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Recording Requested By
And When Recorded Mail To:

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SHARED OWNERSHIP OF 962 MODESTO AVENUE**

This Declaration of Covenants, Conditions and Restrictions for Shared Ownership of 962 Modesto Avenue (this "**Declaration**") is made as of the date of the signature below by Roman Todd Kreminski ("**Declarant**").

RECITALS

A. Declarant is the owner of that certain real property and improvements located at 962 Modesto Avenue, South Lake Tahoe, El Dorado County, California, and more particularly described on Exhibit A attached hereto, together with those furnishings located therein and described on Exhibit B attached hereto (collectively, the "**Property**").

B. Declarant intends to convey four (4) undivided fractional interests ("**Shared Ownership Interests**") in the Property providing in each deed therefor that the grantee or grantees named therein shall be tenants-in-common owning the Percentage Interest specified therein and shall have certain defined rights to use and occupy the Property during certain specified time periods subject to the declarations, limitations, covenants, conditions and restrictions set forth in this Declaration.

C. By this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration and improvement of the Property and for the payment of taxes, assessments, insurance premiums and other expenses pertaining thereto.

NOW, THEREFORE, in furtherance of such intent, Declarant hereby declares that the Property shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the following easements, covenants, conditions and restrictions set forth in this Declaration, as this Declaration may be amended from time to time, and subject to the Rules and Regulations, all of which easements, covenants, conditions and restrictions are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Property and the Shared Ownership Interests therein. All such easements, covenants, conditions and restrictions and Rules and Regulations shall constitute covenants running with the land and equitable servitudes and shall be binding upon and for the benefit of Declarant and each Shared Ownership Interest, and shall be binding upon and for the benefit of all parties having or acquiring a Shared Ownership Interest, including, but not limited to, the heirs, executors, administrators and assigns of any such parties and all subsequent owners of such Shared Ownership Interests.

ARTICLE I. DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.1 **"Annual Report"** means a report to Owners comprising (a) a balance sheet relating to the Property as of the last day of a Fiscal Year, (b) an operating statement for such Fiscal Year, (c) a statement of the net changes in financial position of the Property for such Fiscal Year, and (d) a list of the names, mailing addresses and telephone numbers of the Owners.

1.2 **"Assessments"** means, collectively, the Basic Assessment, Tax Assessment, Special Assessment, Supplemental Tax Assessment and Reconstruction Assessment.

1.3 **"Basic Assessment"** means, for each Shared Ownership Interest and for each Fiscal Year, an assessment levied by the Manager (on behalf of the Owners) against such Shared Ownership Interest in an amount determined by multiplying the Basic Expenses by the Owner's Percentage Interest.

1.4 **"Basic Expenses"** means the estimated aggregate amount of expenses, as set forth in the Budget, to be incurred by the Owners during the applicable Fiscal Year:

(a) to operate and manage the Property, including, without limitation, maintenance, improvements and repairs to the Property;

(b) to provide for the collection of funds on an annual basis over the useful life of the Property components in an amount sufficient to meet the Reserve Expenses;

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

(d) to provide for the payment of the fees of the Manager.

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

(i) All charges, costs, and expenses whatsoever incurred for or in connection with the administration and operation of the Property;

(ii) Taxes, including, without limitation, real property taxes assessed against the Property, the Shared Ownership Interests and the Common Furnishings, which are not separately levied by the County or other governmental agency against each Owner;

(iii) Assessments and other similar governmental charges levied on or attributable to the Property, unless separately levied against each Owner;

(iv) Insurance obtained pursuant to this Declaration;

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

(vi) Cost of repair, reinstatement, rebuilding, and replacement of the Property;

(vii) The costs of all basic utility services, including water, electricity, natural gas, garbage disposal, local telephone service and any other similar service attributable to the Property;

(viii) The unpaid share of any Assessment levied during the previous Fiscal Year against any Shared Ownership Interest for which a default in payment thereof has occurred, to the extent that the same becomes uncollectible; and

(ix) Wages, accounting and legal fees, management fees, housekeeping service, and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred with respect to the Property.

Basic Expenses shall not include any expense constituting a Personal Charge.

1.5 **"Budget"** means a pro forma operating statement setting forth the Basic Expense for a particular Fiscal Year.

1.6 **"Check-in Time"** and **"Check-out Time"** means the times designated as such in the then-current Rules and Regulations.

1.7 **"Common Furnishings"** means all furniture, furnishings, appliances, telephone system and other personal property from time to time owned, leased or held by the Owners (i) for use in common by the Owners in accordance with this Declaration or (ii) for use by the Owners or the Manager in the operation, management, maintenance and repair of the Property.

1.8 **"Consent of a Majority of the Owners"** means the vote or written assent of Owners entitled to vote and who collectively own more than fifty percent (50%) of the voting power vested in the Owners (as such voting power is described in Section 3.3 below). Unless otherwise specifically set forth herein, any and all acts which require the consent of the Owners shall occur upon the Consent of a Majority of the Owners as defined above.

1.9 **"Consent of all of the Owners"** means the vote or written assent of Owners entitled to vote or so assent and who collectively own one hundred percent (100%) of the total voting power vested in such Owners (as such voting power is described in Section 3.3 below).

1.10 **"County Assessor"** means the County Assessor of El Dorado County, California.

1.11 **"Current Assessed Value"** means, for each Tax Year, the assessed valuation ascribed to the Property by the County Assessor as of the Lien Date next preceding the commencement of such Tax Year.

1.12 **"Declarant"** means Roman Todd Kreminski, or any successor-in-interest to Declarant either (a) by express assignment of the rights of Declarant hereunder by an instrument executed by Declarant, recorded in the Office of the County Recorder and filed with the Manager, or (b) through foreclosure or acceptance of a deed in lieu of foreclosure of the interest of a beneficiary or mortgagee under a Prior Mortgage of Declarant's interest in the Property provided that such beneficiary or mortgagee also executes, records in the Office of the County Recorder and files with the Manager an express assignment of the rights of Declarant hereunder.

1.13 **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions for Shared Ownership of 962 Modesto Avenue, as the same may be amended or supplemented from time to time in the manner herein provided.

1.14 **"Delinquent"** when used to describe a payment means that such payment is due hereunder and remains unpaid more than fifteen (15) days after the due date therefor.

1.15 **"Detained User"** means any Owner or Permitted User prevented from using or occupying the Property or part thereof for all or any portion of his Use Period because of the unauthorized use or occupancy, or uninhabitability of the Property, caused by a Detaining User.

1.16 **"Detaining User"** means any Owner or Permitted User who makes unauthorized use or occupancy of the Property, or through any act or course of conduct affecting the Property, or any portion thereof, renders the Property uninhabitable.

1.17 **"Fair Rental Value"** means the cost of renting comparable accommodations located in the vicinity of the Property.

1.18 **"Fiscal Year"** means the one (1) year period commencing on the first day of January of each calendar year; provided, however, that the first Fiscal Year shall be the partial year period commencing on the Starting Date and ending on December 31; provided, further, that the Fiscal Year shall be subjected to change upon the Consent of a Majority of the Owners.

1.19 **"General Account"** means the separate federally insured account(s) with a bank and/or savings and loan association located within the State of California and selected by the Manager into which all cash and cash equivalent receipts of the Property shall be deposited.

1.20 **"Governing Instruments"** means this Declaration, the Rules and Regulations and any policies and procedures adopted by the Owners, as the foregoing may be amended or supplemented from time to time.

1.21 **"Lien Date"** means the date each year established by the State of California as the date upon which the assessed valuation of real property within the State is determined for purposes of calculating real property taxes for any Tax Year.

1.22 **"Maintenance Periods"** means (a) any Use Period reserved by the Manager in order to perform maintenance, (b) the periods of time between Check-Out and subsequent Check-In, and (c) the period(s) of time, outside of those described in clause (b), during which any maintenance or repair of the Property is requested by an occupant or is reasonably necessary to be performed. Manager shall use its best efforts to allocate Maintenance Periods reserved by Manager equally between the Shared Ownership Interests.

1.23 **"Manager"** means the agent engaged by the Owners pursuant to Section 3.4, below. The first Manager shall be appointed by Declarant and may be Declarant or an affiliate of Declarant. Throughout this document, whenever the Manager has duties or obligations, manager shall be conducting same on behalf of the Owners, and in the event no Manager is under contract to perform such duties at the time such duties or obligations arise, the Owners shall undertake to accomplish those acts which would otherwise be required of the Manager.

1.24 **"Management Agreement"** means an agreement between the Owners and the Manager regarding Manager's operation of the Property.

1.25 **"Mortgage"** means a mortgage or deed of trust.

1.26 **"Mortgagee"** means the beneficiary pursuant to a Mortgage recorded in the Office of the County Recorder.

1.27 **"Office of the County Recorder"** means the Office of the County Recorder of El Dorado County, California.

1.28 **"Original Deed"** means each grant deed from Declarant first recorded after the date hereof conveying a Shared Ownership Interest, excluding, however, any deed which conveys all or substantially all of the interest in the Property then owned by Declarant and which expressly recites that it is not an Original Deed within the meaning of this Declaration.

1.29 **“Owner”** means and includes (a) the grantee(s) named in each Original Deed and successor(s)-in-interest to such grantee(s).

1.30 **“Percentage Interest”** means, generally, the percentage of ownership of the Property attributable to a Shared Ownership Interest. Specifically, the Percentage Interest attributable to Shared Ownership Interest No. One is 26.58%; the Percentage Interest attributable to Shared Ownership Interest No. Two is 23.01%; the Percentage Interest attributable to Shared Ownership Interest No. Three is 23.01%; and the Percentage Interest attributable to Shared Ownership Interest No. Four is 27.40%.

1.31 **“Permitted User”** means any person (including, without limitation, members of an Owner’s family and his guests), who either occupies the Property concurrently with the Sponsoring Owner or occupies the Property pursuant to a reservation obtained by the Sponsoring Owner.

1.32 **“Personal Charges”** means (a) any expense resulting from the act or omission of any Owner or his Permitted User, including, without limitation, (i) the cost of long distance telephone charges or telephone message unit charges and other special services or supplies attributable to the occupancy of such Owner during such Owner’s Use Period or the occupancy of the Property by a Sponsored Guest and the expense of additional housekeeping services requested by such Owner or his Permitted User during such Owner’s Use Period; (ii) the cost to repair any damage to any portion of the Property or to repair or replace any Common Furnishings on account of loss or damage caused by such Owner or his Permitted User; or (iii) the cost to satisfy any expense to any other Owner or Owners or to the Manager due to any intentional or negligent act or omission of such Owner or his Permitted User, or resulting from the breach by such Owner or his Permitted User of any provisions of the Governing Instruments, and (b) any transient occupancy tax levied pursuant to the laws of the State of California or El Dorado County payable by any Owner which Manager is or shall be required or entitled to collect on behalf of the levying authority. In amplification of the foregoing, the act or negligence of a Permitted User shall be deemed to be the act or negligence of the Owner who permits such Permitted User to use and occupy any portion of the Property.

1.33 **“Prior Mortgage”** means, with respect to each Shared Ownership Interest, any first Mortgage made in good faith and for value.

1.34 **“Property”** has the meaning ascribed thereto in Recital A, above.

1.35 **“Proposition 13 Percentage”** means the percentage increase or decrease, if any, applied by the County Assessor in any tax year pursuant to California Constitution Article XIII A, Section 2, and any other applicable laws, ordinances, or rules and regulations enacted, adopted or promulgated thereunder as the same may be amended from time to time.

1.36 **“Purchase Agreement”** means a purchase and sale agreement by and among Declarant and the person or entity named therein as “Buyer” or “Purchaser” providing for the sale by Declarant and the purchase by the Buyer or Purchaser of a Shared Ownership Interest.

1.37 **“Reassessed Shared Ownership Interest”** means (a) with respect to each Tax Year and the Tax Assessment therefor, each Shared Ownership Interest conveyed by Original Deed recorded prior to the Lien Date next preceding the commencement of such Tax Year and (b) with respect to any Supplemental Tax Assessment, each Shared Ownership Interest conveyed subsequent to the most recent Lien Date.

1.38 **“Reconstruction Assessment”** means an assessment levied against each Shared Ownership Interest for the purpose of raising funds to rebuild, restore or replace any portion of the Property suffering material damage.

1.39 **“Reserve Account”** means (a) one or more federally insured interest bearing accounts with one or more banks and/or savings and loan associations selected by the Manager, or (b) one or

more Treasury Bills and/or Certificates of Deposit, which account(s), Treasury Bills and/or Certificates of Deposit shall contain funds collected as and for Reserve Expenses.

1.40 **“Reserve Expenses”** means the specific capital expenditures required to be made at any time and from time to time provide for the repair, replacement or restoration of any portion of the Property and for such other purposes as prudent business practice requires.

1.41 **“Roster”** means a written compilation of the names and addresses of each Owner.

1.42 **“Rules and Regulations”** means the “Rules and Regulations for 962 Modesto Avenue,” which relate to the possession, use and enjoyment of the Property.

1.43 **“Shared Ownership Interest”** means an interest, consisting of (a) the undivided fee title interest in the Property, together with (b) the right to use and occupy the Property, all as more particularly set forth in Section 2.1 below. Each Shared Ownership Interest shall be identified by a Shared Ownership Interest number designated on the Use Period Calendar set forth in Exhibit C attached hereto.

1.44 **“Special Assessment”** means an assessment levied against each Shared Ownership Interest to provide funds in the event the Basic Assessment proves inadequate, in an aggregate amount sufficient to provide for such inadequacy.

1.45 **“Sponsored Guest”** means (i) a Permitted User who occupies or intends to occupy the Property while accompanied by his Sponsoring Owner, or (ii) a Permitted User over the age of twenty-one (21) who occupies or intend to occupy the Property under authorization from the Sponsoring Owner but without being accompanied by his Sponsoring Owner.

1.46 **“Sponsoring Owner”** means the Owner in whose name or under whose authority a reservation is made or sought to be made, and who is responsible for the actions of a Permitted user.

1.47 **“Starting Date”** means the date on which the Original Deed conveying the first Shared Ownership Interest is recorded in the Office of the County Recorder.

1.48 **“Statement of Status”** means a written statement setting forth the amount of any delinquent Assessments, Personal Charges or any other amounts unpaid with respect to a Shared Ownership Interest.

1.49 **“Supplemental Tax Assessment”** means, for each Reassessed Shared Ownership Interest, an amount levied against such Reassessed Shared Ownership Interest in an amount determined as set forth herein and required to be paid pursuant to the provisions of California Revenue and Taxation Code Sections 75 through 75.80 (Chapter 498 of Statutes of 1983).

1.50 **“Tax Assessment”** means, for each Shared Ownership Interest and for each Tax Year, an amount levied against such Shared Ownership Interest equal to a portion of the real property taxes levied against the Property and not billed directly to Owners by the County.

1.51 **“Tax Year”** means the one (1) year period beginning July 1 each year and ending June 30 of the following year, or such other tax year established by the State of California for the assessment and collection of real property taxes attributable to the Property and/or the Shared Ownership Interests.

1.52 **“Use Period”** means the seven to ten day periods set forth in the Use Period Calendar, during which an Owner shall have the exclusive right to use and occupy the Property in accordance with the provisions of this Declaration and the Rules and Regulations.

1.53 **“Use Period Calendar”** means the calendar of Use Periods set forth in Exhibit C hereto, which identifies the commencement day of all Use Periods

ARTICLE II. USE RIGHTS AND RESTRICTIONS

2.1 Use Rights

(a) Subject to all the terms and conditions contained elsewhere in this Declaration and the other Governing Instruments, the ownership of a Shared Ownership Interest shall entitle the Owner to the exclusive right to use and occupy the Property during the Use Periods reserved to such Owner in the Use Period Calendar. Each Owner's Use Period shall be identified on the Use Period Calendar by such Owner's Shared Ownership Interest number designated in the attached Exhibit C.

(b) The Rules and Regulations shall establish the earliest and latest dates for the making of reservations for the Property in the event an Owner chooses not to use his or her Use Period and elects to make such Use Period available to other Owners.

(c) Notwithstanding anything in this Section 2.1, no reservation, use or occupancy by any Owner will be permitted if such Owner is delinquent in the payment of any amounts owned by such Owner regarding such Owner's use or ownership of the Property.

2.2 Occupancy

(a) No Owner shall occupy the Property or exercise any other rights of ownership with respect to the Property other than the rights provided to him in this Article II.

(b) Each Owner shall keep the Property in good condition and repair during such Owner's Use Periods; vacate the Property at the expiration of such Owner's Use Period(s); remove all persons and Owner's property therefrom, excluding only the Common Furnishings; leave the Property in good and sanitary condition and repair; and otherwise comply with such check-out and other procedures and regulations as may from time to time be contained in the Rules and Regulations.

(c) Unless included as a Basic Expense, each Owner, when using the Property, shall pay the reasonable cleaning charge established by the Manager as provided in subsection 3.2, and any such other Personal Charges as described in Section 4.8(b), below.

(d) Any Owner who, in accordance with the Rules and Regulations, permits the Property to be occupied by other persons during such Owner's Use Period(s) shall be responsible for any loss, damage, destruction or violation of this Declaration or the Rules and Regulations which occurs during such occupancy as if such Owner were the sole occupant of the Property.

(e) The occupancy of the Property by a Sponsored Guest shall be subject to the discretion of the Manager as set forth in the then-current Rules and Regulations.

2.3 Failure to Vacate

(a) A Detaining User shall (i) be subject to immediate removal, eviction or ejection from the Property; (ii) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejections (to the extent that such notices may be waived under California law); (iii) reimburse the other Owners and the Detained User for all costs and expenses incurred thereby as a result of such conduct, including, but not limited to, costs of alternate accommodations, travel costs, Manager's costs, court costs and reasonable attorneys' fees incurred in connection with removing, evicting or ejecting the Detaining User from the Property, and costs (including reasonable attorneys' fees) incurred in collecting such reimbursement(s); and (iv) pay to the Detained User entitled to use and occupy the Property during such wrongful occupancy, as liquidated damages (in addition to the costs and expenses set forth in subsection 2.3(a)(iii), above), a sum equal to 200% of the Fair Rental Value per day of the Property for each day or portion thereof, including the day of surrender, during which the Detaining User prevents use and occupancy of the Property.

(b) The Manager shall be responsible for determining the Fair Rental Value of the Property.

(c) The Manager shall use reasonable efforts to attempt to remove such Detaining User from the Property and/or to assist the Detained User in find alternate accommodations during such holdover period and to secure alternate accommodations for any Detained User which alternate accommodations shall be as near in value to the Property as possible and the cost thereof shall be assessed to the Detaining User as a Personal Charge.

(d) In the event that the Manager, in its sole discretion, deems it necessary to contract for a period greater than the actual period for which the use is prevented in order to secure alternate accommodations as set forth above, the cost of the entire period shall be assessed to the Detaining User as a Personal Charge.

(e) By accepting an Original Deed or any other transfer of a Shared Ownership Interest, each Owner agrees that, in the event of a wrongful occupancy or use by him or his Permitted User, 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 are deprived of occupancy.

(f) For the purposes of this Section 2.3, the act or negligence of a Permitted User shall be deemed to be the act of the Sponsoring Owner.

2.4 Use Restrictions

(a) Each Owner shall utilize the Property in conformance with those certain use restrictions set forth herein and within the Rules and Regulations.

(b) Use and occupancy of the Property is limited to private, residential use.

(c) Declarant and each Owner, by accepting an Original Deed or any other transfer of a Shared Ownership Interest, hereby covenants and agrees to abide by the Governing Instruments, including, without limitation, the Rules and Regulations.

(d) The smoking of tobacco within the interior of the Residence, including, without limitation, in the garage is strictly prohibited. The Manager may, in its discretion, cause the Residence to be cleaned in such manner as the Manager deems reasonable to remove any smell of smoke from the Residence, and Manager shall charge the cost of such cleaning to the Owner last occupying the Property or to the Sponsoring Owner whose Permitted User last occupied the Property, as a Personal Charge.

2.5 **Transfer of Interest.** No Owner shall sell, assign, transfer, hypothecate or encumber less than all of such Owner's Shared Ownership Interest; provided, however, that nothing herein contained shall restrict the manner in which title to a Shared Ownership Interest may lawfully be held under California law (e.g. joint tenants, tenants-in-common, or the like). Any sale, assignment, transfer, hypothecation or encumbrance by any Owner which would have the effect of separating the Shared Ownership Interest from an Owner's rights and obligations as set forth more fully herein shall be null, void and of no effect. The transfer of any Shared Ownership Interest shall operate to transfer to the new owner of the Shared Ownership Interest the interest of the prior Owner in funds in the hands of the Manager even though not expressly mentioned or described in the instrument of transfer and without further instrument of transfer.

2.6 **Separate Mortgages.** Each Owner shall have the right to mortgage or otherwise to encumber all, but not less than all, of such Owner's interest in such Owner's Shared Ownership Interest. Subject to the provisions of Article V of this Declaration, any Mortgage shall be subordinate to all of the

provisions of the Governing Instruments and in the event of foreclosure, the provisions of the Governing Instruments shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise. Notwithstanding any other provision of the Governing Instruments, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof shall impair, defeat or render invalid the priority of the lien of any Prior Mortgage of any Owner's Shared Ownership Interest if such Prior Mortgage is recorded in the Office of the County Recorder and is given in good faith for value.

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

(a) It is intended that this Declaration shall govern all rights with respect to the use, possession, enjoyment, management and disposition of the Property and the interests therein. Accordingly, all rights with respect to the use, possession, enjoyment, management or disposition of a Shared Ownership Interest in the Property which an Owner might otherwise have as a tenant-in-common (including, but not limited, any common law or statutory right jointly to use, possess or manage commonly-owned property) are hereby unconditionally and irrevocably subordinated to this Declaration for so long as this Declaration shall remain in effect; provided, however, that in the event that an election to terminate this Declaration is made pursuant to Section 7.2, an Owner shall have the rights specified in Section 7.2.

(b) Except as provided in Section 7.2, no Owner or other person or entity acquiring any right, lien or interest in the Property shall seek or obtain, through any legal procedures, judicial partition of the Property or the sale thereof in lieu of partition. If, however, any Shared Ownership Interest is owned by two (2) or more persons as tenants-in-common or as joint tenants or as community property, nothing herein contained shall prohibit a judicial sale of such Shared Ownership Interest in lieu of partition as between such co-tenant or joint tenants.

2.8 **Protection of Interest.** Except as provided in Section 2.6, no Owner shall permit his Shared Ownership Interest to be subject to any lien (other than the liens of current real property taxes), claim or charge, the enforcement of which may result in a sale or threatened sale of the Shared Ownership Interest of any other Owner or any part thereof or in any interference in the use or enjoyment thereof by any other Owner. In the event of a threatened sale of the Property or any part thereof or of the Shared Ownership Interest of any Owner, or should the use and enjoyment of any portion thereof by any Owner be threatened by reason of any lien, claim or charge against the Shared Ownership Interest of any other Owner (the "**Owner in Violation**"), or should proceedings be instituted to effect any such sale or interference, any Owner (the "**Curing Owner**") acting on his own behalf or through the Manager or the Manager acting on behalf of any one or more Owners (if promptly indemnified to his or its satisfaction) may, but shall not be required to, pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof and, in such event, the Owner In Violation shall forthwith pay the amount so paid or expended to the Curing Owner or the Manager, whosoever shall have paid or compromised the lien, claim or charge, together with such reasonable attorneys' fees and related costs as he or it may have incurred. No Owner shall permit his interest in any funds from time to time in possession of the Manager to be subjected to any attachment, lien, claim or charge or other legal process, and each Owner shall promptly restore any funds held by the Manager with respect to his Shared Ownership Interest to the extent depleted by the reason of the assertion of any such attachment, lien, claim, charge, or other legal process and shall reimburse the Manager for all reasonable attorneys' fees or other costs incurred in respect thereof.

2.9 Easements

(a) Easement for Management, Operation, Maintenance, Use and Repair. The Manager, for itself, its successors, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, shall have the right and is hereby granted, for so long as the Manager or its successors shall be required hereunder to manage and maintain the Property, an exclusive easement in

gross in, over and through the Property for the management, operation, repair and maintenance of the Property and the administration and operation of the Property.

(b) Rental of Property by Owners. Each Owner shall have the exclusive right to rent such Owner's Use Period(s) to the general public provided, however, that the Owners comply with the Lake Tahoe Vacation Rental Ordinance (Article XIII, Chapter 28A, City of South Lake Tahoe Code), and further provided that such renting Owner shall be considered the Sponsoring Owner for such rental users. Any rentals received by an Owner for the rental of such Owner's Use Period shall inure to the benefit of such Owner, except that such Owner shall pay to the Manager a fee as reasonably determined by Manager to oversee use of the Property by such renting user. There is hereby reserved by Declarant, and granted to each Owner, a non-exclusive easement in gross in, over and through the Property for the purpose of conducting any approved rental activities under this Section. The rights of Owners to conduct such rental activities shall be limited as set forth more fully in the Rules and Regulations.

(c) Easement for Sales, Resales, and Related Purposes. Declarant, for the benefit of the Owners, reserves an easement in gross in, over and through the Property, for the purposes of marketing and selling the Shared Ownership Interests, displaying signs on the Property, and showing the Property. In amplification of the foregoing, it shall not be considered an unreasonable interference with the rights of any Owner or the Manager for an Owner or such Owner's real estate agent to show the Property to prospective owners if such Owner or such Owner's real estate agent shall provide at least twelve (12) hours notice of his or her desire to show the Property to such prospective owners.

ARTICLE III. MANAGEMENT

3.1 **Powers and Duties Generally.** The operation, administration, maintenance, and repair of the Property, and any alterations or additions thereto, shall be vested in the Owners. The Owners, acting upon their own behalf (or through the Manager or other duly authorized representatives) may, subject to the provisions of the Governing Instruments, exercise any and all rights and powers herein enumerated.

3.2 **Specific Powers and Duties of the Owners.** The Owners shall have the power and the duty to maintain and repair the Property, to administer their own affairs and the operation of the Property as provided herein, to acquire (by lease or purchase), maintain, repair and replace the furnishings, to levy, collect, and enforce the Assessments and Personal Charges enumerated in this Declaration. The following powers and duties are in amplification and not limitation of the foregoing powers and duties:

(a) Bank Accounts. The Owners shall have the power and duty to deposit all funds collected hereunder as follows:

(i) All funds shall be deposited in the General Account. Funds deposited in the General Account(s) may be used only for the purposes for which such funds have been collected.

(ii) Within ten (10) days after deposit in the General Account, all amounts collected for Reserve Expenses shall be deposited in the Reserve Account. The Owners shall keep accurate books and records reflecting the amount in the Reserve Account attributable to each Owner. Funds deposited in the Reserve Account shall be held in trust and, except in an emergency, may be used by the Owners only for the specific purposes for which such funds have been collected. Funds held in Reserve Account and used in an emergency shall be replaced in the Reserve Account as soon as practicable after the date upon which emergency arose but in no event later than the end of the Fiscal Year immediately following the Fiscal Year in which such emergency occurred. Interest, if any, earned on funds deposited in the Reserve Account shall be accumulated therein and shall be used only for payment of Reserve Expenses and any taxes incurred as a result of the earning of such interest.

(b) Cleaning and Housekeeping Service. The Owners shall have the power and duty to do the following for the Property: (i) provide a full annual cleaning during the Maintenance

Period(s); (ii) clean and provide full housekeeping service during the Maintenance Period immediately prior to Check-In Time for any Use Period; (iii) provide such cleaning as may be necessary during a Use Period so that the Property is maintained in good order and repair, and (iv) provide additional housekeeping service during a Use Period if requested by the occupant of the Property; provided, however, that any and all housekeeping provided as set forth above (except for the annual cleaning provide at (b)(i),above) shall be a Personal Charge unless otherwise determined by the Consent of a Majority of the Owners. For purposes of billing, the cleaning provided as set forth at (b)(ii) above, shall be considered a Personal Charge of the Owner or Permitted User occupying the Property immediately prior to such cleaning.

(c) Compensating Use. The Owners shall have the power and duty to compensate each Owner who, through an error on the part of the person(s)/entity managing reservations, is prevented from occupying the Property during his Use Period, by either (i) paying to such Owner a sum equal to 100% of the Fair Rental Value of the Property during his Use Period, or (ii) procuring alternate accommodations reasonably acceptable to such Owner for his Use Period. Whether such Owner is compensated through the method provided in subsection (i) or (ii) shall be at the Owners' discretion.

(d) Delegation. The Owners shall have the power to delegate the authority and responsibilities set forth hereunder to one or more agents, including, without limitation, the Manager as provided for in Section 3.3 below.

(e) Budget. The Owners shall have the power and duty to cause a Budget to be regularly prepared, and copies thereof to be distributed to all Owners as follows:

(i) A Budget shall be distributed to Owners not less than forty-five (45) days nor more than sixty (60) days before the beginning of each Fiscal Year, except the first Fiscal Year with respect to which the Budget was distributed to each Owner prior to such Owner's execution of the Purchase Agreement providing for the sale by Declarant and the purchase by the Owner of a Shared Ownership Interest. The Budget shall contain at least the following information:

(A) Estimated revenue and expenses on accrual basis;

(B) The amount of the total cash reserves currently available for replacement or major repair of the Property and for contingencies;

(C) An itemized estimate of the remaining life of the Property and the methods of funding to defray Reserve Expenses; and

(D) A general statement setting forth the procedures used to calculate and establish Reserve Expenses.

(ii) The Budget must be approved with the Consent of a Majority of the Owners prior to the commencement of each Fiscal Year. Upon distribution of the Budget, as set forth above, the Owners shall have thirty (30) days to issue a written objection to the Budget to the party distributing such Budget. The failure of an Owner to object to the Budget by delivering a written objection thereto within such thirty (30) day period shall be deemed each such Owner's approval of the Budget. In the event a Budget is disapproved by the Owners, the Owners shall convene a meeting as soon as reasonably possible to prepare a Budget which receives the Consent of a Majority of the Owners.

(f) Inspection of Books and Records. The Owners and/or the Manager shall have the power and duty to open, at any reasonable time during usual business hours, the books and records of the Property for inspection by any Owner.

(g) Insurance. The Owners shall have the power and duty to obtain and pay the cost of the following, to the extent commercially reasonable:

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

(ii) On and after the Starting Date, insurance against hazards such as burglary and theft covering the furnishings and to the extent available at a reasonable cost, the personal property on the Property owned by any Owner or Permitted User or in the possession of the Owners, its agents or employees.

(iii) Insurance against loss or liability due to injury to Owners and Permitted Users, or destruction of personal property belonging thereto, while located on the Property, including, without limitation, loss due to claims for bodily injury, death and property damage with a combined single limit liability with regard thereto of not less than \$1,000,000.00 per occurrence. The Owners shall also procure and maintain one or more umbrella liability insurance policies against loss or damage due to claims for personal injury, death and property damage with a limit with regard thereto of not less than \$5,000,000.00 per occurrence if available at a reasonable cost.

(iv) To the extent available at a reasonable cost, any other insurance deemed necessary or desirable by the Owners.

All insurance policies obtained by the Owners hereunder shall name all Owners as additional insureds. Liability insurance shall contain appropriate waivers of subrogation against any Owner or member of such Owner's household, and a provision that no act or omission by an Owner will void the policy or operate as a condition to recovery by any other person under such policy (to the degree such provision is available on a commercially reasonable basis).

(h) Legal and Accounting. The Owners shall have the power to obtain and pay the cost of legal and accounting services necessary or proper in the operation of the Property and maintenance and repair of the Property and the enforcement of the Governing Instruments.

(i) Levy and Collection of Assessments. The Owners shall have the power, and shall have the duty to take such action as they may deem reasonable, (i) to establish the frequency of collection of Assessments, (ii) to levy, collect and enforce Assessments against the Owners in the manner provided in Articles VI and VII hereof in order to pay the expenses of operating the Property and the expenses of maintaining and repairing the Property (including the fee of the Manager), and (iii) to do all things necessary to enforce each Owner's obligations hereunder.

(j) Rules and Regulations. The Owners shall have the power and duty, to adopt, publish and enforce (to the extent deemed necessary and proper), from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Property which Rules and Regulations shall be consistent with the provisions of the Governing Instruments.

(k) Maintenance and Repair. The Owners shall have the power, and to the extent deemed necessary or proper by the Owners for the management and operation of the Property and the maintenance and repair of the Property, the duty, to do the following: (i) repair, maintain, repaint, furnish or refurbish the Property or any portion thereof; (ii) establish reserves for anticipated costs, including the

costs of acquisition and replacement of furnishings; and (iii) acquire and pay for materials, supplies, furniture, furnishings, labor or services.

(l) Minutes, Agenda and Policies. The Owners shall have the power and duty to provide each Owner with (1) copy of any and all votes taken by the Owners within sixty (60) days following the date of such vote, and (2) a list of the orders of business to be considered at upcoming vote of the Owners not later than thirty (30) days prior to the date for such vote unless the Owners shall waive such notice.

(m) Other Necessary Acts. The Owners shall have the power to do all other things or acts deemed by the Owners to be necessary, desirable or appropriate for the operation and administration of the Property and maintenance, repair and replacement of the Property or any portion thereof.

(n) Right of Entry. The Manager (on behalf of the Owners) shall have the right, during Maintenance Periods and upon giving reasonable notice if the Property is occupied, to enter the Property for the purpose of cleaning, housekeeping service, painting, maintenance and repair.

(o) Roster. The Manager (on behalf of the Owners) shall have the power and duty to compile the Roster. Upon the written request of an Owner stating the purpose for which the request is made, the Manager shall furnish such Owner with a copy of the Roster and may charge such Owner a reasonable fee therefor.

(p) Statements of Status; Property Documents.

(i) The Owners shall have the power and duty to issue a Statement of Status within ten (10) days of the mailing or delivery of a request therefor by any Owner, Mortgagee, prospective Mortgagee, purchaser or other prospective transferee of a Shared Ownership Interest. Such Statement of Status shall be binding upon the Owners in favor of any person who may rely thereon in good faith.

(ii) The Owners shall have the power and duty to provide a copy of any or all of the Governing Documents within ten (10) days of the mailing or delivery of a request therefor by any Owner.

(q) Taxes and Assessments. The Owners shall have the power and duty to pay all taxes and assessments and other costs affecting or relating to the Property not otherwise directly assessed against each Owner and shall have the power to discharge, contest or protest liens or charges affecting the Property.

(r) Utilities. The Owners shall have the power and duty to obtain and pay the costs of water, electrical, local telephone service, satellite television, broadband internet or such other internet service as is available to the Property, gas, refuse pick-up, garbage disposal and other utility services for the Property.

3.3 Voting. The Owner of each Shared Ownership Interest is entitled to cast a single vote for each Shared Ownership Interest owned. When more than one (1) person owns a Shared Ownership Interest, the vote for such interest shall be exercised as they themselves determine, but in no event shall more than one (1) vote be cast with respect to any Shared Ownership Interest. An Owner's right to vote shall vest upon the recordation of the deed conveying a Shared Ownership Interest to the Owner. Any action required or permitted to be taken by the Owners may be taken (i) by vote cast at a meeting of Owners, (ii) without a meeting if all the Owners consent in writing to the action, or (iii) by written ballot.

3.4 **Authority and Duty to Engage Manager.** The Owners shall have the authority to engage and the obligation to use their best efforts to engage and maintain a reputable firm as the Manager for the Property and operation of the Property pursuant to a Management Agreement. Declarant has initially entered into a Management Agreement for the Property, which Management Agreement is binding upon all Owners of the Property. Upon the termination or expiration of such Management Agreement pursuant to its terms, a new Management Agreement shall be entered into upon the Consent of a Majority of the Owners. The execution of a Management Agreement by a Majority of the Owners shall render such document binding upon all the Owners.

3.5 **Limited Liability.** Except as otherwise set forth in this Declaration, neither the Owners nor the Manager shall be responsible for the acts, omissions or conduct of any other Owner or any Permitted User, or for the breach of any of the obligations of any Owner or Permitted User.

ARTICLE IV. ASSESSMENTS AND PERSONAL CHARGES

4.1 **Creation of Personal Obligations For Assessments.** From and after the Starting Date, each Owner accepting the conveyance of a Shared Ownership Interest, whether or not it shall be so expressed in the Original Deed, shall be deemed to have covenanted and agreed, for each such Shared Ownership Interest owned, to pay all Assessments which shall be established, made and collected as hereinafter provided. Personal Charges shall not be deemed to be Assessments for any purposes hereunder. The Assessments, together with interest thereon, costs and reasonable attorneys' fees shall be the personal obligation of each Owner at the time each Assessment becomes due and payable and shall be a lien and charge upon the Shared Ownership Interest against which such Assessment is made. Subject to the provisions of subsection 5.2(b), below, the personal obligation for delinquent Assessments shall not pass to successors-in-title unless expressly assumed. No Owner may waive or otherwise avoid liability for the Assessments by non-use of his Shared Ownership Interest or any part thereof or any abandonment thereof.

4.2 **Purpose of Assessments.** Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, to maintain, repair and improve the Property, to pay for the operation and administration of the Property, and to reimburse expenses incurred by the Manager and other expenditures incurred in the performance of the duties of the Owners as set forth in this Declaration.

4.3 **Excess Collections of Assessments.** Each Owner hereby further agrees that in the event it shall be determined at any time during the Fiscal Year that the Budget is, or will be, in excess of the amounts needed to meet the Basic Expenses (other than Reserve Expenses) for such Fiscal Year, the Owners shall have the authority, exercisable in their sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously prepared Budget for the Fiscal Year to which such excess is applicable. The Basic Expenses reflected in the reduced total Budget shall then be allocated among the Owners in the same ratio as provided in Section 1.4 of this Declaration, regarding Basic Assessments. Except as may be determined by the Owners on an annual basis, (i) no Owner shall, by reason of such reduction, be entitled to a refund of all or any portion of any Basic Assessment previously paid, and (ii) each Owner hereby agrees that any amount assessed and collected in excess of the amount required to meet the Basic Expenses (other than Reserve Expenses) shall be applied to reduce the amount assessed to meet the Basic Expenses for the next succeeding Fiscal Year. Any reduction in the Budget, as provided herein, shall not relieve any Owner from his obligation to pay any past due Basic Assessment.

4.4 **Basic Assessment.** The Basic Assessment shall commence as to each Shared Ownership Interest on the Starting Date for such Shared Ownership Interest. The initial Basic Assessment for each Shared Ownership Interest may be prorated between the Declarant and the grantee thereof as more particularly provided in the Purchase Agreement for such Shared Ownership Interest.

4.5 Tax Assessment and Supplemental Tax Assessment. The Tax Assessment and Supplemental Tax Assessment shall be determined as follows:

(a) Tax Assessment. If real property taxes are not separately assessed against each Shared Ownership Interest by the County, the Manager shall use its best efforts to affect the Tax Assessment as a private separate assessment against the Shared Ownership Interests as if the County Assessor had done so. Unless the Manager shall determine that another method of calculation of the Tax Assessment is required by law or would be more equitable under the circumstances, and such method of calculation is approved by the Consent of a Majority of Owners, the Manager shall determine and levy the Tax Assessment in accordance with the following provisions; provided, however, no Tax Assessment shall be levied by the Manager in the event real property taxes are separately assessed and billed by the County Assessor against the Shared Ownership Interests.

The Tax Assessment for each Reassessed Shared Ownership Interest shall be determined (a) by multiplying the product of (y) the Current Assessed Value times the tax rate established for the applicable Tax Year by (z) a fraction, the numerator of which is the purchase price paid for the Reassessed Shared Ownership Interest and the denominator of which is the aggregate of the purchase prices for all Reassessed Shared Ownership Interests, or (b) by multiplying the assessed value attributed to such Reassessed Shared Ownership Interest by the County Assessor for the County by the tax rate established for the applicable Tax Year.

(b) Supplemental Tax Assessment. Upon receipt by the Manager of a supplemental tax bill from the County Assessor, the Manager shall levy a Supplemental Tax Assessment against the Shared Ownership Interests, the conveyance of which have caused the supplemental assessment producing such bill.

4.6 Payment of Basic Assessment, Tax Assessment, and Supplemental Tax Assessment. The Basic Assessment, Tax Assessment, and Supplemental Tax assessment shall be paid as follows:

(a) The Basic Assessment shall be paid as follows:

(i) Each Owner, for each Shared Ownership Interest owned by such Owner, shall pay, for the Fiscal Year in which such Owner acquired such Shared Ownership Interest, the Basic Assessment of each such Shared Ownership Interest as provided in the Purchase Agreement between such Owner and Declarant.

(ii) For each Fiscal Year thereafter, such Owner shall pay the Basic Assessment with respect to each Shared Ownership Interest within the Property which he or she owns either (A) in one lump sum due on or before the date determined by the Owners, or (B) in installments payable no more frequently than monthly. Whether such Basic Assessment is paid through the method provided in (A) or (B) of the foregoing sentence shall be at the sole discretion of the Consent of a Majority of the Owners.

(iii) That portion of the Basic Assessment which is attributable to Reserve Expenses shall be deposited in the Reserve Account.

(b) Each Owner shall pay the Tax Assessment for each Shared Ownership Interest which he or she owns in the Tax Year in which he or she became the Owner thereof as provided in the Purchase Agreement between Declarant and such Owner, and of each Tax Year thereafter, such Owner shall pay the Tax Assessment for each such Shared Ownership Interest concurrently with payment of the Basic Assessment;

(c) The Supplemental Tax Assessment shall be payable within ten (10) days after receipt of a statement therefor from the Manager.

4.7 Special Assessments. If the Basic Assessments collected or to be collected for a particular Fiscal Year are, or will be, inadequate to meet all expenses incurred hereunder (other than for items constituting Personal Charges) for any reason, the approximate amount of such inadequacy shall be determined (the “**Shortfall**”), and a supplemental budget shall be prepared and distributed and each Shared Ownership Interest shall pay a Special Assessment as set forth below in this Section 4.7. The Special Assessment for each Shared Ownership Interest shall be determined in the same method as used to determine the Basic Assessment as set forth in Section 1.4 except that the term “Special Assessment” shall be substituted for the term “Basic Assessment” and the term “Shortfall” shall be substituted for the term “Basic Expenses”. Notwithstanding the foregoing, no Special Assessment shall be levied until the supplemental budget and consequential Special Assessment shall be approved as set forth in Section 3.2(e)(ii) above, except that no such approval shall be required in the case of either of the following “emergency situations:”

- (i) an extraordinary expense required by court order; or
- (ii) an extraordinary expense for repair or maintenance of the Property where a threat to personal safety is discovered.

Any Special Assessment shall be payable in one lump sum or periodically, as determined by the Consent of a Majority of the Owners.

4.8 Personal Charges

(a) Personal Charges are not Assessments and the remedies available against any Owner for nonpayment of such Owner’s Personal Charges are those remedies provided in Section 5.1 and subsection 5.2(a), below.

(b) Except as provided in Section 7.5, below, Personal Charges will be billed to the Owners by the Manager or shall otherwise be payable as determined by the Owners after consultation with the Manager.

ARTICLE V. ENFORCEMENT OF RESTRICTIONS

5.1 In General. In the event that any Owner or Permitted User should fail to comply with any of the provisions of the Governing Instruments, any one or more of the Owners shall have full power and authority to enforce compliance with the Governing Instruments in any manner provided for therein, by law or in equity, including, without limitation, the right to enforce the Governing Instruments by bringing an action for damages, an action to enjoin the violation or specifically enforce the provisions of the Governing Instruments, to enforce the liens provided for herein and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Shared Ownership Interest of such Owner in any lawful manner. In the event any Owner(s) shall employ an attorney to enforce the provisions of the Governing Instruments, the party engaging the attorney shall be entitled to recover from such Owner or Permitted User violating any such provisions reasonable attorneys’ fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner which become Delinquent shall bear interest at the rate of twenty one percent (21%) per annum or the maximum rate permitted by law, whichever is less, from the due date, or if advanced or incurred by the Manager, or any other Owner pursuant to authorization contained in this Declaration, commencing ten (10) days after repayment is requested. Each Owner who becomes Delinquent in the payment of any amount due shall pay a late charge of \$25.00 for each payment which is delinquent. All enforcement powers shall be cumulative. Declarant and each Owner, by accepting the conveyance of a Shared Ownership Interest, shall be deemed to have covenanted and agreed that the Manager (on behalf of the Owners) and each Owner shall each have all of the rights, powers and remedies set forth in this Article VI and elsewhere in this Declaration.

5.2 Certain Specific Enforcement Powers. In amplification of, and not in limitation of, the general powers specified in Section 5.1 above, the Manager and Owners shall have the following rights and powers:

(a) Suspension of Privileges and Imposition of Monetary Penalties. If any Owner or his Permitted User shall be in breach of the Governing Instruments, including, but not limited to the failure of such Owner to pay any Assessment or Personal Charges on or before the due date therefor, subject to the limitation hereinafter set forth in this subsection 5.2(a), the right of such Owner to reserve or occupy the Property and the right of such Owner to participate in any vote or other determination provided for herein may be suspended, and monetary penalties may be assessed therefor. No such suspension or imposition of monetary penalties shall be made except upon the Consent of a Majority of the Owners excepting therefrom the violating Owner. The violating Owner shall be entitled to address the voting Owners and present his case in writing at least five (5) business days prior to any vote of the voting Owners being taken, as to why his privileges should not be suspended or such monetary penalties imposed and the reasons therefor shall be given to the affected Owner and the suspension or monetary penalties shall become effective five (5) days following the date such notice is given. If a suspension of privileges or imposition of monetary penalties is based on the failure of an Owner to pay Assessments, Personal Charges or any other amount(s) due hereunder when due, the suspension shall become effective upon the date of the Owners' decision to suspend such privileges and such suspended privileges of such Owner shall be reinstated automatically at such time as the Owner shall have paid, in cash or by cashier's or certified check, all amounts past due as of the date of such reinstatement, together with accrued and unpaid interest and any late charges or other monetary penalties imposed. If such suspension of privileges is based on any act or omission other than the failure of an Owner to pay Assessments, Personal Charges or any other amount(s) due hereunder when due, the suspended privileges shall be automatically reinstated upon the expiration of the period stated in the suspension notice. In case of any emergency situation which, in the reasonable judgment of the Manager requires an immediate suspension of the rights or privileges of an occupant of the Property in order to protect persons or property at the Property, the Owners delegate to the Manager the power to suspend the privileges of any Owner or Permitted User during the period of time that such Owner or Permitted User is in violation of the Governing Instrument. Further, the Owners delegate to the Manager the power to suspend the privileges of any Owner or Permitted User during the period of time that such Owner or Permitted User is Delinquent in the payment of an Assessment or Personal Charge, subject to the provisions of this subsection.

(b) Enforcement by Lien. There is hereby created a claim of lien, with the power of sale, on each and every Shared Ownership Interest to secure the prompt and faithful performance of each Owner's obligations under the Governing Instruments for the payment of any and all Assessments levied against any and all Shared Ownership Interests, together with interest thereon at the rate of twenty one percent (21%) per annum or the maximum rate permitted by law, whichever is less, from the date such payment becomes Delinquent, and all late charges and costs of collection which may be paid or incurred in connection therewith, including reasonable attorneys' fees. At any time within ninety (90) days after the occurrence of any default in the payment of such Assessment or performance secured, any Owner, or the Manager on behalf of the Owners, may, but shall not be required to make a written demand for payment to the defaulting Owner. Said demand shall state the date and amount of the delinquency with respect to which the Owner is in default. Each default shall constitute a separate basis for a demand or claim of lien or lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid or default is not cured within ten (10) days after delivery of such demand, or within one hundred (100) days after the date of delinquency or default if no written demand is made, the Owners may elect to file and record a notice of default and claim of lien (with a copy to the Mortgagee of such defaulting Owner if such Mortgagee has requested a copy and furnished its name and address to the Manager) against the Shared Ownership Interest of the defaulting Owner in the Office of the County Recorder. Such a notice of default and claim of lien shall be executed and acknowledged by the Owners, or the Manager on behalf of the Owners, and shall contain substantially the following information:

- (i) The name of the defaulting Owner;
- (ii) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;
- (iii) A statement that the notice of default and claim of lien is made pursuant to this Declaration; and
- (iv) A statement that a lien is claimed and will be foreclosed against the Shared Ownership Interest in an amount equal to the amount stated.

The recordation of a duly executed original or copy of such a notice of default and claim of lien, and mailing a copy thereof to the defaulting Owner, shall not constitute a condition precedent to nor delay the attachment of the lien. The lien claimed in such a notice of default and claim of lien shall attach to the Shared Ownership Interest without notice at the beginning of the first day of any period for which any Assessment is levied. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. Any Owner shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Shared Ownership Interest acquired at such sale subject to the provisions of this Declaration. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and unpaid Assessments hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale, shall obtain title to the Shared Ownership Interest free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of the Governing Instruments; and no such sale or transfer shall relieve such Shared Ownership Interest or the purchaser thereof from liability for any Assessments, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums assessed hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon; but if such sum should prove uncollectible, then, with regard to a Shared Ownership Interest, it shall be deemed to be a Basic Expense, and shall be shared among the Owners in the same manner as other Basic Expenses are shared.

Upon the timely curing of any default for which a notice of default or claim of lien was filed, the Owners, or Manager on behalf of the Owners, are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

5.3 Subordination to Certain Mortgages. The lien provided for herein shall be prior to all encumbrances made by an Owner or imposed by legal process upon any Owner except taxes, bonds, assessments and other levies which by law are prior thereto, whether the notice of lien is recorded prior or subsequent to any such encumbrances, except that the lien provided for herein shall be subordinate to the lien of any Prior Mortgage. The sale or transfer of any Shared Ownership Interest shall not defeat or affect the lien provided for herein; provided, however, that the sale or transfer of any such interest which is subject to any Prior Mortgage pursuant to a foreclosure under such Prior Mortgage shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Shared Ownership Interest or the purchaser thereof from liability for any Assessment(s) thereafter becoming due or from the lien thereof.

ARTICLE VI. DAMAGE, DESTRUCTION, OR CONDEMNATION

6.1 **Damage or Destruction to Contents.** In the event of any damage or destruction other than by ordinary wear and tear, whether resulting from an insured or uninsured casualty, to all or any portion of the Property, the Owners shall promptly cause such to be repaired, restored or replaced as near as may be possible to its condition immediately prior to such damage or destruction. The Owners shall obtain firm bids from two (2) or more licensed contractors to rebuild such damaged or destroyed portion of the Property as nearly as possible to its condition immediately prior to such damage or destruction and shall accept the bid they consider most favorable. If a bid is accepted, a Reconstruction Assessment shall be levied on all of the Owners in accordance with the method set forth below for the amount required to make up any deficiencies between the total insurance proceeds and the contract price for such repair and rebuilding (the "**Reconstruction Shortfall**"). The Reconstruction Assessment for each Shared Ownership Interest shall be determined in the same method as used to determine the Basic Assessment for each such interest as set forth in Section 1.4 except that the term "Reconstruction Assessment" shall be substituted for the term "Basic Assessment" and the term "Reconstruction Shortfall" shall be substituted for the term "Basic Expenses."

Notwithstanding the foregoing, if the loss, damage or destruction was caused by the intentional or negligent act or failure to act of any Owner or an Owner's Permitted User(s), the cost of such repair shall be a Personal Charge of, and be paid by, such Owner as provided in Section 4.8, above, to the extent such loss, damage or destruction is not covered by insurance. All insurance monies recovered on account of such damage or destruction, less the cost, if any, of such recovery, shall be applied to the payment of the cost of repairing, replacing and rebuilding, and shall be paid out from time to time as such work progresses upon the written certification of the architect or engineer if applicable, or the contractor in charge of such work, stating that the sum requested is justly due to those persons rendering services or furnishing materials in connection with such work.

6.2 **Extensive Damage or Destruction; Condemnation.** In the event that the Reconstruction Shortfall exceeds ten percent (10%) of the amount of Basic Expenses for such Fiscal Year, the Reconstruction Assessment shall not be levied without the Consent of Majority of the Owners. If such Reconstruction Assessment is not so approved or if no action is taken with respect to such Reconstruction Assessment within one-hundred eighty (180) days following the date of such damage or destruction or in the event the entire Property shall be taken by eminent domain, this Declaration shall terminate upon the consummation of the sale of the Property, pursuant to Section 7.2, below, and the recordation in the Office of the County Recorder of an amendment stating that the Declaration has been terminated in accordance with the provisions of this Section 6.2. The proceeds arising from such sale, together with any insurance proceeds or condemnation proceeds received as a result of such damage, destruction or condemnation (collectively, the "**Proceeds**"), shall be distributed equally to each Owner (subject to the rights of Mortgagees as reserved in Prior Mortgages); provided, however, there shall be deducted from the amount due any Owner, and distributed among the remaining Owners, the amount, if any, of all sums due from such Owner under the Governing Documents.

ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 **Amendment.** This Declaration may be amended as set forth below:

(a) This Declaration may be amended by Declarant as follows:

(i) In its sole and absolute discretion and without the consent of any other party at any time prior to the Starting Date;

(ii) From and after the Starting Date, this Declaration may be amended by Declarant in its sole and absolute discretion and without the consent of any other party if such an amendment is necessary in order to comply with the laws of any jurisdiction in which the sale of Shared

Ownership Interests is to be undertaken by Declarant or if the changes are made to correct any scrivener error, provided such amendment does not have a material adverse effect on any Owner.

Any amendment authorized by this Section 7.1(a) shall be evidenced by an instrument in writing, signed and acknowledged by Declarant and recorded in the Office of the County Recorder.

(b) Except as otherwise set forth expressly herein, this Declaration may be amended from and after the Starting Date with the Consent of a Majority of the Owners. Any amendment authorized pursuant to this Section 7.1 shall be evidenced by an instrument in writing, signed and acknowledged by the Owners and recorded in the Office of the County Recorder. Every Owner is obligated to execute any document evidencing an amendment which has been duly approved regardless of whether such Owner voted in favor of the amendment.

(c) Notwithstanding the provisions of Section 7.1(b) above,

(i) The specific percentages of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes required for action to be taken under such clause or provision;

(ii) No amendment which would defeat the obligations of the Owners to maintain the Property in a first-class condition and good state of repair and administer and operate the Property, or which would defeat the assessment procedures which assure the collection of funds for such maintenance and administration shall be made unless such instruments is approved by (i) the Consent of all of the Owners; and (ii) each of the beneficiaries of first trust deeds of record against the Shared Ownership Interests; and

(d) Notwithstanding the foregoing provisions of this Section 7.1, if, by law, any different consent or agreement is required for any action, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be effective only if taken and made as required by law.

(e) No provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law. No amendment or termination of this Declaration which does not apply to all of the Property then covered by this Declaration shall be made or recorded as to any portion of the Property without the written consent of all of the recorded Owners of such affected portion.

(f) Any amendment must be recorded prior to becoming effective. Any amendment shall be binding upon every Owner and Shared Ownership Interest whether the burdens thereon are increased or decreased. No amendment shall require the consent or approval of any Mortgagee. any amendment authorized hereby shall be evidenced by an instrument in writing, signed and acknowledged by all Owners.

7.2 Termination of this Declaration and Sale of the Property

(a) Subject to the provisions of Article VI of this Declaration and subsection 7.2(b) below, this Declaration shall remain in effect for a period of thirty (30) years from the date of recordation hereof and thereafter shall remain in effect for successive periods of ten (10) years each. This provision may not be amended without the vote or written consent of seven (7) of the four (4) Owners.

(b) In the event the Owners, by the Consent of a Super-Majority of the Owners, determine they desire to terminate this Declaration and sell the Property, they shall be entitled to do so as follows: (Note: Where the phrase "approved by the Owners" is used in this Subsection 7.2(b) below, it is meant to denote that the further Consent of a Super-Majority of the Owners be obtained for each such action.)

(i) The Property is listed for sale with a real estate sales agent duly licensed by, and in good standing with, the California Department of Real Estate, which listing agreement shall be approved by the Owners;

(ii) The Property is sold pursuant a purchase and sale agreement, the final terms of which shall be approved by the Owners. Notwithstanding anything herein to the contrary, the purchase and sale agreement shall specifically provide for the following:

(1) That an escrow company, licensed by, and in good standing with, the California Department of Corporations shall oversee the sales transaction.

(2) That the net proceeds derived from the sale of the Property (after payment of pro-rated taxes, sales commissions, and other fees and costs associated with the sale of the Property) shall be distributed evenly among the Owners by the escrow holder at the close of escrow.

(3) That this Declaration shall terminate and cease to have any force or effect upon the close of escrow, and that the Owners shall sign any and all documents required to effectuate termination of this Declaration.

(c) Section 7.2(b) may not be amended without the unanimous written consent of all the Owners.

7.3 **Notices.** Notices provided for in this Declaration shall be in writing and shall be deemed to sufficiently give either when delivered personally at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery) or forty-eight (48) hours after deposit of same in any United States post office box in the state to which the notice is addressed, seventy-two (72) hours after deposit of same in any such post office box other than in the state to which the notice is addressed, postage prepaid, addressed as set forth below.

Notices to the Manager shall be addressed to:

South Lake Tahoe, California 96150

Notices to the Declarant shall be addressed to:

Roman Kreminski
P.O. Box 733
South Lake Tahoe, CA 96156

Any notice to an Owner required under this Declaration shall be addressed to the Owner at the last address for such Owner appearing in the records of the Manager (which address shall initially be that address set forth upon such Owner's Purchase Agreement).

The addresses and addressees for purposes of this Section 7.3 may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addressee as stated by notice or as provided herein, if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

7.4 **Notification of Sale of Shared Ownership Interest.** No later than thirty (30) days after the sale or transfer of any Shared Ownership Interest under circumstances whereby the transferee becomes the Owner thereof, the transferor or the transferee shall notify the Manager and other Owners in

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

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

7.6 **Successors.** The provisions of this Declaration shall be binding all parties having or acquiring any Shared Ownership Interest or any right, title or interest therein and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Shared Ownership Interest upon ceasing to own such Shared Ownership Interest and paying all sums and performing all obligations hereunder insofar as the same relate to such Shared Ownership Interest up to the time his ownership interest is terminate.

7.7 **Violation or Nuisance.** Every act or mission whereby any provision of the Governing Instruments is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated whether or not the relief sought is for negative or affirmative action, by Declarant or any Owner.

7.8 **Interpretation.** The captions of the Articles, Sections and subsections hereof are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein the singular shall include the plural and masculine shall include the feminine and neuter.

7.10 **No Waiver.** The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed as of the day and year first above written.

DECLARANT:

Roman Todd Kreminski

EXHIBIT A

To Declaration of Covenants, Conditions and Restrictions
For Shared Ownership of 962 Modesto Avenue

(Legal Description of Land)

The land referred to is situated in the City of South Lake Tahoe, County of El Dorado, State of California, and is described as follows:

Lot 15, Block 60, of Amended Maps of Al Tahoe, filed November 21, 1917, in Book "A" of Maps, at Page 3, El Dorado County Records.

APN: 026-114-20-100

EXHIBIT B

To Declaration of Covenants, Conditions and Restrictions For Shared Ownership of 962 Modesto Avenue

(Common Furnishings)

Living Room and Dining Room

- Nicoletti 9ft long leather chase lounge
- Wenge coffee table/chest with storage
- Built-in Sony 32" TV and Samsung HD DVD Player
- Bose Lifestyle 5.1 surround sound system
- Wenge designer storage cabinet
- Skovbe extendable dining room table with 6 matching chairs

Upstairs Master Bedroom

- Unfurnished

Upstairs Bedroom

- Craftsman style queen bed with headboard
- Craftsman style armoire
- Craftsman style wood chest
- Craftsman style night stand

Upstairs Laundry

- Whirlpool Duet front load washer and dryer duets with extra storage

Upstairs Window Covering

- All Hunter Douglas bottom up top down blinds

Downstairs Laundry

- Kenmore side by side washer and dryer

Downstairs Window Coverings

- Natural wood blinds

Outdoor furniture

- Hot Tub by Dolphin Spas
- Outside furniture and umbrella

Upstairs Kitchen

- Range Jennair dual fuel SS commercial style
- Frigidare side by side SS Fridge with water and ice maker on door
- GE SS built in microwave oven
- Kenmore SS dishwasher
- 2 35,000 BTU gas fireplaces

Downstairs Kitchen

- Downstairs SS appliance package Includes
- SS Gas Range
- SS Dish Washer
- SS built in Microwave oven
- SS Refridgeator

Garage

- Finished garage w/ built in cabinets

EXHIBIT C
To Declaration of Covenants, Conditions and Restrictions
for Shared Ownership of 962 Modesto Avenue

(Use Period Calendar)

SEE ATTACHED