improvements therein contained. Paint and other wall, ceiling, or floor coverings on interior surfaces shall be deemed to be a portion of the Unit. Notwithstanding the fact that they may be within the boundaries of a Unit, the following are not part of a Unit insofar as they are necessary for the support or use and enjoyment of another Unit or other part of a Building: bearing walls, floors, ceilings, and roofs (except the interior surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility installations, except the outlets

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thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

### DESCRIPTION OF THE PROPERTY AND IMPROVEMENTS

2.1 Description of Property. The Property on which the Units and improvements are, or pursuant to the provisions of this Amended Declaration may become, located is particularly described as follows:

Beginning at the Weber County Monument marking the county line, said point being given as East 3002.78 feet and South 3624.00 feet and North 47°15'00" West 1085.00 feet along the county line from the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, Weber County, Utah, said point being the point of beginning for the perimeter description, Phase 1, Parcel 1 of Phase 1, Powder Ridge Condominiums and running thence South 47°15'00" East 33.08 feet; thence due South 152.40 feet; thence South 54°56'34" East 36.65 feet; thence due South 40.00 feet; thence due East 15.22 feet; thence South 54°56'34" East 66.92 feet; thence due South 101.75 feet; thence South 83°55'00" East 155.55 feet; thence South 04°03'12" West 120.00 feet; thence South 44°17'42" West 62.93 feet; thence South 22°39'13" East 154.29 feet; thence due South 6.81 feet; thence due East 28.00 feet; thence South 13°48'54" East 62.82 feet; thence South 02°09'17" West 68.03 feet; thence South 13°10'00" West 81.32 feet; thence South 48°53'21" West 31.73 feet; thence South 85°53'48" West 73.96 feet; thence South 05°00'00" West 94.77 feet to the South boundary of Powder Ridge Condominiums, Phase 1; thence along said boundary the following courses and distances: North 75°00'00" West 164.83 feet, South 30°05'07" West 59.92 feet, North 19°15'33" West 105.00 feet, North 36°54'08" East 84.77 feet; due North 245.66 feet; due West 140.05 feet to a point of curvature to a 1667.00-foot radius curve to the right; thence Northerly along the arc of said curve for a distance of 36.53 feet, (central angle = 01°15'19", chord bearing and distance = North 09°55'26" West 36.53 feet) North 09°17'36" West 309.10 feet to a point of curvature to a 402.11-foot radius curve to the left; thence Northerly along the arc of said curve for a distance of 160.88 feet, (central angle = 22°55'25", chord bearing and distance = North 20°45'19" West 159.81 feet) North 57°44'00" East 264.83 feet to the point of beginning, containing 6.524 acres.

LESS AND EXCEPTING the following parcel:

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Beginning at a point which is East 2415.00 feet and South 3486.00 feet from the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, Weber County, Utah and running thence South 270.00 feet; thence West 69.02 feet; thence North 45°00'00" West 22.61 feet; thence North 200.02 feet; thence East 15.00 feet; thence North 54.00 feet; thence East 70.00 feet to the point of beginning, containing 0.505 acres. Net area = 6.018 acres.

Subject to and together with any and all easements, rights-of-way and reservations of record, including, but not limited to, that certain Right-of-Way and Easement Grant for use of a private road to the Property, recorded in the office of the County Recorder of Weber County, State of Utah.

Together with a non-exclusive right-of-way for ingress and egress to and from the adjacent commercial property located directly South of the Property.

### ARTICLE III

#### SUBMISSION AND DIVISION OF PROJECT

3.1 Resubmission to Act. The Owners hereby confirm that the Project and all improvements now existing or hereafter made in or upon the Project are subject to the provisions of the Act. All of said Project is and shall hereafter be held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected as a residential and timeshare ownership project to be known as Powder Ridge Condominiums Phase 1 Amended. All of said Project is and shall hereafter be subject to the covenants, conditions, restrictions, uses, limitations, and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said Project and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to any person or entity acquiring or owning an interest in the real property and improvements comprising the Project, and the heirs, personal representatives, successors, and assigns of any such person or entity. The foregoing submission is made subject to all patent reservations and exclusions, all easements and rights-of-way of sight or record, an easement for each and every pipeline, cable, wire, utility line, or similar facility which presently does or in the future may traverse or partially occupy the Project, and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipelines, cables, wires, utility lines, and similar facilities. Reserved from the foregoing submission are all presently existing or to be constructed sewer lines and water mains located beyond the exterior boundaries of the Buildings within the Project.

3.2 Division into Units. In furtherance of a plan for improvement of the Project, the Project is hereby divided into Units.

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3.3 Uniform Use. A Building may not contain both (a) Residential Units and (b) Timeshare Units.

#### ARTICLE IV

#### NATURE AND INCIDENTS OF RESIDENTIAL UNIT OWNERSHIP

4.1 Separate Ownership. Each Residential Unit in the Project 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 Amended Declaration.

4.2 Use and Occupancy. Subject to the limitations contained in this Amended Declaration, each Residential Owner shall have the nonexclusive right to use and enjoy the Common Areas and certain Limited Common Areas and the exclusive right to use and enjoy his Unit and any Limited Common Areas designated for exclusive use by such Residential Owner.

4.3 Interior of Units. Each Residential Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet, or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his Residential Unit and the surface of all walls, ceilings, floors, and doors within such boundaries. Each Residential Owner shall keep the interior of his Residential Unit, including without limitation, interior walls, windows, ceiling, floors, and permanent fixtures and appurtenances therein, in a sanitary condition and in a state of good repair. In the event that any such Residential Unit should develop an unsanitary condition or fall into a state of disrepair, and in the event that the Residential Owner of such Residential Unit should fail to correct such condition or state of disrepair promptly following written notice from the Master Association, the Master Association shall have the right, at the expense of the Residential Owner and without liability to the Residential Owner for trespass or otherwise, to enter said Residential Unit and correct or eliminate said unsanitary condition or state of disrepair. Notwithstanding the foregoing, only the Timeshare Association shall have the right to maintain the interiors of the Timeshare Units.

4.4 Right to Combine Units. With the written consent of the Master Association, two or more Residential Units may be utilized by Residential Owners as if the Units were one. To the extent permitted in the written consent of the Master Association, any walls, floors, ceilings, or other structural separations between any two such Residential Units, or any space which would be occupied by such structural separations but for the utilization of the two Units as one Unit, may, for as long as the two Residential Units are utilized as one Residential Unit, be utilized by the Owners of the adjoining Units as Limited Common Areas, except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the Project. At any time, upon the request of the Residential Owner of one of such adjoining Residential Units, any opening between the two Residential Units which, but for joint utilization of the two Residential Units, would have been occupied by structural separations, shall be closed, at the equal expense of the Residential Owners of each of the two Residential Units and the structural separations between the two Residential Units shall thereupon become Common Areas.

ARTICLE V

NATURE AND INCIDENTS OF TIMESHARE INTEREST OWNERSHIP

5.1 Separate Ownership. Each Timeshare Interest 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 Amended Declaration.

5.2 Use and Occupancy. Subject to the limitations contained in this Amended Declaration, each Timeshare Owner shall have the nonexclusive right to use and enjoy the Common Areas and the exclusive right to use and enjoy the Timeshare Unit and Limited Common Areas related to his Timeshare Interest during the recurring time periods appertaining to his Timeshare Interest in each respective calendar year, as set forth in Exhibit A hereto. Except as this Amended Declaration or the Master Association or Timeshare Association may otherwise permit with respect to use and enjoyment of the Common Areas, no Timeshare Owner shall have the right to use or occupy, nor shall any Timeshare Owner use or occupy the Common Areas or the Timeshare Unit or Limited Common Areas related to his Timeshare Interest during any time or times other than the recurring time periods appertaining to his Timeshare Interest in the respective calendar year.

5.3 Units Committed to Maintenance. Each and every Unit within the Project is hereby Committed to Maintenance.

(a) Each Unit shall remain Committed to Maintenance unless and until:

(i) All Timeshare Interests related to such Unit are owned of record by the same legal entity,

(ii) Such legal entity gives written notice to the Timeshare Association withdrawing such Unit from maintenance,

(iii) The Owners of all of the Timeshare Interests in all of the other Units in the same Building also give written notice to the Timeshare Association withdrawing all of the other Units in the same Building from maintenance, and

(iv) A copy of such written notice is recorded in the Office of the County Recorder for Weber County, State of Utah.

(b) Once a Unit has been withdrawn from maintenance as provided in Section 5.3(a) above, such Unit shall not thereafter be Committed to Maintenance, nor may it again be or become Committed to Maintenance, unless and until:

(i) The Owners of all of the Residential Units within the same Building submit written requests to the Timeshare Association requesting that all such Residential Units again be Committed to Maintenance,

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(ii) The Timeshare Board consents thereto in a duly executed written instrument, and

(iii) Such written instrument is recorded in the Office of the County Recorder for Weber County, State of Utah.

5.4 Furniture and Maintenance Assessments. Timeshare Owners shall be subject to the Furniture and Maintenance Assessment provided for in Section 14.4 and the Special Furniture and Maintenance Assessments provided for in Section 14.5.

5.5 Restrictions on Alterations. No Timeshare Owner shall make or cause to be made any alterations, improvements, replacements, or repairs in or to the Timeshare Unit related to his Timeshare Interest or to any Timeshare Unit or to any Timeshare Furnishings therein, except with the prior written consent of the Timeshare Association or as may be necessary in an emergency to prevent injury to persons or damage to property. In no event shall any Timeshare Owner subject any Timeshare Unit or Timeshare Furnishings therein to any lien for the making of any alterations, improvements, replacements, or repairs therein or thereto. No Timeshare Owner, nor persons within his control, shall commit any waste with respect to the Project or any part thereof, including without limitation Units, Common Areas, Limited Common Areas, and Timeshare Furnishings.

5.6 Timeshare Furnishings. The Timeshare Association shall purchase or lease Timeshare Furnishings for each Timeshare Unit from time to time as determined by the Timeshare Board. Each Timeshare Owner shall have the right to use and enjoy the Timeshare Furnishings related to his Timeshare Unit during the recurring time periods appertaining to his Timeshare Interest in each respective calendar year, as set forth in Exhibit A hereto. The Timeshare Furnishings shall be deemed to be owned by the Timeshare Association for the benefit of the Timeshare Owners.

## ARTICLE VI

### TITLE TO UNITS

6.1 Ownership of Common Areas. The undivided interest in the Common Areas appurtenant to each Residential Unit or Timeshare Interest in the Project shall be as set forth in Exhibit A attached hereto and by this reference made a part hereof. The undivided fractional interest in the Common Areas appurtenant to each Residential Unit or Timeshare Interest as shown in said Exhibit A shall have a permanent character and shall not be altered without the affirmative vote of two-thirds (2/3) of the Total Votes of the Master Association expressed in an amendment to this Amended Declaration duly recorded. Except as otherwise provided in this Amended Declaration, an Owner shall be entitled to nonexclusive use of the Common Areas (other than Limited Common Areas) in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules and regulations promulgated by the Master Association.

6.2 Inseparability. Title to no part of a Residential Unit or Timeshare Interest within the Project may be separated from any other part thereof during the period of ownership prescribed

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herein, and each Residential Unit or each Timeshare Interest, and the undivided interest in the Common Areas appurtenant to each, shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Residential Unit or Timeshare Interest. Every devise, encumbrance, conveyance, or other disposition of a Residential Unit or Timeshare Interest or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Residential Unit or Timeshare Interest, together with all appurtenant rights created by law or by this Amended Declaration, including appurtenant membership in the Master Association and Timeshare Association, if applicable, as hereinafter set forth.

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

6.4 Separate Mortgages by Owners. Each Owner shall have the right separately to mortgage or otherwise encumber his interest in a Residential Unit or Timeshare Interest. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas or any part thereof, except the undivided interest therein appurtenant to his Residential Unit or Timeshare Interest. Any mortgage or other encumbrance of any Residential Unit or Timeshare Interest within the Project shall be subordinate to all of the provisions of this Amended Declaration and, in the event of foreclosure, the provisions of this Amended Declaration shall be binding upon any Owner whose title is derived through foreclosure, by private power of sale, judicial foreclosure, or otherwise.

6.5 Separate Taxation. Each Unit in the Project shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For the purposes of assessment, the valuation of the Common Areas shall be apportioned among the Units in proportion to the undivided interests in the Common Areas appurtenant to each such Unit. The Master Association shall furnish to the assessor all necessary information with respect to such apportionment. No forfeiture or sale of any Unit or Timeshare Interest for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Unit or Timeshare Interest.

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

6.7 Description of Units. Every contract for the sale of a Residential Unit or Timeshare Interest and every other instrument affecting title to a Residential Unit or Timeshare Interest

within the Project may describe a Residential Unit or Timeshare Interest by its identifying number or symbol as indicated in Exhibit A hereto or as shown on the Amended Map. Such description will be construed to describe the Residential Unit or Timeshare Interest, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Residential Unit or Timeshare Interest within the Project and all of the limitations on such ownership as described in this Amended Declaration.

## ARTICLE VII

### EASEMENTS

**7.1 Easement for Encroachments.** If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or 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 encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the Buildings or any improvements constructed or to be constructed within the Project as shown on the Amended Map, by error in the Amended Map, 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.

**7.2 Easements for Maintenance, Cleaning, and Repair.** Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Master Association shall have the irrevocable right to have access to each Unit and to all Common Areas from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair, or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. The Master Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, or painting for which the Master Association is responsible. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances, and any damage caused thereby shall be repaired by the Master Association with funds from the Common Expense Fund. The Timeshare Association, with respect to the Timeshare Units, shall have all the rights granted in this Section to the Master Association with respect to the Units and the right to have access to the Timeshare Units for purposes of meeting its obligations under this Amended Declaration.

**7.3 Right to Ingress, Egress and Support.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Unit and to any Limited Common Areas appurtenant to such Unit, and shall have the right to horizontal, vertical, and lateral support of such Unit.

**7.4 Right to Use Common Areas.** The Master Association and the Timeshare Association each has an easement, or has the right to assign such easement, to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that the Master Association or Timeshare Association, as applicable, is obligated or permitted to perform pursuant to this Amended Declaration, including, without limitation, the right to

construct and maintain in the Common Areas (except Limited Common Areas) facilities for use by the Owners generally or by the Master Association and its agents exclusively or the Timeshare Association and its agents exclusively.

7.5 Non-Exclusive Easements. All entrances to and exits from the Project providing access to public or private roads outside the Project and all access and service roadways inside the Project and certain other areas within the Project have been designated on the Amended Map as Access Easements. Notwithstanding anything on the Amended Map to the contrary, these Easements are for the non-exclusive use of the Owners of the respective Units or Timeshare Interests and for the non-exclusive use of the owners of approximately 8.1 acres of real property located adjacent to the Property and the owners of approximately 1.91 acres of real property located adjacent to and south of the Property, for the purposes of installing and maintaining water, sewer, electric, telephone, storm drain, and other utility lines and services therein and providing ingress to and egress from said adjacent real properties, reserving to the owners of said adjacent parcels of real property the right to grant to their successors a right to use such Easements on a non-exclusive basis with the Owners.

7.6 Easements Deemed Created. All conveyances of Units or Timeshare Interests within the Project hereafter made, 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.

## ARTICLE VIII

### RESTRICTIONS ON USE

8.1 Residential Uses. The Units within the Project shall be used exclusively for residential, timeshare and overnight lodging purposes. No Unit shall be used for business or commercial activity. Nothing herein shall be deemed to prevent any Owner or his duly authorized agent from renting or leasing his Unit or Timeshare Interest from time to time.

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

8.3 Restriction on Signs. No signs, flags, or advertising devices of any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior inspection and written approval of the Master Association, except (a) as may be temporarily necessary to caution or warn of danger, or (b) that the owners or developers of the Units in Buildings 3A, 3B, 3C and 3D may erect signs advertising the availability of Units in said Buildings during the period in which the Units in such Buildings are being actively marketed. If the Master Association consents to the erection of any signs or devices, the same shall be promptly removed at the request of the Master Association.

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8.4 Restriction on Animals. Except for trained assistance animals for the disabled or for similar purposes, no animals, birds, fish, reptiles, or pets of any kind shall be brought or allowed to remain in or upon any part of the Project.

8.5 No Subdivision. Except as otherwise provided in this Amended Declaration no Unit, Common Areas, or portions thereof may be further divided or subdivided or a fractional portion thereof sold, conveyed, or otherwise affected so as to be held in divided ownership. No Timeshare Interest may be further divided or subdivided into shorter time periods by any conveyance, disclaimer, or other means.

8.6 No Structural Alterations. Except as otherwise provided in this Amended Declaration, no Owner shall, without the prior written consent of the Master Association, make or permit to be made any structural alteration, improvement, or addition in or to his Unit or to the Common Areas. No Owner shall do any act that would impair the structural soundness or integrity of the Buildings or the safety of the Property or impair any easement or hereditaments appurtenant to the Project.

8.7 No Obstructions. There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Master Association. Timeshare Owners shall neither store nor leave any of their property in the Timeshare Units, except with the prior written consent of the Timeshare Association.

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

8.9 Rules and Regulations. The Owners shall comply with each and all of the Rules and Regulations governing use of the Units, Common Areas, and/or Limited Common Areas, as such Rules and Regulations may from time to time be adopted, amended, or revised by the Master Association or Timeshare Association as applicable.

8.10 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements, the provisions, covenants, conditions, and restrictions contained in this Amended Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such

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construction, nothing shall be done which will result in a violation of any of said provisions, covenants, conditions, or restrictions upon completion of the construction.

## ARTICLE IX

### VOTING

9.1 Master Association Meetings. At any meeting of the Master Association, each Owner of a Residential Unit either in person or by proxy, shall be entitled to vote the interest appurtenant to each respective Residential Unit as set forth in this Section and in Exhibit A. The voting rights appurtenant to each Residential Unit shall vest upon execution and recording of this Amended Declaration. At any meeting of the Master Association, the Timeshare Board shall be entitled to vote the interests appurtenant to each Timeshare Unit as set forth in this Section and in Exhibit A. The voting rights appurtenant to each Timeshare Unit shall vest upon execution and recording of this Amended Declaration. The number of votes appurtenant to each respective Residential Unit or Timeshare Interest shall be as shown in Exhibit A attached hereto and by this reference made a part hereof. The number of votes appurtenant to each Unit or Timeshare Interest as shown in said Exhibit A shall have a permanent character and shall not be altered without the affirmative consent of two-thirds (2/3) of the Total Votes of the Master Association expressed in an amendment to this Amended Declaration duly recorded.

9.2 Timeshare Association Meetings. At any meeting of the Timeshare Association, each Owner of a Timeshare Interest, either in person or by proxy, shall be entitled to vote the percentage interest appurtenant to his or her respective Timeshare Interest as set forth in this Section and Exhibit A. The voting rights appurtenant to each Timeshare Interest shall vest upon execution and recording of this Amended Declaration. The Timeshare Owners acknowledge and agree that in all matters pertaining to the Master Association the voting rights appurtenant to the Timeshare Units shall be exercised by the Timeshare Board, which, in exercising such Master Association voting rights, shall carefully consider input received from the Timeshare Owners whether such input is in the form of an Owner vote at a formal Timeshare Association meeting or otherwise. Each Timeshare Owner hereby designates the Timeshare Board as his or her attorney-in-fact in his or her name, place and stead for purposes of exercising his or her voting rights at all Master Association meetings. As attorney-in-fact, the Timeshare Board shall have the full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument, with respect to the interest of any Timeshare Owner in the Master Association which may be necessary or appropriate to exercise the powers herein granted.

## ARTICLE X

### THE MASTER ASSOCIATION AND MASTER BOARD

10.1 Membership. Each Owner shall be entitled and required to be a member of the Master Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit or Timeshare Interest is held by more than one person, the membership appurtenant to that Unit or Timeshare Interest shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Unit or Timeshare Interest is held.

An Owner shall have one membership for each Unit or Timeshare Interest owned by him. Each Member shall have the number of votes and the voting rights set forth in Article IX and in Exhibit A of this Amended Declaration. Each membership shall be appurtenant to the Unit or Timeshare Interest to which it relates and shall be transferred automatically by conveyance of that Unit or Timeshare Interest. Ownership of a Unit or Timeshare Interest within the Project cannot be separated from membership in the Master Association appurtenant thereto, and any devise, conveyance, or other disposition of a Unit or Timeshare Interest shall be construed to be a devise, conveyance, or other disposition, respectively, of the Owner's membership in the Master Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Master Association, and membership in the Master Association may not be transferred except in connection with the transfer of a Unit or Timeshare Interest.

10.2 Master Board. The directors of the Master Board shall be elected as set forth in the Master Bylaws.

10.3 Power of Attorney and Amendments. Each Owner makes, constitutes and appoints the Master Association his true and lawful attorney in his name, place and stead to make, execute, sign, acknowledge and file with respect to the Project such amendments to this Amended Declaration and the Amended Map as may be required by law or by vote taken pursuant to the provisions of this Amended Declaration.

## ARTICLE XI

### CERTAIN RIGHTS AND OBLIGATIONS OF THE MASTER ASSOCIATION

11.1 The Common Areas. The Master Association, subject to the rights and duties of the Owners as set forth in this Amended Declaration, shall be responsible for the exclusive management, control, operation, and maintenance of the Common Areas and all improvements thereon (including the Common Facilities), and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair, provided, however, that each Owner shall keep the Limited Common Areas (if any) designated for use in connection with his Unit in a good, clean, safe, sanitary, and attractive condition. The Master Association shall be responsible for the maintenance and repair of the exterior of the Buildings and the grounds, including without limitation painting thereof, repair and replacement of exterior trim and roofs, and maintenance of landscape, walkways, and driveways. The Master Association shall also be responsible for maintenance, repair, and replacement of Common Areas within the Buildings, including without limitation hallways, utility lines, and all Common Facilities, improvements, or other material located within or used in connection with the Common Areas. The specification of duties of the Master Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Master Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

11.2 Miscellaneous Goods and Services. The Master Association may obtain and pay for out of the Common Expense Fund the services of such personnel as the Master Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Master Association or by any person or

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

11.3 Property Acquisition. The Master Association may acquire (by purchase, lease, or otherwise) and hold, personal, real and mixed property of all types for the use or benefit of all Owners, and may dispose of such property or any part thereof by sale or otherwise. The costs of acquiring all such property, shall be paid for out of the Common Expense Fund, and all proceeds from disposition thereof shall be part of such fund.

11.4 Rules and Regulations. The Master Association may make reasonable Rules and Regulations governing the use of the Units, Common Areas, and/or Limited Common Areas; provided however, that such Rules and Regulations shall be consistent with the rights and obligations established by this Amended Declaration. The Master Association or any aggrieved Owner may initiate and prosecute appropriate legal proceedings against an offending Owner to enforce compliance with such Rules and Regulations or to recover damages for noncompliance therewith, as permitted by law. In the event the Master Association or any aggrieved Owner initiates any such legal proceedings, the Master Association or aggrieved Owner shall be entitled to recover from the offending Owner costs and expenses incurred including court costs and reasonable attorneys' fees.

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

11.6 Manager. The Master Association may by written contract delegate in whole or in part to a professional Manager such of the Master Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. Such Manager may also be the Manager for the Timeshare Association as provided in Section 13.5 below. The services of any Manager retained by the Master Association shall be paid for with funds from the Common Expense Fund.

11.7 Financial Statements. The Master Association shall cause financial statements for the Master Association to be regularly prepared and audited in accordance with the provisions of Section 24.4 of this Amended Declaration and shall cause copies thereof to be made available to all Owners as described in the Master Bylaws.

## ARTICLE XII

### TIMESHARE ASSOCIATION AND TIMESHARE BOARD

12.1 Membership. Each Timeshare Owner shall be entitled and required to be a member of the Timeshare Association. Membership shall begin immediately and automatically upon becoming a Timeshare Owner and shall terminate immediately and automatically upon ceasing to be a Timeshare Owner. If title to a Timeshare Interest is held by more than one person, the membership appurtenant to that Timeshare Interest shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Timeshare Interest is held. A Timeshare Owner shall have one membership for each Timeshare Interest owned by him. Each Timeshare Owner shall have the number of votes and the voting rights set forth in Article IX and in Exhibit A of this Amended Declaration. Each membership shall be appurtenant to the Timeshare Interest to which it relates and shall be transferred automatically by conveyance of that Timeshare Interest. Ownership of a Timeshare Interest within the Project cannot be separated from membership in the Timeshare Association appurtenant thereto, and any devise, conveyance, or other disposition of a Timeshare Interest shall be construed to be a devise, conveyance, or other disposition, respectively, of the Owner's membership in the Timeshare Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Timeshare Association, and membership in the Timeshare Association may not be transferred except in connection with the transfer of a Timeshare Interest.

12.2 Timeshare Board. The directors of the Timeshare Board shall be elected as set forth in the Timeshare Bylaws.

## ARTICLE XIII

### CERTAIN RIGHTS AND OBLIGATIONS OF THE TIMESHARE ASSOCIATION

13.1 Maintained Units. As to all Timeshare Units, the Timeshare Association shall be responsible for maintaining said Units, and all Timeshare Furnishings therein and Limited Common Areas (if any) appurtenant thereto, in good, clean, attractive, safe, and sanitary condition, order, and repair. Without limiting the generality of the foregoing, the Timeshare Association shall be responsible for the cleaning, maintenance, repair, and replacement of the interiors of such Units, including without limitation cleaning, painting, repairing, maintaining and replacing the interior surfaces of ceilings, walls, floors, and windows and all cabinets, fixtures, floor coverings, appliances, equipment, improvements, materials and Timeshare Furnishings within such Units. All goods, materials, labor, and services procured by the Timeshare Association in performing its responsibilities under this Section shall be paid for out of the Furniture and Maintenance Fund.

13.2 Property Acquisition. The Timeshare Association may acquire (by purchase, lease, or otherwise) and hold real, personal or mixed property of all types for the use and benefit of the Timeshare Owners, and may dispose of such property or any part thereof by sale or otherwise. The costs of acquiring such property shall be paid for out of the Furniture and Maintenance Fund, and all proceeds from disposition thereof shall be part of such fund.

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13.3 Rules and Regulations. The Timeshare Association may make reasonable Rules and Regulations governing the use of the Timeshare Units and/or Limited Common Areas; provided however, that such Rules and Regulations shall be consistent with the rights and obligations established by this Amended Declaration and the Rules and Regulations promulgated by the Master Association. Such Rules and Regulations made by the Timeshare Association shall include, without limiting the generality of the foregoing, provisions for check in and check out times relative to use of Timeshare Units. The Timeshare Association, or any aggrieved Timeshare Owner may initiate and prosecute appropriate legal proceedings against an offending Timeshare Owner to enforce compliance with such Rules and Regulations or to recover damages for noncompliance therewith, as permitted by law. In the event the Timeshare Association or aggrieved Timeshare Owner initiates any such legal proceedings, the Timeshare Association or aggrieved Timeshare Owner shall be entitled to recover from the offending Timeshare Owner costs and expenses incurred including court costs and reasonable attorneys' fees.

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

13.5 Manager. The Timeshare Association may by written contract delegate in whole or in part to a professional Manager such of the Timeshare Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. Such Manager may also be the Manager for the Master Association as provided for in Section 11.6 above. The services of any Manager retained by the Timeshare Association shall be paid for with funds from the Furniture and Maintenance Expense Fund.

13.6 Financial Statements. The Timeshare Association shall cause financial statements for the Timeshare Association to be regularly prepared and audited in accordance with the provisions of Section 24.4 of this Amended Declaration and the Timeshare Bylaws and shall cause copies thereof to be made available to all Owners as described in the Timeshare Bylaws.

#### ARTICLE XIV

##### ASSESSMENTS BY THE MASTER ASSOCIATION AND TIMESHARE ASSOCIATION

14.1 Agreement to Pay Assessments. Each Owner of any Unit or Timeshare Interest by the acceptance of instruments of purchase and/or conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Master Association or Timeshare Association, as applicable, to pay to the Master Association or Timeshare Association all assessments made by the Master Association or Timeshare Association, as applicable, for the purposes provided in this Amended Declaration. Such assessments may be collectively referred to as the "Maintenance Fee" and shall be fixed, established, and collected from time to time as provided in this Article XIV.

14.2 Common Assessments. Common Assessments shall be computed and levied against all Units or Timeshare Interests in the Project as follows:

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(a) Common Expense. Common Assessments shall be based upon advance estimates of the Master Association's cash requirements to provide for payment of all estimated expenses, arising out of or connected with maintenance and operation of the Common Areas and provision of utility services (to the extent not separately metered or billed) and other items common to the Units. Such estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments, unless and until Units are separately assessed; premiums for all insurance that the Master Association is required or permitted to maintain hereunder; repairs and maintenance; wages for Master Association employees, including fees for a Master Association Manager, if any; utility charges (including charges for utility services for the Units to the extent not separately metered or billed); legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses and liabilities which may be incurred by the Master Association for the benefit of all of the Owners or by reason of this Amended Declaration. Such expenses shall constitute the estimated Common Expense, and all funds received from assessments under this Section shall be part of the Common Expense Fund.

(b) Apportionment. Expenses attributable to the Common Expense or to the Project as a whole shall be apportioned among and assessed to all Owners in proportion to their respective undivided interests in the Common Areas.

(c) Notice and Payment of Common Assessment. Common Assessments shall be made on a January 1 through December 31 fiscal year basis. Any week beginning on or before December 31 and continuing into a new year shall be deemed entirely within the earlier year for assessment purposes. On or before December 1 each year, the Master Association shall give written notice to each Owner as to the amount of the Common Assessment with respect to his Unit or Timeshare Interest for the fiscal year commencing on January 1 immediately following such date. Such assessment shall be payable as described in the Master Bylaws. Failure of the Master Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Amended Declaration, nor shall such failure affect the liability of the Owner of any Unit or Timeshare Interest for payment of such assessment.

(d) Inadequate Funds. In the event that the Common Expense Fund proves inadequate during any fiscal year for whatever reason, including nonpayment of any Owner's assessment, the Master Association may either borrow funds and/or levy additional assessments in accordance with the procedure set forth in Section 14.3, except that the vote therein specified shall not be necessary.

14.3 Special Common Assessments. In addition to the Common Assessments authorized by this Article, the Master Association may levy, at any time and from time to time, upon the affirmative vote of at least fifty percent (50%) of the Total Votes of the Master Association, Special Common Assessments, payable over such periods as the Master Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas or any part thereof or for

any other Common Expenses incurred or to be incurred as provided in this Amended Declaration. This Section shall not be construed as an independent source of authority for the Master Association to incur expenses, but shall be construed to prescribe the manner of assessing the expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of such Special Common Assessments and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Common Assessment shall bear interest as described in the Master Bylaws from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

14.4 Furniture and Maintenance Assessments. The Timeshare Association shall levy Furniture and Maintenance Assessments against all Timeshare Interests in the Project as follows:

(a) Furniture and Maintenance Expense. Furniture and Maintenance Assessments shall be based upon advance estimates of the Timeshare Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the Timeshare Association's reservation system, accounting costs, maid service for, and cleaning, maintenance, repair, and replacement of Timeshare Units and of Timeshare Furnishings in such Units. Such estimated expenses may include, among other things, the following: expenses of maid service for all Timeshare Units; expenses for cleaning, maintaining, repairing, and painting all Timeshare Units; expenses for cleaning, maintaining, repairing, and replacing Timeshare Furnishings in all Timeshare Units; any deficit from a previous period; creation of a reasonable contingency reserve, surplus, and/or sinking fund; and any other expenses or liabilities which may be incurred in accordance with the provisions of this Amended Declaration by the Timeshare Association for the benefit of all Timeshare Owners. Such shall constitute the estimated Furniture and Maintenance Expense, and all funds received from assessments under this Section 14.4 shall be part of the Furniture and Maintenance Fund.

(b) Apportionment. Expenses attributable to the Furniture and Maintenance Expense shall be apportioned among and assessed to all Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common Areas bears to the total of all Timeshare Owners' undivided interest in the Common Areas.

(c) Notice and Payment of Furniture and Maintenance Assessment. Furniture and Maintenance Assessments shall be made on a January 1 through December 31 fiscal year basis. Any week beginning on or before December 31 and continuing into a new year shall be deemed to be entirely within the earlier year for assessment purposes. On or before December 1 each year, the Timeshare Association shall give written notice to each Timeshare Owner as to the amount of the Furniture and Maintenance Assessment with respect to his Timeshare Interest(s) for the fiscal year commencing on January 1 immediately following such date. Such assessment shall be payable as described in the Timeshare Bylaws. Failure of the Timeshare Association to give timely notice of any Furniture and Maintenance Assessment as provided herein shall not be deemed a waiver

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or modification in any respect of the provisions of this Amended Declaration, nor shall such failure affect the liability of the Timeshare Owner for payment of such assessment.

(d) Inadequate Funds. In the event that the Furniture and Maintenance Fund proves inadequate during any fiscal year for whatever reason, including nonpayment of any Timeshare Owner's assessment, the Timeshare Association may, at any time and from time to time levy additional assessments, in the proportions set forth in Section 14.4(b) hereof and payable over such reasonable periods as the Timeshare Association may determine. Notice in writing of the amount of such assessment and the time for payment thereof shall be given promptly to each appropriate Timeshare Owner, and no payment shall be due less than thirty (30) days after such notice shall have been given.

14.5 Special Furniture and Maintenance Assessments. In addition to the Furniture and Maintenance Assessments authorized by this Article XIV, the Timeshare Association may levy, at any time and from time to time, upon the affirmative vote of at least fifty percent (50%) of the Total Votes of the Timeshare Association, Special Furniture and Maintenance Assessments, payable over such periods as the Timeshare Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Timeshare Units and Timeshare Furnishings or any part thereof or for any other Furniture and Maintenance Expenses incurred or to be incurred in connection with Timeshare Units as provided in this Amended Declaration. This Section shall not be construed as an independent source of authority for the Timeshare Association to incur expenses, but shall be construed to prescribe the manner of assessing the expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common Areas bears to the total of all Timeshare Owners' undivided interests in the Common Areas. Notice in writing of the amount of such Special Furniture and Maintenance Assessments and the time for payment thereof shall be given promptly to the Timeshare Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Furniture and Maintenance Assessment shall bear interest as described in the Timeshare Bylaws from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Furniture and Maintenance Expense Fund.

14.6 Expenditure of Funds. All funds received hereunder from assessments shall be expended, or accumulated in a reasonable contingency reserve, surplus, and/or sinking fund to be expended, exclusively for the respective purposes designated in this Amended Declaration.

14.7 Lien for Assessments. All sums assessed to the Owner of any Unit or Timeshare Interest within the Project pursuant to the provisions of this Article XIV, together with interest thereon as provided herein, shall be secured by a lien on such Unit or Timeshare Interest in favor of the Master Association and/or the Timeshare Association, as applicable. To evidence a lien for sums assessed pursuant to this Article XIV, the Master Association or the Timeshare Association, as applicable, may prepare a written notice of lien setting forth the amount of the assessment, the date due, and amount remaining unpaid, the name of the Owner of the Unit or Timeshare Interest and a description of the Unit or Timeshare Interest. Such a notice shall be signed and acknowledged by a duly authorized officer of the Master Association or the Timeshare Association, as applicable, and may be recorded in the Office of the County Recorder



for Weber County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by foreclosure by the Master Association or the Timeshare Association, as applicable, in the manner in which mortgages or trust deeds on real property may be foreclosed in Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Master Association or the Timeshare Association, as applicable, any assessments against the Unit or Timeshare Interest which shall become due during the period of foreclosure. The Master Association and the Timeshare Association shall have the right and power to bid at any foreclosure sale, and to hold, lease, mortgage, or convey the subject Unit or Timeshare Interest. The Master Board and/or Timeshare Board, as applicable, shall have the right to designate and appoint as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures, any person or entity qualified to act as a trustee under § 57-1-21, Utah Code Ann., as amended. The liens of the Master Association and the Timeshare Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Amended Declaration, a first mortgage on a Unit or Timeshare Interest 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 or Timeshare Interest. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Master Association or the Timeshare Association from taking a deed in lieu of foreclosure.

14.8 Personal Obligation of Owner. The amount of each and every Common Assessment, Special Common Assessment, Furniture and Maintenance Assessment, and Special Furniture and Maintenance Assessment against any Unit or Timeshare Interest within the Project shall be the personal obligation of the Owner of such Unit or Timeshare Interest to the Master Association or Timeshare Association, as applicable. Suit to recover a money judgment for such personal obligation shall be maintainable by the Master Association or Timeshare Association, as applicable, without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or Timeshare Interest or by waiving any services or amenities provided for in this Amended Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Master Association or Timeshare Association, as applicable, in connection therewith, including court costs and reasonable attorneys' fees.

14.9 Statement of Account. Upon payment of a reasonable fee, not to exceed \$25.00, and upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit or Timeshare Interest, the Master Association and/or Timeshare Association, as applicable, shall issue a written statement setting forth the following: the amount of all of the unpaid assessments, if any, with respect to such Unit or Timeshare Interest; the amount of the current Common Assessment, Furniture and Maintenance Assessment, Special Common Assessment, and Special Furniture and Maintenance Assessment and the date such assessments become or became due; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the Master Association or Timeshare Association, as applicable, in favor of persons who rely thereon in good faith.

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14.10 Personal Liability of Purchaser. Subject to the provisions of Section 14.9, a purchaser of a Unit or Timeshare Interest shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit or Timeshare Interest up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

14.11 Personal Charges. The term "Personal Charges" means any expense resulting from the act or omission to act of any Timeshare Owner, his family, guests, tenants, licensees, invitees or any other persons occupying said Owner's Timeshare Unit, including without limitation, the cost of long distance telephone charges or telephone message unit charges, food, beverages, sports supplies, optional maid service and other special services or supplies attributable to the occupancy of the Owner's Timeshare Unit, the cost to repair or replace any Timeshare Furnishings or Common Facilities on account of loss or damage occurring during such Owner's occupancy, and the cost to satisfy any expense to any of the other Timeshare Owners or to the Timeshare Association due to any intentional or negligent act or omission to act of such Timeshare Owner, his family, guests or invitees, including, without limitation, any person who occupies the Timeshare Unit during the Timeshare Owner's right to occupy (in accordance with the provisions of this Amended Declaration under an exchange program) or resulting from the breach by such Owner of any provision of this Amended Declaration, the Timeshare Bylaws, or Rules and Regulations promulgated under the authority of the Timeshare Association. Such personal charges shall be paid by each Owner as follows:

(a) If the Timeshare Association or the Manager is able to determine the amount of Personal Charges at the time of check-out (for example, personal charges constituting food charges, beverage charges, optional maid service, telephone or telephone message unit charges, etc.), such Personal Charges will be payable at check-out.

(b) Personal Charges which are not ascertainable as provided in Section 14.11(a), above, shall be payable within thirty (30) days after receipt of a statement therefor.

14.12 Combined Billings. For convenience, the Master Association and the Timeshare Association, if they so elect, may submit joint, or combined, invoices to the Timeshare Owners for the Maintenance Fees due both associations from time to time. In the event a joint, or combined, invoice is used, such invoices shall be submitted to the Timeshare Owners by the Master Association and shall (a) clearly identify the amounts due each association and the nature and purpose of such amounts, and (b) instruct the Timeshare Owners to pay all amounts to the Master Association or its Manager. Upon receipt of any and all payments of Maintenance Fees from any and all Timeshare Owners, all funds received shall be immediately segregated and deposited either into (a) the Master Association's Common Expense Fund or (b) the Timeshare Association's Furniture and Maintenance Expense Fund, as applicable. Except for a clearing account to facilitate the orderly receipt and immediate segregation of funds received from Owners, no funds shall at any time be deposited, held, or co-mingled in any account other than that for which said funds are properly intended pursuant to the provisions of this Amended Declaration. In no event shall funds received from Owners remain in a clearing account for more than one (1) business day.

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ARTICLE XV

INSURANCE

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

(a) Fire and Casualty Insurance. The Master Association shall obtain a policy or policies of insurance on the Project in such amounts as shall provide for replacement of the Units, Common Areas, Common Facilities, and all other parts of the Project in the event of damage or destruction from the casualty against which such insurance is obtained, which insurance shall be in accordance with coverage customarily maintained by other condominium projects similar to the Project in construction, design, use, and location. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Master Association shall deem it appropriate to provide insurance protection. The Master Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as, in the Master Association's opinion, are consistent with good business practice.

(b) Insurance Maintained by Timeshare Association. The Timeshare Association shall maintain property insurance on the interiors of the Timeshare Units, and insurance covering other losses commonly insured against by associations similar to the Timeshare Association, the costs of which shall be charged solely to the Timeshare Association. The Timeshare Association shall also acquire property insurance to cover Timeshare Furnishings and personal property owned by the Timeshare Association, the cost of which shall be paid from the Furniture and Maintenance Expense Fund.

(c) Public Liability and Property Damage Insurance. The Master Association shall obtain a broad form of comprehensive liability insurance coverage, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death, and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Master Association and all activities in connection with the ownership, operation, maintenance, and other use of the Project.

(d) Worker's Compensation Insurance. The Master Association and Timeshare Association shall each obtain and maintain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees in the amounts and in the forms now or hereafter required by law.

(e) Fidelity Insurance. The Master Association and Timeshare Association shall each purchase, in such amounts and in such forms as each deems appropriate, fidelity insurance or a bond to cover against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

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15.2 Form of Insurance. Insurance coverage relating to the Project, insofar as possible, shall be in the following form:

(a) Casualty Insurance. Casualty insurance shall be carried in a form or forms naming the Master Association or Timeshare Association, as applicable, as the insured, as trustee for the Owners of all Residential Units or Timeshare Interests, as applicable, and the appurtenant undivided interest in the Common Areas. Each policy shall provide a standard, noncontributory Mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Master Association or Timeshare Association as applicable to its Mortgage. Each policy shall also provide that it cannot be cancelled by either the insured or the insurance company until after ten (10) days prior written notice is first given to the Master Association and its Manager and/or the Time Share Association and its Manager, as applicable, and to each Mortgagee requesting the same.

(b) Public Liability and Property Damage Insurance. Public liability and property damage insurance shall name the Master Association as the insured, as trustee for each Owner, and for the Manager (if any), and shall protect the Master Association, each Owner, and the Manager (if any), in connection with the ownership, operation, maintenance, or other use of the Project or any part thereof. Each such policy shall provide that it cannot be cancelled either by the insured or the insurance company until after ten (10) days written notice to the Master Association, to each Owner, and to the Manager (if any).

(c) Policies. The Master Association and Timeshare Association shall make every effort to secure insurance policies that will provide for the following:

(i) The insurer shall waive subrogation as to any claims against the Master Association or Timeshare Association, as applicable, the Manager (if any), the Owners, and their respective servants, agents, and guests;

(ii) The policy or policies on the Project cannot be cancelled, invalidated, or suspended on account of the conduct of any one or more individual Owners;

(iii) The policy or policies on the Project cannot be cancelled, invalidated, or suspended on account of the conduct of any trustee, officer, or employee of the Master Association or Timeshare Association without a prior demand in writing that the Master Association or Timeshare Association, as applicable, cure the defect within a reasonable time;

(iv) Any "no other insurance" clause in the policy or policies on the Project shall exclude individual Owners' policies from consideration; and

(v) The policy or policies can be cancelled and the insurance thereunder can be invalidated or suspended only in respect to the interest of any particular Owner guilty of a breach of warranty, act, omission, negligence, or noncompliance with any provision of such policy or policies, including payment of the insurance premiums applicable to that Owner's interest, or who permits or

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fails to prevent the happening of any event (whether occurring before or after a loss) which under the provisions of such policy would otherwise invalidate or suspend the entire policy.

15.3 Insurance Proceeds. The Master Association or Timeshare Association as applicable, shall receive the proceeds of any casualty insurance payments made under policies obtained and maintained by the Master Association or Timeshare Association pursuant to this Article. To the extent that reconstruction or repair is required herein, all proceeds of such insurance shall be made available as a fund for such reconstruction or repair and shall be disbursed as provided in Article XVI.

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

15.5 Adjustment and Contribution. Exclusive authority to adjust losses under policies hereafter in force on the Project shall be vested in the Master Association or the Timeshare Association as applicable. In no event shall the insurance coverage obtained and maintained by the Master Association or Timeshare Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

15.6 Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Residential Unit or Timeshare Interest, his personal property, for his personal liability, and covering such other risks as he may deem appropriate; provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Master Association or the Timeshare Association as applicable pursuant to this Article. All such insurance of the Owner's Residential Unit or Timeshare Interest shall waive the insurance company's right of subrogation against the Master Association, Timeshare Association, other Owners, and the Manager (if any), and their respective employees, agents, and guests, if such insurance can be obtained in the normal practice without significant additional premium charge for the waiver of subrogation rights.

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

15.8 Overlapping Coverage. To the extent reasonably possible, the Master Association and the Timeshare Association shall cooperate with respect to obtaining insurance policies and shall coordinate coverage where and as needed to avoid overlap and duplicating coverage.

## ARTICLE XVI

### DAMAGE OR DESTRUCTION

16.1 Jurisdiction, Responsibility. In the event of damage to, or destruction of, all or part of the Project, the Timeshare Association shall have jurisdiction over and responsibility (including financial responsibility) for the repair or replacement of the interiors of all Timeshare Units, including all fixtures, appliances, interior surfaces, furnishings, furniture, and contents thereof; and the Master Association shall have jurisdiction over and responsibility (including financial responsibility) for the repair or replacement of all other parts, portions, elements, and/or facets of the Project including Common Areas. Notwithstanding the foregoing provisions of this Section 16.1, each Owner of a Residential Unit shall have jurisdiction over and responsibility (including financial responsibility) for the repair or replacement of the furnishings, furniture, and contents of such Residential Unit.

16.2 Faithful Discharge of Duties of Timeshare Association and/or Master Association. In the event of damage to, or destruction of, all or part of the Project, the Timeshare Association and/or the Master Association, as may be applicable pursuant to the foregoing Section 16.1, shall have and shall faithfully discharge their respective duties, responsibilities and authorities as set forth in this Article XVI.

16.3 Master Association or Timeshare Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Master Association or the Timeshare Association, as applicable, their true and lawful attorney in fact in their name, place, and stead for the purpose of dealing with the Project upon its damage or destruction as herein provided. Acceptance by the grantee of a deed or purchase contract from the Declarant or from any Owner shall constitute an appointment by said grantee of the Master Association or the Timeshare Association, as applicable, as his attorney in fact as herein provided. As attorney in fact, the Master Association or the Timeshare Association, as applicable, shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed, or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted.

16.4 General Authority of Master Association and Timeshare Association. Repair and reconstruction of the improvements as used in this Article means restoring the Project to substantially the same condition in which it existed prior to destruction or damage with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before. The proceeds of any casualty insurance collected by the Master Association or the Timeshare Association, as applicable, shall be available to the Master Association or Timeshare Association, as applicable, for the purpose of repair or reconstruction, unless Owners holding at least seventy-five percent (75%) of the Total Votes of the Master Association agree, within one hundred (100) days after such destruction or damage, not to repair or rebuild in accordance with the provisions hereinafter set forth.

16.5 Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Master Association or Timeshare Association, as

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applicable, shall obtain complete and reliable estimates of the costs of repair or reconstruction of that part of the Project damaged or destroyed.

16.6 Repair or Reconstruction. As soon as practicable after receiving said estimates, the Master Association or the Timeshare Association, as applicable, shall diligently pursue to completion the repair or reconstruction of that part of the project damaged or destroyed. The Master Association or the Timeshare Association, as applicable, may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners and no consent or other action by any Owner shall be necessary in connection herewith. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the fire or other casualty, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries, Common Facilities and, if applicable, Timeshare Furnishings as before.

16.7 Funds for Reconstruction. The proceeds of any casualty insurance collected by the Master Association or the Timeshare Association, as applicable, shall be available to the Master Association or the Timeshare Association, as applicable, for the purpose of repair or reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Master Association or the Timeshare Association, as applicable, may levy in advance a Special Common Assessment or a Special Furniture and Maintenance Assessment, as applicable, sufficient to provide funds to pay such estimated or actual cost of repair or reconstruction. Such assessments shall be allocated and collected as provided in Section 14.3 and/or Section 14.5, as applicable, except that any vote therein specified shall not be necessary. Further levies may be made in like manner if the proceeds of insurance and the assessments collected prove insufficient to pay the costs of repair or reconstruction.

16.8 Disbursement of Funds for Repair or Reconstruction. The insurance proceeds received by the Master Association or the Timeshare Association, as applicable, and any amounts received from assessments made pursuant to Section 16.7 shall constitute a fund for the payment of costs of repair, reconstruction, or replacement after casualty. The first money disbursed in payment for costs of repair, reconstruction, or replacement shall be made from insurance proceeds; if there is a balance after payment of all costs of repair, reconstruction, or replacement of Common Areas, such balance shall be distributed to the Owners in proportion to their respective fractions of undivided ownership of the Common Areas. If there is a balance after payment of all costs of repair, reconstruction or replacement of Timeshare Units or Timeshare Furnishings, such balance shall be distributed to the Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common Areas bears to the total of all Timeshare Owners' undivided interests in the Common Areas.

16.9 Partition and Distribution. In the event that Owners holding at least seventy-five percent (75%) of the Total Votes of the Master Association shall agree, within one hundred (100) days after destruction of or damage to three-fourths (3/4) or more of each Building, not to repair or rebuild, the Master Association shall file with the County Recorder for Weber County, State of Utah, a notice setting forth such facts. Upon filing of such notice, the following shall occur:

- (a) The Project, except Timeshare Furnishings and funds in the Furniture and Maintenance Fund, shall be deemed to be owned in common by the Owners;

(b) The undivided interest in the Project so owned in common which shall appertain to each Owner shall be the fraction of undivided interest previously owned by such Owner in the Common Areas;

(c) Any liens affecting any of the Units or Timeshare Interests shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owners in the Project;

(d) The Project, excluding Timeshare Furnishings, shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with funds in the Common Expense Fund and the net proceeds of the insurance on the Project, if any, excluding insurance on Timeshare Furnishings shall be considered as one fund and shall be divided among all the Owners in a fraction equal to the fraction of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit A hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner;

(e) The Timeshare Furnishings owned by the Timeshare Association, the funds in the Furniture and Maintenance Expense Fund, and the proceeds of any insurance on the Timeshare Furnishings shall be subject to an action for partition at the suit of any Timeshare Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the funds in the Furniture and Maintenance Fund, if any, and the proceeds of any insurance on the Timeshare Furnishings, shall be considered as one fund and shall be divided among all such Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common Areas bears to the total of all such Timeshare Owners' undivided interest in the Common Areas, after first paying all liens against the Timeshare Furnishings.

#### ARTICLE XVII

#### OBSOLESCENCE

17.1 Adoption of Plan. Owners holding seventy-five (75%) or more of the Total Votes of the Master Association may agree that the Project is obsolete and adopt a written plan for the renewal and reconstruction of the Project, provided that such plan has the unanimous approval of all first Mortgagees of record at the time such plan is adopted. Written notice of adoption of such a plan, together with a copy of the plan, shall be given to all Owners.

17.2 Payment for Renewal and Reconstruction. The expense of renewal and reconstruction shall be payable by all of the Owners as assessments against their respective Residential Units or Timeshare Interests. Such assessments shall be levied in advance and shall be allocated and collected as provided in Section 14.3 and Section 14.5, as applicable, except that any vote therein specified shall not be necessary. Further levies may be made in a like manner if the amounts collected prove insufficient to pay all costs of renewal or reconstruction. In the event amounts collected pursuant hereto are in excess of the amounts required for renewal and reconstruction, the excess shall be returned to the Owners by the Master Association or the



Timeshare Association, as applicable, by a distribution to each Owner in an amount proportionate to the assessments levied by the Master Association or the Timeshare Association, as applicable.

17.3 Sale of Project. Notwithstanding all other provisions of this Amended Declaration, the Owners may, by an affirmative vote of at least seventy-five percent (75%) of the Total Votes of the Master Association, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Project. Such action shall be binding upon all Owners and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts in such manner and form as may be necessary to effect such sale. The proceeds of any such sale, except that portion of the proceeds derived from sale of the Timeshare Furnishings, shall be divided among all Owners in proportion to the undivided interest in the Common Areas owned by each respective Owner, as set forth in Exhibit A hereto, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the interest of such Owner in the Project. That portion of the proceeds of any such sale derived from sale of the Timeshare Furnishings owned by the Timeshare Association shall be divided among all Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common Areas bears to the total of all such Timeshare Owners' undivided interests in the Common Areas, after first paying all liens against the Timeshare Furnishings.

17.4 Amendment of Article. This Article XVII shall not be amended without the consent of seventy-five percent (75%) of the Total Votes of the Master Association by instruments duly executed and recorded.

#### ARTICLE XVIII

#### CONDEMNATION

18.1 Condemnation. If at any time or times during the continuance of condominium ownership pursuant to this Amended Declaration, all or any part of the Project shall be taken or condemned by any authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be taking by power of eminent domain.

18.2 Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to either (a) the Timeshare Association providing such condemnation award is for Timeshare Furnishings, or (b) the Master Association providing such condemnation award is for other than Timeshare Furnishings. Condemnation awards for Timeshare Furnishings shall be distributed by the Timeshare Association as herein provided. Condemnation awards other than for the Timeshare Furnishings shall be distributed by the Master Association as herein provided.

18.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall terminate and (a) any condemnation award for Timeshare Furnishings shall be allocated among and distributed to the Timeshare Owners in the proportion that each such Timeshare Owner's undivided interest in the Common

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Area bears to the total of all such Timeshare Owners' undivided interest in the Common Areas, after first paying all liens against the Timeshare Furnishings. Any condemnation award other than for Timeshare Furnishings, shall be allocated among and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Such distributions shall be made by check payable jointly to each Owner and his respective Mortgagees, as appropriate.

(a) Allocation of Award. If apportionment or allocation is established by applicable negotiations, judicial decree, or statute, the Master Association and/or the Timeshare Association, as applicable, shall employ such apportionment and allocation to the extent appropriate. Otherwise, as soon as practicable, the Master Association and/or the Timeshare Association, as applicable, shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages or other proceeds, and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners in proportion to their respective undivided interests in the Common Areas. The total amount apportioned to taking of or injury to Timeshare Furnishings shall be allocated among and distributed to all Timeshare Owners in the proportion that each Timeshare Owner's undivided interest in the Common Areas bears to the total of all such Timeshare Owners' undivided interests in the Common Areas, after first paying all liens against the Timeshare Furnishings or injured;

(ii) The amounts apportioned to severance damages shall be allocated among and distributed to the Owners of those Units and Timeshare Interests that have not been taken. Amounts apportioned for severance damage of Timeshare Furnishings shall be allocated among and distributed to all Timeshare Owners in the proportion that each Timeshare Owner's undivided interest in the Common Areas bears to the total of all such Timeshare Owners' undivided interest in the Common Areas, after first paying all liens against the Timeshare Furnishings taken. All other apportioned amounts shall be distributed to the Owners in proportion to their respective undivided interests in the Common Areas;

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

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

(v) Distribution of allocated proceeds shall be made by check payable jointly to each Owner and his respective Mortgagees, as appropriate.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate,

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but shall continue. If any partial taking results in the taking of an entire Residential Unit or Timeshare Interest, the Owner thereof shall cease to be a member of the Master Association or the Timeshare Association, as applicable. The Master Association shall reallocate the voting rights and the undivided interest in the Common Areas appertaining to such Residential Unit or Timeshare Interest in accordance with the provisions of the Condominium Act.

(c) Reconstruction or Repair. Any reconstruction or repair necessitated by condemnation shall be governed by the procedures specified in Article XVI for cases of Damage or Destruction.

## ARTICLE XIX

### BUILDINGS AND LIMITED COMMON AREAS

19.1 Buildings. The Project currently consists of six (6) completed Buildings (Buildings 2A, 2B, 2C, 9A, 10A, and 10B) containing thirty-two (32) Units. Up to four (4) additional Buildings (Buildings 3A, 3B, 3C, and 3D) containing thirty (30) additional Units may be built as depicted on the Amended Map and pursuant to Article XXII hereof. Buildings are constructed principally of wooden frame with both load bearing and non-bearing walls studded with wood; concrete lower floors and all other floors composed of wooden beams covered with plywood; roofs are composed of wooden beams covered with plywood and surfaced with composite or metal roofing; interior walls are surfaced with gypsum board; and exterior walls are surfaced with rough-cut cedar plank or composite siding.

19.2 Limited Common Areas. Each balcony and each patio, if any, as shown on the Amended Map, shall be Limited Common Areas for exclusive use by the Owner of the particular Unit. The Timeshare Furnishings shall be for exclusive use by the Owners of the Timeshare Interests related to the particular Timeshare Unit within which such Timeshare Furnishings are located.

## ARTICLE XX

### ENFORCEMENT OF RESTRICTIONS

20.1 In General. Each Owner shall comply with the provisions of this Amended Declaration, and as applicable, the Master Articles and Master Bylaws, the Timeshare Articles and Timeshare Bylaws, and any rules, regulations, decisions or resolutions adopted pursuant thereto as the same may be lawfully amended, modified, revised or adopted from time to time. The Master Association and/or Timeshare Association shall have full power and authority to enforce compliance with this Amended Declaration, the Master Bylaws, or Timeshare Bylaws, as applicable, and the Rules and Regulations in any manner provided for by law or in equity, including, without limitation, the right to bring an action for damages, an action to recover sums due, an action to enjoin the violation or specifically enforce the provisions thereof. Said action may be maintainable by the Master Association or Timeshare Association, as applicable, or, in a proper case, by an aggrieved Owner. In the event of any action by the Master Association, Timeshare Association, or aggrieved Owner, to enforce the provisions hereof, the Master

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Association, Timeshare Association, or aggrieved Owner, as applicable, shall be entitled to recover from the offending Owner all costs and expenses incurred in connection with such action, including court costs and reasonable attorneys' fees. The obligations, provisions, covenants, restrictions, and conditions contained in this Amended Declaration, as the same may be lawfully amended or supplemented, shall be enforceable by the Master Association or Timeshare Association, as applicable, or by an Owner through a proceeding for prohibitive or mandatory injunction. The rights and remedies herein provided for enforcement of the provisions of this Amended Declaration, the Master Articles and Master Bylaws, and Timeshare Articles and Timeshare Bylaws, the Rules and Regulations, and any decisions and resolutions adopted pursuant to any of the foregoing as the same may be lawfully amended, modified, revised or adopted by the Master Board, the Timeshare Board, or the Owners from time to time shall be in addition to any and all other rights and remedies now or hereafter provided by law.

20.2 Interest. Unless otherwise specifically set forth in this Amended Declaration, all sums payable hereunder by an Owner shall bear interest at a rate to be set by the Master Board or the Timeshare Board from time to time, not to exceed eighteen percent (18%) per annum from the due date, or if advanced or incurred by the Master Association or Timeshare Association, of any other Owner pursuant to authorization contained in this Amended Declaration, within ten (10) days after repayment is requested.

20.3 Certain Specific Enforcement Powers. In amplification of and not in limitation of, the general powers specified in Paragraph 20.1, above, the Master Association and/or Timeshare Association shall have the following rights and powers:

(a) Suspension of Privileges. If any Timeshare Owner shall be in breach of this Amended Declaration, the Timeshare Bylaws or the Rules and Regulations, including, but not limited to, the failure of such Timeshare Owner to pay any assessment on or before the due date thereof, subject to the limitations hereinafter in this Paragraph 20.3(a) set forth, the Timeshare Association may suspend the right of such Timeshare Owner to use the Timeshare Unit during his scheduled occupancy and the right of such Timeshare Owner to participate in any vote or other determination provided for herein. If such suspension of privileges is based on the failure of the Timeshare Owner to pay assessments or any other amounts due hereunder when due, the suspended privileges of such Timeshare Owner shall be reinstated automatically at such time as such Timeshare Owner has paid to the Timeshare Association, in cash or by Cashier's or Certified Check, all amounts past due as of the date of such reinstatement. If such suspension of privileges is based on any act or omission other than the failure of a Timeshare Owner to pay assessments or any other amounts due hereunder when due, no such suspension shall be made except after a meeting of the Timeshare Board at which a quorum of the Timeshare Board is present, duly called and held for such purpose in the same manner as provided in the Timeshare Bylaws for the noticing, calling and holding of a special meeting of the Timeshare Board. Written notice of such meeting shall be given to the Timeshare Owner whose privileges are being sought to be suspended at least ten (10) days prior to the holding of such meeting. Such Timeshare Owner shall be entitled to appear at such meeting and present his case or provide a written response to the Timeshare Board no later than the time scheduled for such meeting as to why his privileges should not be suspended. The decision as to whether such privileges should be suspended shall be made

by a majority of the members of the Timeshare Board present at such meeting. No suspension under this Paragraph 20.3(a) shall be effective unless and until written notice has been given to the Timeshare Owner of the suspension, the reasons therefor and the actions that must be taken by said Timeshare Owner to have all suspended privileges reinstated.

(b) Enforcement by Lien. If any Owner shall fail or refuse to make any payment for any assessments when due, the amount thereof shall constitute a lien on the Unit or Timeshare Interest of such Owner and the Master Association and the Timeshare Association, as applicable, reserve the right to foreclose on such lien as provided for in Section 14.7 above.

(c) Failure to Vacate. If any Timeshare Owner or any other person(s) occupying a Timeshare Unit (hereinafter collectively the "Holdover Occupant") fails to vacate a Timeshare Unit at the end of his scheduled time period, or otherwise uses or occupies a Timeshare Unit during a period other than his properly schedule time, or prevents another Timeshare Owner or any other person(s) otherwise entitled to use the Timeshare Unit (hereinafter the "Scheduled Occupant") from using or occupying a Timeshare Unit during such other Scheduled Occupant's scheduled time period, such Holdover Occupant shall: (i) be subject to immediate removal, eviction or ejection from the Timeshare Unit wrongfully occupied; (ii) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejection to the extent that such notices may be waived under Utah law; (iii) reimburse the Scheduled Occupant otherwise entitled to use the Timeshare Unit for all costs and expenses incurred by him as a result of such conduct, including, but not limited to, costs of alternative accommodations, travel costs, court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Holdover Occupant from such Timeshare Unit; and (iv) pay to the Scheduled Occupant entitled to use the Timeshare Unit during such a wrongful occupancy, as liquidated damages (in addition to the costs and expenses set forth in Paragraph 20.3(c)(iii) above), a sum equal to Two Hundred Percent (200%) of the "fair rental value" per day of the Timeshare Unit for each day or portion thereof, including the day of surrender, during which the Holdover Occupant prevents occupancy of the Timeshare Unit. The Timeshare Association shall be responsible for determining the "fair rental value" of a Timeshare Unit. "Fair rental value" for a Timeshare Unit shall be based upon the cost of renting comparable accommodations located in the Project or in the vicinity of the Project. By entering into a contract for the purchase of a Timeshare Unit or by accepting any conveyance of a Timeshare Unit, each Timeshare Owner agrees that, in the event of a wrongful occupancy by him, damages would be impracticable or extremely difficult to ascertain and that the measure of liquidated damages provided for herein constitutes fair compensation to those who were deprived of occupancy. If a Timeshare Owner, by his intentional or negligent act, renders a Timeshare Unit uninhabitable for the successive time period(s), such Timeshare Owner shall be liable to the Timeshare Owner(s) of successive time period(s) just as if such Timeshare Owner had refused to vacate the Timeshare Unit at the end of his Timeshare Week. For purposes of this section, the act or negligence of a guest, any member of the Timeshare Owner's family, or any other person who occupies the Timeshare Unit with the permission of the Timeshare Owner (including, without

limitation, a person who occupies the Timeshare Unit under an exchange program) shall be deemed to be the act of the Timeshare Owner.

## ARTICLE XXI

### MORTGAGE PROTECTION

21.1 Mortgagee Protection. No breach of any of the covenants, conditions, restrictions, or limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions or limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure or trustee's sale.

21.2 Priority of Liens. No enforcements, or any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Residential Unit or Timeshare Interest prior and superior to all other liens except: (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Residential Unit or Timeshare Interest made in good faith and for value and recorded prior to the date on which any such assessment was levied.

21.3 Prior Liens Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Residential Unit or Timeshare Interest and not to the Project as a whole.

21.4 Mortgage Holder Rights in Event of Foreclosure. Whenever the Mortgagee or other purchaser at a foreclosure sale obtains title to a Unit or Timeshare Interest pursuant to the foreclosure of a Mortgage on such Unit or Timeshare Interest, such acquirer shall take such Unit or Timeshare Interest free of any claims for unpaid assessments and charges against such Unit or Timeshare Interest which accrued prior to the date of the acquisition of title to such Unit or Timeshare Interest by such acquirer except for claims for the pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units or Timeshare Interests in the Project, including such mortgaged Unit or Timeshare Interest. Such unpaid share of assessments shall be deemed to be common expenses collectible prospectively pro rata from all of the Units or Timeshare Interests in the Project, including the Unit or Timeshare Interest that has been acquired in accordance with the provisions of this Section.

21.5 Notice to First Mortgage Holders. If provided with a written request from a first Mortgagee to do so, the Master Association and Timeshare Association shall give the applicable first Mortgagee prompt notice of any default by the mortgagor of the respective Unit or Timeshare Interest in the performance of such mortgagor's obligations under this Amended Declaration not cured within thirty (30) days of default.

21.6 Matters Requiring Mortgagee Approval. Notwithstanding any other provisions contained in this Amended Declaration, the Master Association or the Timeshare Association, as applicable, must obtain the written consent of at least two thirds (2/3) of all Mortgagees holding first Mortgages which encumber Units and/or Timeshare Interests, as such Mortgages then

appear in the official records of Weber County, Utah, before the Master Association or the Timeshare Association, as applicable, shall be entitled to:

(a) By act or omission, seek to abandon or terminate the Project;

(b) Except in the event PMI or the Huffmans, or their respective successors and assigns exercise the rights to construct as described in Article XXII below, change the pro rata interest or obligations of any individual Unit or Timeshare Interest for the purpose of:

(i) Levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or

(ii) Determining the pro rata share of ownership of each Unit or Timeshare Interest in the Common Areas and Common Facilities;

(c) Use hazard insurance proceeds for losses to the Project (whether to Units, Common Areas, Common Facilities or Timeshare Furnishings) for other than the repair, replacement or reconstruction of such condominium property, except as provided by the Act and Article XVI in case of substantial loss to the Units, Common Areas, Common Facilities, and/or Timeshare Furnishings of the Project.

21.7 Amendment. No provision of this Article XXI shall be amended without the prior written consent of at least two-thirds (2/3) of all holders of first Mortgages against Condominium Units and/or Timeshare Interests in the Project as appears on the official records of Weber County, State of Utah, as of the date of such amendment.

## ARTICLE XXII

### RIGHT TO CONSTRUCT; CONVERTIBLE LAND

22.1 Uncertainty of Future Units. As stated in Recital C above, PMI (as to Buildings 3A and 3B) and the Huffmans (as to Buildings 3C and 3D), are the successors in interest to the Declarant under the Original Declaration. Certain Buildings containing Units were depicted on the Original Map and referred to in the Original Declaration, including Exhibit A thereto, but not completed. Prior to the date of the recording of this Amended Declaration, there existed some uncertainty as to the status of PMI's right to construct Units to be located within Buildings 3A and 3B and Huffmans' rights to construct Units to be located within Buildings 3C and 3D. The Master Association and the Owners hereby acknowledge that it is in the Owners' best interest to grant to PMI and the Huffmans and their respective successors and assigns construction rights as set forth in this Article XXII in order to complete the build-out of the Project.

22.2 Right to Construct; Convertible Land. The Owners, pursuant to the affirmative votes referred to in Recital G of this Amended Declaration, hereby grant to PMI and the Huffmans, and their respective successors and assigns, the right to complete construction of the thirty (30) Future Units and requisite parking facilities therefor (the "Right to Construct") on the building site for Buildings 3A, 3B, 3C and 3D and said parking area as depicted on the Amended

Map (the "Convertible Land") upon the terms and provisions set forth in this Article XXII. The Convertible Land is more particularly described as follows:

Parcel A:

Beginning at a point which is South 47°15'00" East 33.08 feet and due South 152.40 feet from the Weber County Monument marking the county line, said monument location being given as East 3002.78 feet and South 3624.00 feet and North 47°15'00" West 1085.00 feet along the county line from the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, Weber County, Utah and running thence South 54°56'34" East 7.33 feet; thence due South 236.23 feet; thence South 07°30'00" East 22.10 feet; thence South 82°30'00" West 21.78 feet; thence North 07°30'00" West 38.00 feet; thence due West 50.00 feet; thence due North 275.00 feet; thence South 54°56'34" East 82.67 feet to the point of beginning.

Parcel B:

ALSO beginning at a point which is South 47°15'00" East 33.08 feet and due South 152.40 feet and South 54°56'34" East 36.65 feet and due South 40.00 feet from the Weber County Monument marking the county line, said monument location being given as East 3002.78 feet and South 3624.00 feet and North 47°15'00" West 1085.00 feet along the county line from the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, Weber County, Utah and running thence due East 15.22 feet; thence South 54°56'34" East 66.92 feet; thence due South 126.56 feet; thence due West 51.51 feet; thence South 07°30'00" East 70.29 feet; thence South 82°30'00" West 20.00 feet; thence North 07°30'00" West 60.00 feet; thence due North 177.81 feet to the point of beginning.

22.3 Terms and Conditions. The terms and conditions of the Right to Construct shall be as follows:

(a) PMI agrees to either: (i) remove all presently constructed portions of Buildings 3A and 3B (except the concrete foundations, first level concrete floor slabs and sub-rough plumbing, which shall remain in place) by October 31, 2003, or (ii) enclose Buildings 3A and 3B by October 31, 2003. The determination as to whether the presently constructed portions of Buildings 3A and 3B shall be removed or enclosed shall be made by PMI solely at its discretion. In the event PMI elects to enclose Buildings 3A and 3B, such enclosure shall consist of the installation of all doors, windows, complete exterior siding and roofs. PMI further agrees that if it elects to enclose Buildings 3A and 3B by October 31, 2003, it shall complete the balance of the exterior improvements to

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such Buildings, including but not limited to the completion of entryways, back decks and stairways, by October 31, 2004. If PMI fails to remove the presently constructed portions of Buildings 3A and 3B as described in this Section 22.3(a) by October 31, 2003, or in the alternative, complete any portion of the enclosure and other described construction by either of the above respective deadlines, as applicable, and no extension of time is granted by the Master Board, PMI's Right to Construct Buildings 3A and 3B shall terminate and all portions of the building site for Buildings 3A and 3B and all portions of Buildings 3A and 3B shall be deemed part of the Common Area.

(b) PMI and the Huffmans shall each have a transferable easement over and on the Common Areas for the purpose of completing construction of the Future Units and the parking therefor on the Convertible Land, for exercising their Rights to Construct, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, PMI and/or the Huffmans, as applicable, and the person causing the damage shall be jointly liable for the prompt repair of such damage.

(c) Subject to the provisions of Section (d) below, and unless otherwise specifically provided in Section 22.3(a) above, PMI and the Huffmans may exercise their Rights to Construct at different times as to portions of the improvements on the Convertible Land and in any order elected by either PMI or the Huffmans. No assurance is made with regard to which portions, if any, of the Convertible Land will be converted to Units, Common Areas, Common Facilities or Limited Common Areas or the order in which such portions will be so converted. In the event PMI or the Huffmans exercise their Right to Construct with respect to a portion of the Convertible Land, the Right to Construct may or may not, in the sole discretion of PMI or the Huffmans, be exercised with respect to any other portion of the Convertible Land.

(d) PMI and the Huffmans shall be restricted in the location of improvements on the Convertible Land and unless the Master Board grants written permission to do otherwise, PMI and the Huffmans shall construct the Future Units and the parking therefor only as depicted on the Amended Map and as may be required by applicable zoning requirements, ordinances or regulations. The total number of Future Units on the Convertible Land shall not exceed thirty (30) Units.

(e) The Future Units to be located on the Convertible Land shall be subject to the same use restrictions as described in this Amended Declaration.

(f) Unless written approval is granted by the Master Board, the Future Units shall be substantially identical to the Units on other portions of the Property within the Project and future structures on the Convertible Land shall be consistent with the structures existing as of the date of recordation of this Amended Declaration in structure type, quality of construction, principal materials to be used and architectural style. Neither PMI nor the Huffmans may erect structures on the Convertible Land other than Buildings containing the Future Units and parking for such Future Units without the prior written consent of the Master Board, which consent may be withheld for any reason or no reason. If approved by the Master Board, further improvements on each area of the Convertible

Land may include recreational facilities, parking areas, flag poles, walkways, landscaping and/or other amenities within the Common Areas contained therein.

(g) The Owners and the Master Association agree and acknowledge that they will legally recognize each Future Unit and its appurtenant voting rights and ownership interests in the Common Areas, as defined in Schedule II of Exhibit A hereto and the Act, upon completion of each such Unit and upon Weber County's issuance of a final certificate of occupancy for such Unit.

(h) After completion, title to each Future Unit thereby completed within the Convertible Land including its appurtenant ownership interest in the Common Areas shall without further action, vest in and be held by PMI or the Huffmans, as applicable, and/or their successors and none of the other Owners shall have any individual or personal claim or title to or interest in such Unit or its appurtenant ownership interest in the Common Areas.

(i) Neither PMI nor the Huffmans shall be required to obtain the consent of any Owner or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to constructing the Future Units and the related parking facilities on the Convertible Land.

(j) PMI or the Huffmans, as applicable, shall identify each Future Unit by assigning the Unit such identification number as described in this Amended Declaration and as depicted on the Amended Map.

(k) All construction shall be performed in a good and workmanlike manner and shall minimize any inconvenience to the operations of the Master Association and the Owners' use and occupancy of the existing Units. Once construction has commenced on the interior of either Building 3A or 3B, the construction of the Future Units in such Building and the related parking therefor shall be diligently prosecuted to completion within eighteen (18) months from commencement of such interior construction in Building 3A or 3B. Once construction of either Building 3C or 3D is commenced, all work on such Building 3C or 3D and the related parking therefor shall be diligently prosecuted to completion within eighteen months (18) months from the commencement of construction of such Building 3C or 3D.

(l) All Rights to Construct granted to PMI and the Huffmans in this Article XXII shall expire and lapse on the date which is five (5) years from the date that this Amended Declaration is recorded (the "Lapse Date"). Provided, however that PMI's Right to Construct could expire earlier pursuant to the provisions of Section 22.3(a). On such expiration date, all portions of the Convertible Land shall be deemed part of the Common Areas except for such portions of it as contain completed Units and Limited Common Areas which have been completed in accordance with this Article XXII.

(m) Notwithstanding anything to the contrary herein, the Owners hereby grant to the Master Board the unilateral right to extend any deadline provided for in this Article

XXII if the Master Board, in its sole discretion, deems it in the best interest of the Owners.

22.4 Amendment of this Article XXII; Successors in Interest. Prior to the Lapse Date, this Article XXII shall not be amended or modified in any way without the prior written consent of PMI and the Huffmans or, if PMI and/or the Huffmans have conveyed their interests to others, the prior written consent of their respective successors in interest. The terms PMI and the Huffmans as used in this Amended Declaration shall mean and include the successors in interest to PMI and/or the Huffmans.

#### ARTICLE XXIII

#### OPTION TO EXPAND

23.1 Option to Expand. It is anticipated that the Project may be expanded. Accordingly, the Master Association hereby reserves, pursuant to Section 57-8-13.6 of the Act, the option to expand the Project (the "Option to Expand") upon the terms and provisions set forth in this Article without the prior consent of the Owners. The Option to Expand must be exercised no later than seven (7) years from the date of recording this Amended Declaration. The terms and conditions of the Option to Expand shall be as follows:

(a) The real property subject to the Option to Expand consists of the real property sometimes hereinafter referred to as the "Additional Land," being more particularly described as follows:

Beginning at a point which is East 2415.00 feet and South 3486.00 feet from the Northwest Corner of Section 6, Township 7 North, Range 2 East, Salt Lake Base and Meridian, Weber County, Utah and running thence South 270.00 feet; thence West 69.02 feet; thence North 45°00'00" West 22.61 feet; thence North 200.02 feet; thence East 15.00 feet; thence North 54.00 feet; thence East 70.00 feet to the point of beginning.

(b) If the Project is expanded, the Additional Land must be added to the Project all at one time and not at different times.

(c) No assurances are made as to where improvements may be placed on the Additional Land, and there are no limitations as to the location of such improvements on the Additional Land however, the maximum number of Units (the "Additional Units") that may be created on the Additional Land is twenty-four (24).

(d) No more than one-half (1/2) of the Additional Units constructed on the Additional Land may be Residential Units and no less than one-half (1/2) of the number of Additional Units constructed on the Additional Land shall be Timeshare Units.

(e) The Additional Units to be built on the Additional Land shall be substantially similar to the existing Units except that (i) the height of buildings containing Additional Units shall not exceed two stories above grade on the east side of the building unless

otherwise approved by the Master Association and (ii) the parking for the Additional Units shall be located beneath the two (2) stories referred to in (e) (i) above. Future improvements shall be consistent with the initial improvements in structure, type, quality of construction, principal materials to be used and architectural style. Except as provided in Section (h) below, structures other than buildings containing Units may not be erected on the Additional Land.

(f) Expansion of the Project shall be accomplished in accordance with the provisions of the Act. In expanding the Project, an amendment to this Amended Declaration and a supplemental record of survey map shall be duly executed, acknowledged, and recorded by the Master Association and the then owners of the Additional Land. Such amendment shall include the information required by the Act.

(g) The amendment to the Amended Declaration described above shall reallocate the undivided interests in the Common Areas so that the Additional Units depicted on the supplemental record of survey map described above shall be allocated undivided interests in the Common Areas on the same basis as the Units depicted on the Amended Map that is recorded concurrently with this Amended Declaration.

(h) Limited Common Areas including porches, balconies, parking stalls or other apparatus intended to serve one or more Units shall be created on the Additional Land. Such Limited Common Areas shall be substantially similar to the Limited Common Areas serving existing Units. The size, type and total number of such Limited Common Areas shall be reasonable and shall be appropriate to the Units involved in light of the number and nature of Additional Units created on the Additional Land.

(i) The Master Association shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to adding the Additional Land.

#### ARTICLE XXIV

#### GENERAL PROVISIONS

24.1 Intent and Purpose. The provisions of this Amended Declaration, and any supplemental or subsequent Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a residential condominium and timeshare project. Failure to enforce any provision, restriction, covenant, or condition in this Amended Declaration, or in any supplemental or subsequent Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

24.2 Interpretation. The provisions of this Amended 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 shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all other genders. The Article and Section headings set forth herein are for convenience and reference only and are

not intended to describe, interpret, define, or otherwise limit or affect the content, meaning, or intent of this Amended Declaration or any Article, Section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

24.3 Registration of Mailing Address. Each Owner shall from time to time register his current mailing address with the Master Association and Timeshare Association, as applicable, or their respective Managers. All notices or demands intended to be served upon any Owner may be sent by first class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address or, if no address has been registered, to the Unit of such Owner. All notices or demands intended to be served upon the Master Association or the Timeshare Association may be sent by first class U.S. Mail, postage prepaid, addressed to the Master Association or Timeshare Association at 404 East 4500 South #A-34, Salt Lake City, Utah 84107, or to such other address as each may hereafter furnish to the Owners in writing. Any notice or demand referred to in this Amended Declaration shall be deemed given when placed in the U.S. Mail, postage prepaid, and in the form provided for in this Section 24.3.

24.4 Audit

(a) The Master Association and the Timeshare Association shall each obtain an audit, by public accountants, of its books and records at least every other year, and copies thereof shall be furnished to Owners upon request and upon payment of reasonable copying and transmittal costs.

(b) Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Master Association or Timeshare Association of which such Owner is a Member.

24.5 Amendment. Except as otherwise provided herein or by the Act, this Amended Declaration may be amended if Owners holding at least fifty-one percent (51%) of the Total Votes of the Master Association consent and agree to such amendment, and an instrument setting forth such amendment and vote is executed by the Master Association and duly recorded in the Office of the County Recorder for Weber County, State of Utah.

24.6 Effective Date. This Amended Declaration and every provision thereof shall take affect upon recording.

24.7 Owner's Obligations. All obligations of an Owner under and by virtue of the provisions contained in this Amended Declaration shall continue, notwithstanding that he may be leasing, renting, or selling under contract his Unit or Timeshare Interest. The Owner of a Unit or Timeshare Interest within the Project shall have the obligation to pay to the Master Association and/or the Timeshare Association, when due, any and all amounts, including interest, accrued in favor of said association(s) to the date of any conveyance of such Owners' Unit or Timeshare Interest to another party. In addition, such Owner shall be obligated to pay to said association(s) interest accrued on such amounts until paid. Notwithstanding the foregoing provisions of this

Section, no Owner shall have any obligation for expenses or other obligations (except interest on prior obligations) accruing after he conveys such Unit or Timeshare Interest to another party.

24.8 Recitals. The Recitals of this Amended Declaration are by this reference incorporated herein and made a part hereof.

IN WITNESS WHEREOF, Bartell Jensen, President of Powder Ridge Village Owners Association, Inc. the Master Association, has executed this Amended Declaration the day and year first above written, and hereby certifies that:

(a) the general provisions of this Amended Declaration have been approved by the required affirmative vote of at least fifty-one percent (51%) of the total votes of the Powder Ridge Village Owners Association, Inc., a Utah nonprofit corporation, pursuant to Section 13.6 of the Original Declaration;

(b) Section 6.1 and Articles XXII and XXIII hereof and Schedules I and II of Exhibit A attached hereto have been approved by the required affirmative vote of at least two thirds (2/3) of the total votes of the Powder Ridge Village Owners Association, Inc., pursuant to Section 57-8-7 of the Act; and

(c) the creation of Units 9A5 and 9A6 and the amendment of the Project boundaries as reflected on the Amended Map have been approved by the affirmative vote of at least seventy-five percent (75%) of the total votes of the Powder Ridge Village Owners Association, Inc.

MASTER ASSOCIATION:

POWDER RIDGE VILLAGE OWNERS ASSOCIATION, INC., a Utah nonprofit corporation

By: Bartell Jensen  
Its: President

STATE OF UTAH )  
COUNTY OF Nebo )  
SS.

E# 1988680 PG47 OF56

The foregoing instrument was acknowledged before me this 17 day of Sept, 2003 by Bartell Jensen, President of Powder Ridge Village Owners Association, Inc., a Utah nonprofit corporation.

Ashlee Cook  
NOTARY PUBLIC  
Residing at: Ogden, Utah

My Commission Expires: 6-16-2007

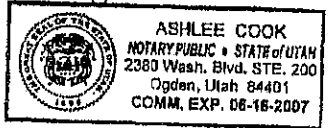


EXHIBIT A

To

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM

FOR

POWDER RIDGE CONDOMINIUMS PHASE I AMENDED

1. Time Period Weeks.

(a) Each Unit has been divided into fifty-two (52) one week time periods, each of which is referred to in this Exhibit A as a "Time Period Week". In each Unit, one (1) Time Period Week is designated as a "Maintenance Week" and fifty-one (51) Time Period Weeks are available for Owners' use. In a Timeshare Unit, each of these fifty-one (51) Time Period Weeks is also referred to as a Timeshare Interest and is owned by a Timeshare Owner. In a Residential Unit, all fifty-two Time Period Weeks are owned by the same Residential Owner.

2. Time Period Week Identification Numbers. Each Time Period Week shall be identified by a five part identification number (e.g. T-00-X-00-00), as follows:

(a) The letter "T" preceding the numerical designations shall indicate that the five part identification number designates and identifies a Time Period Week which is part of a Unit in the Project.

(b) The first (two digit) numerical designation following the letter "T" shall indicate the number of the Building in which the Unit containing the Time Period Week is located, as identified and shown on the Map (e.g. T-02).

(c) The second designation (one alphabetical letter) following the letter "T" shall indicate the entry, stairwell, or "plex" (A, B, C, or D) within the Building in which the Unit containing the Time Period Week is located, as identified and shown on the Map (e.g. T-02-A).

(d) The third (two digit) numerical designation following the letter "T" shall indicate the Unit (from 1 through 8), within the entry, stairwell, or "plex", within the Building, as identified and shown on the Map (e.g. T-02-A-05).

(e) The fourth, and final (two digit) numerical designation following the letter "T" shall indicate the annual Time Period Week (e.g. T-02-A-05-03)

As an example, the five part identification number, T-02-A-05-03, indicates: Building 2, Entry A, Unit 5, Time Period Week number 3.

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3. Timing, Seasons, Floating Use, Bonus Time.

(a) Consecutive Numbering of Time Period Weeks. Time Period Weeks are consecutively numbered during the calendar year from 01 through 52; the week commencing on the first Friday of a calendar year is designated as Time Period Week 01, the week commencing on the second Friday of a calendar year is designated as Time Period Week 02, and so forth.

(b) Friday Starting and Ending Time. Each Time Period Week shall commence on Friday at 12:01 p.m. and end on Friday of the following week at 12:00 noon. The Timeshare Association may, however, establish Friday check-in and check-out times for Timeshare Units as it deems necessary to provide adequate unoccupied time for cleaning and maid services.

(c) Seasons. Each Time Period Week is within a designated "Season" of the year, as follows:

Time Period Weeks 01 through 14 and 47 through 52 - Prime (or Winter) Season  
Time Period Weeks 22 through 41 - High (or Summer) Season  
Time Period Weeks 15 through 21 and 42 through 46 - Swing (or Spring or Fall) Season

(d) Floating Use. While each Owner of a Timeshare Interest owns a fee interest in a specific Time Period Week within a specific Unit and within a specific Season, the use of each Time Period Week shall be on a "floating use" basis, both as to time and Timeshare Unit location within the Project. Each Owner of a Timeshare Interest who is in compliance with all provisions of this Amended Declaration and all other applicable requirements, including the Rules and Regulations, shall, subject to availability, be entitled to occupy a Timeshare Unit within the Project containing the same number of bedrooms, in the same Season, as the Unit designated in the Timeshare Interest owned by such Owner. Except as may be available within the "floating use" reservation system administered by the Timeshare Association or its Manager, no Timeshare Owner shall have the right to occupy a particular Timeshare Unit during a particular Time Period Week. Notwithstanding the foregoing provisions of this paragraph, Owner's shall have the right, subject to availability, and compliance with all then applicable Rules and Regulations, to use their time in the following Seasons:

(i) Owners of Timeshare Interests/Time Period Weeks in the Prime Season may use their owned time in either the Prime, High, or Swing Season.

(ii) Owners of Timeshare Interests/Time Period Weeks in the High Season may use their owned time in either the High or Swing Season.

(iv) Owners of Timeshare Interests/Time Period Weeks in the Swing Season may use their owned time in either the spring or fall portion of the Swing Season.

(e) Bonus Time. In addition to use of the owned time as set forth herein, each Timeshare Owner shall also have the right, subject to availability, compliance with all applicable Rules and Regulations, and payment of the rents therefor as established by the Timeshare Association from time to time, to use available unscheduled time in any Season and in any size Unit. Such available time shall be known as "Bonus Time".

(f) Time Period Weeks Beginning in One Year and Ending in Another. Any Time Period Week which begins in one calendar year and ends in the following calendar year shall be deemed to be a Time Period Week in the calendar year in which it began.

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(g) Fifty-Third (53rd) Weeks. Whenever there occurs a week which begins on the fifty-third (53rd) Friday of a calendar year, such week shall be known as a "Fifty-Third Week".

Each Fifty-Third Week which occurs in connection with a Timeshare Unit shall be scheduled and used based upon the Rules and Regulations of the Timeshare Association. No Timeshare Owner shall have any rights to occupancy or use of any Fifty-Third Week in a Timeshare Unit except as may be granted by the Timeshare Association. Residential Owners shall have unrestricted use of Fifty-Third Weeks in Residential Units.

4. Maintenance Weeks. One of the annually recurring Time Period Weeks within each Unit shall be reserved as a "Maintenance Week". Necessary maintenance and refurbishment shall be performed within each Unit during the Maintenance Week. The Time Period Weeks designated as Maintenance Weeks are set forth on Schedule III of this Exhibit A.

5. Undivided Interest in Common Areas. Each Owner shall, as provided in the Amended Declaration, own an undivided interest in the Common Areas of the Project. The undivided interest in the Common Areas (expressed as a percentage of the whole of the Common Areas) appertaining to each Time Period Week shall be as shown in the following Schedules I and II of this Exhibit A. In connection with each Unit, only fifty-one (51) Time Period Weeks are allocated an undivided interest in the Common Areas, as one (1) Time Period Week in each Unit is reserved as a Maintenance Week and no undivided interest in the Common Areas is allocated to any Maintenance Week.

6. Owner's Votes.

(a) Timeshare Owners' votes. Each Timeshare Owner shall be a Member of the Timeshare Association and, as set forth in this Declaration and the Bylaws of the Timeshare Association, shall be entitled to cast the designated number of votes appurtenant to his Timeshare Interest in any matter properly brought before the Members of the Timeshare Association for vote. In addition, each Timeshare Owner shall be a Member of the Master Association and, as set forth in this Declaration and the Bylaws of the Master Association, shall be entitled to have the Board of Directors of the Timeshare Association cast the designated number of votes appurtenant to his Timeshare Interest in any matter properly brought before the Members of the Master Association for vote.

(b) Residential Owners' votes. So long as a Residential Unit remains withdrawn from maintenance as provided in the Amended Declaration, the Residential Owner thereof shall not be a Member of the Timeshare Association and shall not have any voting rights, or other rights of any kind in connection with the Timeshare Association. Each Residential Owner shall be a Member of the Master Association, and shall be entitled to cast, in any matter properly brought before the Members of the Master Association for vote, all of the votes appurtenant to each of the fifty-one (51) Time Period Weeks to which votes are allocated in such Residential Unit.

(c) Number of votes. The number of votes appurtenant to each Time Period Week is as set forth in Schedules I and II of this Exhibit A. In connection with each Unit, only fifty-one (51) Time Period Weeks are allocated votes, as one (1) Time Period Week in each Unit is reserved as a Maintenance Week and no votes are allocated to any Maintenance Week.

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SCHEDULE I of EXHIBIT A  
(Page 1 of 2)

UNDIVIDED INTERESTS AND OWNER VOTES - Based upon 32 completed Units  
(Applicable as of the date of recordation of the Amended Declaration)

The following schedule depicts the undivided interests and Owner votes which are applicable to the thirty-two (32) Units in Buildings 2A, 2B, 2C, 9A, 10A, and 10B which are completed as of the date of recordation of the Amended Declaration. If and when Future Units are completed in Buildings 3A, 3B, 3C, and 3D, (a) the Undivided Interests and the votes appurtenant to each completed Unit in the Project will have to be recalculated and reallocated based upon the total number of completed Units and the square feet therein, and (b) the total Owner votes will have to be recalculated and reallocated to reflect the votes appurtenant to all Units then completed. Schedule II of Exhibit A reflects the reallocation which will be applicable providing all thirty (30) Future Units in Buildings 3A, 3B, 3C, and 3D are completed.

	Building, Entry, and Unit Designation	Number and Type of Units in Group	Undivided Square Feet per Unit	Owner Interest per Time Period Week	votes per Time Period Week
1.	T-02-A-02-00 T-02-B-01-00 T-02-B-02-00 T-02-C-01-00	4 (One Bedroom)	638	.036863%	35
2.	T-09-A-06-00	1 (One Bedroom)	697	.040196%	39
3.	T-09-A-01-00 T-09-A-02-00 T-09-A-05-00 T-10-A-01-00 T-10-A-02-00 T-10-B-01-00 T-10-B-02-00	7 (Two Bedroom)	920	.053137%	51
4.	T-02-A-01-00 T-02-A-03-00 T-02-A-04-00 T-02-B-03-00 T-02-B-04-00 T-02-C-02-00 T-02-C-03-00 T-02-C-04-00	8 (Two Bedroom)	972	.056128%	54
5.	T-09-A-03-00 T-09-A-04-00 T-10-A-03-00 T-10-A-04-00 T-10-B-03-00 T-10-B-04-00	6 (Three Bedroom)	1356	.078301%	75
6.	T-02-A-05-00 T-02-A-06-00 T-02-B-05-00 T-02-B-06-00 T-02-C-05-00 T-02-C-06-00	6 (Three Bedroom)	1392	.080392%	77
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Totals:		32 Units	33,953 Square Feet	100% Undivided Interest	95,880 Votes

SCHEDULE I of EXHIBIT A, continued

(Page 2 of 2)

Notes:

(1) See paragraph 3 and other information in Exhibit A for the location of each Time Period Unit in the calendar year and for provisions regarding "floating use".

(2) The above calculations of the undivided interest in the Common Areas and the voting rights of each Owner are based upon fifty-one (51) Time Period Weeks per Unit, as one (1) Time Period Week in each Unit is reserved for maintenance time and no undivided Common Area interests or voting rights are attributed to any Maintenance Week.

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SCHEDULE II of EXHIBIT A  
(Page 1 of 2)

**UNDIVIDED INTERESTS AND OWNER VOTES - Based upon 62 completed Units**  
(Will be applicable only when all thirty (30) Future Units are completed in Buildings 3A, 3B, 3C, and 3D)

The following schedule depicts the undivided Interests and Owner votes which will be applicable when all thirty (30) of the Future Units in Buildings 3A, 3B, 3C, and 3D are completed in accordance with the provisions of Article XXII of the Amended Declaration. If less than all thirty (30) of the Future Units are completed within the allotted time, the Master Association shall, using the same formula as used in this Schedule II, promptly (a) recalculate and reallocate the Undivided Common Area Interests appurtenant to each completed Unit in the Project based upon the total number of then completed Units and the square foot area therein, and (b) recalculate and reallocate the Owner votes to reflect only the votes appurtenant to then completed Units.

	Building Entry, and Unit Designation	Number and Type of Units in Group	Square Feet per Unit	Undivided Interest per Time Period Week	Owner votes per Time Period Week
1.	T-03-A-03-00 T-03-C-01-00 T-03-B-01-00 T-03-C-02-00 T-03-B-02-00 T-03-D-01-00	6 (Studio)	306	.0099222%	17
2.	T-02-A-02-00 T-03-B-03-00 T-02-B-01-00 T-03-B-04-00 T-02-B-02-00 T-03-C-03-00 T-02-C-01-00 T-03-C-04-00 T-03-A-02-00 T-03-D-02-00	10 (One Bedroom)	638	.020687%	35
3.	T-09-A-06-00	1 (One Bedroom)	697	.022560%	39
4.	T-09-A-01-00 T-10-A-02-00 T-09-A-02-00 T-10-B-01-00 T-09-A-05-00 T-10-B-02-00 T-10-A-01-00	7 (Two Bedroom)	920	.029830%	51
5.	T-02-A-01-00 T-03-A-04-00 T-02-A-03-00 T-03-A-05-00 T-02-A-04-00 T-03-B-05-00 T-02-B-03-00 T-03-B-06-00 T-02-B-04-00 T-03-C-05-00 T-02-C-02-00 T-03-C-06-00 T-02-C-03-00 T-03-D-03-00 T-02-C-04-00 T-03-D-04-00 T-03-A-01-00 T-03-D-05-00	18 (Two Bedroom)	972	.031516%	54
6.	T-09-A-03-00 T-10-A-04-00 T-09-A-04-00 T-10-B-03-00 T-10-A-03-00 T-10-B-04-00	6 (Three Bedroom)	1356	.043967%	75
7.	T-02-A-05-00 T-03-A-07-00 T-02-A-06-00 T-03-B-07-00 T-02-B-05-00 T-03-B-08-00 T-02-B-06-00 T-03-C-07-00 T-02-C-05-00 T-03-C-08-00 T-02-C-06-00 T-03-D-06-00 T-03-A-06-00 T-03-D-07-00	14 (Three Bedroom)	1392	.045134%	77
			EA 1985680 PG53 OF56		
Totals:		62 Units	60,473 Square Feet	100% Undivided Interest	170,748 Votes

SCHEDULE II of EXHIBIT A, continued

(Page 2 of 2)

Notes:

- (1) See paragraph 3 and other information in Exhibit A for the location of each Time Period Unit in the calendar year and for provisions regarding "floating use".
- (2) The above calculations of the undivided interest in the Common Areas and the voting rights of each Owner are based upon fifty-one (51) Time Period Weeks per Unit, as one (1) Time Period Week in each Unit is reserved for maintenance time and no undivided Common Area interests or voting rights are attributed to any Maintenance Week.

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SCHEDULE III of EXHIBIT A

MAINTENANCE WEEKS  
(Page 1 of 2)

Building, Entry, and Unit Designation	Time Period Week Designated as Maintenance Week
T-02-A-01	45
T-02-A-02	20
T-02-A-03	21
T-02-A-04	44
T-02-A-05	18
T-02-A-06	18
T-02-B-01	14
T-02-B-02	14
T-02-B-03	14
T-02-B-04	44
T-02-B-05	15
T-02-B-06	15
T-02-C-01	12
T-02-C-02	18
T-02-C-03	08
T-02-C-04	15
T-02-C-05	15
T-02-C-06	15
T-03-A-01	18
T-03-A-02	18
T-03-A-03	18
T-03-A-04	18
T-03-A-05	18
T-03-A-06	18
T-03-A-07	18
T-03-B-01	18
T-03-B-02	18
T-03-B-03	18
T-03-B-04	18
T-03-B-05	18
T-03-B-06	18
T-03-B-07	18
T-03-B-08	18

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SCHEDULE III of EXHIBIT A

MAINTENANCE WEEKS  
(Page 2 of 2)

Building, Entry, and Unit Designation	Time Period Week Designated as Maintenance Week
T-03-C-01	18
T-03-C-02	18
T-03-C-03	18
T-03-C-04	18
T-03-C-05	18
T-03-C-06	18
T-03-C-07	18
T-03-C-08	18
T-03-D-01	18
T-03-D-02	18
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T-03-D-04	18
T-03-D-05	18
T-03-D-06	18
T-03-D-07	18
T-09-A-01	15
T-09-A-02	18
T-09-A-03	15
T-09-A-04	15
T-09-A-05	18
T-09-A-06	18
T-10-A-01	15
T-10-A-02	15
T-10-A-03	17
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T-10-B-02	11
T-10-B-03	17
T-10-B-04	15

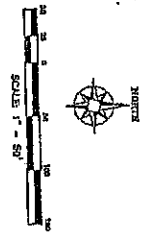
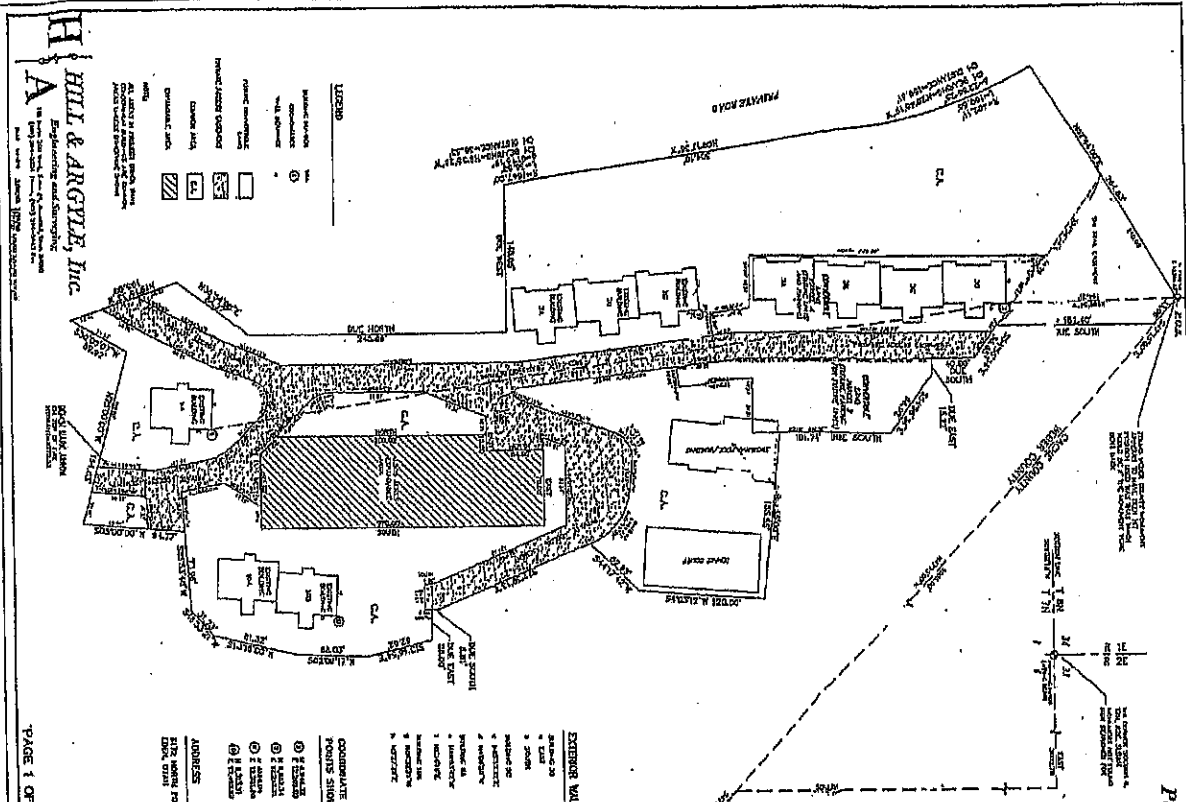
EA 1985480 PGS 6 OF 56

# EXHIBIT “2”



# POWDER RIDGE CONDOMINIUMS PHASE 1 AMENDED

PART OF SECTION 9, TOWNSHIP 7 NORTH, RANGE 2 EAST  
SALT LAKE BASE AND MERIDIAN  
WEBER COUNTY, UTAH  
MARCH 2003



### EXTERIOR WALL BEARINGS

- 1. 12" x 12" CONCRETE
- 2. 12" x 12" CMU
- 3. 12" x 12" BLOCK
- 4. 12" x 12" BRICK
- 5. 12" x 12" SANDWICH PANEL
- 6. 12" x 12" METAL PANEL
- 7. 12" x 12" GLASS
- 8. 12" x 12" ALUMINUM
- 9. 12" x 12" STEEL
- 10. 12" x 12" WOOD

### COORDINATE VALUES FOR POINTS SHOWN ON BUILDINGS

- 1. 12" x 12" CONCRETE
- 2. 12" x 12" CMU
- 3. 12" x 12" BLOCK
- 4. 12" x 12" BRICK
- 5. 12" x 12" SANDWICH PANEL
- 6. 12" x 12" METAL PANEL
- 7. 12" x 12" GLASS
- 8. 12" x 12" ALUMINUM
- 9. 12" x 12" STEEL
- 10. 12" x 12" WOOD

PAGE 1 OF 4

**HILL & ARGYLE, Inc.**  
Engineering and Surveying  
1000 West 2000 South, Suite 100  
Salt Lake City, Utah 84119  
Tel: 313-222-1111  
Fax: 313-222-1112

### BOUNDARY DESCRIPTION

THESE BOUNDARIES ARE BASED ON THE FOLLOWING DATA: A SURVEY OF THE SECTION 9, TOWNSHIP 7 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, WEBER COUNTY, UTAH, MADE BY JOHN W. HARRIS, SURVEYOR, IN 1988. THE BOUNDARIES ARE SHOWN ON THE ATTACHED MAP AND ARE SUBJECT TO THE FOLLOWING CONDITIONS: 1. THE BOUNDARIES ARE BASED ON THE BEST AVAILABLE DATA AND ARE SUBJECT TO CHANGE IF BETTER DATA IS AVAILABLE. 2. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE CORNER MARKERS ARE IN THEIR ORIGINAL POSITIONS AND HAVE NOT BEEN MOVED OR DESTROYED. 3. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 4. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 5. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED.

### SURVEYOR'S CERTIFICATE

I, JOHN W. HARRIS, SURVEYOR, DO HEREBY CERTIFY THAT THE BOUNDARIES SHOWN ON THE ATTACHED MAP ARE CORRECTLY BOUNDARIED AND ARE SUBJECT TO THE FOLLOWING CONDITIONS: 1. THE BOUNDARIES ARE BASED ON THE BEST AVAILABLE DATA AND ARE SUBJECT TO CHANGE IF BETTER DATA IS AVAILABLE. 2. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE CORNER MARKERS ARE IN THEIR ORIGINAL POSITIONS AND HAVE NOT BEEN MOVED OR DESTROYED. 3. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 4. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 5. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED.



### OWNER'S DEDICATION

WE, THE UNDERSIGNED OWNERS OF THE PROPERTY SHOWN ON THE ATTACHED MAP, DO HEREBY DEDICATE THE BOUNDARIES SHOWN ON THE MAP TO THE PUBLIC AND TO THE STATE OF UTAH. WE AGREE TO HOLD THE BOUNDARIES SUBJECT TO THE FOLLOWING CONDITIONS: 1. THE BOUNDARIES ARE BASED ON THE BEST AVAILABLE DATA AND ARE SUBJECT TO CHANGE IF BETTER DATA IS AVAILABLE. 2. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE CORNER MARKERS ARE IN THEIR ORIGINAL POSITIONS AND HAVE NOT BEEN MOVED OR DESTROYED. 3. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 4. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED. 5. THE BOUNDARIES ARE BASED ON THE ASSUMPTION THAT THE ADJACENT PROPERTIES ARE CORRECTLY BOUNDARIED.

### CORPORATE ACKNOWLEDGMENT

I, SHAWN C. HEDGECOCK, Secretary of the Weber County Planning Commission, do hereby certify that the following is a true and correct copy of the resolution of the Weber County Planning Commission, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah, and that the same is a true and correct copy of the resolution of the Weber County Planning Commission, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah.



**WEBER COUNTY ENGINEER**  
I, John W. Harris, Surveyor, do hereby certify that the following is a true and correct copy of the resolution of the Weber County Engineer, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah, and that the same is a true and correct copy of the resolution of the Weber County Engineer, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah.

**WEBER COUNTY PLANNING COMMISSION**  
I, Shawn C. Hedgcock, Secretary of the Weber County Planning Commission, do hereby certify that the following is a true and correct copy of the resolution of the Weber County Planning Commission, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah, and that the same is a true and correct copy of the resolution of the Weber County Planning Commission, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah.

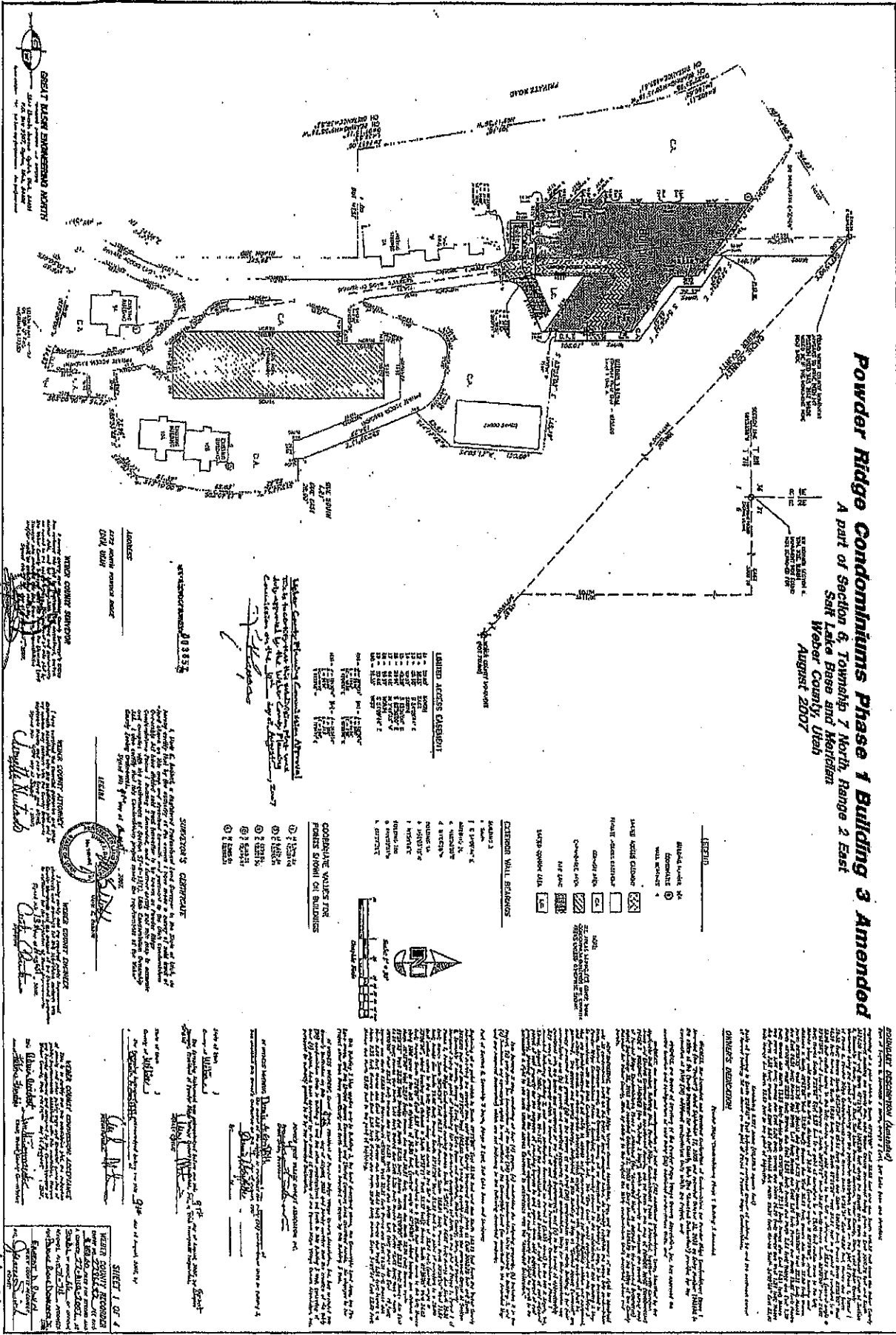
**WEBER COUNTY SURVEYOR**  
I, John W. Harris, Surveyor, do hereby certify that the following is a true and correct copy of the resolution of the Weber County Surveyor, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah, and that the same is a true and correct copy of the resolution of the Weber County Surveyor, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah.

**WEBER COUNTY ATTORNEY**  
I, David C. Gibbs, Attorney, do hereby certify that the following is a true and correct copy of the resolution of the Weber County Attorney, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah, and that the same is a true and correct copy of the resolution of the Weber County Attorney, as the same appears in the minutes of the meeting held on March 10, 2003, at 10:00 AM, in the City of Provo, Utah.

# EXHIBIT “3”

# Powder Ridge Condominiums Phase 1 Building 3 Amended

A part of Section 6, Township 7 North, Range 2 East  
Salt Lake Base and Meridian  
Weber County, Utah  
August 2007



**GENERAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
3. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

**ADDITIONAL NOTES:**  
1. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.  
2. The owner warrants that the information provided in this plan is true and correct to the best of their knowledge and belief.

**NEVER COUNTY ATTORNEY:**  
[Signature]  
[Stamp]

**NEVER COUNTY ENGINEER:**  
[Signature]  
[Stamp]

**NEVER COUNTY COMMISSIONER:**  
[Signature]  
[Stamp]

**NEVER COUNTY RECORDS:**  
[Signature]  
[Stamp]

# EXHIBIT "4"



\*W2284183\*

EN 2284183 PG 1 OF 10  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
13-AUG-07 1:53 PM FEE \$32.00 DER-KRA  
REC FOR: HOME ABSTRACT

WHEN RECORDED, MAIL TO:

J. Martin Tate  
HARBOR REAL ASSET FUND, LP  
7659 South 700 West (Main Street)  
Midvale, UT 84047  
Parcel # \_\_\_\_\_

Space Above for Recorder's Use  
Tax Serial No. \_\_\_\_\_

DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is made August 10, 2007 (the "Effective Date"), between Powder Ridge Land IV, LLC a Utah limited liability company, whose address is 45 East 200 North, Alpine, UT 84004 ("PRL IV"), Dennis A. Griffith, an individual and resident of California ("Griffith") and Griffith Bros. ST&G Benefit Plan ("Griffith Bros." and together with PRL IV and Griffiths, the "Trustor"); J. Martin Tate, Esq., as Trustee, whose address is 7659 South 700 West, Midvale, UT 84047; and Harbor Real Asset Fund, LP, a Delaware limited partnership, as Beneficiary, whose address is 7659 South 700 West, Midvale, UT 84047.

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably conveys and warrants to Trustee, in trust, with power of sale, for the benefit and security of Beneficiary, the real property, situated in Weber County, Utah, described on Exhibit A attached hereto ("Property").

TOGETHER WITH all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Property, or any part thereof, subject, however, to the right, power and authority hereinafter given to Beneficiary to collect and apply such rents, issues, and profits. The entire estate, property and interest hereby conveyed to Trustee may hereinafter be referred to collectively as the "Trust Estate".

This Deed of Trust is given for the purpose of securing (1) payment of the indebtedness evidenced by a promissory note ("Note") of even date herewith, in the principal sum of Six Million Six Hundred Fifty One Thousand Five Hundred Twenty Three and 86/100 Dollars \$ 6,651,523.86 made by PRL IV and Guaranteed by Griffith and Griffith Bros., payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement and covenant of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to any Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof,

together with interest thereon as herein provided. It is understood and agreed that this Deed of Trust shall secure payment of any future advances made by Lender to or for the benefit of Trustor from time to time under this Deed of Trust or the other Loan Documents up to a total principal amount not to exceed \$12,000,000.00, it being agreed any such advances shall be made at the sole and absolute discretion of Lender within two (2) years from the date hereof, and all interest accruing thereon, shall be equally secured by this Deed of Trust and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Deed of Trust.

TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR COVENANTS AND AGREES:

1. Maintenance, Repair and Construction. To keep the Trust Estate in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Trust Estate; not to commit or permit waste thereof; not to commit, suffer or permit any act upon the Trust Estate in violation of law; to do all other acts which from the character or use of the Trust Estate may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on the Trust Estate, Trustor further agrees:

a. To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and

b. To allow Beneficiary to inspect the Trust Estate at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. Insurance. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf and at Trustor's expense, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.

3. Evidence of Title. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. Actions Affecting the Trust Estate. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Trust Estate, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum incurred by Beneficiary or Trustee.

5. Taxes and Impositions. To pay at least ten days before delinquency all taxes and assessments affecting the Trust Estate, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Trust Estate; to pay, when due, all encumbrances, charges, and liens with interest, on the Trust Estate or any part thereof; which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

6. Actions by Trustee and/or Beneficiary to Preserve Trust Estate. Should Trustor fail to make any payment or to do any act or herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Trust Estate for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights of powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay reasonable legal fees and expenses.

7. Repayment of Expenses. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the interest rate of eighteen percent (18%) per annum, compounded monthly.

8. Environmental Indemnification. To indemnify, defend and hold Beneficiary and Trustee harmless from any claims, judgments, damages, penalties, fines, expenses or liabilities, arising or in any way relating to the presence, release, or disposal of any toxic or hazardous substances from the Trust Estate. As used in this Section 8: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an

**Environmental Cleanup.**

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

**IT IS MUTUALLY AGREED THAT:**

9. Proceeds from Condemnation of Destruction. Should the Trust Estate or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Trust Estate, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorneys' fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

10. Beneficiary's Powers. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the Note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of Trust or the lien or charge thereof; (d) reconvey, without warranty, all or any part of said property. The grantees in any reconveyance may be described as "the person or persons entitled



thereto," and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

11. Assignment of Rents. As additional security, Trustor hereby assigns Beneficiary, during the continuance of these trusts, all rents, issues, royalties and profits of the Trust Estate and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the Trust Estate, to collect all rents, royalties, issues and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such monies shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.

12. Appointment of Receiver. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby irrevocably consenting to the appointment of such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Trust Estate or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

13. Remedies Not Exclusive. The entering upon and taking possession of the Trust Estate, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage to the Trust Estate, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

14. Non-Waiver. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

15. Time of the Essence; Default; Acceleration. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary.

16. Foreclosure by Power of Sale. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Trust Estate to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the Note and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Trust Estate on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than allowed by law, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and Beneficiary's attorneys' fees; (2) cost of any evidence of title procured in connection with such sale; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at 18% per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

17. Additional Remedies. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or upon a default or alleged default by Trustor in the payment or performance of any other obligation secured by, or in any way relating to, said property, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

18. Successor Trustee. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Property or

some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

19. Successors and Assigns: Joint and Several Obligations. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note. In this Deed of Trust, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

20. Acceptance of Trust. Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of a pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

21. Governing Law. This Deed of Trust and the related Deed of Trust Note constitute the entire understanding of the parties and shall be construed according to the laws of the State of Utah.

22. Notice of Default and Sale. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

23. Restrictions on Transfer. In the event of any sale, assignment, transfer, conveyance or other disposition or subjection to any lien, voluntary or involuntary, whether by operation of law or otherwise, of the Trust Estate, or any part thereof or any interest therein, without in each instance the prior written consent of Beneficiary, which consent shall not be unreasonably withheld, the entire unpaid principal balance of the indebtedness secured hereby together with accrued interest shall immediately become due and payable at the option of Beneficiary.

**NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.**

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first above written.

TRUSTOR:

Powder Ridge Land IV, LLC  
a Utah limited liability company

By: [Signature]  
Name: Jared Wright  
Its: EXECUTIVE V.P.

STATE OF UTAH )  
                          ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 10 day of Aug, 2007, by Jared Wright, the Executive V.P. of Powder Ridge Land IV, LLC, a Utah limited liability company.

[Signature]  
NOTARY PUBLIC

My Commission Expires:  
01/19/2011

Residing at:  
45 E 200 N Alpine UT 89004



[Signature]  
Dennis A. Griffith

STATE OF UTAH )  
                          ) ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 10 day of AUG, 2007, by Dennis A. Griffith.

[Signature]  
NOTARY PUBLIC

My Commission Expires:  
01/19/2011

Residing at:  
45 E. 200 N Alpine UT 89004





Parcel #1  
 Part of Section 8, Township 7 North, Range 2 East, Salt Lake Base & Meridian, US Survey, beginning at a point located North 18215.33' and West 105.00 feet from the Southwest corner of Powder Ridge Condominiums Phase I amended, running thence North 19015.33' West 72.86 feet, thence along a 1167.00 foot radius curve to the right 253.43 feet (LC = North 12954.14' West 253.13' feet) thence due East 140.05 feet, thence due South 245.56 feet, thence South 36284.03' West 84.77' feet to the point of Beginning.

Ex. Id. #23-012-0107 ✓

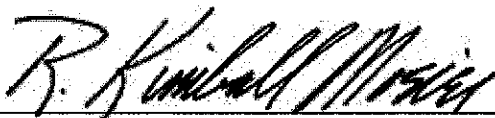
Parcel #1  
 The "Right to Construct" fifteen (15) "Future Units" in future Building 2A, 2B, 2C, 2D and the parking therefor, together with any and all Grantor's right, title, and interest in, to, and/or in connection with, the "Convertible Lease" located within Powder Ridge Condominiums Phase I Amended, Weber County, Utah, all as set forth in, and subject to the provisions of the Amended and Restated Declaration of Condominiums for Powder Ridge Condominiums Phase I Amended recorded on October 28, 2003 as Entry Number 1988680 (the "Amended Declaration") and the Plat of Powder Ridge Condominiums Phase I Amended recorded on October 23, 2003 as Entry Number 1988579 (the "Amended Plat"), together with any and all rights of Grantor pursuant to said Amended Declaration and Amended Plat.

Ex. Id. Pt. of 23-122-0833 ✓

# EXHIBIT "5"

The below described is **SIGNED**.

Dated: January 12, 2012



R. KIMBALL MOSIER  
U.S. Bankruptcy Judge



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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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In re:

HRAF HOLDINGS, LLC, and  
HARBOR REAL ASSET FUND, LP,

Debtors.

Bankruptcy No. 10-32433 (RKM)  
Bankruptcy No. 10-32436 (RKM)

Jointly Administered under  
Case No. 10-32433

Chapter 11

---

ORDER CONFIRMING DEBTORS' FIRST AMENDED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE, DATED  
SEPTEMBER 26, 2011

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The matter before the Court is the *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, dated September 26, 2011* (the "**Plan**") [Docket No. 234] filed jointly by HRAF HOLDINGS, LLC and HARBOR REAL ASSET FUND, LP (collectively, the "**Debtors**") in this jointly administered bankruptcy case. On January 12, 2012, the Court conducted a hearing to consider confirmation of the Plan and all objections thereto (the "**Confirmation Hearing**"). At the Confirmation Hearing, Matthew M. Boley appeared on behalf of Debtor HRAF HOLDINGS, LLC, Michael R. Johnson appeared on behalf of Debtor HARBOR REAL ASSET FUND, LP, and other appearances were noted on the record.



WHEREAS, the Plan having been transmitted to creditors and equity security holders; and

WHEREAS, after reviewing and considering the Plan, the *Declaration of Ryan Relyea* filed in support of the Plan [Docket No. 319], the *Supplemental Ballot Tabulation Register* (the "**Ballot Register**") concerning the Plan [Docket No. 320], the *Memorandum of Law in Support of Confirmation of the Debtors' Joint Plan of Reorganization* [Docket No. 321], all other papers filed in support of and in opposition to the Plan, the representations of counsel and evidence received at the Confirmation Hearing, and all other relevant matters of record in this case, the Court separately entered its *Findings and Conclusions Regarding Confirmation of Debtors' First Amended Plan of Reorganization* (the "**Findings and Conclusions**"), which Findings and Conclusions are incorporated herein by this reference; and

WHEREAS, it having been determined by the Court at the Confirmation Hearing on notice that all of the applicable requirements for confirmation set forth in 11 U.S.C. § 1129 have been satisfied concerning the Plan; and for good cause appearing, **THE COURT HEREBY ORDERS AND DECREES** as follows:<sup>1</sup>

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<sup>1</sup> Capitalized terms used but not otherwise defined herein are defined in the Plan. Unless otherwise provided herein, all references to statutory sections in this Confirmation Order using the section symbol "§" are to the relevant sections of the Bankruptcy Code.

1. Plan Confirmed. The Plan shall be, and hereby is, CONFIRMED as expressly supplemented and modified by this Confirmation Order (as supplemented and modified, the “**Confirmed Plan**”). A copy of the Plan is attached hereto as **Exhibit “A.”**

2. Resolving Inconsistency. In the event of any conflict or inconsistency between the terms of the Plan and the terms of this Confirmation Order, the terms of this Confirmation Order shall control. Except as otherwise provided herein, the terms of the Plan are incorporated by reference into and are an integral part of this Confirmation Order.

3. Supplementation of and Modifications to Plan. The Confirmed Plan consists of the Plan as supplemented by the following supplementations and modifications, which supplementations and modifications are expressly incorporated into the Plan by this reference:

A. The definition of “Allowed” under paragraph 1.2 of the Plan shall be, and hereby is, supplemented with the additional provisions as follows:

1.2.5 the Claim of Promontory Development LLC as “allowed” pursuant to that certain *Order Approving Debtor’s Settlement with Promontory Development*, dated August 8, 2011 [Docket No. 216]; or

1.2.6 any Claim expressly allowed pursuant to Order of the Court entered prior to the Effective Date.

B. Section 4.7 of the plan shall be amended and superseded in its entirety as follows:

**4.7 Class 7 - Secured Claim of Salt Lake County.**

4.7.1 Impairment and Voting. Class 7 is impaired under the Plan. The holders of Allowed Class 7 Claims shall be entitled to vote to accept or reject the Plan.

4.7.2 Payment. The holders of Allowed Class 7 Claims shall be paid the full amount of their claim as of the Petition Date. Interest shall accrue on the principal balance of each Class 7 Claim at the rate prescribed by applicable nonbankruptcy law (i.e., 7.08% per annum) from the Petition Date through the Effective Date; provided, however, that the total amount of the Claim shall not exceed the value of the property securing it. Interest shall accrue on the principal balance of each Class 7 Claim at the rate prescribed by applicable nonbankruptcy law (i.e., 7.08% per annum) from the Effective Date until such Claim is paid in full.

4.7.3 Distributions. As Collateral which secures a portion of the Class 7 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 7 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. To the extent the Debtor elects to pay a Class 7 Claim after closing, (y) the Collateral shall be sold free and clear of the lien, claim or interest of the holder of the Class 7 Claim with all liens to attach instead to the proceeds of the sale, and (z) immediately following closing, the Debtor shall deposit into a segregated account cash proceeds in an amount sufficient to pay in full the Allowed Secured Claim plus twelve months of interest thereon.

4.7.4 Deadline for Distributions; Termination of the Plan Injunction. Allowed Class 7 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 7 Claims shall retain their Liens until their Claims are paid in full. The injunction imposed under the Plan automatically shall terminate and expire as to the holders of Allowed Class 7 Claim on the first business day following the Final Distribution Date. If Allowed Class 7 Claims have not been paid in full on or before the Final Distribution Date, the

holders thereof shall be free thereafter to exercise their rights and remedies in their Collateral as prescribed by applicable nonbankruptcy law.

4. Objections. Any and all objections to confirmation of the Plan that were not withdrawn, waived or settled prior to the Confirmation Hearing, and all reservations of rights included in any such objections, are overruled in their entirety on the merits (except as otherwise provided in this Confirmation Order), and all withdrawn objections are deemed withdrawn with prejudice.

5. Effect of Confirmation. As of the Effective Date of the Plan, all persons and entities are hereby permanently enjoined from commencing or continuing, in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtors, their Estates, or the Reorganized Debtor, on account of, or respecting any Claims, Interests, debts, rights, Causes of Action or liabilities discharged pursuant to the Confirmed Plan, except only to the extent expressly permitted under the Confirmed Plan or this Confirmation Order.

6. Executory Contracts and Unexpired Leases. On the Effective Date, all existing written lease agreements, if any, under which either of the Debtors is the landlord, all existing settlement agreements with borrowers or guarantors wherein either of the Debtors is or was a lender (to the extent executory in nature), all insurance policies insuring the Debtors or the Debtors' assets (to the extent executory in nature), and all executory contracts and unexpired leases identified in Exhibit "A" to the *Notice of Proposed Assumption or Rejection of Executory Contracts and Unexpired Leases in*

*Connection with Confirmation of Plan and Notice of Hearing*, filed November 29, 2011 [Docket No. 285] shall be assumed by the Debtors, as more particularly described in Article 8 of the Plan, and the Debtors shall not be required to make any cure payments as a condition to such assumptions. All other executory contracts and unexpired leases to which either of the Debtors is a party shall be, and hereby are, deemed rejected, excepting only any executory contract or unexpired lease that (i) has been assumed pursuant to a Final Order of the Bankruptcy Court entered before the Effective Date or (ii) is the subject of a separate motion to assume or assign or reject filed under Section 365 of the Bankruptcy Code before the Effective Date.

7. Implementation and Consummation of Plan. In accordance with section 1142 of the Bankruptcy Code, the implementation and consummation of the Confirmed Plan in accordance with its terms shall be, and hereby is, authorized and approved, and the Debtors, the Reorganized Debtor or any other Person referenced in the Confirmed Plan shall be, and they hereby are, authorized, empowered and directed to issue, execute, deliver, file and record any documents, and to take any action necessary or appropriate to consummate the Confirmed Plan in accordance with its terms.

8. Payment of Statutory Fees; Final Decree. The Estate shall be responsible for the payment of any post-confirmation fees due pursuant to 28 U.S.C. §1930(a)(6) and the filing of post-confirmation reports, until the case is closed. A final decree may be entered as soon as practicable after initial distributions have commenced under the Confirmed Plan, and within the time limits set forth in Local Rule 3022-1.

9. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction, in accordance with the Plan and sections 105(a) and 1142 of the Bankruptcy Code, with respect to all matters arising in, arising under or related to the Bankruptcy Case or Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including but not limited to all of the matters described in Article 10 of the Plan.

10. Notice of Entry of Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7), 2002(k) and 3020(c), on or before the fifth Business Day following the date of entry of this Confirmation Order, the Debtors shall serve notice of entry of this Confirmation Order on all creditors and interest holders, the United States Trustee, and other parties-in-interest, by causing such notice of entry to be delivered to such parties by first-class mail, postage prepaid. No other or further notice shall be necessary.

11. Notice of Effective Date. Within five Business Days following the occurrence of the Effective Date, the Reorganized Debtor shall file notice of the occurrence of the Effective Date and shall serve a copy of the notice on all creditors and interest holders, the United States Trustee, and other parties-in-interest, by causing such notice to be delivered to such parties by first-class mail, postage prepaid. No other or further notice of the Effective Date shall be necessary.

12. Effect of Dimple Dell Sale Order. Nothing set forth herein shall be construed to impair, modify, alter or change the rights and obligations of the Debtors, their creditors or any other parties in interest under that certain *Order Authorizing Debtor HRAF Holdings, LLC to Sell Real Property (Located at 10658 S. Dimple Dell*

*Rd., Sandy, Utah) Free and Clear of Liens, Claims and Interests*, entered December 14, 2011 [Doc. 299] (the "**Dimple Dell Sale Order**") and, to the extent of any inconsistency between the terms of this Order and the terms of the Dimple Dell Sale Order, the terms of the Dimple Dell Sale Order shall control.

13. Rights of Powder Ridge Village Owners Association, Inc. Concerning "Convertible Land" and "Additional Land." Nothing set forth herein shall be construed to impair, modify, alter or restrict the ability of Powder Ridge Village Owners Association, Inc. or its successors and assigns to bring a quiet title action and/or declaratory relief action against the Debtors in the United States Bankruptcy Court or some other court of competent jurisdiction to seek a determination from the court of the rights and other legal relations of the parties concerning ownership of, and the rights and obligations of the parties concerning, that certain real property defined as the "Convertible Land" and the "Additional Land," as those terms are more fully described and explained in that certain *Limited Objection to First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* filed by Powder Ridge Village Owners Association, Inc. on December 29, 2011, as Docket Entry 308.

14. Sales Free and Clear. Pursuant to §§ 105(a) and 363(f), subject to the Reorganized Debtor's compliance with all of its obligations under the Confirmed Plan and this Confirmation Order, and except as otherwise set forth in the Confirmed Plan, all property to sold under the Confirmed Plan shall be transferred to the relevant purchaser (or its designee) at the applicable time free and clear of any "interest" (within the fullest

of extent of the meaning of such term as used in § 363(f)), including but not limited to any Liens of any kind whatsoever, with all such interest and Liens to attach to the net proceeds of the sale in the order of their priority, with the same validity, force and effect which they now have as against such property, subject to any claims and defenses the Debtors' estates may possess with respect thereto.

15. Revesting of Debtor's Property. Except as otherwise provided in the Plan or in this Confirmation Order, on the Effective Date, in accordance with § 1141(b) and (c), all property of the Estate and all other property dealt with by the Plan shall be (i) vested in the Reorganized Debtor, free and clear of all Liens, Claims and interests. The Debtors shall remain as debtors in possession under the Bankruptcy Code, until the Effective Date. Except as set forth in the Plan, the Reorganized Debtor may operate its businesses, and may use, acquire and dispose of any of its property on and after the Effective Date, free of any restrictions imposed by the Bankruptcy Code.

-----END OF ORDER-----



# **EXHIBIT A**

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Matthew M. Boley (8536)  
Steven C. Strong (6340)  
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Attorneys for Debtor-in-Possession  
Harbor Real Asset Fund, LP

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**IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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In re

HRAF HOLDINGS, LLC, and  
HARBOR REAL ASSET FUND, LP,  
  
Debtors.

Bankruptcy No. 10-32433 (RKM)  
Bankruptcy No. 10-32436 (RKM)

Jointly Administered under  
Case No. 10-32433

Chapter 11

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**FIRST AMENDED PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: September 26, 2011

HRAF Holdings, LLC and Harbor Real Asset Fund, LP, debtors-in-possession in the above-captioned jointly administered bankruptcy case, hereby propose the following joint plan of reorganization under Section 1121 of Title 11 of the United States Code. The following shall constitute a separate plan of reorganization proposed by each of the foregoing debtors.

**ARTICLE 1  
DEFINITIONS AND RULES OF INTERPRETATION**

**SECTION A. DEFINED TERMS**

For purposes of this Plan, the following terms shall have the meanings specified in this Article 1. A term used but not defined herein, which is also used in the Bankruptcy Code, shall have the meaning ascribed to that term in the Bankruptcy Code.

**1.1** "Administrative Expense Claim" shall mean a Claim that is Allowed under Section 503(b) of the Bankruptcy Code and that is entitled to priority under Section 507(a)(1) of the Bankruptcy Code, including, without limitation,

**1.1.1** All fees and expenses of Professionals Allowed pursuant to an Order of the Bankruptcy Court, and

**1.1.2** all fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930.

**1.2** "Allowed" shall mean, with reference to any Claim:

**1.2.1** a Claim that has been listed by the Debtors in their Schedules and (i) is not listed as disputed, contingent or unliquidated, and (ii) is not a Claim as to which a proof of claim has been filed;

**1.2.2** a Claim as to which a timely proof of claim has been filed by the Bar Date and either (i) no objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery, has been made on or before any applicable deadline, or (ii) if an objection thereto, or application to estimate, equitably subordinate or otherwise limit recovery has been interposed, the extent to which such Claim has been allowed (whether in whole or in part) by a Final Order;

**1.2.3** a Claim arising from the recovery of property under Section 550 or 553 of the Bankruptcy Code and allowed in accordance with Section 502(h) of the Bankruptcy Code; or

**1.2.4** any Claim expressly designated as an "allowed" Claim under this Plan or pursuant to the Confirmation Order.

**1.3** "Avoidance Actions" shall mean Causes of Action arising or held by the Estate under Sections 502, 510, 541, 544, 545, 547, 548, 549, 550 or 553 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer laws.

1.4 "Bank" shall mean and refer to Loan Acquisitions Group, LLC, which is the successor-in-interest to Bank of America, N.A. and the current holder of the promissory note and related loan documents originally executed and delivered by the Debtors in favor of Bank of America, N.A.

1.5 "Bankruptcy Case" or "Case" shall mean the above-captioned jointly administered bankruptcy case of the Debtors, Case No. 10-32433. "Bankruptcy Cases" or "Cases" shall mean the above-captioned bankruptcy cases of the Debtors pending in the Bankruptcy Court.

1.6 "Bankruptcy Code" shall mean Title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

1.7 "Bankruptcy Court" or "Court" shall mean the United States Bankruptcy Court for the District of Utah in which the Bankruptcy Cases are pending and, to the extent of any reference under 28 U.S.C. § 157, the unit of such District Court specified pursuant to 28 U.S.C. § 151.

1.8 "Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075, and any local rules of the Bankruptcy Court.

1.9 "Bar Date" shall mean: (i) January 12, 2011 with respect to a Claim against the Estate other than a Claim of a Governmental Unit; and (ii) March 8, 2011 with respect to a Claim against the Estate of a Governmental Unit.

1.10 "Black Ridge Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Washington County, State of Utah, at or about 250 Tonaquint Dr., Saint George, UT.

1.11 "Bogus Basin Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Boise County, State of Idaho, at or about Bogus Basin Ski Resort.

1.12 "Business Day" shall mean any day other than a Saturday, Sunday or legal holiday recognized in the State of Utah.

1.13 "Canyon Vine Cove Property" means and refers to the real property and improvements owned by HRAF and located in Salt Lake County, State of Utah at or about 14233 S. Canyon Vine Cove, Draper, UT.

1.14 "Cash" shall mean lawful currency of the United States of America (including wire transfers, cashier's checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks and money orders).

1.15 "Causes of Action" shall mean, without limitation, any and all actions, causes of action, defenses, liabilities, obligations, rights, suits, debts, sums of money, damages, judgments, Claims or proceedings to recover money or property and

demands of any nature whatsoever, whether known or unknown, in law, equity or otherwise, including, without limitation, Avoidance Actions.

**1.16** "Cedar Valley Property" means and refers to the real property and improvements, if any, currently titled in the name of Strawberry Holdings, LLC and in which Harbor holds a first priority Lien interest, located in Iron County, State of Utah at or about Cedar Valley Acres Subdivision.

**1.17** "Claim" shall mean a claim against a Person or its property as defined in Section 101(5) of the Bankruptcy Code, including, without limitation, (i) any right to payment, whether or not such right is reduced to judgment, and whether or not such right is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or (ii) any right to an equitable remedy for breach of performance, if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, or is fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

**1.18** "Class" shall mean those classes designated in Article III of this Plan.

**1.19** "Code" shall mean Title 11 of the United States Code, as amended from time to time, as applicable to the Bankruptcy Cases.

**1.20** "Costs of Sale" shall have the meaning provided in section 5.13.1 of the Plan.

**1.21** "Collateral" shall mean any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable law.

**1.22** "Confirmation Date" shall mean the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Bankruptcy Cases.

**1.23** "Confirmation Order" shall mean the order of the Bankruptcy Court confirming the Plan pursuant to the provisions of the Bankruptcy Code, and any supplementary orders of the Bankruptcy Court issued in furtherance of the Plan.

**1.24** "Contingent or Unliquidated Claim" shall mean any Claim for which a proof of claim has been filed with the Bankruptcy Court but which was not filed in a sum certain, or which has not occurred and is dependent upon a future event that has not occurred or may never occur, and which has not been Allowed.

**1.25** "Creek Road Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Salt Lake County, State of Utah at or about 7390 Creek Road, Suite 203, Sandy, UT.

**1.26** "Debtor" or "Debtors" shall mean and refer to, singularly or collectively as the context may require, HRAF Holdings, LLC and Harbor Real Asset Fund, LP and, from and after the Effective Date, shall mean and refer to the Reorganized Debtor.

**1.27** "Deer Canyon Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Wasatch County, State of Utah, sometimes referred to as Lots 1, 2, 3, 4, 5, 11, 12, 13, 14 and 15, Deer Canyon Preserve Phase 1.

**1.28** "Dimple Dell Property" means and refers to the real property and improvements owned by HRAF and located in Salt Lake County, State of Utah at or about 10658 S. Dimple Dell Rd., Sandy, UT.

**1.29** "Disclosure Statement" shall mean the disclosure statement relating to the Plan, including, without limitation, all exhibits and schedules thereto, in the form approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

**1.30** "Disputed Claim" shall mean:

**1.30.1** if no proof of claim relating to a Claim has been filed, a claim that is listed in the Schedules as unliquidated, disputed or contingent; or

**1.30.2** if a proof of claim relating to a Claim has been filed, a Claim as to which a timely objection or request for estimation, or request to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, has been made, or which is otherwise disputed by the Debtors, or the Reorganized Debtor in accordance with applicable law, which objection, request for estimation, action to limit recovery or dispute has not been withdrawn or determined by Final Order; or

**1.30.3** a Claim which is a Contingent or Unliquidated Claim.

**1.31** "Disputed Claim Amount" shall mean the amount set forth in the proof of claim relating to a Disputed Claim or an amount estimated pursuant to an order of the Bankruptcy Court in respect of a Disputed Claim in accordance with Section 502(c) of the Bankruptcy Code.

**1.32** "Disputed Claims Reserve" shall have the meaning set forth in Section 6.4 hereof.

**1.33** "Distribution Record Date" shall mean the Confirmation Date.

**1.34** "Effective Date" shall mean the date which is 30 days after the Confirmation Date, or if such date is not a Business Day, the next succeeding Business Day; provided, however, that if, as of such date, all conditions precedent to the occurrence of the Effective Date set forth in Section 9.1 of the Plan have not been satisfied or waived, then the first Business Day immediately following the day upon which all such conditions have been satisfied or waived.

**1.35** "Equity Interest" shall mean any membership interest or the interest of any holder of common or preferred equity securities of either of the Debtors or of any general or limited partnership interest in either of the Debtors, and all options, warrants and rights, contractual or otherwise, to acquire any such equity securities or to acquire

any general or limited partnership interest in either of the Debtors, as such interests exist immediately prior to the Effective Date.

**1.36** "Estate" or "Estates" shall mean the respective estates of the Debtors arising pursuant to Section 541 of the Bankruptcy Code. From and after the Effective Date, "Estate" shall mean and refer to the consolidated estate of the Reorganized Debtor as defined under this Plan, including all property of both Debtors which was part of their pre-confirmation estates pursuant to Section 541 of the Bankruptcy Code.

**1.37** "Final Order" shall mean an order or judgment which has not been reversed, stayed, modified or amended and, as to which (i) the time to appeal or seek review or rehearing has expired and as to which no appeal or petition for certiorari, review or rehearing is pending, or (ii) if appeal, review, reargument or certiorari of the order has been sought, the order has been affirmed or the request for review, reargument or certiorari has been denied and the time to seek a further appeal, review, reargument or certiorari has expired, and as a result of which such order shall have become final and nonappealable in accordance with applicable law; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

**1.38** "Final Distribution Date" shall mean the earlier of (a) one hundred eighty (180) days after the Debtors have completed the liquidation of all Real Property and other assets, or (b) September 9, 2015.

**1.39** "Final Sales Period" shall mean the period ending September 9, 2015.

**1.40** "General Unsecured Claim" shall mean a Claim that is not a Secured Claim or that is not entitled to priority of payment under Section 507 of the Bankruptcy Code.

**1.41** "Harbor" shall mean Harbor Real Asset Fund, LP.

**1.42** "Haven Estates Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Uintah County, State of Utah at or about 500 W. 750 S., Vernal, UT.

**1.43** "HRAF" shall mean HRAF Holdings, LLC.

**1.44** "Initial Distribution Date" shall mean the date that is 30 days after the Effective Date, or the next succeeding Business Day if such thirtieth day is not a Business Day.

**1.45** "Interim Distribution Date" shall mean each of the following dates: (a) the nine month anniversary of the Effective Date; (b) the eighteen month anniversary of the Effective Date; (c) the twenty-four month anniversary of the Effective Date; and (d) the thirty month anniversary of the Effective Date.

**1.46** "LaColonia Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Coachella, California at or about Parcel I & II, Phase 2, La Colonia Subdivision.

**1.47** "Lien" shall have the meaning set forth in Section 101(37) of the Bankruptcy Code; except that a lien that has been avoided in accordance with Sections 544, 545, 546, 547, 548, 549 or 553 of the Bankruptcy Code shall not constitute a Lien.

**1.48** "Makaha Beach Property" means and refers to the real property and improvements, if any, owned by Harbor and located in Honolulu County, State of Hawaii and sometimes referenced as Tax Parcel No. 1-8-4-010-060-0000.

**1.49** "Person" shall mean any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association or organization, Governmental Unit or political subdivision thereof.

**1.50** "Participants" shall have the meaning provided in section 3.26 of this Plan.

**1.51** "Participated Loans" shall have the meaning provided in section 3.26 of this Plan.

**1.52** "Participated Property" shall have the meaning provided in section 3.26 of this Plan.

**1.53** "Participation Interests" shall have the meaning provided in section 3.26 of this Plan.

**1.54** "Participation Proceeds" shall have the meaning provided in section 4.26.3 of this Plan.

**1.55** "Petition Date" shall mean September 9, 2010.

**1.56** "Plan" shall mean this *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, including, without limitation, the exhibits, supplements, appendices and schedules hereto, either in their present form or as the same may be altered, amended or modified from time to time, including pursuant to the Confirmation Order.

**1.57** "Plan Rate" shall mean the interest rate determined pursuant to 28 USC. § 1961 as of the Petition Date.

**1.58** "Powder Mountain Condo Pads" means and refers to the real property and improvements, if any, owned by HRAF and located in Weber County, State of Utah at or about (i) Parcel A, TIN #23-12-120, Parcel B, .505 acres, Tin #23-12-106, Parcel C, .682 acres, TIN #23-12-107, Parcel D, TIN #23-12-119 and Parcel E, TIN #23-12-105.

**1.59** "Powder Mountain Lots" means and refers to the real property and improvements, if any, owned by HRAF and located in Weber County, State of Utah at or



about (i) Parcel A, TIN #23-12-120, Parcel B, .505 acres, Tin #23-12-106, Parcel C, .682 acres, TIN #23-12-107, Parcel D, TIN #23-12-119 and Parcel E, TIN #23-12-105.

**1.60** "Priority Claims" shall mean any and all Claims (or portions thereof), if any, entitled to priority under Section 507(a) of the Bankruptcy Code other than Administrative Expense Claims.

**1.61** "Priority Tax Claims" shall mean any Claim of a Governmental Unit entitled to priority under Section 507(a)(8) of the Bankruptcy Code.

**1.62** "Pro Rata" shall mean a proportionate share of the total distribution made at any particular time under this Plan to the holders of Allowed Claims in a Class, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of such Allowed Claim is the same as the ratio of the amount of the consideration distributed on account of all Allowed Claims in such Class to the total of all Allowed Claims in such Class.

**1.63** "Professionals" shall mean (i) those Persons employed pursuant to an order of the Bankruptcy Court in accordance with Sections 327 or 1103 of the Bankruptcy Code and to be compensated for services pursuant to Sections 327, 328, 329, 330 and 331 of the Bankruptcy Code, or (ii) those Persons for which compensation and reimbursement is allowed by the Bankruptcy Court pursuant to Section 503(b)(4) of the Bankruptcy Code.

**1.64** "Promontory Lots" means and refers to the 4 individual lots together with improvements, if any, owned by HRAF and located in Summit County, State of Utah at or about 8270, 8101, 8223 N. Sunrise Loop and 7521 Fiddlers Hollow, Park City, UT.

**1.65** "Real Property" means and refers to: (a) the parcels of real property identified on Schedule A; (b) any other real property owned by one of the Debtors on the Effective Date or in which one of the Debtor's acquires ownership or another interest on or before the Final Distribution Date; or (c) any real property upon which either of the Debtors has, or prior to the Final Distribution Date obtains, a lien interest.

**1.66** "Reorganized Debtor" shall mean the consolidated Debtors as reorganized on the Effective Date pursuant to the terms of this Plan.

**1.67** "Royal Pointe Property" means and refers to the real property and improvements, if any, owned by HRAF and located in the City of Live Oak, County of Columbia, State of Florida, consisting of approximately 35 lots in the Royal Pointe Subdivision.

**1.68** "Schedules" shall mean the schedules of assets and liabilities, the list of holders of interests and the statements of financial affairs filed by the Debtors under Section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as such schedules, lists and statements have been or may be supplemented or amended from time to time.

**1.69** "Secured Claim" shall mean any Claim that is secured by a Lien on Collateral to the extent of the value of such Collateral, as determined in accordance with

Section 506(a) of the Bankruptcy Code, or, in the event that such Claim is a claim of setoff under Section 553 of the Bankruptcy Code, to the extent of such setoff.

**1.70** "Southgate Townhomes" means and refers to the real property and improvements, if any, owned by HRAF and located in Washington County, State of Utah at or about 2200 South Circle Dr., St. George, UT.

**1.71** "Stoney Creek Property" means and refers to the real property and improvements, if any, owned by HRAF and located in Taney County, Missouri at or about Gretna Road, Branson, MO.

**1.72** "Subordinated Claim" means a Claim that is subordinated to other classes of Claims by agreement, consent or order of the Bankruptcy Court.

**1.73** "Washington County Property" means and refers to the real property and improvements, if any, owned by Harbor and located in Washington County, State of Utah, more particularly known as Tax Parcel or Tax Serial Number SG-6-2-36-2002.

**1.74** "Water Stock" means and refers to the fourteen (14) shares of stock of Midway Irrigation Company, and all rights related thereto, owned by Harbor.

## **SECTION B. RULES OF CONSTRUCTION**

**1.75** Capitalized Terms. Unless otherwise provided, any capitalized terms used in the Plan shall have the meaning set forth in Article 1.

**1.76** Other Terms. All terms not defined in this Article 1 or otherwise defined in the Plan, but that are defined in the Code or the Rules shall have the meaning ascribed by the Code or the Rules. For convenience, terms defined in the Code may be capitalized in the Plan, and the Plan sometimes may include a cross-reference to the Code. Neither the failure to capitalize any such term, nor the failure to include a Code cross-reference, however, shall modify the meaning or use of such term as defined in the Code.

**1.77** References Generally. All references to an "article" or "articles" are to articles in the Plan. All references to a "section" or "sections" designated by capital letters are to the section and all numbered paragraphs within such section. All references to a "section," "paragraph," "sections" or "paragraphs" designated by numbers are to the individual numbered sections or numbered paragraphs in the Plan. The words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to the Plan as a whole and not to any particular Section, sub-Section or clause contained in the Plan.

**1.78** Incorrect Cross-References. The definitions contained in Article 1 of this Plan, and other articles and sections of this Plan, provide a plethora of specific cross-references to other articles, sections and subsections. Certain cross-references inadvertently may be misstated or incorrect. To the extent a definition or other provision in this Plan misstates a cross-reference, the mistake should not render the definition or

other provision or this Plan ambiguous or invalid. Rather, the Plan should be construed as if the correct cross-reference had been made.

**1.79 References to Documents, Headings or Exhibits.** Any reference in the Plan to a contract, instrument, release or other agreement or document being in a particular form or on particular terms and conditions shall mean that such document shall be substantially in such form or substantially on such terms and conditions. Any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit, as it may have been or may be amended, modified or supplemented. Unless otherwise specified in a particular reference, all references in the Plan to Articles, Sections, Subsections and Exhibits are references to Articles, Sections, Subsections and Exhibits of or to the Plan.

**1.80 General Rules of Construction.** The headings at the beginning of each paragraph or section this Plan are solely for convenience and may not be used or construed in any manner to interpret, define, change, modify, amend, alter or restrict the substance of the Plan. Unless the context requires otherwise, singular nouns and pronouns used in this Plan shall be deemed to include the plural and vice versa. Pronouns of one gender or the neuter shall be deemed to include the equivalent pronouns of the other gender or the neuter. The rules of construction contained in Section 102 of the Bankruptcy Code shall apply to the terms of this Plan.

**1.81 Computation of Time.** In computing any period of time prescribed or allowed in the Plan, Bankruptcy Rule 9006(a) shall apply. Among other things, to the extent a deadline or due date falls on a weekend or holiday, the deadline or due date shall be the next business day that is neither a weekend nor a holiday.

## ARTICLE 2 TREATMENT OF ALLOWED ADMINISTRATIVE EXPENSE CLAIMS AND ALLOWED PRIORITY TAX CLAIMS

**2.1 Non-Classification.** As provided in Section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified for the purposes of voting on, or receiving distributions under, the Plan. All such Claims are instead treated separately in accordance with the terms in this Article II.

### **2.2 Administrative Expense Claims.**

**2.2.1 General.** Except as otherwise agreed to by the Debtors and the holder of an Allowed Administrative Expense Claim, each such holder shall be paid in full in Cash on the later of (i) the date such Allowed Administrative Expense Claim becomes due in accordance with its terms, and (ii) the Effective Date. If the Debtors dispute any portion of an Administrative Expense Claim, the Debtors shall pay such Claim within 30 days after the entry of a Final Order with respect to the allowance of such disputed Administrative Expense Claim.

**2.2.2 U.S. Trustee's Fees.** The United States Trustee's quarterly fees shall be paid in full without prior approval pursuant to 28 U.S.C. § 1930 on or before the Effective Date.

### **2.2.3 Professional Compensation and Expense Reimbursement Claims.**

2.2.3.1 Each Professional of the Debtors and/or the Reorganized Debtor may request that its fees and expenses be paid in accordance with the procedures set forth in the order of the Bankruptcy Court approving the Disclosure Statement. Such Professional shall file a final application for the allowance of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date no later than thirty days after the Effective Date. Any award granted by the Bankruptcy Court shall be paid (i) within ten days of the entry of the order of the Bankruptcy Court approving such award, unless a stay is obtained, or (ii) upon such other terms as may be mutually agreed upon between such holder of an Allowed Administrative Expense Claim and the Debtors.

2.2.3.2 All fees and expenses of Professionals for services rendered after the Confirmation Date in connection with the Bankruptcy Cases and the Plan including, without limitation, those relating to the occurrence of the Effective Date, shall be paid by the Reorganized Debtor upon receipt of reasonably detailed invoices therefore in such amounts and on such terms as such Professional and the Reorganized Debtor may agree, without the need for further Bankruptcy Court authorization or entry of a Final Order.

2.2.4 Source of Payment of Administrative Expenses. Subject to the availability of Cash, Allowed Administrative Expenses of the Debtors shall be paid from the amounts or reserves established under sections 6.1.3.8, 6.1.3.9, 6.1.4.8 and 6.1.4.9 of this Plan, or from any other unencumbered assets of the Reorganized Debtor.

2.3 Priority Tax Claims. At the sole election of the Reorganized Debtor, each holder of an Allowed Priority Tax Claim shall be paid either (i) upon such terms as may be agreed to between the Reorganized Debtor and such holder of an Allowed Priority Tax Claim, (ii) in full in Cash on the later of the Effective Date or the date that such Allowed Priority Tax Claim would have been due if the Bankruptcy Case had not been commenced, or (iii) in four equal annual Cash payments, beginning on September 9, 2012 and ending on the Final Distribution Date, totaling the amount of such Allowed Priority Tax Claim, plus interest at the rate prescribed by Bankruptcy Code § 511.

## **ARTICLE 3 CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

Claims, other than Administrative Expense Claims and Priority Tax Claims, shall be classified for all purposes, including voting on, confirmation of, and distribution pursuant to the Plan, as follows:

### **SECTION A. UNSECURED CLAIMS AGAINST HRAF**

3.1 Class 1 – Priority Claims (HRAF). Class 1 shall consist of all Allowed Priority Claims as against HRAF.

**3.2 Class 2 – General Unsecured Claims (HRAF).** Class 2 shall consist of all Allowed non-priority Unsecured Claims against HRAF, including the Allowed Claim of the Bank.

## **SECTION B. TAX CLAIMS SECURED BY REAL PROPERTY**

**3.3 Class 3 – Secured Claim of Boise County.** Class 3 shall consist of the Allowed Secured Claim of Boise County. Boise County holds an Allowed Claim secured by the Bogus Basin Property.

**3.4 Class 4 – Secured Claim of Columbia County Tax Collector.** Class 4 shall consist of the Allowed Secured Claim of Columbia County. Columbia County holds an Allowed Claim secured by the Royal Pointe Property.

**3.5 Class 5 – Secured Claim of Honolulu County.** Class 5 shall consist of the Allowed Secured Claim of Honolulu County. Honolulu County holds an Allowed Claim secured by the Makaha Beach Property.

**3.6 Class 6 – Secured Claim of Iron County.** Class 6 shall consist of the Allowed Secured Claim of Iron County. Iron County holds an Allowed Claim secured by the Cedar Valley Property.

**3.7 Class 7 – Secured Claim of Salt Lake County Treasurer.** Class 7 shall consist of the Allowed Secured Claim of the Salt Lake County Treasurer. Salt Lake County holds an Allowed Claim secured by the Creek Road Property, the Canyon Vine Cove Property and the Dimple Dell Property.

**3.8 Class 8 – Secured Claim of Summit County.** Class 8 shall consist of the Allowed Secured Claim of Summit County. Summit County holds an Allowed Claim secured by the Promontory Lots and the Deer Canyon Property.

**3.9 Class 9 – Secured Claim of Taney County Collector.** Class 9 shall consist of the Allowed Secured Claim of Taney County Collector. Taney County holds an Allowed Claim secured by the Stoney Creek Property.

**3.10 Class 10 – Secured Claim of Uintah County.** Class 10 shall consist of the Allowed Secured Claim of Uintah County. Taney County holds an Allowed Claim secured by the Haven Estates Property.

**3.11 Class 11 – Secured Claim of Wasatch County Corporation.** Class 11 shall consist of the Allowed Secured Claim of Wasatch County Corporation. Wasatch County holds an Allowed Claim secured by the Deer Canyon Property.

**3.12 Class 12 – Secured Claim of Washington County.** Class 12 shall consist of the Allowed Secured Claim of Washington County. Washington County holds an Allowed Claim secured by the Black Ridge Property and the Southgate Property owned by HRAF, and the Washington County Property owned by Harbor.

**3.13 Class 13 – Secured Claim of Weber County.** Class 13 shall consist of the Allowed Secured Claim of Weber County. Weber County holds an Allowed Claim secured by the Powder Mountain Lots and the Powder Mountain Condo Pads.

#### **SECTION C. OTHER SECURED CLAIMS AGAINST HRAF**

**3.14 Class 14 – Secured Claim of Creek Road Owners Association.** Class 14 shall consist of the Allowed Secured Claim of the Creek Road Owners Association.

**3.15 Class 15 – Secured Claim of Jordanelle Special Services District.** Class 15 shall consist of the Allowed Secured Claim of Jordanelle Special Services District.

**3.16 Class 16 – Secured Claim of The Promontory Conservancy.** Class 16 shall consist of the Allowed Secured Claim of the Promontory Conservancy.

**3.17 Class 17 – Secured Claim of Reynolds Brothers Construction.** Class 17 shall consist of the Allowed Secured Claim of Reynolds Brothers Construction. Reynolds Brothers Construction alleges that its Claim is secured by the Dimple Dell Property, which Claim and/or Lien is or may be disputed or challenged by the Debtors.

**3.18 Class 18 – Miscellaneous Secured Claims (HRAF).** Class 18 shall consist of the Allowed Secured Claim of any other holder of an Allowed Secured Claim against HRAF that is not specifically classified in another Class.

#### **SECTION D. OTHER SECURED CLAIMS AGAINST HARBOR**

**3.19 Class 19 – Secured Claim of the Bank.** Class 19 shall consist of the Allowed Claim of the Bank that is secured by a Lien upon certain of Harbor's personal property, including without limitation Harbor's membership interest in and right to profits distributions from HRAF.

**3.20 Class 20 – Secured Claim of Kenneth and Richelle Patey.** Class 20 shall consist of the Allowed Secured Claim of Kenneth and Richelle Patey. As more particularly described in Proof of Claim 9-1, filed in Harbor's Case on January 12, 2011, Mr. and Mrs. Patey alleges that they hold a Claim and that their Claim is secured by the Water Stock. The Claim and/or Lien of Mr. and Mrs. Patey is or may be disputed or challenged by the Debtors.

**3.21 Class 21 – Miscellaneous Secured Claims (Harbor).** Class 21 shall consist of the Allowed Secured Claim of any other holder of an Allowed Secured Claim against Harbor that is not specifically classified in another Class.

#### **SECTION E. UNSECURED CLAIMS AGAINST HARBOR**

**3.22 Class 22 – Priority Claims (Harbor).** Class 22 shall consist of all Allowed Priority Claims as against Harbor.

**3.23 Class 23 – General Unsecured Claims (Harbor).** Class 23 shall consist of all Allowed non-priority Unsecured Claims against Harbor.

#### **SECTION F. EQUITY INTERESTS**

**3.24 Class 24 – Equity Interests in Harbor.** Class 24 shall consist of all Equity Interests in Harbor.

**3.25 Class 25 – Equity Interest in HRAF.** Class 25 shall consist of the Equity Interest in HRAF held by Harbor.

#### **SECTION G. PARTICIPATION INTERESTS**

**3.26 Class 26 – Participation Interests.** Class 26 shall consist of the claims or interests (the "Participation Interests") of loan participants (the "Participants") in the participated loans (the "Participated Loans") and certain parcels of Real Property, all listed on Schedule A attached hereto (the "Participated Property"), which claims or interests are evidenced by, among other documents, Claim 10-1 filed in Harbor's Case, and Claim 119-1 filed in HRAF's Case.

#### **SECTION H. SUBORDINATED CLAIMS**

**3.27 Class 27 – Subordinated Claims.** Class 27 shall consist of all Allowed Claims that are subordinated to the other Classes of Claims by agreement, consent or order of the Bankruptcy Court.

### **ARTICLE 4 TREATMENT OF CLAIMS AND EQUITY INTERESTS**

#### **SECTION A. UNSECURED CLAIMS AGAINST HRAF**

##### **4.1 Class 1 - Priority Claims (HRAF).**

**4.1.1 Impairment and Voting.** Class 1 is impaired under the Plan. The holders of Allowed Class 1 Claims shall be entitled to vote to accept or reject the Plan.

**4.1.2 Payment.** The holders of Allowed Class 1 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 1 Claims shall not be paid post-petition interest on their Claims.

**4.1.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 1 Claim, each holder of an Allowed Class 1 Claim shall receive Cash in an amount equal to such Allowed Class 1 Claim on or before the Interim Distribution Date first occurring at least sixty days after such Priority Claim becomes an Allowed Priority Claim.

**4.2 Class 2 – General Unsecured Claims (HRAF).**

**4.2.1 Impairment and Voting.** Class 2 is impaired under the Plan. The holders of Allowed Class 2 Claims shall be entitled to vote to accept or reject the Plan.

**4.2.2 Payment.** The holders of Allowed Class 2 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 2 Claims shall not be paid post-petition interest on their Claims.

**4.2.3 Distributions.** Subject to the limitations described in section 6.1.3.11, the holders of Allowed Class 2 Claims shall be paid, pro rata, (a) from time to time, but in any event at least on the Initial Distribution Date and the subsequent Interim Distribution Dates, to the extent that a full or partial distribution of Cash is available on such dates, and (b) on or before the Final Distribution Date.

**SECTION B. TAX CLAIMS SECURED BY REAL PROPERTY**

**4.3 Class 3 - Secured Claim of Boise County**

**4.3.1 Impairment and Voting.** Class 3 is impaired under the Plan. The holders of Allowed Class 3 Claims shall be entitled to vote to accept or reject the Plan.

**4.3.2 Payment.** The holders of Allowed Class 3 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.3.3 Distributions.** As Collateral which secures a portion of the Class 3 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 3 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 3 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 3 Claims shall retain their Liens until their Claims are paid in full.

**4.4 Class 4 - Secured Claim of Columbia County.**

**4.4.1 Impairment and Voting.** Class 4 is impaired under the Plan. The holders of Allowed Class 4 Claims shall be entitled to vote to accept or reject the Plan.

**4.4.2 Payment.** The holders of Allowed Class 4 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.



**4.4.3 Distributions.** As Collateral which secures a portion of the Class 4 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 4 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 4 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 4 Claims shall retain their Liens until their Claims are paid in full.

**4.5 Class 5 - Secured Claim of Honolulu County.**

**4.5.1 Impairment and Voting.** Class 5 is impaired under the Plan. The holders of Allowed Class 5 Claims shall be entitled to vote to accept or reject the Plan.

**4.5.2 Payment.** The holders of Allowed Class 5 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.5.3 Distributions.** As Collateral which secures a portion of the Class 5 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 5 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 5 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 5 Claims shall retain their Liens until their Claims are paid in full.

**4.6 Class 6 - Secured Claim of Iron County.**

**4.6.1 Impairment and Voting.** Class 6 is impaired under the Plan. The holders of Allowed Class 6 Claims shall be entitled to vote to accept or reject the Plan.

**4.6.2 Payment.** The holders of Allowed Class 6 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.6.3 Distributions.** As the Collateral which secures a portion of the Class 6 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 6 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 6 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law,

such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 6 Claims shall retain their Liens until their Claims are paid in full.

**4.7 Class 7 - Secured Claim of Salt Lake County.**

**4.7.1 Impairment and Voting.** Class 7 is impaired under the Plan. The holders of Allowed Class 7 Claims shall be entitled to vote to accept or reject the Plan.

**4.7.2 Payment.** The holders of Allowed Class 7 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.7.3 Distributions.** As Collateral which secures a portion of the Class 7 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 7 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 7 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 7 Claims shall retain their Liens until their Claims are paid in full.

**4.8 Class 8 - Secured Claim of Summit County.**

**4.8.1 Impairment and Voting.** Class 8 is impaired under the Plan. The holders of Allowed Class 8 Claims shall be entitled to vote to accept or reject the Plan.

**4.8.2 Payment.** The holders of Allowed Class 8 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.8.3 Distributions.** As Collateral which secures a portion of the Class 8 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 8 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 8 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 8 Claims shall retain their Liens until their Claims are paid in full.

#### **4.9 Class 9 - Secured Claim of Taney County**

**4.9.1 Impairment and Voting.** Class 9 is impaired under the Plan. The holders of Allowed Class 9 Claims shall be entitled to vote to accept or reject the Plan.

**4.9.2 Payment.** The holders of Allowed Class 9 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.9.3 Distributions.** As Collateral which secures a portion of the Class 9 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 9 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 9 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 9 Claims shall retain their Liens until their Claims are paid in full.

#### **4.10 Class 10 - Secured Claim of Uintah County**

**4.10.1 Impairment and Voting.** Class 10 is impaired under the Plan. The holders of Allowed Class 10 Claims shall be entitled to vote to accept or reject the Plan.

**4.10.2 Payment.** The holders of Allowed Class 10 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.10.3 Distributions.** As Collateral which secures a portion of the Class 10 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 10 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 10 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 10 Claims shall retain their Liens until their Claims are paid in full.

#### **4.11 Class 11 - Secured Claim of Wasatch County**

**4.11.1 Impairment and Voting.** Class 11 is impaired under the Plan. The holders of Allowed Class 11 Claims shall be entitled to vote to accept or reject the Plan.

**4.11.2 Payment.** The holders of Allowed Class 11 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.11.3 Distributions.** As Collateral which secures a portion of the Class 11 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 11 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 11 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 11 Claims shall retain their Liens until their Claims are paid in full.

#### **4.12 Class 12 - Secured Claim of Washington County**

**4.12.1 Impairment and Voting.** Class 12 is impaired under the Plan. The holders of Allowed Class 12 Claims shall be entitled to vote to accept or reject the Plan.

**4.12.2 Payment.** The holders of Allowed Class 12 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.12.3 Distributions.** As Collateral which secures a portion of the Class 12 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 12 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 12 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 12 Claims shall retain their Liens until their Claims are paid in full.

#### **4.13 Class 13 - Secured Claim of Weber County**

**4.13.1 Impairment and Voting.** Class 13 is impaired under the Plan. The holders of Allowed Class 13 Claims shall be entitled to vote to accept or reject the Plan.

**4.13.2 Payment.** The holders of Allowed Class 13 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest at the rate prescribed by applicable nonbankruptcy law for said tax claims.

**4.13.3 Distributions.** As Collateral which secures a portion of the Class 13 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the

Reorganized Debtor, the Class 13 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 13 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 13 Claims shall retain their Liens until their Claims are paid in full.

## **SECTION C. OTHER SECURED CLAIMS AGAINST HRAF**

### **4.14 Class 14 - Secured Claim of Creek Road Owners Association.**

**4.14.1 Impairment and Voting.** Class 14 is impaired under the Plan. The holders of Allowed Class 14 Claims shall be entitled to vote to accept or reject the Plan.

**4.14.2 Payment.** The holders of Allowed Class 14 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest from and after the Effective Date at the Plan Rate.

**4.14.3 Distributions.** As Collateral which secures a portion of the Class 14 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 14 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 14 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 10 Claims shall retain their Liens until their Claims are paid in full.

### **4.15 Class 15 - Secured Claim of Jordanelle Special Services District.**

**4.15.1 Impairment and Voting.** Class 15 is impaired under the Plan. The holders of Allowed Class 15 Claims shall be entitled to vote to accept or reject the Plan.

**4.15.2 Payment.** The holders of Allowed Class 15 Claims shall be paid the full amount of their claim as of the Petition Date, together with interest from and after the Effective Date at the Plan Rate.

**4.15.3 Distributions.** As Collateral which secures a portion of the Class 15 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 15 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 15 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy

law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 15 Claims shall retain their Liens until their Claims are paid in full.

**4.16 Class 16 - Secured Claim of The Promontory Conservancy.**

**4.16.1 Impairment and Voting.** Class 16 is impaired under the Plan. The holders of Allowed Class 16 Claims shall be entitled to vote to accept or reject the Plan.

**4.16.2 Allowed Claim Amount.** The Claim of The Promontory Conservancy is secured by ten separate Promontory Lots, some of which have been or will be sold prior to the Effective Date. The Promontory Conservancy shall receive an Allowed Claim of \$9,000 per lot, plus the right to charge an additional \$750 per lot owned by HRAF per quarter from and after July 1, 2011 (provided that HRAF is the title owner of the lot for the majority of the calendar quarter at issue), with such additional homeowner's association fees accruing and being added to the Allowed Claim. The Promontory Conservancy shall not have a right to recover any transfer fees.

**4.16.3 Payment.** The holders of Allowed Claims in Class 16 shall be paid in full the amounts specified in the preceding paragraph.

**4.16.4 Distributions.** As Collateral which secures a portion of the Class 16 Claim is sold, the Reorganized Debtor will pay the portion of the Allowed Secured Claim attributable to such Collateral. The Class 16 Claims will be paid (a) as to Promontory Lots sold prior to the Effective Date, on or before the Effective Date, or (b) in connection with future sales of Promontory Lots, immediately upon the closing of the sale of the Collateral. The holders of Allowed Class 16 Claims shall retain their Liens until their Claims are paid in full.

**4.17 Class 17 - Secured Claim of Reynolds Brothers Construction**

**4.17.1 Impairment and Voting.** Class 17 is impaired under the Plan. The holders of Allowed Class 17 Claims shall be entitled to vote to accept or reject the Plan.

**4.17.2 Payment.** The holders of Allowed Class 17 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.17.3 Distributions.** As Collateral which secures a portion of the Class 17 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 17 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 17 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the

property from tax sale. The holders of Allowed Class 17 Claims shall retain their Liens until their Claims are paid in full.

**4.18 Class 18 – Miscellaneous Secured Claims (HRAF)**

**4.18.1 Impairment and Voting.** Class 18 is impaired under the Plan. The holders of Allowed Class 18 Claims shall be entitled to vote to accept or reject the Plan.

**4.18.2 Payment.** The holders of Allowed Class 18 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.18.3 Distributions.** As Collateral which secures a portion of the Class 18 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 18 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 18 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 18 Claims shall retain their Liens until their Claims are paid in full.

**SECTION D. OTHER SECURED CLAIMS AGAINST HARBOR**

**4.19 Class 19 – Secured Claim of the Bank.**

**4.19.1 Impairment and Voting.** Class 19 is impaired under the Plan. The holders of Allowed Class 19 Claims shall be entitled to vote to accept or reject the Plan.

**4.19.2 Allowed Claim Amount.** The Bank Claim is Allowed in the amount of \$10,673,388.43 as of the Petition Date, plus interest from the Petition Date through the Effective Date at the rate of eight percent (8%) per annum, plus the Bank's reasonable attorneys' fees and costs incurred from September 9, 2010 to the Effective Date (with the amount to be determined by stipulation of the Debtors and the Bank or, if necessary, an order of the Court), less any pre-confirmation payments paid by the Debtors to or for the benefit of the Bank (the "Bank's Claim"). The Bank's Claim shall bear interest from and after the Effective Date at the rate of seven percent (7%) per annum.

**4.19.3 Liens.** The Bank's Allowed Claim against Harbor is secured by certain of Harbor's personal property, including, without limitation, Harbor's membership interest in and right to receive member distributions from HRAF. The holders of Allowed Class 19 Claims shall retain their Liens until their Claims are paid in full.

**4.19.4 General Unsecured Claim Against HRAF.** The Bank also holds an Allowed General Unsecured Claim as against HRAF in the amount of

\$10,673,388.43. The Bank's Allowed Class 2 Claim arises pursuant to a written guaranty executed by HRAF in favor of the Bank.

**4.19.5 Payment.** The Bank's Class 19 Claim shall be paid in full by the Reorganized Debtor on or before the Final Distribution Date. Payments by the Reorganized Debtor of the Bank's Allowed Class 2 Claim (General Unsecured Claim against HRAF) shall constitute a dollar-for-dollar credit against and reduce the Reorganized Debtor's obligation to pay the Bank's Allowed Class 19 Claim (Secured Claim against Harbor).

**4.19.6 Distributions.** The Class 19 Claim shall be paid in full, with accrued interest, not later than the Final Distribution Date. Subject to the payments, priorities and reserves established under sections 6.1.3 and 6.1.4 of this Plan, the Debtors may make payments of available Cash to the Bank or its successor-in-interest from time-to-time, but in any event at least on the Initial Distribution Date and the subsequent Interim Distribution Dates, to the extent that a full or partial distribution of Cash is available on such dates, through any combination of (a) sale, liquidation or distribution of the Debtors' assets, (b) collection of the Debtors' accounts receivable, (c) collection of rents payable to the Debtors, (d) financing or refinancing of the Real Property on a first-priority lien basis, (e) the incurrence of debt by HRAF and/or Harbor on a secured or unsecured basis, or (f) raising additional equity capital by Harbor or HRAF, subject to the Bank's liens in any asset of the Debtors, or the Bank's whole or partial release of such liens.

**4.19.7 Release of Liens and Encumbrances.** The bank shall release all "negative pledge agreements" and any other record encumbrance against any individual parcel of Real Property of HRAF or Harbor at or before the closing of any sale of such Real Property by the Reorganized Debtor. Further, upon request, and to assist the Reorganized Debtor with the sale of property subject to a lien of the Bank, the Bank may execute a document releasing its lien, interest or encumbrance, if any, in or against property in which the Bank may have or claim a lien, so long as the Bank receives the applicable reserve or distribution of Cash pursuant to sections 6.1.3.5, 6.1.3.6, 6.1.4.5 or 6.1.4.6.

#### **4.20 Class 20 - Kenneth and Richelle Patey.**

**4.20.1 Impairment and Voting.** Class 20 is impaired under the Plan. The holders of Allowed Class 20 Claims shall be entitled to vote to accept or reject the Plan.

**4.20.2 Payment.** The holders of Allowed Class 20 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.20.3 Distributions.** As Collateral which secures a portion of the Class 20 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 20 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 20 Claims shall be paid in



full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 20 Claims shall retain their Liens until their Claims are paid in full.

**4.21 Class 21 – Miscellaneous Secured Claims (Harbor)**

**4.21.1 Impairment and Voting.** Class 21 is impaired under the Plan. The holders of Allowed Class 21 Claims shall be entitled to vote to accept or reject the Plan.

**4.21.2 Payment.** The holders of Allowed Class 21 Claims shall be paid the full amount of their claim as of the Petition Date.

**4.21.3 Distributions.** As Collateral which secures a portion of a Class 20 Claim is sold, the Reorganized Debtor will pay in full the portion of the Allowed Secured Claim attributable to such Collateral. At the discretion of the Reorganized Debtor, the Class 21 Claims may be paid either (a) immediately upon the closing of the sale of the Collateral, or (b) on the first Interim Distribution Date following the closing of the sale. Allowed Class 21 Claims shall be paid in full not later than the Final Distribution Date or, if applicable under nonbankruptcy law, such later date as the Reorganized Debtor may have the right to redeem the property from tax sale. The holders of Allowed Class 21 Claims shall retain their Liens until their Claims are paid in full.

**SECTION E. UNSECURED CLAIMS AGAINST HARBOR**

**4.22 Class 22 – Priority Claims (Harbor)**

**4.22.1 Impairment and Voting.** Class 22 is impaired under the Plan. The holders of Allowed Class 22 Claims shall be entitled to vote to accept or reject the Plan.

**4.22.2 Payment.** The holders of Allowed Class 22 Claims shall be paid the full amount of their claim as of the Petition Date. The holders of Allowed Class 22 Claims shall not be paid post-petition interest on their Claims.

**4.22.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 22 Claim, each holder of an Allowed Class 22 Claim shall receive Cash in an amount equal to such Allowed Class 22 Claim on or before the later of (a) the Interim Distribution Date first occurring at least sixty days after such Priority Claim becomes an Allowed Priority Claim, or (b) the date on which the Reorganized Debtor has Cash available for distribution to the holders of Priority Claims.

**4.23 Class 23 – General Unsecured Claims (Harbor)**

**4.23.1 Impairment and Voting.** Class 23 is impaired under the Plan. The holders of Allowed Class 23 Claims shall be entitled to vote to accept or reject the Plan.

**4.23.2 Payment.** The holders of Allowed Class 23 Claims shall be paid the full amount of their claim as of the Petition Date to the extent the Reorganized Debtor has sufficient Cash remaining after distributions to the holders of Secured Claims and Priority Claim. The holders of Allowed Class 23 Claims shall not be paid post-petition interest on their Claims.

**4.23.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 23 Claim, each holder of an Allowed Class 23 Claim shall receive Cash in an amount equal to such Allowed Class 23 Claim on or before the Final Distribution Date, provided that the Reorganized Debtor has sufficient Cash available for distribution to the holders of Allowed Unsecured Claims. If the Reorganized Debtor does not have sufficient Cash to pay in full all Allowed Unsecured Claim, then it shall distribute the Cash pro rata to the holders of Allowed Claims in Class 23. No holders of Class 24 Interests shall receive distributions unless and until the holders of Allowed Class 23 Claims have been paid in full.

**SECTION F. EQUITY INTERESTS.**

**4.24 Class 24 – Equity Interests in Harbor.**

**4.24.1 Impairment and Voting.** Class 24 is impaired under the Plan. The holders of Allowed Class 24 Interests shall be entitled to vote to accept or reject the Plan.

**4.24.2 Distributions.** Each record holder of Equity Interest in Harbor shall retain its interest in Harbor, or its successor in interest, as a Reorganized Debtor.

**4.25 Class 25 – Equity Interests in HRAF.**

**4.25.1 Impairment and Voting.** Class 25 is impaired under the Plan. The holders of Allowed Class 25 Interests shall be entitled to vote to accept or reject the Plan.

**4.25.2 Distributions.** Until the payment in full of the Class 19 Claim of the Bank, each record holder of Equity Interest in HRAF shall retain its interest in HRAF, or its successor in interest, as a Reorganized Debtor. After the payment in full of the holders of all Allowed Claims against HRAF (and after all amounts specified in sections 6.1.3.1 through 6.1.3.11, below, have been paid, reserved or set aside), any and all remaining Cash shall be distributed to the holders of Class 25 Interests according to their respective equity ownership interests.

**4.25.3 Distributions Directly to the Bank.** The Bank holds a Lien upon, among other things, the Class 25 Interests and upon Harbor's right, as the holder of such interests, to receive member distributions. Except as otherwise agreed by the Bank in writing, all distributions to the holders of Class 25 Interests shall be paid directly to the Bank until the Bank's Class 19 Secured Claim has been paid in full.

## **SECTION G. PARTICIPATION INTERESTS.**

### **4.26 Class 26 – Participation Interests.**

**4.26.1 Impairment and Voting.** Class 26 is impaired under the Plan. The holders of Allowed Class 26 Claims shall be entitled to vote to accept or reject the Plan.

**4.26.2 Impairment.** Class 26 is impaired under the Plan. Each holder of a Participation Interest is entitled to vote to accept or reject the Plan.

**4.26.3 Payment.** Upon a sale of any Participated Property and pursuant to sections 6.1.3.7 and 6.1.4.7 of this Plan, the pro rata portion, if any, of the net sales proceeds realized by the Reorganized Debtor after making the payment and setting aside the reserves described in sections 6.1.3.1 through 6.1.3.6 or sections 6.1.4.1 through 6.1.4.6 of this Plan, as the Case may be, and to which the Participants hold a claim or interest as shown on Schedule A (the "Participation Proceeds") shall be paid to the Participants.

### **4.26.4 Distributions.**

**4.26.4.1 *Proceeds from Sales of Participated Property Prior to the Effective Date.*** All Participation Proceeds shall be paid to the Participants entitled thereto no later than the Initial Distribution Date.

**4.26.4.2 *Proceeds from Sales of Participated Property After the Effective Date.*** From and after the Effective Date, all Participation Proceeds shall be paid directly to the Participants at closing from the sale of Participated Property.

## **SECTION H. SUBORDINATED CLAIMS**

### **4.27 Class 27 – Subordinated Claims.**

**4.27.1 Impairment and Voting.** Class 27 is impaired under the Plan. The holders of Allowed Class 27 Claims shall be entitled to vote to accept or reject the Plan.

**4.27.2 Payment.** The holders of Allowed Class 27 Claims shall be paid the full amount of their claim as of the Petition Date to the extent the Reorganized Debtor has sufficient Cash remaining after distributions to the

holders of Secured Claims, Class 22 Priority Claims and Class 20 and 23 Unsecured Claims. The holders of Allowed Class 27 Claims shall not be paid post-petition interest on their Claims.

**4.27.3 Distributions.** Unless otherwise agreed by a holder of an Allowed Class 27 Claim, each holder of an Allowed Class 27 Claim shall receive Cash in an amount equal to such Allowed Class 27 Claim on or before the Final Distribution Date, provided that the Reorganized Debtor has sufficient Cash available for distribution to the holders of Allowed Subordinated Claims. If the Reorganized Debtor does not have sufficient Cash to pay in full all Allowed Unsecured Claim, then it shall distribute the Cash pro rata to the holders of Allowed Claims. No holders of Class 24 Interests shall receive distributions unless and until the holders of Allowed Class 27 Claims have been paid in full.

## **SECTION I. TREATMENT OF CLAIMS GENERALLY**

**4.28 Satisfaction of Claims and Release.** As of the Effective Date, all Claims against the Debtors shall be released except as provided in the Plan.

**4.29 No Assumed Liability.** Except as otherwise expressly set forth in the Plan, the Reorganized Debtor shall not assume or be liable for any Claims

**4.30 Debtors Reserve the Right to Dispute Claims and Liens Notwithstanding Specific Classification.** Excepting only the Class 16 Claim of Promontory Conservancy, the Class 19 Claim of the Bank and the Class 26 Participation Interests, the Debtors and/or the Reorganized Debtor, as the case may be, reserve the right to challenge the Claim or Lien or any creditor or interest holder. As an example, the Debtors anticipate that they may object to the Claims and/or Liens of both Reynolds Brothers Construction (Class 17) and of Kenneth and Richelle Patey (Class 20) notwithstanding that such Claims are classified in the Plan as Secured Claims. If the Debtors or the Reorganized Debtor do object to Claims (separately classified or otherwise) and their objections are sustained, such Claims will not be "Allowed" and, thus, will not be entitled to any distribution under this Plan notwithstanding that such Claims may have been specifically classified.

**4.31 Disputed Claims.** Notwithstanding any other provision of this Plan, no Cash or property shall be distributed under the Plan on account of any Disputed Claim until the Claim is Allowed. As provided in section 6.5 of this Plan, the Reorganized Debtor shall establish a Disputed Claim Reserve with respect to Disputed Claims. Cash and property to be distributed on account of Disputed Claims shall be held by the Reorganized Debtor until such Claims are Allowed or disallowed by Final Order. At the option of the Reorganized Debtor, Cash which is held in Disputed Claim Reserve may be held in the Reorganized Debtor's current operating account, may be deposited into one or more segregated, interest bearing bank accounts, or may be used to purchase a short term certificate of deposit or another short term investment. Upon the later of (a) the date on which the holder of the Disputed Claim first becomes entitled to payment or distribution under the Plan, or (b) thirty (30) days after a Disputed Claim becomes Allowed, the holder shall receive a distribution from the Disputed Claims Reserve based

upon the Allowed amount of the Claim, plus a proportionate amount of any interest earned thereon, and, thereafter, shall participate in any further distributions under the Plan as the holder of an Allowed Claim. Any cash or property remaining in the Disputed Claims Reserve after the resolution of all disputes by Final Order shall be distributed in accordance with the Plan.

## **ARTICLE 5 MEANS FOR EXECUTION OF THE PLAN**

**5.1 Revesting of Property.** Except as otherwise provided in this Plan, the Reorganized Debtor, as of the Effective Date, shall be vested with all of the separate assets of the Debtors' Estates.

**5.2 Avoidance Actions and Other Claims.** Without limiting the foregoing, the Reorganized Debtor shall be vested with all claims and causes of action of such Debtor including, without limitation, those claims arising under sections 510, 541, 544, 547, 548, 549, 550 and 553 of the Bankruptcy Code.

**5.3 Bankruptcy Case Administration.** Except as otherwise provided in this Plan, from and after the Effective Date and continuing through the date on which a final decree closing the Bankruptcy Case is entered pursuant to section 350 of the Bankruptcy Code and Bankruptcy Rule 3022, the Reorganized Debtor shall possess the rights of a party in interest pursuant to section 1109(b) of the Bankruptcy Code for all matters arising in, arising under or related to the Bankruptcy Case. In addition to the foregoing, for all matters arising under or related to the Bankruptcy Case, the Reorganized Debtor shall (i) have the right to appear and be heard on matters brought before the Bankruptcy Court or other courts of competent jurisdiction, (ii) be entitled to notice and opportunity for hearing, (iii) participate in all matters brought before the Bankruptcy Court, including but not limited to adversary proceedings, and (iv) receive notice of all applications, motions and other papers and pleadings before the Bankruptcy Court.

**5.4 Continuation of Business Operations.** From and after the Effective Date of the Plan, the Reorganized Debtor is authorized to continue its normal business operations and enter into such transactions as it deems advisable, free of any restriction or limitation imposed under any provision of the Bankruptcy Code, except to the extent otherwise provided in the Plan.

**5.5 Continuation of Anti-Discrimination Provisions of Bankruptcy Code.** A governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, or discriminate with respect to such a grant against, the Debtors, the Reorganized Debtor, or another Person with whom the Debtors or the Reorganized Debtor have been or are associated or affiliated, solely because of the commencement, continuation, or termination of the Bankruptcy Cases or because of any provision of the Plan or the legal effect of the Plan, and the Confirmation Order will constitute an express injunction against any such discriminatory treatment by a governmental unit.

**5.6 Administration of the Estate.** The Reorganized Debtor shall administer the consolidated Estate after consummation of the Plan. The Reorganized Debtor shall hold all rights, powers, and duties of a trustee of the Estate under Chapter 11 of the Bankruptcy Code. The Reorganized Debtor shall reduce all property of the Estate and Causes of Action to Cash, and distribute such Cash pursuant to the provisions of this Plan. The Reorganized Debtor shall use such Cash to pay the holders of Claims until such Cash is exhausted.

**5.7 Liquidation of Remaining Property.**

**5.7.1 Generally.** Following the Effective Date, the Reorganized Debtor shall conduct an orderly liquidation of the remaining property of the consolidated Estate consistent with the terms of the Plan.

**5.7.2 HRAF Equity Interest.** The Reorganized Debtor shall not dissolve or liquidate the Class 25 Equity Interest unless and until the Class 19 Claim of the Bank has been paid in full.

**5.7.3 Liquidation of Real Property.** The Reorganized Debtor will use its best efforts to sell as much of the Real Property and Water Stock and other assets of the Estate, if any, as is necessary to satisfy the Allowed Claims of the Bank, and to satisfy the Allowed Claims of other creditors.

**5.8 Consolidation of the Debtors and Their Estates.** Except as expressly set forth in this Plan, on the Effective Date, the Estates shall be deemed consolidated pursuant to Bankruptcy Code § 1123(a)(5).

**5.8.1 Effect of Consolidation.** The consolidation of the Estates shall include, but shall not be limited to, the following:

5.8.1.1 Unless otherwise specified in the Plan, duplicate Claims filed by a single creditor against both Debtors or Estates shall be disallowed. Creditors are entitled to only one Claim against the Reorganized Debtor and but a single satisfaction of the Claim. Any joint or several liability of the Debtors shall be deemed to be one obligation of the Reorganized Debtor.

5.8.1.2 Any Claims of Harbor against HRAF and vice-versa shall be deemed released and discharged on the Effective Date. This release and discharge includes, without limitation, any Avoidance Actions and any set-off rights. The Debtors do not believe that any such inter-debtor claims exist.

5.8.1.3 Administrative Claims and operating expenses incurred by either Debtor or by the Reorganized Debtor may be paid from the assets of the consolidated Reorganized Debtor irrespective of which Debtor may have incurred, or may be liable for, such expense.

**5.8.2 Pre-Confirmation Priorities in Distribution Are Preserved.** Excepting only Administrative Expense Claims (which shall be borne by both Debtors and/or the Reorganized Debtor on a consolidated basis) the pre-Confirmation Date priorities in distribution held by creditors and interest holders of HRAF and Harbor shall be preserved. As an example, the holders of Class 1 and Class 2 Claims shall be entitled to be paid from the proceeds of Real Property and other assets owned by HRAF, and the Bank shall be entitled to distribution on account of its Class 19 Claim, before the holders of Class 22 and Class 23 Claims may share in the proceeds of Real Property or other cash of HRAF.

**5.8.3 Consolidation Shall Not Correct Defective Claims.** The consolidation of the plan shall not benefit any creditor that may have filed a claim that was defective prior to consolidation. As an example, a creditor might have filed a proof of claim against HRAF, but held a claim against Harbor. Such a claim should be disallowed as against HRAF and the Reorganized Debtor. Consolidation of the Debtors and their Estates shall not protect such a defective claim against an objection by the Reorganized Debtor. If the proof of claim was defective prior to consolidation of the Debtors, such Claim should be disallowed.

**5.8.4 Use of Either Name.** The Reorganized Debtor may conduct business in the name of HRAF, Harbor or both, as the Reorganized Debtor may determine on a case-by-case basis in its sole and absolute discretion.

**5.8.5 Formalizing Consolidation.** The Reorganized Debtor may, but is not required to, formalize the consolidation of HRAF and Harbor by filing articles of merger, articles of dissolution or other corporate filings with applicable state and federal authorities, as the Reorganized Debtor may determine in its sole and absolute discretion. The Reorganized Debtor may do so at any time on or after the Effective Date, or may elect never to do so.

**5.8.6 Tax Filings.** The Reorganized Debtor may file separate returns for HRAF and Harbor, or may file a consolidated return for the consolidated Reorganized Debtor, as it determines in its sole and absolute discretion and/or as may be suggested by the Reorganized Debtor's tax preparers and/or tax advisors.

**5.9 Marketing and Sale of Assets.** The Reorganized Debtor shall be solely responsible, and shall be vested with all power and authority to sell as many of the consolidated Estate's assets and properties as it determines to be necessary or advisable to allow for payment in full of Allowed Claims as provided in this Plan. The Reorganized Debtor shall use its best efforts to sell sufficient assets and properties to pay in full Allowed Claims, subject to the terms and conditions of this Plan.

**5.10 Real Estate Professionals.** Upon the Effective Date and as frequently thereafter as the Reorganized Debtor deems appropriate, the Reorganized Debtor shall review the performance of the real estate brokers and agents retained to list and sell the Real Property. In the exercise of its business judgment, and without notice or a hearing, the Reorganized Debtor may extend the contracts with such brokers and agents on such terms and conditions as it deems appropriate, or may retain another broker or

agent on terms it deems appropriate. No broker or agent whose services have been terminated by the Debtors or the Reorganized Debtor shall receive a commission or other compensation as a result of the sale of property in which such broker or agent did not directly participate. Finally, the Reorganized Debtor shall direct adjustments to listing prices for assets as it, in its sole and complete discretion, deems appropriate to satisfy its obligations under this Plan.

**5.11 Reorganized Debtor's Discretion to Sell Real Property and Other Assets.** Schedule A to the Plan identifies the respective parcels of Real Property owned by the Debtors. The Reorganized Debtor shall have absolute discretion in determining when, how and at what price to sell the Real Property. Further, the Reorganized Debtor need not obtain an Order from the Court, nor the consent of the Bank or any other person to consummate a sale of the Real Property. The Reorganized Debtor shall have discretion to sell and liquidate assets other than Real Property on such terms, and for such amounts, as it deems appropriate without first obtaining an Order from the Court or the consent of the Bank or any other person.

**5.12 Sales Free and Clear of Liens, Claims and Interests.**

**5.12.1 Sales Shall Be Free and Clear without Entry of a Sale Order.** All sales by the Reorganized Debtor of Real Property shall, pursuant to the Order confirming this Plan, expressly be free and clear of liens, claims and interests pursuant to sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code, with any applicable liens or interests to attach to the Cash proceeds of the sale. No notice, hearing or further order shall be necessary for such sales to be free and clear with the protection of sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code.

**5.12.2 The Reorganized Debtor May Obtain a Sale Order on Shortened Notice.** Nevertheless, the Reorganized Debtor may obtain an order expressly providing that the sale of any particular parcel of Real Property is free and clear pursuant to sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code. Such an Order may be entered without a hearing pursuant to Local Rule 9013-2 upon "negative notice" pursuant to Local Rule pursuant to Bankruptcy Code §§ 363(f) and/or 1123(a)(5)(D). Notice shall be appropriate and sufficient if mailed to the holders of all Claims secured or allegedly secured by the Property at least fourteen (14) days before the date conditionally available for hearing, and if the notice gives the holders of Liens or Interests ten calendar days from the date of filing or mailing to file an objection.

**5.12.3 Liens Attach to Proceeds.** Liens, encumbrances, and other interests (subject to any recovery awarded pursuant to section 506(c) of the Bankruptcy Code) shall attach to the proceeds of the sale subject to the distribution provisions and priorities of the Plan.

**5.13 Relief Under Section 506(c).**

**5.13.1 Automatic Relief.** Without the need for notice, hearing or Order, the Reorganized Debtor shall be authorized and entitled to recover from the



proceeds of sale and to pay at closing the actual closing costs, broker's commissions (up to six percent of the gross sales price) and other ordinary and reasonable expenses incurred by the Debtors and/or the Reorganized Debtor in connection with marketing an asset for sale and closing the sale ("Costs of Sale").

**5.13.2 Additional Relief.** The Reorganized Debtor may seek recovery of additional reasonable, necessary costs and expenses of preserving, or disposing of, property pursuant to Bankruptcy Code § 506(c) (beyond the automatic relief afforded under section 5.13.1), either before or after the Effective Date, upon notice and opportunity for hearing pursuant to Local Rule 9013-2. Notice shall be appropriate and sufficient if mailed to the holders of all Claims secured or allegedly secured by the Property at least fourteen (14) days before the date conditionally available for hearing, and if the notice gives the holders of Liens or Interests ten calendar days from the date of filing or mailing to file an objection.

**5.14 Sale for Amount Insufficient to Pay Outstanding Liens.** Subject to the express limitations, if any, delineated under this Plan, the Reorganized Debtor may market and sell Real Property and other property of the Estate notwithstanding the fact that the proceeds of sale will be insufficient to pay Costs of Sale and Liens of holders of Allowed Secured Claims on said property.

**5.14.1 Notice of the Sale.** If the Reorganized Debtor desires to sell Real Property or other assets for a price less than the amount necessary to pay in full all Costs of Sale and Liens against the property, then the Reorganized Debtor shall file with the Court a "Notice of Proposed Sale" identifying (a) the Real Property or other property to be sold, (b) the proposed gross sale price, (c) the closing costs, commissions and other costs of sale that may reduce the gross sale price at closing, (d) the identity of the buyer(s), and (e) the nature and amount of any actual or claimed liens or interests. The Reorganized Debtor shall mail (or may deliver electronically pursuant to the CM/ECF system) the Notice of Proposed Sale the same day it is filed on: (i) the Bank (until the Bank is paid in full); (ii) the Office of the United States Trustee; and (iii) the Holder of any Claim secured by the property to be sold. Any party in interest may file a motion with the Court to prohibit the sale; provided, however, that any such motion must be filed no less than ten calendar days after the filing of the Notice of Proposed Sale and must be scheduled for hearing no later than thirty days after the date of the filing of the motion. In the absence of a timely filed motion or an order prohibiting the sale entered within thirty days after the filing of the motion, the Reorganized Debtor shall be authorized to consummate the proposed transaction without need for hearing, an order or consent.

**5.14.2 Rights Under Bankruptcy Code § 363(k).** If the Reorganized Debtor gives notice of its intent to sell Real Property or other assets for a price less than the amount necessary to pay in full all Costs of Sale and Liens against the property, then the holders of an Allowed Secured Claim with a Lien on the property to be sold that acted to preserve its rights under section 363(k), as required under section 5.16 of this Plan, shall have ten calendar days after the

filing of the Notice of Proposed Sale in which to exercise its right under Bankruptcy Code § 363(k).

**5.14.3 Failure to Respond Deemed Acceptance of Sale.** If, after the expiration of ten calendar days from the filing of the Notice of Proposed Sale, the holder of an Allowed Secured Claim has not exercised its rights under section 363(k) and has not filed an objection to the sale, then the creditor shall be deemed to have approved and accepted the sale, and all such rights and objections shall be deemed waived. The Reorganized Debtor may consummate the sale without further notice, opportunity for hearing or order. Alternatively, the Reorganized Debtor may request *ex parte*, and the Bankruptcy Court may enter, an order approving the sale free and clear of all liens, claims and interests without further notice or opportunity for hearing.

**5.15 Employment of Professionals.** The Reorganized Debtor may employ attorneys, accountants, or other professionals as it may deem appropriate and pay such professionals reasonable fees and expenses. Professionals employed by the Reorganized Debtor after the Confirmation Date shall not be subject to Bankruptcy Court approval, their compensation shall not be subject to Bankruptcy Court approval, and their employment shall not be subject to the disinterestedness requirements of the Bankruptcy Code.

**5.16 Rights Under Section 363(k).**

**5.16.1 Notice Required to Preserve Right; Automatic Waiver.** The holder of any Allowed Secured Claim that wishes to preserve its rights under section 363(k) of the Bankruptcy Code must file with a Court written notice of its intent to reserve such rights no later than thirty days after the Confirmation Date. The notice must identify the dollar amount that such creditor is willing to credit bid and the particular property or asset to which the credit bid amount is allocable. Failure to file such a notice on or before said deadline shall constitute a permanent and irrevocable waiver of all rights under section 363(k).

**5.16.2 Reorganized Debtor's Right to Quit-Claim Property in Satisfaction.** Notwithstanding any other provision of this Plan, the Reorganized Debtor shall have the right to quit-claim the property or asset identified in the Creditor's notice to such Creditor and, thereby, obtain a satisfaction of the Claim of such Creditor equal to the amount of the credit bid identified in the Creditor's notice. To the extent any junior liens or interests exist or may exist in the asset quit-claimed to the Creditor under this section, the transfer shall be without prejudice to and shall not result in a merger of title or extinguishment of such Creditor's senior lien or other interest.

**5.16.3 Right to Credit Bid Limited.** No Creditor shall have the right to "credit bid" under section 363(k) unless the price for which the Debtor proposes to sell a particular parcel of Real Property or other asset is less than the amount of the Creditor's Allowed Secured Claim.

**5.17 Ability to Incur Debt.** Except as otherwise provided in this Plan, the Reorganized Debtor may incur debt after the Effective Date on a secured or unsecured basis without further notice, opportunity for hearing or order.

## **ARTICLE 6 IMPLEMENTATION OF THE PLAN**

### **6.1 Use and Allocation of Cash.**

**6.1.1 Use Generally.** Except as otherwise provided in this ARTICLE 6, the Reorganized Debtor may use Cash, including cash realized upon the liquidation of Real Property and other assets, in any manner consistent with this Plan.

**6.1.2 Membership Distributions to Harbor.** Except as otherwise provided in this Plan, any Cash distributed to Harbor on account of its Equity Interest in HRAF shall be paid to the Bank until the Class 19 Claim of the Bank has been paid in full. Once the Class 19 Claim of the Bank has been paid, Harbor may use Cash distributed to it by HRAF without any limitations except those imposed under this Plan.

**6.1.3 Proceeds of Real Property and Other Cash of HRAF.** The gross proceeds of sale of any Real Property (whether sold before or after the Effective Date) and any and all other Cash held, received or realized by HRAF will be reserved, held and used as follows and in the following order of priority:

6.1.3.1 *Undisputed Taxes and Assessments* - first, in payment of undisputed real property taxes and undisputed homeowners association assessments due as of the closing, if any;

6.1.3.2 *Reserve for Disputed Taxes and Assessments* - second, set aside in reserve for potential payment of disputed real property taxes and disputed homeowners association assessments, if any;

6.1.3.3 *Broker's Commissions* - third, in payment of any commissions, finders fees, or similar type expenses payable to licensed real estate brokers or agents involved in the particular sale transaction, in an amount not to exceed 6% in the aggregate of the gross sales proceeds;

6.1.3.4 *Closing Costs* - fourth, payment of normal and customary closing costs incidental to the closing of the sale of the Real Property (including, in states where attorneys normally handle closings, such fees and expenses);

6.1.3.5 *Undisputed Liens* - fifth, payment of any undisputed liens or encumbrances against the Real Property;

6.1.3.6 *Reserve for Disputed Liens* – sixth, in the event a lien or encumbrance is disputed either formally or informally by the Reorganized Debtor but the Reorganized Debtor's objection or challenge to the lien or claim has not yet been sustained, set aside in reserve for payment of applicable liens or encumbrances against the Real Property;

6.1.3.7 *Payment of Participants* – seventh, upon sales of Participated Property, payment to the Participants in an amount sufficient to satisfy in full the net pro rata interest of the Participants in the Participation Proceeds;

6.1.3.8 *Payment of Pre-Confirmation Professional Fees and Administrative Expenses* – eighth, in payment of administrative expenses due and payable as of the Effective Date, including compensation to the attorneys and other professionals of HRAF and Harbor for all Allowed pre-confirmation fees and costs;

6.1.3.9 *Reserve for Administrative Expenses* – ninth, (a) as of the Effective date, the gross sum of \$200,000 from all pre-Effective Date sales and other receipts, plus (b) from and after the Effective Date, ten percent (10%) of the gross proceeds from sales of Real Property, shall be reserved and made available for payment of the Debtors' administrative and operating expenses (including the post-confirmation fees and expenses of professionals), as determined by the Reorganized Debtor in its sole and absolute discretion;

6.1.3.10 *Payment of Class 1 Priority Claims (HRAF)* – tenth, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 1 Priority Claims against HRAF, with a pro rata reserve for any disputed Priority Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.3.11 *Payment of Class 2 General Unsecured Claims (HRAF)* – eleventh, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 2 General Unsecured Claims against HRAF, with a pro rata reserve for any disputed Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.3.12 *Distributions in Payment of the Bank's Class 19 Claim* – twelfth, after the foregoing amounts are paid or reserved, Cash distributions to the Bank on account of its Allowed Class 19 Claim and its right to direct payment of distributions made to the members of HRAF, until such Claim has been paid in full; and

6.1.3.13 *Remainder Used to Pay Operating Expenses or Distributed to Creditors of Harbor* – after the foregoing amounts are paid or reserved, any remaining Cash may be used as determined by the

Reorganized Debtor in its sole and absolute discretion, either (a) to pay reasonable and necessary operating expenses of the Reorganized Debtor, or (b) to make a Cash distributions to creditors of Harbor.

**6.1.4 Proceeds of Real Property and Other Cash of Harbor.** The gross proceeds of sale of any Real Property (whether sold before or after the Effective Date) and any and all other Cash held, received or realized by Harbor (including cash distributed to Harbor pursuant to paragraph 6.1.3.13(b)) will be reserved, held and used as follows and in the following order of priority:

6.1.4.1 *Undisputed Taxes and Assessments* - first, in payment of undisputed real property taxes and undisputed homeowners association assessments due as of the closing, if any;

6.1.4.2 *Reserve for Disputed Taxes and Assessments* - second, set aside in reserve for potential payment of disputed real property taxes and disputed homeowners association assessments, if any;

6.1.4.3 *Broker's Commissions* - third, in payment of any commissions, finders fees, or similar type expenses payable to licensed real estate brokers or agents involved in the particular sale transaction, in an amount not to exceed 6% in the aggregate of the gross sales proceeds;

6.1.4.4 *Closing Costs* - fourth, payment of normal and customary closing costs incidental to the closing of the sale of the Real Property (including, in states where attorneys normally handle closings, such fees and expenses);

6.1.4.5 *Undisputed Liens* – fifth, payment of any undisputed liens or encumbrances against the Real Property;

6.1.4.6 *Reserve for Disputed Liens* – sixth, in the event a lien or encumbrance is disputed either formally or informally by the Reorganized Debtor but the Reorganized Debtor's objection or challenge to the lien or claim has not yet been sustained, set aside in reserve for payment of applicable liens or encumbrances against the Real Property;

6.1.4.7 *Payment of Participants* – seventh, upon sales of Participated Property (if any is owned by Harbor), payment to the Participants in an amount sufficient to satisfy in full the net pro rata interest of the Participants in the Participation Proceeds;

6.1.4.8 *Payment of Pre-Confirmation Professional Fees and Administrative Expenses* – eighth, in payment of administrative expenses due and payable as of the Effective Date, including compensation to the attorneys and other professionals of HRAF and Harbor for all Allowed pre-confirmation fees and costs;

6.1.4.9 *Reserve for Administrative Expenses* –ninth, ten percent (10%) of the gross proceeds from sales of Real Property, rents and/or any other receipts, shall be reserved and made available for payment of the Debtors' administrative and operating expenses (including the post-confirmation fees and expenses of professionals), as determined by the Reorganized Debtor in their sole and absolute discretion;

6.1.4.10 *Payment of Class 22 Priority Claims (Harbor)* – tenth, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 22 Priority Claims against Harbor, with a pro rata reserve for any disputed Priority Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full;

6.1.4.11 *Payment of Class 23 General Unsecured Claims (Harbor)* – eleventh, after the foregoing amounts are paid or reserved, payment pro rata of the Allowed Class 23 General Unsecured Claims against Harbor, with a pro rata reserve for any disputed Claims that, as of the date of distribution, have neither been Allowed nor disallowed, until such Claims have been paid (or reserved for) in full; and

6.1.4.12 *Remainder Used to Pay Operating Expense or Distributed to the Holders of Class 24 Interests* – after the foregoing amounts are paid or reserved, any remaining Cash may be used as determined by the Reorganized Debtor in its sole and absolute discretion, either (a) to pay reasonable and necessary operating expenses, or (b) to make a Cash distribution to the holders of Allowed Class 24 Interest, pro rata.

## **6.2 Method of Distributions Under the Plan.**

**6.2.1 In General.** Subject to Bankruptcy Rule 9010, all distributions under the Plan to be made by the Reorganized Debtor to the holder of each Allowed Claim shall be mailed by first class mail, postage prepaid, to the address of such holder as listed on the Schedules as of the Distribution Record Date, unless the Reorganized Debtor has been notified in writing of a change of address, including, without limitation, by the filing of a proof of claim or notice of transfer of claim filed by such holder that provides an address for such holder different from the address reflected on the Schedules. The Reorganized Debtor shall have no obligation to locate such holders whose distributions or notices are properly mailed but nevertheless returned.

**6.2.2 Form of Distributions.** Any payment of Cash made by the Reorganized Debtor pursuant to the Plan shall be made by check; provided, however, that after the occurrence of the Effective Date, the Reorganized Debtor is not obligated to make any Cash payment under the Plan unless the payment exceeds ten dollars (\$10); provided, further, that Cash equal to 100% of the distributions to which the holder of a Claim would be entitled under the Plan if the payment to such holder was less than or equal to ten dollars (\$10) shall be maintained in a reserve (the "Small Payment Reserve") for the benefit of such

holder until an aggregate of at least ten dollars is payable to such holder and at such time the holder shall receive a payment equal to 100% of the distributions to which it would otherwise be entitled.

**6.2.3 Distributions to be on Business Days.** Any payment or distribution required to be made under the Plan on a day other than a Business Day shall be made on the next succeeding Business Day.

**6.2.4 Distributions to Holders as of the Distribution Record Date.** As of the close of business on the Distribution Record Date, the claims register shall be closed. The Reorganized Debtor shall have no obligation to recognize any transfer of any Claims occurring after the close of business on the Distribution Record Date, and shall instead be entitled to recognize and deal for all purposes under the Plan with only those holders of record as of the close of business on the Distribution Record Date.

**6.3 Objections to Disputed Claims.** Any objections to Claims against the Estates of HRAF or Harbor may be prosecuted by the Reorganized Debtor or any other party in interest. Except as otherwise provided by order of the Bankruptcy Court, the Reorganized Debtor or any other party in interest may file an objection to any Claim until 180 days after the Effective Date. Upon motion filed within such one hundred eighty (180) days, the Bankruptcy Court may extend the period within which to object to a Claim for a reasonable period of time, not to exceed an additional one hundred eighty (180) days. Any Claim to which no timely objection has been filed shall be deemed an Allowed Claim.

**6.4 Estimation of Claims.** The Debtors or the Reorganized Debtor may, at any time either prior to or after the Effective Date, request that the Bankruptcy Court estimate any Disputed Claim pursuant to Section 502(c) of the Bankruptcy Code, and the Bankruptcy Court shall have jurisdiction to estimate such Claim at any time, including, without limitation, during litigation concerning such Claim or an objection to such Claim. The Debtors and the Reorganized Debtor shall be entitled to request that the Bankruptcy Court determine either the Allowed amount of such Claim or a maximum limitation on such Claim. If the Bankruptcy Court determines the maximum limitation of such Claim, such determination shall not preclude the Debtors or Reorganized Debtor from pursuing any additional proceedings to object to any ultimate payment of such Claim. If the Bankruptcy Court determines the Allowed amount of such Claim, the amount so determined shall be deemed the amount of the Claim for all purposes under this Plan. All such proceedings are cumulative and not exclusive remedies.

**6.5 Disputed Claims Reserve.**

**6.5.1 Establishment.** The Reorganized Debtor shall maintain a reserve (the "Disputed Claims Reserve") equal to 100% of the distributions to which holders of Disputed Claims would be entitled under the Plan if such Disputed Claims were Allowed Claims or such lesser amount as required by a Final Order.

**6.5.2 Distributions Upon Allowance of Disputed Claims.** The holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Initial

Distribution Date shall receive distributions of Cash from the Disputed Claims Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order. Such distributions shall be made in accordance with the Plan based upon the distributions that would have been made to such holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Initial Distribution Date. No holder of a Disputed Claim shall have any claim against the Disputed Claims Reserve or the Reorganized Debtor with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no holder of a Disputed Claim shall have any right to interest on such Disputed Claim.

**6.6 Reversion of Unclaimed Checks and Disputed Claims Reserve.** The following amounts shall revert and be vested in the Estate free and clear of any claim or interest of any holder of a Claim under the Plan: (i) the amount of any checks issued for distributions under the Plan that remain uncashed for a period of one year after the date of such distribution, and (ii) to the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim Amount, the excess of the amount of Cash in the Disputed Claims Reserve attributable to such Disputed Claim over the amount of Cash actually distributed on account of such Disputed Claim.

**6.7 Cash Payments and Time Bar.** Cash distributions made by the Reorganized Debtor shall be by checks drawn on a domestic bank, and promptly mailed, postage prepaid. Any check issued to pay an Allowed Claim will be null and void if such check is not negotiated within ninety (90) days of its issuance. All Claims that the Reorganized Debtor attempt to pay with a check that becomes void hereunder will be barred and disallowed, and all rights to such distribution by such Creditor shall be forfeited. The Reorganized Debtor will retain the funds resulting from such void checks for the benefit of other Creditors and will distribute such funds to such other Creditors under the Plan.

**6.8 Retention and Preservation of Claim Objections and Causes of Action.** Pursuant to Section 1123(b)(3)(B) of the Bankruptcy Code, upon entry of the Confirmation Order, the Debtors' and the Reorganized Debtor's rights to object to all Claims and Interests asserted against the Estate and all of the Debtors' or Estates' Causes of Action, including without limitation: (1) the Debtors' Causes of Action asserted in any adversary proceeding, U.S. District Court litigation, state court proceeding, or any other proceeding which is pending as of the Confirmation Date; (2) all Claims and Causes of Action disclosed in the Schedules which are incorporated herein by reference; (3) all Claims and Causes of Action described in the Disclosure Statement; (4) any Claims and Causes of Action contained in any contested matter or objection to Claim pending on the Confirmation Date; and (5) any and all other Claims and Causes of Action that the Debtors hold pre-confirmation, including, but not limited to, Claims for unpaid accounts receivable, shall vest in the Reorganized Debtor, and the Reorganized Debtor is appointed and authorized to pursue such objections and such causes of action. Notwithstanding anything else in the Plan to the contrary, no provision in this Plan is intended or shall be construed to preclude or otherwise bar the Debtors or the Reorganized Debtor from pursuing any claims arising under chapter 5 of the



Bankruptcy Code or under other applicable law. Among other things, no Person sued pursuant to sections 547, 548, 549, 550, 553 of the Bankruptcy Code or otherwise may argue that confirmation of this Plan precludes such claim on grounds of res judicata, issue preclusion or otherwise.

**6.9 No Release or Waiver.** Unless a Claim or Cause of Action against any Person is expressly waived or released in the Plan or any Final Order of the Bankruptcy Court, the Debtors expressly reserve such Claim or Cause of Action for later adjudication (including without limitation, Claims and Causes of Action not specifically identified or which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts and circumstances which may change or be different from those which the Debtors now believes to exist) and, therefore, no preclusion doctrine, including without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claims preclusion, waiver, estoppel (judicial, equitable, or otherwise) or laches shall apply to such Claims or Causes of Action upon or after the confirmation or consummation of the Plan based on the Disclosure Statement, the Plan, or the Confirmation Order, except where such Claims or Causes of Action have been expressly released in the Plan or any other Final Order of the Bankruptcy Court.

## ARTICLE 7 VOTING ON THE PLAN

**7.1 Voting of Claims.** Each holder of an Allowed Claim in an impaired Class which retains or receives property under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan.

**7.2 Nonconsensual Confirmation.** If any impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in Sections 1126(c) or 1126(d) of the Bankruptcy Code, as applicable, or if any impaired class is deemed to have rejected the Plan, the Debtors reserve the right (i) to confirm the Plan under Section 1129(b) of the Bankruptcy Code, and (ii) to amend the Plan in accordance with Section 11.6 hereof to the extent necessary to obtain entry of a Confirmation Order.

## ARTICLE 8 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

**8.1 Assumption of Executory Contracts and Leases.** The following Executory Contracts and Leases (collectively, the "Assumed Contracts") are assumed pursuant to section 365 of the Bankruptcy Code in accordance with their terms, unless (a) alternative terms are agreed to by the non-Debtor party or parties to such Executory Contracts or Lease or (b) alternative terms are specified in the Plan:

**8.1.1** All existing written lease agreement, if any, under which Harbor or HRAF is landlord;

**8.1.2** All existing settlement agreements with borrower or guarantors of Harbor or HRAF, if any; and

**8.1.3** All existing executory contracts or agreements set forth in a written document entitled "Schedule of Assumed Contracts and Leases," provided such Schedule is filed with the Bankruptcy Court at least fifteen (15) days prior to the Confirmation Date.

**8.2 Rejection of Executory Contracts.** Except for the Assumed Contracts, any and all Executory Contracts and unexpired leases that have not been either assumed and assigned or rejected prior to the Effective Date are rejected by the Debtors (the "Rejected Contracts"), and the entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such rejection pursuant to Sections 365(a) and 1123(b)(2) of the Bankruptcy Code.

**8.3 Plan Does Not Supersede Prior Orders; Prior Motions Incorporated.** This Plan does not supersede any Final Order of the Bankruptcy Court pursuant to which one of the Debtors has either assumed or rejected an executory contract or unexpired lease. Unless expressly provided herein to the contrary, all such Final Orders are deemed incorporated herein, and all such executory contracts and leases shall be deemed assumed or rejected as specified in such Order. Any motion to assume or reject an executory contract or lease filed by the Debtors prior to the Confirmation Date shall be deemed incorporated into paragraphs 8.1 or 8.2, as applicable.

**8.4 Approval of Assumption of Executory Contracts and Unexpired Leases.** Entry of the Confirmation Order shall constitute the approval, pursuant to Section 365(a) of the Bankruptcy Code, of the assumption of the executory contracts and unexpired leases assumed as of the Effective Date of the Plan.

**8.5 Cure Claims.** The Debtors shall file with the Bankruptcy Court, and serve upon all counterparties to executory contracts to be assumed pursuant to this Article, not later than thirty days before the Confirmation Date, a proposed Cure Schedule. The counterparties to such executory contracts may file any objections to the Debtors' proposed cure amounts, which objections must state with specificity the basis for any objection, including the counterparties' proposed cure amount, any documentary evidence supporting the objection, and a detailed basis for the objection, not later than fifteen days before the Confirmation Date. The Bankruptcy Court shall determine any disputes concerning cure claims at the confirmation hearing.

**8.6 Rejection Damage Claims.** If the rejection of an Executory Contract or unexpired lease by one of the Debtors pursuant to Section 8.2 hereof results in a claim for damages to the other party or parties to such contract or lease, any claim for such damages, if not heretofore evidenced by a filed proof of claim, shall be forever barred and shall not be enforceable against the Estate, or its respective properties or agents, successors, or assigns, including the Reorganized Debtor, unless a proof of claim is filed with the Bankruptcy Court and served upon counsel for the Reorganized Debtor on or before forty-five (45) days following the Confirmation Date. Unless otherwise ordered by the Bankruptcy Court or provided in the Plan, all such Claims for which proofs of claim timely are filed will be treated as General Unsecured Claims under Class 2 or

Class 23, as applicable, subject to the provisions of the Plan. The Reorganized Debtor shall have the right to object to any such rejection damage claims filed in accordance with this section.

**8.7 Post-Petition Agreements Unaffected By Plan.** Except as otherwise expressly provided herein, nothing contained in the Plan shall alter, amend or supersede any agreements or contracts entered into by the Debtors after the Petition Date that were otherwise valid, effective and enforceable against the Debtors as of the Confirmation Date. The Reorganized Debtor shall be deemed to be substituted for any Debtor in such contract or agreement, as applicable, and the Reorganized Debtor shall have all right, title and interest of the Debtors under such contract or agreement as if the Reorganized Debtor had been the original contracting party thereunder.

## ARTICLE 9 CONDITIONS PRECEDENT TO EFFECTIVE DATE

**9.1 Conditions Precedent to Effectiveness.** The Plan shall not become effective, and the Effective Date shall not occur, unless and until the following conditions shall have been satisfied or waived:

**9.1.1** the Confirmation Order, in form and substance reasonably acceptable to the Debtors, shall have been entered by the Bankruptcy Court and shall have become a Final Order;

**9.1.2** all actions, other documents and agreements necessary to implement the Plan shall have been executed, delivered and, if necessary, properly recorded, and shall have become effective;

**9.1.3** the Court shall have entered orders (or there shall be agreements satisfactory to the Debtor) concerning Claims, any Liens asserted by holders of Claims, and any interests in the Debtor (which may be orders included within the Confirmation Order) that, in the sole discretion of the Debtors are required for the feasibility and implementation of the Plan; and

**9.1.4** the consolidated Estate shall have sufficient Cash to meet all Cash funding obligations under the Plan required to be made on the Effective Date and the Initial Distribution Date.

**9.2 Failure of Conditions Precedent.** Notwithstanding anything in this Plan to the contrary, the conditions set forth in Section 9.1 above must be satisfied or waived on or before April 15, 2012. In the event that the conditions set forth in Section 9.1 above are not satisfied on or before April 15, 2012, then the Plan shall be deemed revoked and withdrawn, the Confirmation Order shall be deemed vacated, and Section 11.8 of the Plan shall apply.

**9.3 Waiver of Conditions.** The Debtors may waive one or more of the conditions precedent to the effectiveness of the Plan set forth in Section 9.1 above, except that the Debtors may not waive the condition that the Estates will have sufficient

Cash to meet all payment and funding obligations under the Plan on the Effective Date and the Initial Distribution Date.

## ARTICLE 10 RETENTION OF JURISDICTION

**10.1 Retention of Jurisdiction.** After the Effective Date, the Bankruptcy Court shall have original jurisdiction of all matters arising in, arising under or related to the Bankruptcy Case or Plan pursuant to, and for the purposes of, Sections 105(a) and 1142 of the Bankruptcy Code, including but not limited to the following specific matters:

**10.1.1 Executory Contracts.** The Court shall retain jurisdiction (a) to hear and determine any and all pending applications for the rejection or assumption of executory contracts and unexpired leases, and (b) to hear and determine any and all Claims resulting from the rejection of any executory contract or unexpired lease, and any objections to such Claims.

**10.1.2 Litigation.** The Court shall retain jurisdiction to hear and determine any and all adversary proceedings, applications, contested matters and other litigated matters pending on the Confirmation Date or filed thereafter, including any and all claims that might be filed by the Reorganized Debtor under chapter 5 of the Code.

**10.1.3 Distributions.** The Court shall retain jurisdiction to ensure that the distributions to holders of Claims are accomplished as provided herein.

**10.1.4 Determine Claims Arising Post-Confirmation.** The Court shall retain jurisdiction to determine any Claim or liability to a Governmental Unit which may be asserted as a result of the transactions contemplated herein.

**10.1.5 Tax Claims.** The Court shall retain jurisdiction to hear and determine matters concerning state, local, and federal taxes in accordance with Sections 346, 505 and 1146 of the Bankruptcy Code.

**10.1.6 Objections to Claims.** The Court shall retain jurisdiction (a) to hear and determine any objections to Claims filed both before and after the Confirmation Date, (b) to allow or disallow any Claim in whole or in part, (c) to decide any controversies as to the classification of any Claims and/or (d) to estimate any Disputed Claim.

**10.1.7 Stay or Reversal of Confirmation.** The Court shall retain jurisdiction to enter and implement such orders as may be appropriate in the event Confirmation of the Plan is for any reason stayed, reversed, revoked, modified or vacated.

**10.1.8 Compensation.** The Court shall retain jurisdiction to hear and determine all applications by Professionals and others for compensation and reimbursement of expenses.

**10.1.9 Plan Modification.** The Court shall retain jurisdiction to hear applications, if any, to modify the Plan in accordance with § 1127 of the Bankruptcy Code. After Confirmation of the Plan, the Reorganized Debtor may also, so long as it does not adversely affect the interests of Creditors, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement or the Order of Confirmation, in such manner as may be necessary to carry out the purpose and effect of the Plan.

**10.1.10 Plan Disputes.** The Court shall retain jurisdiction to hear and determine disputes arising in connection with the Plan or its implementation, including without limitation disputes relating to the execution of agreements, documents or instruments required to be executed pursuant to the terms of the Plan, or arising under or relating to the interpretation of agreements, documents or instruments executed in connection with the Plan.

**10.1.11 Plan Implementation.** The Court shall retain jurisdiction to construe and to take any action to enforce the Plan and issue such orders as may be necessary for the implementation, execution and consummation of the Plan.

**10.1.12 Plan Corrections.** The Court shall retain jurisdiction to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or in the Confirmation Order as may be necessary to carry out the purpose and the intent of the Plan.

**10.1.13 Creditors' Disputes.** The Court shall retain jurisdiction to take any action to resolve any disputes arising out of or relating to any Claim, to hear and determine other issues presented by or arising under the Plan, and to take any action to resolve any disputes of Creditors with respect to their Claims.

**10.1.14 Other Matters.** The Court shall retain jurisdiction to determine such other matters and for such other purposes as may be provided in the Order of Confirmation or that are not inconsistent with chapter 11 of the Bankruptcy Code.

**10.2 Exclusive Jurisdiction.** The retention of jurisdiction provided for in this Plan shall be exclusive with respect to all matters set forth in section 10.1 hereof so as to preserve for the Reorganized Debtor the benefits of the Plan, subject to the Court's power under section 305 of the Bankruptcy Code or 28 U.S.C. § 1334(c) to abstain as to all or part of any proceeding.

**10.3 Effectuating Orders.** The Bankruptcy Court shall enter all judgments, partial judgments, and Orders necessary to effectuate or enforce the Plan, any term therein or as reasonably requested by any party intended as a direct beneficiary of a material provision of the Plan. Such Orders and decrees may include a permanent injunction effectuating all actions, releases, assignments, transfers and waivers required by the Plan.

#### **10.4 Closure of the Case.**

**10.4.1 Closing the Bankruptcy Case.** As soon as the Reorganized Debtor determines that there is no further need for administration of the Case by the Bankruptcy Court, the Case shall be closed pursuant to 11 U.S.C. § 350 upon (i) the filing of a final report, (ii) after twenty (20) days notice to parties-in-interest, and (iii) the entry of an appropriate Order by the Court closing the Case.

**10.4.2 Post-Confirmation Payments to United States Trustee.** Until entry of an Order closing, dismissing or converting the Bankruptcy Case, any quarterly payments due to the office of the United States Trustee after the Effective Date of the Plan shall be paid in accordance with 28 U.S.C. § 1930(a)(6) by the Reorganized Debtor.

**10.4.3 Reopening Case.** At any time, the Reorganized Debtor may obtain entry of an order reopening the Bankruptcy Case to obtain any relief or order from the Bankruptcy Court consistent with section 10.1. Although the Reorganized Debtor may seek such relief on an ex parte basis, the Reorganized Debtor shall give notice of the motion or other request to the US Trustee.

### **ARTICLE 11 MODIFICATION OF THE PLAN**

**11.1 Revocation or Withdrawal of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors revoke or withdraw the Plan prior to the Confirmation Date, then the Plan shall be deemed null and void. In such event, nothing contained herein shall constitute or be deemed a waiver or release of any Claims by or against the Estates or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving the Estates.

**11.2 Amendments Prior to Confirmation.** Alterations, amendments or modifications of the Plan may be proposed in writing by the Debtors at any time prior to the Confirmation Date, provided that the Plan, as altered, amended or modified, satisfies the conditions of Sections 1122 and 1123 of the Bankruptcy Code, and the Debtors shall have complied with Section 1125 of the Bankruptcy Code.

**11.3 Amendments After Confirmation.** The Plan may be altered, amended or modified at any time before or after the Confirmation Date and before substantial consummation, provided that (a) the Plan, as altered, amended or modified, satisfies the requirements of the Bankruptcy Code and (b) the Bankruptcy Court approves such modifications after such notice, and under such circumstances, as the Court determines to be fair and equitable.

**11.4 Effect on Acceptance Requirements.** The holder of a Claim that has accepted the Plan shall be deemed to have accepted the Plan, as altered, amended or modified, if (a) such Person fails timely to object to the proposed alteration, amendment or modification, or (b) in the event an objection is timely filed, the Court determines the proposed alteration, amendment or modification does not materially and adversely

change the treatment of the Claim of such holder. The Debtors may correct any defect or omission in this Plan and any exhibit hereto without notice to holders of Claims insofar as it does not materially and adversely affect the interests of any such holders.

**11.5 Effect of Modification.** Every modification of the Plan will supersede all previous versions of the Plan when such modification becomes effective. Previous superseded versions of the Plan will be deemed to be in the nature of a withdrawn or rejected settlement proposal, and will be of no evidentiary or substantive effect for any purpose whatsoever.

## **ARTICLE 12 STAYS, INJUNCTIONS AND RELEASES**

**12.1 Continuation of Injunctions or Stays until Effective Date.** All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date. Further, unless the Plan provides otherwise, any injunctions or stays ordered by the Bankruptcy Court shall continue in effect through and after the Effective Date.

**12.2 Injunction Relating to the Plan.** As of the Effective Date, all Persons are hereby permanently enjoined from commencing or continuing, in any manner or in any place, any action or other proceeding, whether directly, indirectly, derivatively or otherwise against the Debtors or their Estates, on account of, or respecting any Claims, debts, rights, Causes of Action or liabilities discharged or treated pursuant to the Plan, except to the extent expressly permitted under the Plan. Upon entry of the Confirmation Order, all holders of Claims and Equity Interests and other parties in interest, along with their respective present, future, or former employees, agents, officers, directors, or principals, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan. Further, except as otherwise expressly provided in the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims against the Debtors, or who have held, hold or may hold any debt or interest relating to the Debtors, are permanently enjoined, from and after the Effective Date, to the maximum extent permitted by law, from (i) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such Claim, debt or interest against the Debtors or the Reorganized Debtor, or (ii) enforcing, attaching, collecting or recovering by any manner or means any judgment, award, decree or order against the immediate or any mediate transferee of any property distributed pursuant to the Plan or of any putative securities, based upon a claim that the transferor's receipt of such property constituted a fraudulent conveyance, preference, violation of bulk sales or other law, or based upon any other claim that receipt and or distribution of property by transfer pursuant to the Plan is wrongful, whether in law or equity.

**12.3 Broad Injunction.** The intent of paragraph 12.2 is to provide the broadest possible injunction permitted by law and, to the extent permitted by law, to expand the scope of that injunction for the benefit of the Reorganized Debtor to the extent that, at any time after the Effective Date, the law is clarified or changed to permit such a broader injunction. The injunction in the Confirmation Order shall provide that the holders of Claims shall be enjoined from commencing or continuing any such specified

action or proceeding against the Debtors or the Reorganized Debtor with respect to any Claim or property of the Estate, including Claims based in whole or in part on an allegation: (i) that the Debtors breached any contract, with, or any duty or obligation to the Creditor; (ii) that the Debtors were the alter ego or instrumentality of another Person; (iii) that the Debtors made any preferential or fraudulent transfer or any other voidable transfer or payment to any Person; or (iv) that the Debtors are liable for any act or omission. In addition, to the extent that 11 U.S.C. § 524(e) or other applicable law imposes a limit on the scope of the injunction against any holder of Claims, such holder shall be required to marshal such Claims and to exhaust all of the holder's legal and equitable remedies against all other Persons who are jointly or severally liable on such Claims before attempting to enforce such claims against the Reorganized Debtor.

**12.4 Exculpation.** Neither the Reorganized Debtor nor any of its attorneys, accountants or agents shall have or incur any liability to any Creditor for any act or omission in connection with or arising out of their administration of the Plan or the property to be distributed under the Plan, except for willful misconduct, and in all respects, shall be entitled to rely upon the advice of counsel with respect to their duties and responsibilities under the Plan and shall be fully protected in acting or in refraining from acting in accordance with such advice.

**12.5 Release of Claims.** Except as contemplated by the Plan, the rights afforded to holders of Claims in the Plan shall be in exchange for a complete release, satisfaction and discharge of all Claims against the Debtors and the Reorganized Debtor, and acceptance of such distributions under the Plan shall be deemed irrevocably to release any and all claims of any type, kind or nature against the Debtors and the Reorganized Debtor. Persons deemed to have released claims pursuant to this paragraph shall be forever precluded from asserting against the Debtors, the Reorganized Debtor or its assets any Claim, including any Claim of the type released or deemed released herein.

**12.6 Setoffs.** Except as otherwise provided in this Plan, nothing contained in this Plan shall constitute a waiver or release by the Reorganized Debtor or the Estate of any rights of setoff the Reorganized Debtor or the Estate may have against any Person.

## ARTICLE 13 DEFAULT AND REMEDIES

**13.1 Default of Plan; Notice Required.** In the event of any material default of the provisions of this Plan, a creditor or party in interest aggrieved by such default may provide written notice to the Reorganized Debtor and its counsel of record (a "Default Notice"). The Default Notice must describe with specificity the nature of the default alleged and the steps required of the Reorganized Debtor to cure such default.

**13.2 Opportunity to Cure.** The Reorganized Debtor shall have thirty (30) days after receipt by it and its counsel of record of a written Default Notice to cure such default. The aggrieved Person shall take no further action until at least thirty (30) days have passed and the Reorganized Debtor has not cured or substantially complied with the Default Notice. Even after the thirty (30) day period has expired, the Reorganized



Debtor may cure a default at any time, even after an application or motion has been filed by an aggrieved party.

### **13.3 Remedies in the Event of Default.**

**13.3.1 Application to Compel Compliance.** If a material default has occurred and the Reorganized Debtor does not cure such default within thirty (30) days after receipt of a Default Notice, a creditor or party in interest aggrieved by such a material default may apply to the Bankruptcy Court to compel compliance with the applicable provisions of the Plan. Such application must be accompanied by an affidavit or sworn declaration specifying the default, the applicant's compliance with the notice requirements, and the Reorganized Debtor's failure to cure the same as required herein.

**13.3.2 Service of Application.** The application must be served upon (a) the Reorganized Debtor, (b) the Reorganized Debtor's counsel, (c) the United State Trustee, (d) the Bank and/or its successor-in-interest, and (e) the twenty largest unsecured creditors of both Debtors or, if applicable, the Unsecured Creditor's committee(s).

**13.3.3 Determination and Relief by Bankruptcy Court.** The Bankruptcy Court, after notice and a hearing, shall determine whether a default occurred, whether it was and is material, and if a material default occurred, whether such default has been cured. If the Court determines that a material default has occurred and has not been cured, the Court shall determine an appropriate remedy in light of the applicable default, including an order compelling compliance with the pertinent provisions of the Plan. In determining an appropriate remedy, the Court should consider and impose the least severe remedy that will appropriately compensate the aggrieved party or address the default. Neither the section nor any other provision of this Plan, however, shall be construed to provide a Creditor or other Person with the right to recover attorneys' fees from the Reorganized Debtor, in the event of a material default or otherwise.

## **ARTICLE 14 MISCELLANEOUS**

**14.1 Severability.** If, prior to the Confirmation Date, any term or provision of the Plan is determined by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court may, upon the request of the Debtors, alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alternation or interpretation. The Confirmation Order shall constitute a judicial determination that each

term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable according to its terms.

**14.2 Binding Effect.** The rights, duties and obligations of any Person named or referred to in this Plan shall be binding upon, and shall inure to the benefit of, the successors and assigns of such Person. Pursuant to 11 U.S.C. § 1141(a), the provisions of this Plan bind the Reorganized Debtor, any Person issuing securities under the Plan, any Person acquiring property or receiving distributions under the Plan, the counter-parties to any executory contracts or unexpired leases with the Debtors, any and all Creditors or Equity Interest holders of the Debtors, and any and all other Persons referred to or contemplated in this Plan, whether or not the Lien, Claim, Equity Interest or other right of such Person is impaired under the Plan and whether or not such Person has accepted the Plan. To the extent the Bankruptcy Case is converted to chapter 7 or the Reorganized Debtor files a future bankruptcy case, the Claims, Liens, Equity Interests and rights of Creditors and other Persons, as determined and modified by this Plan, shall be final and shall determine the allowed amounts of such claims and interests in the subsequent chapter 7 case or future bankruptcy case.

**14.3 Further Assurances.** Each Person receiving any payment or other benefit under the Plan, including any holder of any Allowed Claim or Equity Interest, shall execute such documents and shall take such other actions (or omit to take actions) as may be necessary or reasonable in order to effectuate the Plan. All injunctions or stays provided for in the Bankruptcy Cases under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

**14.4 Bar Date for Administrative Claims.** All applications for allowance of Administrative Claims other than (a) fees and expenses of Professionals Allowed pursuant to an Order of the Bankruptcy Court, and (b) fees and charges assessed against the Estates pursuant to 28 U.S.C. § 1930, shall be filed not later than thirty days after the Effective Date. All Administrative Claims not filed within thirty days after the Effective Date shall be barred. The deadline in the preceding sentence shall be construed and have the same force and effect as a statute of limitations. The Reorganized Debtor shall provide notice to all creditors listed on the mailing matrix of this bar date within ten days after the Effective Date. The Bankruptcy Court shall determine all Administrative Claims.

**14.5 Notices.** All notices, requests and demands to or upon the Reorganized Debtor shall only be effective if in writing and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and confirmed, addressed as follows:

Harbor Real Asset Fund  
HRAF Holdings LLC  
7659 South Main Street  
Midvale, Utah 84047  
Tel: (801) 208-3701  
Fax: (801) 208-3705

with a copy to:

Matthew M. Boley  
Parsons Kinghorn Harris  
111 East Broadway, 11th Floor  
Salt Lake City, Utah 84111  
Tel: (801) 363-4300  
Fax: (801) 363-4378

**14.6 Governing Law.** Except to the extent the Bankruptcy Code, Bankruptcy Rules or other federal law is applicable, the rights and obligations arising under this Plan shall be governed by, construed and enforced in accordance with, the laws of the State of Utah, without giving effect to the principles of conflicts of law of such jurisdiction.

**14.7 Post-Confirmation Fees, Final Decree.** The Reorganized Debtor shall be responsible for the payment of any post-confirmation fees due pursuant to 28 U.S.C. § 1930 and the filing of required post-confirmation reports, until a final decree and/or Order closing the Bankruptcy Case is entered.

**14.8 Filing of Additional Documents.** On or before substantial consummation of the Plan, the Reorganized Debtor shall file with the Bankruptcy Court any agreements or other documents that may be necessary or appropriate to effectuate and further evidence the terms and conditions hereof.

**14.9 Inconsistency.** In the event of any inconsistency between the Plan and the Disclosure Statement, or any other instrument or document created or executed pursuant to the Plan, the terms of the Plan shall govern.

Dated this 26th day of September, 2011

HRAF HOLDINGS, LLC, a Utah limited liability

By

  
Ryan A. Relyea  
Authorized Signatory

HARBOR REAL ASSET FUND, LP, a  
Delaware limited partnership

By

\_\_\_\_\_  
Ryan A. Relyea  
Authorized Signatory

**PARSONS KINGHORN HARRIS**

/s/ Matthew M. Boley  
George B. Hofmann  
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