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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**FOR**  
**FLAGSTAFF**  
**(Including Bylaws)**

A Utah Condominium Project

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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
FLAGSTAFF

A. THIS FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for the Flagstaff Condominiums is made on the date evidenced below by the Flagstaff Owners Association, a domestic nonprofit corporation (the “Association”), established to govern the common affairs of the Association’s members and enforce the covenants, conditions, restrictions and rules of the Association.

B. This Amended and Restated Declaration of Condominium including Bylaws supersedes and replaces the Declaration for the Flagstaff Condominiums recorded February 15, 2008, as Entry No. 00837786 records of the Summit County Recorder, in its entirety and including all subsequent amendments or supplements thereto (the “Original Declaration”) and including the Bylaws attached to the Original Declaration.

C. Pursuant to Section 19.1 of the Original Declaration, at least sixty seven percent (67%) of the total votes of the Association and 51% of “Eligible Mortgagees” (as defined in the Original Declaration) have affirmatively approved the adoption of this document.

D. This Amended and Restated Declaration of Condominium including Bylaws shall be binding upon all real property described in Exhibit A attached hereto and it is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the property or any unit in the property regime created by this Declaration, that this Declaration, together with the Plat Map and plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the condominium development mutually beneficial in all of the described units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire property and upon each such unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of units under security instruments.

E. The Flagstaff Condominiums, a Utah condominium project, has been and continues to be submitted to Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et seq.* (the “Act”), as amended from time to time, with the rights, privileges and obligations as set forth herein and in the Act.

## ARTICLE I - DEFINITIONS

The following words when capitalized in this Declaration have the following meanings:

**1.1 “Act”** means the Utah Condominium Ownership Act (Section 57-8-1 et seq., Utah Code Annotated, 1953), as the same has been and may be amended from time to time.

**1.2 “Assessment”** means any charge imposed or levied by the Association on or against an Owner or Unit pursuant to the terms of this Declaration, the Bylaws or applicable law.

**1.3 “Association”** means and refers to the Flagstaff Owners Association, a Utah nonprofit corporation, and its successors and assigns, or all of the Unit Owners acting as a group in accordance with the Declaration and Bylaws.

**1.4 “Bylaws”** means the Bylaws of the Association, as they may be amended from time to time and are attached hereto in their current form as **Exhibit “C.”**

**1.5 “City”** means Park City Municipal Corporation, a body politic of the state of Utah.

**1.6 “Common Area”** means, refers to, and includes: (a) The real property, excluding all Units as defined herein, and interests in the real property which this Declaration submits to the terms of the Act and which comprise the Project; (b) All common areas and facilities designated as such on the Plat Map and elsewhere herein; (c) All Limited Common Areas and facilities (except when the context otherwise requires for maintenance or use purposes); (d) All foundations, roofs, columns, girders, beams, supports, perimeter walls, chimneys, flues, chimney cases, patios, decks, balconies, parking spaces, and vestibules constituting a portion of or included in the improvements which comprise a part of the Project; (e) All installations for and all equipment connected with the furnishing of the Project’s utility services, such as electricity, gas, water and sewer, except as otherwise provided herein; (f) In general, all apparatus, installations and facilities included within the Project and existing for common use, including trash rooms and storage rooms; (g) The Project’s outdoor lighting, fences, landscape, sidewalks, parking spaces, driveways and roads; (h) All portions of the Project not specifically included within the individual Units; (i) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; and (j) the areas designated on the Plat as ADA Suite 1 and ADA Suite 2 and referred to herein as the “Guest Rooms.”

**1.7 “Common Expenses”** means sums which are required by the Management Committee to effect the purposes of the Association and to perform or exercise its functions, duties, or rights under the Act and the Governing Documents.

**1.8 “Community”** means the Flagstaff Condominiums, including all Units and Common Area, and all other real property and interests described in the Plat and herein.

**1.9 “Eligible Holder”** means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Unit number to which the Eligible Holder’s mortgage interest applies.

**1.10 “Empire Pass” or “Empire Pass at Deer Valley”** means that certain master planned community organized pursuant to the Master Declaration and situated in Summit County, Utah, of which the Project is a part.

**1.11 “Employee Unit”** means Unit 104, which is restricted for rental or sale to persons meeting certain income and employment requirements, as set forth in Section 2.9 below.

**1.12 “Guest Rooms”** means that portion of the Common Areas and Facilities designated on the Plat as ADA Suite 1 and ADA Suite2, and which are available for rental by Owners and their guests, as well as by persons having a physical disability as set forth in Section 2.10 below.

**1.13 “Governing Documents”** means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations.

**1.14 “Improvements”** means every structure or improvement of any kind, including but not limited to landscaping, Units, decks, porches, awnings, fences, garages, carports, driveways, storage compartments or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish authorized in accordance with the Declaration).

**1.15 “Limited Common Areas”** means all of the real property identified as limited common area on the Plat Map for the Project and maintained pursuant to the terms of this Declaration and shall include ski lockers assigned to specific Units, and the following, if designated to serve a single Unit but located outside the Unit's boundaries: patios, entrance ways, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, owner storage bins designated as such on the Plat. Limited Common Areas are Common Areas limited to the use of certain Units to the exclusion of other Unit Owners. Owners may not reassign Limited Common Areas between or among Units in which they have an interest. However, the Association may reassign Limited Common Areas to the fullest extent permitted under the Act. Notwithstanding the designation of the ski locker room as Common Area on the Plat, each individual ski locker assigned to a Unit shall be Limited Common Area appurtenant to such Unit.

**1.16 “Lodge Keeper”** means the person(s) retained by the Association or the Manager to serve as an on-site manager of the Project, to supervise the day-to-day operations of the Project and the Common Areas and Facilities.

**1.17 “Management Committee” or “Committee”** means the Board of Trustees of the Association vested with the authority to manage the Community and to enforce this Declaration, Bylaws and rules and regulations. The term Management Committee is synonymous and interchangeable with the term “Board of Directors” and “Board of Trustees” as those terms may be used in the governing documents of the Association or the Utah Nonprofit Corporation Act.

**1.18 “Manager” or “Managing Agent”** means the person or entity that may be retained from time to time by the Association to manage the Property at the option and according to the direction of the Management Committee.

**1.19 “Master Association”** means the Empire Pass Master Owners Association, Inc., a Utah

nonprofit corporation, and its successors and assigns.

**1.20 “Master Declaration”** means that certain Amended and Restated Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community, recorded June 28, 2002, as Entry No. 623450, the Supplemental Declaration and Amendment to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community, recorded October 22, 2002, as Entry No. 635722, and the Second Supplemental Declaration and Amendment to the Master Declaration of Covenants, Conditions and Restrictions of Flagstaff, a Planned Community, recorded July 18, 2003, as Entry No. 665954 in the Office of the Summit County Recorder, all as amended or supplemented from time to time.

**1.21 “Mortgage”** means any mortgage or deed of trust encumbering any Unit and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

**1.22 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.23 “Notice”** means notice as defined, and shall be carried out as set forth, in the Bylaws.

**1.24 “Owner”** means the person, persons or other entity owning any Unit, as such ownership is reflected in the records of the County Recorder, but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Unit.

**1.25 “Percentage Interest”** means the percentage of undivided ownership interest of each Unit Owner in the Common Areas as set forth in **Exhibit B** attached hereto.

**1.26 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the record of survey map recorded at the County Recorder's Office and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof.

**1.27 “Property” or “Project”** means the Flagstaff Condominiums, including all Units and Common Area, and all other real property and interests described in the Plat and herein and including all of Lot 13, THE VILLAGE AT EMPIRE PASS, WEST SIDE, in accordance with the plat thereof recorded in the Office of the Summit County Recorder on August 12, 2005 as Entry No. 746744.

**1.28 “Rules and Regulations”** means and refers to those rules and regulations adopted by the Management Committee from time to time that are deemed necessary by the Committee for the enjoyment of the Community.

**1.29 “Unit”** means a separate physical part of the Property intended for independent use and ownership, consisting of rooms and spaces located within a building structure. Subject to this section, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit. Mechanical equipment and appurtenances located within any one Unit or located outside of said Unit but designated and designed to serve only that specific Unit, such as appliances, electrical receptacles and outlets,

air conditioning compressors and other air conditioning or air cooling or heating apparatus, pipes, conduits, wires and fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors; all surfaces of floors and ceilings; all wallboard or drywall; paneling; tiles; wallpaper; paint; flooring; carpeting; and tile. The vertical boundaries of each Unit shall be the interiors of the unfinished walls located on the perimeter lines of the respective Units as shown on the Plat. The following shall be considered part of the Unit: all windows and doors forming part of the vertical boundaries of a Unit, including window frames, door frames, thresholds and door jams; any fireplace or stove hearth (including facing brick, tile or firebox), pipes, shut-off valves, breaker boxes, wires, outlets, conduits, public utility lines or installations serving only a specific Unit; and any structural features or any other property of any kind within any Unit, including fixtures and appliances, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the structure or building within which the Unit is situated.

## **ARTICLE II - PROPERTY DESCRIPTION; PROPERTY RIGHTS**

**2.1. *Property Subject the Declaration, Bylaws, the Act and the Master Association.*** It is hereby confirmed and acknowledged that the Project is submitted and subject to the Act and shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and obligations of all parties interested in the Project shall be governed and controlled by, this Declaration, the Governing Documents, the Master Declaration, and all agreements, decisions and determinations made by the Committee or Association, and the Act and any amendments thereto as codified from time to time, and, to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control. This Declaration and covenants, conditions and restrictions herein and in the Master Declaration shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of the Association each Owner thereof.

**2.2. *Description of Improvements.*** The significant improvements within the Project consist of one freestanding multi-story residential building of steel frame construction containing 38 Units, and other improvements as shown by the Plat.

**2.3. *Description and Legal Status of Units.*** The Plat shows the building designations, Units, Limited Common Areas, and Common Areas, including their locations and dimensions from which their areas may be determined. Storage areas referred to as "Owner Storage Bins" are assigned to and shall at all times remain appurtenant to the Units, as designated on the Plat. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.4. *Ownership Interest in Common Areas, Percentage Interests.*** The Common Area (including Limited Common Area) shall be owned in undivided interests by the Owners. The undivided interest in the Common Area appurtenant to each Unit in the Project is based upon the Par Value of such Unit, which is determined by the number of points allocated to each Unit.

Because the Employee Unit is subject to covenants and restrictions limiting the manner in which it may be occupied and sold, the Employee Unit has a lower Par Value than the other Units. In determining the Par Value of each Unit there shall be 1 point allocated to each square foot in the Employee Unit, and 4 points allocated to each square foot in a Residential Unit. The percentage of undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be determined by dividing the number of points allocated to that Unit by the total number of points allocated to all Units in the Project, as set forth in attached Exhibit B. In accordance with the provisions of the Act, the statement of Par Value shall not be considered to reflect or control the sales price or fair market value of any Unit. Accordingly, no opinion, appraisal or market transaction may affect the Par Value of any Unit. Except as otherwise provided in this Declaration or the Act, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered. The common expenses of the Project shall be charged to, and the voting rights shall be available to, the Unit Owners according to their respective percentage of undivided interests in the Common Areas and Facilities. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent (100%). However, the undivided interest of one or more Units may be rounded in order to cause the total to equal one hundred percent (100%).

**2.5. *Public Skiing Facility.*** The Project is located adjacent to a public skiing facility and recreation area (the “Ski Facility”), which may generate an unpredictable amount of visible, audible and odorous impacts and disturbances at all times of the day and night from activities relating to the construction, operation, use and maintenance thereof. The activities associated with the Ski Facility include, without limitation: (a) vehicular and residential traffic, including, without limitation (i) buses, vans, snowcats, snowmobiles and other vehicles which transport residents and guests of the Ski Facility over, around and through the Ski Facility, and (ii) construction vehicles and equipment; (b) activities relating to the construction, maintenance and grooming of all pedestrian trails, bridges and tunnels located in or around the Project; (c) activities relating to the construction, operation and maintenance of ski trails, biking and hiking trails, skyways, and skier bridges and tunnels relating to the Ski Facility, including, without limitation, (i) tree cutting and clearing, grading and earth moving, and other construction activities, (ii) construction, operation and maintenance of access roads, snowmaking equipment and chair lifts, gondolas and other skier transportation systems, (iii) operation of snow making equipment and facilities, and (iv) operation of snow-grooming vehicles, snowmobiles, trail grooming machinery, snow plows and other snow removal machinery and equipment, and safety and supervision vehicles; and (d) activities relating to the use of the Ski Facility, including, without limitation, skiing, snow-boarding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities. The operator of the Ski Facility may decide, in its sole discretion, whether any or all of the chairlifts (including those that serve the Project) should be operated.

**2.6. *Amenities.*** No interest in or right to use any amenity located on or near the Project, such as spas, club facilities, ski facilities or the like, shall be conveyed to an Owner pursuant to this Declaration. The owners of nearby facilities shall have the right, in their sole discretion, to remove, relocate, discontinue operation, restrict access to, charge fees for the use of, sell interests in or otherwise deal with such assets in their sole discretion without regard to any prior use of or benefit to any residents of the Project.



**2.7. *Inherent Risks.*** Ownership of real property in mountain areas involves certain inherent inconveniences and risks. These include, but are not limited to, (a) sliding snow and ice, (b) dripping water onto decks, porches and walkways from snow melt, (c) snow and ice build-up on decks and porches during winter months, (d) the need to remove snow from roofs and decks to prevent damage to these structures, (e) adverse travel conditions, (f) the effects of harsh weather and high altitude upon construction procedures and costs, building materials and finishes, (g) health risks from high altitude and severe weather, and (h) other inconveniences and risks arising from the high altitude and sometimes severe weather conditions in the Rocky Mountains.

**2.8. *Development of Other Properties.*** Other properties located in the vicinity of the Project may be developed pursuant to the land uses and restrictions set forth in the applicable zoning for Empire Pass, with no representation being made herein concerning the planned uses of such other properties. The zoning for the property on which the Project is located and for other properties in the vicinity of the Project is established and governed by the Park City Land Management Code and certain agreements between Park City and the master developer of Empire Pass, as the same may be amended or replaced from time to time.

**2.9. *Employee/Affordable Housing Unit; Lodge Keeper.***

2.9.1. Unit 104 is hereby reserved and dedicated for use as an employee/affordable housing Unit (the “Employee Unit”), subject to the requirements of the City and further subject to that certain Restrictions Concerning The Rental of Employee/Affordable Housing Unit in Flagstaff (“Deed Restriction”) recorded February 15, 2008, as Entry No. 00837787 in the records of the Summit County Recorder. The Deed Restriction includes limitations on the transfer, occupancy and rental of the Employee Unit.

2.9.2. It is anticipated that an individual involved in the management of the Project will live in the Employee Unit (the “Lodge Keeper”); provided, however, that the decision to rent the Employee Unit to the Lodge Keeper shall be at the sole and absolute discretion of the owner of the Employee Unit.

**2.10. *Guest Rooms (ADA Suite 1 and ADA Suite 2).*** The Common Areas and Facilities include the areas designated on the Plat as ADA Suite 1 and ADA Suite 2 and referred to herein as the “Guest Rooms.” The Guest Rooms will be operated by the Association for the use and benefit of the Owners and their guests, as well as unrelated persons with disabilities desiring to rent nightly accommodations in the Project. The Guest Rooms shall be maintained in compliance with the requirements of the Americans with Disabilities Act, the Fair Housing Act and other federal, state and local legislation requiring the provision of facilities that are accessible by persons with physical disabilities. The principal purpose of the Guest Rooms is to provide accommodations to disabled persons desiring to rent nightly accommodations in the Project and other condominium projects in Empire Pass, as determined by the Association. The use and occupancy of the Guest Rooms shall be governed by rules and regulations adopted by the Association. Such rules and regulations shall at all times give priority in the rental of the Guest Rooms to persons with disabilities. Thereafter, priority shall be given to Owners desiring to rent the Guest Rooms for their personal use or use by family and guests of Owners. The

Association may also rent the Guest Rooms to members of the public, in accordance with the rules and regulations adopted by the Association, so long as such use shall not unreasonably impair the availability of the Guest Rooms for disabled persons. Unless otherwise approved by the City, no Guest Room may be rented separately from the rental or occupancy (in the case of an Owner) of another Unit in the Project or in another condominium project in Empire Pass. Because the Guest Rooms are part of the Common Areas and Facilities of the Project, all revenue generated from the rental of the Guest Rooms shall inure to the benefit of the Association, and not to any individual Owner. Likewise, all expenses of maintaining, repairing and operating the Guest Rooms shall be part of the Common Expenses. The Guest Rooms may not be sold by the Association, but must remain part of the Common Areas and Facilities of the Project.

**2.11. *Ski Lockers.*** The ski lockers contained within the ski locker room, as such room is designated on the Plat, have been or shall be individually assigned to the Units by the Association. An Owner may, with the prior written approval of the Management Committee, expand his or her ski locker to encompass any contiguous unused space between or behind finished walls. The Committee may determine standards, requirements, conditions and limitations of such expansions.

**2.12. *Form of Unit Conveyance - Legal Description of Unit.*** Each conveyance or installment contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Plat Map with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in the Governing Documents

**2.13. *No Right of First Refusal.*** The right of an Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

**2.14. *Easements Reserved.*** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

(a) Easements for Maintenance and Repair. The Association and any person authorized by the Association may at any reasonable time enter upon any Unit for the purpose of performing maintenance authorized herein or determining whether the use of the Unit is causing, has caused, or will likely cause damage, nuisance or harm to the Common or Limited Common Areas, another Unit or another resident of the Community. Reasonable notice shall be provided to the Unit occupant prior to entry. "Reasonable notice" means: (i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed entry; or (ii) in the case of emergency repairs, notice that is reasonable under the circumstances, which, at the discretion of the Board, shall mean attempting to contact the occupant or owner immediately prior to entry via contact information the Association has on record, or via knock on the Unit door. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit. The Association shall repair damage it causes to the Common Areas or to a Unit the Association uses to access the Common Areas within a time that is reasonable under the circumstances.

(b) Private Trail. There are private trail easements shown on the Plat, identifying certain portions of the Common Areas and Facilities that may be used for summer and winter access to trails, ski runs and other adjacent recreational areas (the “Private Trail Access Area”). All Owners and their guests shall have easement rights over the Private Trail Access Area. Additionally, notice is hereby given to the Owners that the owners and guests of units in the Paintbrush Homes, Larkspur Townhomes, Shooting Star Lodge, Arrowleaf Lodge and other projects adjacent to or near the Project may have easement rights over the Private Trail Access Area

(c) Utility Easements. The Association and any public utility provider shall have an easement through all Units and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Each Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his or her Unit. The Committee may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area.

(d) Common Areas; Delegation of Rights. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas (except the Guest Rooms) which right and easement shall be subject to compliance by the Owner with the provisions of the Governing Documents and the right of the Association to limit the number of guests of residents.

**2.15. No Encroachment.** No Unit shall encroach upon an adjoining Unit. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Management Committee or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

**2.16. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE X, THE ASSOCIATION SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY THE ELEMENTS OR OTHER OWNERS OR PERSONS.**

### **ARTICLE III - RESTRICTIONS ON USE**

#### **3.1 Animals.**

The Master Declaration includes provisions governing the kind and number of pets that may be kept by an Owner. All such provisions shall be binding upon the Project and all Owners, occupants and guests. In addition, the rules and regulations of the Association may further regulate the kind and number of such pets from time to time.

### **3.2     *Residential Use.***

Units shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No Unit shall be used for commercial purposes; provided, however, any Owner or his or her duly authorized agent may rent or assign the use of his or her Unit from time to time, subject to rules duly adopted by the Association from time to time.

### **3.3     *Offensive Activities, Prohibited Behavior and Use.***

No noxious, offensive or unsightly conditions or activities shall be permitted in any Unit or portion of the Common Areas, nor shall anything be done in or placed upon any Unit or Common Area which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents. Residents may not disturb other residents and shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, amplifiers and any other device that emits sound. Residents may be fined for this and other offensive behavior. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Nothing shall be done or kept within any Unit or on the Common Areas which will increase the cost of insurance to the Association or to other Owners or which will result in cancellation of insurance on any Unit.

### **3.4     *Rubbish and Trash.***

No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container as specified by the Association.

### **3.5     *Window Coverings.***

The Management Committee shall have the right to establish rules regarding draperies, blinds, shades and other interior window coverings to regulate their appearance from the exterior of Buildings.

### **3.6     *Parking of Automobiles and Other Vehicles.***

The Association may adopt rules and restrictions regarding parking and vehicles, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of this subsection and the cost of any storage thereof. Vehicles in violation of the Governing Documents may be towed at the cost of the owner.

### **3.7     *Vehicles in Disrepair.***

No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property. A vehicle shall be deemed in an “extreme state of disrepair” when the Management Committee reasonably determines that its presence offends occupants of other Units or deters prospective purchasers of Units. If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Management Committee, the Management Committee may have such vehicle removed from the Property (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

### **3.8 Signs, Flags or Advertising Devices.**

No advertisement, sign, flag, banner or poster of any kind, including, without limitation, political, informational or directional signs or devices, may be posted in or upon the Properties, except as allowed by the Management Committee by rule or written approval from time to time and except as may be necessary temporarily to caution or warn of danger.

### **3.9 Antennas/Dishes.**

Satellite antennas, such as Direct Broadcast Satellite (“DBS”) antennas (dishes) one meter in diameter or less and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed only to the extent and in locations allowed herein and by local, state or federal law. All other antennas are prohibited. “Antenna” as used herein includes satellite dish antennas.

(a) Antennas may only be installed inside the Owner’s Unit or on Limited Common Area over which the owner has exclusive use and control. No Owner may install an antenna in or on the Common Area, including on the exterior or roof of any building. No antenna may extend beyond balcony railings. Owners need to be aware that their Unit may not be in a proper location to receive satellite broadcast signals even if they install an antenna. Prior to installation, Owners should check with a qualified and reputable company to determine if they are able to receive adequate signals at their unit. Owners shall notify the Committee in writing prior to any installation. Such notice shall include a description of the location for the antenna and the installation (attachment) method. No Owner may drill holes in walls, doors or window frames in order to install the antenna or run cable from the antenna to the television.

(b) Owners are responsible for any injury or damage to persons or property caused by their antenna. All installations must be performed in complete compliance with all applicable statutes, rules and regulations. These rules are meant to comply with 47 CFR § 1.4000, as may be amended from time to time. In the event any portion of this section is held to conflict with applicable law, those portions shall be deemed stricken and all other portions of this installation policy will remain in full force and effect.

(c) No portion of the installation policy in this Section may be waived or changed by the Committee verbally, but the Committee may waive or change the policy in writing. If any Owner receives the benefit of any waiver or change of the installation policy, it shall be that Owner’s responsibility and obligation to keep and safeguard the written waiver or change and to produce it upon any future request of the Committee.

### **3.10 Unit Division.**

Except as otherwise provided in the Declaration, no Unit, or portions thereof, may be further divided or subdivided (either physically or legally) or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to community property, tenancy in common, or other form of joint undivided ownership).

### **3.11 Fractional, Interval, Timeshare Ownership.**

No Unit, whether leased or owned, shall be used:

(a) for the operation of a timesharing, fractional ownership, interval ownership, private residence club, destination club or similar program whereby the right to exclusive use

of the Unit rotates among participants in the program, regardless of whether such program utilizes a fixed or floating schedule, a first come-first served reservation system or any other arrangement; or

(b) for the operation of a reservation or time-use system among co-Owners of a Unit, regardless of whether or not any co-Owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating, if one or more of the following conditions exist:

(i) the ownership interest in such Unit is marketed for sale to the public subject to such system, or

(ii) the co-Owners are or were required as a condition of purchase of the ownership interest in such Unit to subject the interest to a pre-determined reservation or time-use system among co-Owners; or

(c) in the marketing, offering or selling of any club membership interest, limited liability company interest, limited partnership interest, program interest or other interest whereby the interest-holder acquires a right to participate in a reservation or time-use system among the interest-holders, or among the interest-holders and others, involving the Unit, or involving the Unit and other alternate or substitute properties, regardless of whether such interest is equity or non-equity, regardless of whether or not any interest-holder may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating (such interest referred to herein as an “Interest”), if one or more of the following conditions exist:

(i) the Interest is marketed for sale to members of the public, or

(ii) the Interest-holders are or were required as a condition of purchase of the Interest to be subject to a pre-determined reservation or time-use system among Interest-holders, or among Interest-holders and others.

All of the foregoing uses, systems or programs described in this Section 3.12 are hereinafter called a “Timeshare Program”.

(d) Mere co-ownership of a Unit, ownership of a Unit by an entity, or short-term leasing of a Unit shall not create a Timeshare Program unless it meets any of the conditions described above in this Section 3.12. The inclusion of a Unit in a nightly or other short term rental program shall not be considered to create a Timeshare Program. All use and occupancy arrangements falling within the definition of “timeshare interests” under the Utah Timeshare and Camp Resort Act (Utah Code Annotated § § 57-19-1, et seq.) shall be considered Timeshare Programs, but a determination that any use and occupancy arrangements do not constitute a “timeshare interest” under such Act shall not be determinative of whether such arrangements constitute a Timeshare Program hereunder. It is intended that the definition of “Timeshare Program” hereunder shall be broader than, and not limited by, the definition of “timeshare interest” in the Timeshare and Camp Resort Act.

### ***3.12 Rental of a Unit.***

(a) Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of the Governing Documents, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such

lease agreements shall be in writing. The right of any Owner to lease his or her Unit is subject to rules and regulations of the Association. An Owner shall be responsible and liable for any damage to the Project caused by its tenants.

(b) Any Owner who rents his or her Unit for thirty (30) days or more shall advise the Management Committee or Common Area Manager in writing that the Unit has been rented.

(c) Any Owner who rents or otherwise permits any other person to utilize his or her Unit shall be responsible for the conduct of his or her tenants or occupants, and upon written notice from the Management Committee or the Common Area Manager, said Owner shall be responsible for correcting violations of the Governing Documents committed by such tenants or occupants.

(d) If an Owner fails to correct violations by tenants within seventy-two (72) hours of such notice, the Management Committee or Common Area Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within thirty (30) days. Such costs shall be an Individual Assessment against the Owner.

(e) The power of the Management Committee or Common Area Manager hereunder shall include but not be limited to any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting, leasing or otherwise permitting any other person to utilize his or her Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Management Committee and the Common Area Manager from and against any and all liability therefor. It is expressly understood that the remedies available to the Management Committee or Common Area Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Owner.

(f) Other than as contained in this Declaration (as the same may be amended from time to time), there is no restriction on the right of an Owner to lease his or her Unit.

### **3.13 Master Declaration and Association.**

All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth in the Master Declaration, each and all of which are declared and agreed to be for the benefit of the Project; further, each and all of the provisions of the Master Declaration, shall be deemed to run with the land and shall be a burden and a benefit to the Association and any person acquiring, leasing, subleasing or owning an interest in the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors. Each Owner, by accepting a deed to a Unit, recognizes and acknowledges that (a) the Project is subject to the Master Declaration, (b) by virtue of ownership, he or she has become a member of the Master Association, and (c) that he or she has received a copy of the Master Declaration. The Owner agrees to perform all of his or her obligations as a member of the Master Association as they may from time to time exist, including, but not limited to, the obligation to pay assessments as required under the Master Declaration and other governing documents of the Master Association.

The Owners acknowledge that, as more particularly defined in the Master Declaration, the Master Association has the right to assess a transfer fee or "Transfer Assessment" upon an Owner selling, transferring, leasing (for a term greater than fifteen years) or conveying a Unit to a third party.

The Association may contract or cooperate with the Master Association or with other

homeowners' associations or entities within Empire Pass as convenient or necessary to provide services and privileges, such as access to recreational and transportation facilities in Empire Pass, and to fairly allocate costs among the parties utilizing such services and privileges which may be administered by the Association or such other organizations, for the benefit of Owners and their family members, guests, tenants and invitees. The costs associated with such efforts by the Association (to the extent not chargeable to other organizations) shall be a Common Expense.

The Association shall have the power, subject to the primary power of the Board of Directors of the Master Association, to enforce the covenants and restrictions contained in the Master Declaration, but only as said covenants and restrictions relate to the Project, and to collect regular, special, and default assessments on behalf of the Master Association.

## **ARTICLE IV - MAINTENANCE OBLIGATIONS**

### **4.1 *Owner's Responsibility.***

(a) Units. Subject to Section 4.1(c), maintenance of the Units shall be the sole responsibility of the Owner(s) thereof, who shall maintain such Unit, including all doors (and all parts thereof) forming part of the vertical boundaries of a Unit, including thresholds, frames, door jams and hardware, in good repair and in a clean and sanitary condition, all so as to not interfere in any way with other Owner's Units or the Common Areas. Each Unit shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit.

(b) Limited Common Area. Each Unit Owner shall, at his or her own cost, maintain, repair and replace the Limited Common Areas appurtenant to his or her Unit and keep the same in a clean, sanitary and attractive condition at all times, except the maintenance of the exteriors of ski lockers and the staining of balconies which shall both be carried out by the Association.

(c) Certain Maintenance Performance and Cost. Notwithstanding the above, the Association shall carry out all maintenance, repair and replacement of any mechanical equipment and appurtenances located outside of a certain Unit but designated and designed to serve only that specific Unit, such as appliances, air conditioning compressors and other air conditioning or air cooling or heating apparatus, pipes, conduits, wires and fixtures and the like. The cost of such maintenance, repair or replacement shall be the obligation of the Owner of such Unit and such amounts shall constitute an assessment against the Unit and Owner thereof.

(d) Windows. Notwithstanding the above, the Association shall carry out all maintenance, repair and replacement of all windows forming part of the vertical boundaries of a Unit. The cost of such maintenance, repair or replacement shall be the obligation of the Owner of such Unit and such amounts shall constitute an assessment against the Unit and Owner thereof.



## **4.2     *Maintenance by Association.***

4.2.1. The Association shall maintain the Common Areas and the exteriors of the ski lockers. The Association shall also be responsible to stain or re-stain the Limited Common Area balconies as it deems appropriate from time to time. The Committee shall determine, in its sole discretion, the appropriate maintenance of the Common Areas. If the Common Areas are damaged by the willful misconduct of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage, and the cost to repair such shall be an assessment against that Owner and that Owner's Unit.

4.2.2. Additionally, the Association, by and through the Committee, may, but shall not be obligated to, assume the Owner's general maintenance responsibility over a Unit and Limited Common Area, or take such other action as necessary if, in the opinion of the Committee, the Owner is unwilling or unable to adequately provide such maintenance, or if an Owner shall fail to observe any Association covenant, restriction or rule. Before assuming such maintenance responsibility, the Committee shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within 30 days of the date of the notice, the Association may proceed to maintain the Unit. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as assessments pursuant to this Declaration.

4.2.3. To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a resolution distributed to all Owners, shall be binding against all Owners after 30 days from the date the resolution is distributed, and shall not be applied retroactively.

4.2.4. Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the negligent or intentional act of the Association.

4.2.5. Pursuant to the terms and provisions of the Master Declaration and that certain Maintenance Agreement between the City, United Park City Mines Company, Blue Ledge Corporation and the Master Association, including any amendments, modifications or replacements thereto, the Master Association has covenanted with the City that it will, at all times, provide or cause the Association, if appropriate, to provide, all necessary maintenance and repairs to certain roadways, walkways, tunnels, bridges, culinary water system components and other public infrastructure within Empire Pass at Deer Valley (collectively referred to herein as the "Community Areas"). In the event the Master Association defaults in the performance of its covenants to maintain and repair the Community Areas as set forth in the Maintenance

Agreement, then the City shall have the right (but not the obligation) to cause such maintenance and repair work to be performed on behalf of the Master Association or the Association, if appropriate. In the event that the City exercises such right, the City shall have the right to assess the members of the Master Association or the Association, if appropriate, in the amount necessary to pay the costs of such maintenance and repair work to the Community Areas, together with reasonable administrative/overhead costs not to exceed ten percent (10%). The Master Association also has the responsibility to maintain and repair certain sewer laterals serving the Project. The Master Association shall have the right to charge the Association, and the Association shall reimburse the Master Association for, all costs and expenses incurred by the Master Association in the maintenance, repair and replacement of sewer laterals serving one or more Units in the Project. All such costs shall be part of the Common Expenses.

## **ARTICLE V - ASSESSMENTS**

**5.1. *Covenant for Assessments.*** Each Owner, by acceptance of a deed conveying any Unit to such Owner, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association a proportionate share of the Common Expenses and the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments. No member may exempt itself from liability for Assessments by abandonment of any Unit owned by such member. No offsets against Assessment amounts shall be permitted for any reason, including, without limitation, a claim that the Association or Committee is not properly exercising its duties and powers.

### **5.2. *Reserve Funds.***

5.2.1. The Association shall establish and maintain a reserve fund for maintenance, repair and replacement of the Common Areas and for any emergency, unforeseen, unusual, or unanticipated expenditures and for any other purpose determined from time to time by the Management Committee by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Management Committee or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

5.2.2. The Association may establish such other reserves for such other purposes as the Association may from time to time consider to be necessary or appropriate.

5.2.3. The proportional interest of any member of the Association in any reserve fund established under this section shall be considered an appurtenance of such Owner's Unit and shall not be separated from the Unit to which it appertains and shall be deemed to be transferred with the Unit.

5.2.4. The Management Committee shall not expend funds designated as reserves for any purpose other than the purpose for which the reserve fund was established. The Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow

requirements. Any such funds so transferred, and any funds used for a capital improvement, shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer. As used in this subsection, a capital improvement is any (i) substantial discretionary addition to the common areas, (ii) voluntary significant upgrade to common area materials, or (iii) discretionary material alterations to the appearance of the development.

### **5.3. *Annual Budget and Assessment.***

5.3.1. Adoption of Budget. The Management Committee shall prepare, or cause the preparation of, an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### 5.3.2. Determination of Annual Assessment.

(a) The Management Committee shall fix the amount of the annual assessment ("Annual Assessment") against each Unit for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period. The Association may not impose an Annual Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Annual Assessment without first obtaining the approval of a majority of the votes cast by Owners at a meeting or by written ballot.

(b) The omission by the Management Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(c) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment, subject to any approval necessary under 5.3.2(a) above.

**5.4. *Apportionment of Assessments.*** All Units shall pay a pro rata share of the Annual Assessment and Special Assessments commencing upon the date the Units are made subject to this Declaration. The pro rata share shall be based upon the percentage of undivided ownership interests of Units. Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable as provided for below.

**5.5. Purpose of Assessments.** The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community and carrying out the purposes and obligations of the Association, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements; and (f) Any other items properly chargeable as a Common Expense of the Association.

**5.6. Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments (a "Special Assessment"). The Management Committee may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment which in the aggregate exceeds twenty percent (20%) of the budgeted gross expenses of the Association for that fiscal year, may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners holding 30% of the Percentage Interests exists.

**5.7. Individual Assessments.** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Unit to reimburse the Association for costs or attorney fees incurred in bringing the Unit or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses incurred by the Association relating to the cost of maintenance, repair, or replacement of the individual Units.

**5.8. Nonpayment of Assessments.** Unless otherwise provided by resolution of the Management Committee, the Annual Assessments shall be levied and due and payable on a monthly basis on the first calendar day of each month and shall be delinquent if not paid within ten (10) days after the due date. The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

5.8.1. Interest. Delinquent payments shall bear interest from the eleventh (11<sup>th</sup>) day of the month, or such other date established by the Committee (the "date of delinquency"), at the rate of 18% per annum, or such lower rate established by resolution of the Management Committee from time to time.

5.8.2. Late Charge. Each delinquent payment shall be subject to a late charge in the amount established by the Management Committee from time to time.

5.8.3. Acceleration. If the delinquent installments of Annual Assessments and any charges thereon are not paid in full, the Committee, or its authorized agent, may declare all of the unpaid balance of the Annual Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

5.8.4. Rent Payments by Tenant to Association. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Management Committee may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Committee, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

5.8.5. Termination of Common Service and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Management Committee may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Committee. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Committee shall immediately take action to reinstate the terminated utility services to the Unit.

5.8.6. Remedies under the Act and Other Law. The Association shall have each and every remedy for collection of assessments provided in the Utah Condominium Ownership Act, Utah Code Title 57, Chapter 8, as amended from time to time, and in Utah Code Title 12, and such remedies and provisions shall be deemed to be fully set forth herein. A collection fee shall be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, in addition to any other amount owed to the Association.

**5.9. Lien.** All Assessments and charges imposed, together with damages, fines, interest, costs of collection, late charges, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Units against which the Assessment is made and shall be construed as a real covenant running with the land. The recording of this Declaration constitutes record notice and perfection of the lien established herein. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all

unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**5.10. *Personal Obligation and Costs of Collection.*** Assessments imposed under this Declaration, together with interest and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Unit and in a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**5.11. *Appointment of Trustee.*** By acceptance of a deed for a Unit, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Unit and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section, the Act, and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee, or substitution thereof, by recording an appointment or substitution of trustee in the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**5.12. *Enforcement of Lien.*** The lien provided for in this Article may be enforced by the Management Committee by causing a Unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, or by foreclosing the lien through a judicial foreclosure, all in the manner provided by the Act and by the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts or the law for the foreclosure of a mortgage, as the case may be. The Association shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner, and an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, the costs and attorney fees associated with which shall be awarded to the Association or the purchaser, as the case may be. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**5.13. *Subordination of Lien to Mortgages.*** The lien provided for in this Article has priority over each other lien and encumbrance on a Unit except a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Unit. The sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not

relieve the Unit from liability or lien for any Assessments or charges thereafter becoming due, and shall not relieve any Owner of his or her personal obligation for such amounts.

**5.14. Statement of Unpaid Assessment & Payoff Information.**

5.14.1. The Association shall, upon demand at any time, furnish to any Owner liable for assessment or any prospective Owner under contract for purchase of a Unit, a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by the Management Committee, may be levied in advance by the Association for each certificate so delivered.

5.14.2. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Unit up to the maximum amount allowed by law.

**ARTICLE VI - MODIFICATIONS TO UNITS OR LIMITED COMMON AREA**

**6.1. Combining Units.** An Owner shall have the right to physically combine one or more Units with an adjoining Unit. In order to accomplish such combination, an Owner may remove or create additional interior walls, subject to this subsection and any other provisions of this Declaration. Upon the combination of any Units, the Unit resulting from such combination shall be allocated the undivided interest of the predecessor Units in and to the Common Areas and Facilities. Such allocation shall be reflected by an amendment to Exhibit B hereto. An Owner must first obtain the consent of the Management Committee pursuant to Section 6.4 and all necessary approvals from any governmental authority having jurisdiction over the Project before exercising its rights herein. The cost and expense incurred for legal, architectural and/or engineering fees and all other costs and expenses incurred by the Association shall be borne by that party requesting such a change. To the extent possible, the Management Committee shall be permitted to execute and record any amendment effectuating the combination of Units. Notwithstanding the foregoing, no combination of Units shall be allowed which increases the number of "Unit Equivalents" (as defined by City ordinances and approvals) in the Project without all necessary City approvals.

**6.2. Alterations of Units or Limited Common Areas without a Change in Undivided Interests or Unit Boundaries.** No alterations or improvements to a Unit, other than mere aesthetic improvements such as painting or installing or replacing cabinetry, carpeting or appliances; no change affecting the mechanical or utility systems of the Community; no change, addition, structure, projection, decoration or other feature, shall be carried out, erected, applied to, placed upon or attached to the Common Area or Limited Common Area, without, in each instance, the prior written approval of the Committee pursuant to Section 6.4.

**6.3. Alterations of Units or Limited Common Area with a Change in Undivided Interests or Unit Boundaries.** Boundaries of a Unit to include Common Area or Limited Common Area may not be changed unless this Declaration is duly amended pursuant to Article XI authorizing such change and unless the Plat is amended in the manner required herein and by the City, and unless the approval of the Committee is obtained, pursuant to Section 6.4.

**6.4. Application and Approval Requirements.** All changes allowed for in this Article may only be made after application to and approval by the Management Committee. The application and approval process shall include at least the following:

6.4.1. Signatures. The signatures of all of the Owners of a Unit that is proposed to have changes must be on the application;

6.4.2. Representations. The Owner(s) must represent and warrant that the proposed modifications do not affect the structural integrity, impair the electrical systems, mechanical systems or utilities, lessen the support of any portion of the Community or violate any of the provisions of this Declaration;

6.4.3. Contents of the Application. The application must contain at least the following:

(a) evidence sufficient to the Committee that the applicant has complied with and/or will comply with all local rules and ordinances and with any rules or resolutions adopted and enforced by the Master Association;

(b) all necessary and proper permits and approvals from the appropriate governmental authorities have been or will be obtained;

(c) proof that the contractor(s) of the Owner is/are licensed and adequately insured;

(d) if necessary, the proposed form of amendment to this Declaration, including the Plat, as may be necessary, including, if necessary, the proposed reallocations of all of the Owners' undivided interests in the Common Areas and Facilities; and

(e) such other information as may be reasonably requested by the Committee.

6.4.4. Agreement May Be Required. The Management Committee may require the Owner's written agreement (in the form required by the Association) providing for the following:

(a) for the Owner to be responsible, now and in the future, for any structural deficiencies or problems, electrical deficiencies or problems, mechanical structural integrity, electrical systems, utility or mechanical deficiencies or problems or problems associated with a lessening of support of any portion of the Community, or for violations of any of the provisions of this Declaration, all as may reasonably be determined by the Committee;

(b) for the Owner's agreement to be responsible for ongoing maintenance, repair, replacement and improvement of any or all of the proposed additions/modifications of the Owner. The Committee may require the Owner to be responsible for all or some of the maintenance, repair, replacement and improvement of the proposed modifications;

(c) for the Owner's payment of the fees and costs of the Association, together with a deposit against fees and costs which the Committee will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Committee, in advance of any billing for costs and expenses of the Committee;

(d) for reasonable advance notice to the Association by the Owner for the work to be performed, from the Owner or from the Owner's contractor; and

(e) satisfaction of all other conditions as may be required by the Committee.

## **ARTICLE VII – THE ASSOCIATION**

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the



nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Committee may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Management Committee as provided herein and in the Bylaws.

**7.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Units within the Community shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws and each Owner shall have such vote in matters of the Association for each Unit owned equal to the percentage of undivided interest in the Common Areas and facilities appertaining to such Unit. The voting rights appurtenant to any Unit owned by the Association shall be exercised by the Management Committee.

**7.4 Powers and Authority of the Association.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. The Association shall have the exclusive authority and right to provide for the management, use, maintenance, repair, operation or administration of the Community and Common Area. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

7.4.1 In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Unit on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (ii) to defend, bring, prosecute, and settle litigation for itself and the Project, (iii) to obtain, contract and pay for, or to otherwise provide for such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Committee may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Committee may deem desirable, (iv) to delegate by resolution or contract to a Managing Agent any of its powers under this Declaration, (v) to repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act, (vi) to grant easements and rights-of-way over the Common Area and to approve signage for the Project, and (vii) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a

majority of the voting interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

7.4.2 Except as limited in the Governing Documents or by the Act, the Committee acts in all instances on behalf of the Association.

7.4.3 It is anticipated, but not required, that the Management Committee or the Common Area Manager shall retain the services of a Lodge Keeper, who shall live at the Project in the Employee Unit, and who shall serve as an "on-site manager" for the Project and supervise the day-to-day operations of the Project. All compensation and other costs relating to retention of the Lodge Keeper shall be part of the Common Expenses.

7.4.4 Telecommunications/Fiber Optic/Related Contracts. The Management Committee shall have the power, in its own discretion, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with telecommunication service providers and telecommunication facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of telecommunication services and/or telecommunication facilities to each Unit. The Committee shall also have the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests.

## **ARTICLE VIII – COMPLIANCE, ENFORCEMENT, RULES**

**8.1 Association Rules and Regulations.** In addition to the restrictions and requirements in this Declaration, the Association from time to time may adopt, modify, or revoke such rules and regulations governing the conduct of persons and the operation, aesthetics and use of the Units and Common Areas, including Limited Common Areas, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property and the accomplishment of the purposes of the Association and the Community. Reasonable fines may be levied and collected as an assessment for any violation of the Governing Documents. A schedule of fines may be adopted by the Association specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

**8.2 Compliance.** All Unit Owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use the Property or any part thereof shall be subject to and comply with the provisions of the Governing Documents and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**8.2 Remedies.** The voting rights of any Owner more than 60 days' delinquent in his or her account with the Association shall be automatically suspended until the account is brought current. Violation of any provisions of the Governing Documents (including failure to timely pay an assessment) or of any decision of the Association made pursuant to such documents, shall give the Management Committee acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under

law, to do any or all of the following after giving notice:

(a) Subject to the provisions of this Declaration, to enter the Unit as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Management Committee shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy fines, and any violation of any express rule, regulation, covenant, restriction, or term of any of the Governing Documents shall be subject to a fine in the amounts set forth by the Committee in a separate fine schedule from time to time, or if none, \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$10 a day for a continuing violation. A subsequent violation of the same specific type occurring within 12 months of a prior violation shall be deemed the same violation for the purpose of notice and shall be subject to an immediate fine without further warning or notice. Any hearing to dispute a fine shall be conducted in accordance with the standards promulgated by resolution of the Committee from time to time, or if none, in accordance with the standards determined by the Committee at the hearing itself (which need not be written);

(d) To terminate the right to receive utility or other services paid for by the Association, and to terminate the right of access to and use of recreational and service facilities of the Association until the correction of the violation has occurred;

(e) To suspend the voting rights of a Member, but not for longer than 60 days except in the case of a continuous violation;

(f) To bring suit or action against the Owner on behalf of the Association and other Owners to enforce the Governing Documents and the Association shall be entitled to recovery of its attorneys' fees and costs in such case.

**8.3 Action by Owners.** Subject to any limitation imposed under this Declaration, the Bylaws, or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy a thing or condition by appropriate legal proceedings.

**8.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or restrictions in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**8.5 Notification of First Mortgagee.** The Management Committee shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this

Declaration by the Unit Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

## **ARTICLE IX - INSURANCE**

### **9.1 Association Insurance.**

9.1.1. Property and Liability Insurance. The Association shall maintain a master insurance policy which includes: (1) blanket property insurance with not less than 100% of the full replacement cost for the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and Units, and including fixtures, improvements and betterments to a Unit made by a Unit Owner, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and (2) liability insurance having at least a Three Million Dollar (\$3,000,000.00) limit per total claims that arise from the same occurrence, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.

A. The Association's property insurance shall include coverage for any fixture, improvement, or betterment installed by a Unit Owner to a Unit or to a Limited Common Area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Area element associated with a Unit.

B. Each Unit Owner is an insured person under the Association's property insurance policy. Each Unit Owner is an insured person under a liability insurance policy that the Association obtains, but only for liability arising from: (i) the Unit Owner's ownership interest in the common areas and facilities, (ii) maintenance, repair, or replacement of common areas and facilities, and (iii) the Unit Owner's membership in the Association.

9.1.2. Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Committee, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Units plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

9.1.3. Flood Insurance. If any portion of the Project is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the

National Flood Insurance Program, the Association shall be required to obtain and pay the premiums upon a “master” or “blanket” policy of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association but not less than the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement cost of all such buildings and other insurable property within such area.

9.1.4. Directors and Officers (D&O) Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Committee member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

9.1.5. Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Committee deems necessary from time to time, such as workers' compensation insurance.

9.1.6. Loss Not Exceeding Deductible. If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the policy deductible of the Association and until the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (i) for a Unit to which a loss occurs, the Unit Owner's policy is considered the policy for primary coverage for the damage to that Unit; (ii) the Association shall pay for any loss for any common areas and facilities for which a loss occurs; (iii) a Unit Owner who does not have a policy to cover the damage to that Unit Owner's Unit is responsible for that Unit damage and the Association may, as provided herein, recover any payments the Association makes to remediate that Unit, and (iv) the Association need not tender the claim to the Association's insurer.

9.1.7. The Association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

9.1.8. An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy.

9.1.9. Loss Due to Fault of Another. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the Unit Owner, if the Unit Owner resides in the Unit, and (b) the Unit Owner.

9.1.10. Power of Attorney, Insurance Trustee. The Association may enter into an insurance trust agreement with a trustee (the “Insurance Trustee”) who shall thereafter have

exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Unit, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose. By purchasing a Unit, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

9.1.11. The Association, or insurance trustee if any, shall hold any proceeds of insurance in trust for Unit Owners and their first mortgage holders as their interests may appear. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members. The policies shall include: (1) a waiver of the right of subrogation against Unit Owners individually, (2) that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.

9.1.12. The Association shall use generally acceptable insurance carriers. Specific requirements for qualifications of insurance carriers may be found in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

**9.2. Unit Owner Insurance Responsibility.** For Units, the Association's policy is primary but the Unit Owner is responsible for the deductible as follows:

9.2.1. If a loss occurs that is covered by the Association's policy and by a Unit Owner's policy, the Association's policy provides primary insurance coverage, but the Unit Owner is responsible for the deductible of the association of Unit Owners, and Coverage A of the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

9.2.2. If a Unit, or limited common area element appurtenant to a Unit, suffers damage as part of a covered loss, the Unit Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Unit damage for that Unit to the amount of the deductible under the Association's policy. If a Unit Owner does not pay the amount required within 30 days after substantial completion of the repairs to, as applicable, the Unit or the limited common area appurtenant to the Unit, the Association may levy an assessment against a Unit Owner for that amount.

9.2.3. The deductible under the Association's policy is subject to change from time to time by the Management Committee. The Association shall provide notice to the Owners of any change in the amount of the deductible.

9.2.4. The Association's policy does not cover the contents of a Unit or an Owner's personal property. Each Owner is strongly encouraged to obtain insurance coverage for contents of their Unit, as well as for coverage in the event the Owner has to pay the Association's deductible as provided above.

## **ARTICLE X - AMENDMENT AND DURATION**

**10.1 Amendments.** Except as provided in Section 10.2 below, any and all of the conditions, restrictions, charges and terms contained in this Declaration may be annulled, waived, changed, modified or added to through a duly adopted amendment to this Declaration.

(a) How Proposed. Amendments to the Declaration shall be proposed to the membership only by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners holding twenty percent (20%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

(b) Approval Required. This Declaration may be amended if such amendment is approved by Owners holding sixty percent (67%) of the voting rights of the Association, subject to the approval of Eligible Holders as required herein. Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Management Committee without approval of the Members if necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate County Recorder's Office.

**10.2 Duration and Termination.** This Declaration and the Project shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration after the vote and approval of (i) seventy-five percent (75%) of all of the Owners of the Units, and (ii) sixty-seven percent (67%) of the votes of Eligible Holders. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office.

## **ARTICLE XI – MORTGAGEE RIGHTS**

**11.1 Approval Required.** In addition to any other approvals required by this Declaration or the Bylaws, the prior approval of fifty-one percent (51%) of the Eligible Holders (based upon one vote for each Mortgage owned) must be obtained for the following:

(a) The abandonment, termination, or removal of the Property from the provisions of this Declaration, except when provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(b) The addition of Common Property;

(c) Any material amendment to this Declaration or the Bylaws. Except for an amendment to the Declaration or Bylaw if its purpose is to correct technical errors or to clarify, a change to the following would be considered as material: (1) Voting rights; (2) The funding of reserves for maintenance, repair, and replacement of the Common Areas; (3) Changing general responsibility for maintenance and repairs (excluding minor changes); (4) Redefinition of any Unit boundaries; (5) Convertibility of Units into Common Property or vice versa; (6) Expansion or contraction of the project, or the addition, annexation, or withdrawal of property from the project; (7) Insurance or fidelity bond; (8) Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws; (9) Any action to terminate the legal status of the project after substantial destruction or condemnation occurs; (10) Assessments, assessment liens, or subordination of such liens; (11) Rights to use of Common Areas; (12) The interest in the general or limited Common Area; (13) Leasing of Units; (14) Imposition of any right of first refusal of similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; (15) Change by the Association from professional management to self-management and vice versa; (16) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; or

(d) Use of hazard insurance proceeds for losses to any Project property, whether to Units, for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units.

**11.2 Additional Rights.** In addition to the approvals required above, each mortgagee (or beneficiary of a trust deed or vendor and including guarantors) shall have the following rights:

(a) Right to Examine Books and Records. All mortgagees shall have the right to examine the books and records of the Association upon reasonable notice and at reasonable times; (b) Right to Annual Reports. All mortgagees shall, upon written request, be entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; (c) Right to Receive Written Notice of Meetings. The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings.

**11.3 Request for Approval of Mortgagees.** If an Eligible Holder's consent is a condition for amending the Declaration or Bylaws, then, subject to Subsection (4) of this Article, the Eligible Holder's consent is presumed if: (a) written notice of the proposed amendment or action is sent by certified or registered mail to the Eligible Holder's address provided to the Association by such Eligible Holder; (b) 60 days have passed after the day on which notice was mailed; and (c) the person designated for receipt of the response in the notice has not received a written response from the Eligible Holder either consenting to or refusing to accept the amendment or action.

**11.4 Rights of Eligible Holders.** In addition to the approvals required and the rights provided above, each Eligible Holder shall have the following rights:

(a) Right to Receive Written Notice of Meetings. The Association shall give all Eligible Holders written notice of all meetings of the Association, and such Eligible Holders shall be permitted to designate a representative to attend all such meetings.

(b) Right to Notice of Proposed Amendments. All Eligible Holders, upon written



request to the Association, will be entitled to timely written notice of any proposed amendment effecting a change in: (1) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (2) the interests in the general or limited Common Areas appertaining to any Unit or the liability for common expenses appertaining thereto; (3) the number of votes in the Association appertaining to any Unit; or (4) the purposes to which any Unit or the Common Areas are restricted.

(c) **Other Rights to Notice.** All Eligible Holders, upon written request to the Association, will be entitled to timely written notice of: (1) any proposed termination of the condominium regime; (2) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which the Eligible Holder holds a Mortgage interest; (3) any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to a Mortgage of the Eligible Holder, where such delinquency has continued for a period of 60 days; (4) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

## **ARTICLE XII - MISCELLANEOUS PROVISIONS**

**12.1 Premises Liability.** The Association and the Management Committee are and shall remain wholly free and clear of any and all liability to, or claims by, all Unit Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and a Unit Owner shall defend, indemnify and hold harmless the Association and Management Committee against such claim, loss or liability asserted by such Unit Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Unit Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**12.2 Priority of Governing Documents.** To the extent possible under the law and in light of the requirement of the Act that organizational documents for a nonprofit corporation shall not conflict with the rights and obligations found in the declaration and bylaws, in the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**12.3 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in the Governing Documents shall be resolved by the Management Committee, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict

and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Committee except where powers are expressly restricted.

**12.4 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Unit. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

**12.5 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**12.6 Joint Owners.** In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Management Committee, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**12.7 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**12.8 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Management Committee or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute

precedent or estoppel impairing the right of the Association, Management Committee or Owner as to any similar matter.

**12.9 Notice of Sale or Lease.** Immediately upon the sale, rental or other conveyance of any Unit, the Owner shall promptly inform the secretary or manager of the name and address of said grantee or tenant. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it and the address of each Owner shall be deemed for all purposes to be the address of the Unit owned by such Owner unless the Management Committee is otherwise advised in writing.

**12.10 Person to Receive Service of Process.** The person designated to receive service of process on behalf of the Project, in the cases provided by the Utah Condominium Ownership Act, is the registered agent of the Association, as that agent may be designated by the Association from time to time and as reflected in the records of the Utah Division of Corporations and Commercial Code.

IN WITNESS WHEREOF, Flagstaff Owners Association, has executed this Declaration this 15th day of July, 2015.

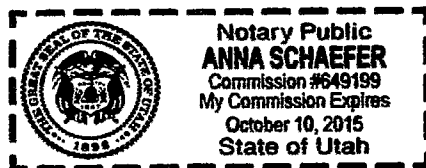
FLAGSTAFF  
OWNERS ASSOCIATION

By: [Signature]

Its: President

STATE OF UTAH                    )  
  )ss:  
County of SUMMIT            )

The foregoing instrument was acknowledged before me on this 15<sup>th</sup> day of JULY, 2015 by Sally Robinson, of Flagstaff Owners Association.



[Signature]  
Notary Public for Utah

## **Exhibit A**

### **Legal Description**

Units 101 through 104, 201 through 208, 301 through 308, 401 through 408, 501 through 508, and 603 through 606, FLAGSTAFF CONDOMINIUMS, according to the official plat thereof recorded in the records of the Summit County Recorder.

(38 Total Units)

FLGSF-101, FLGSF-102, FLGSF-103, FLGSF-104, FLGSF-201, FLGSF-202, FLGSF-203, FLGSF-204, FLGSF-207, FLGSF-208, FLGSF-301, FLGSF-302, FLGSF-303, FLGSF-304, FLGSF-305, FLGSF-306, FLGSF-307, FLGSF-308, FLGSF-401, FLGSF-402, FLGSF-403, FLGSF-404, FLGSF-405, FLGSF-406, FLGSF-407, FLGSF-408, FLGSF-501, FLGSF-502, FLGSF-503, FLGSF-504, FLGSF-505, FLGSF-506, FLGSF-507, FLGSF-508, FLGSF-603, FLGSF-604, FLGSF-605, FLGSF-606

## EXHIBIT B

### Unit Numbers, Square Footage, Par Values and Undivided Interests in Common Areas

Unit Identifying Number	Approx Sq. Footage of Unit	No. of Par Value Points per Unit	No. of Votes per Unit	Undivided Interest Per Unit <sup>1</sup>
101	2192	8768	88	2.97%
102	1995	7980	80	2.70%
103	1612	6448	64	2.18%
104 (EHU)	1260	1260	13	0.43%
201	2192	8768	88	2.97%
202	1995	7980	80	2.70%
203	1827	7308	73	2.47%
204	1962	7848	78	2.66%
207	1996	7984	80	2.70%
208	1996	7984	80	2.70%
301	2192	8768	88	2.97%
302	1995	7980	80	2.70%
303	1827	7308	73	2.47%
304	1950	7800	78	2.64%
305	1620	6480	65	2.19%
306	1952	7808	78	2.64%
307	1996	7984	80	2.70%
308	1996	7984	80	2.70%
401	2192	8768	88	2.97%
402	1995	7980	80	2.70%
403	1827	7308	73	2.47%
404	1950	7800	78	2.64%
405	1620	6480	65	2.19%
406	1952	7808	78	2.64%
407	1996	7984	80	2.70%
408	1996	7984	80	2.70%
501	2192	8768	88	2.97%
502	1995	7980	80	2.70%
503	1827	7308	73	2.47%
504	1950	7800	78	2.64%
505	1620	6480	65	2.19%
506	1952	7808	78	2.64%
507	2499	9996	100	3.39%
508	2499	9996	100	3.39%
603	1827	7308	73	2.47%
604	1950	7800	78	2.64%
605	1620	6480	65	2.19%
606	2752	11008	110	3.73%
<b>Total:</b>	<b>74766</b>	<b>295284</b>	<b>2953</b>	<b>100.00%</b>

# **EXHIBIT C**

## **BYLAWS**

### **OF**

## **FLAGSTAFF OWNERS ASSOCIATION**

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### **ARTICLE 1 - DEFINITIONS**

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.  
“Nonprofit Corporation Act” means Utah Code Title 16, Chapter 6a (the Utah Revised Nonprofit Corporation Act), as has been or shall be amended from time to time.

### **ARTICLE 2 – ASSOCIATION MEETINGS, VOTING, QUORUM**

2.1 Place of Meeting. The Association shall hold meetings of its members at such suitable place as may be designated by the Management Committee from time to time.

2.2 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Management Committee.

2.3 Special Meetings. The Association, by and through the Management Committee, shall notice, hold and conduct a special meeting of its members (1) on call of the Management Committee, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by Owners holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the Owners, the Committee shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Committee within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

2.4 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Committee. Notice shall always be deemed fair and reasonable if given 30 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

2.5 Voting. Each Unit shall be allocated such vote in the affairs of the Association equal to the percentage of undivided interest in the Common Areas and facilities appertaining to such Unit. The Management Committee shall be entitled to vote on behalf of any Unit which has been acquired by or on behalf of the Association, except the Management Committee shall not be entitled to vote such Units in any election of Committee members.

2.6 Proxies, Absentee Ballots and Rights of Mortgagees.

2.6.1 Proxies. A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by the Committee by resolution or as stated in the notice of the meeting. A proxy shall be valid for, and only for, the meeting (and any adjournment of the meeting) for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting, or to the Committee if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

2.6.2 Absentee Ballots. A vote may be cast by absentee ballot.

2.6.3 Mortgagee Rights. An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Management Committee. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

2.7 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity.

(b) Joint Owners. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.8 Quorum.

2.8.1 "Quorum" means the Owners holding the minimum number of Percentage Interests (when duly assembled or represented by proxy at a meeting or casting a written ballot in an action without a meeting) necessary to make the proceedings valid.

2.8.2 At any regular annual meeting of the Association, Owners holding 10% of the Percentage Interests present in person or represented by proxy or by written ballot, shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Owners holding one-third (1/3) of the Percentage Interests, represented in person, by proxy, or by written ballot, shall constitute a quorum.

2.8.3 If any special meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Owners holding twenty percent (20%) of the Percentage Interests, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

2.8.4 When a quorum is once present to organize a meeting it cannot be broken by the



subsequent withdrawal of an Owner or Owners.

2.9 Binding Vote. Action on a matter other than the election of Committee members is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by the Governing Documents.

2.10 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Committee members; (g) Unfinished business; (h) New business; and (i) Adjournment.

2.11 Meeting Procedure. Rules of order may be adopted by resolution of the Management Committee, otherwise, the President shall conduct meetings according to the procedure he or she deems fit and shall have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used. All informalities or irregularities in calls or notices of meetings and in the manner of voting, credentials, and methods of ascertaining those present shall be deemed waived by those present if no objection is made at the meeting.

2.12 Minutes of Annual and Special Meetings. Minutes of the annual and special meetings of the Association shall be distributed to each member within 90 days after the meeting.

2.13 Election Inspectors. The Committee, in advance of any meeting of the Members, may appoint an election inspector or inspectors to act at such meeting (and at any adjournment thereof). If an election inspector or inspectors are not so appointed, the President may, or upon request of 10% of the Members entitled to vote at the meeting will, make such appointment. If any person appointed as an inspector fails to appear or to act, a substitute may be appointed by the President. If appointed, the election inspector or, inspectors (acting through a majority of them if there be more than one) will determine the Members entitled to vote, the authenticity, validity and effect of proxies and the number of Members represented at the meeting in person and by proxy; they will receive and count votes, ballots and consents and announce the results thereof, which announcement of results, as reflected in the minutes of the meeting, shall be conclusive evidence of such results for all purposes; they will hear and determine all challenges and questions pertaining to proxies and voting; and, in general, they will perform such acts as may be proper to conduct elections and voting with complete fairness to all Members.

2.14 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter not less than fourteen (14) days prior to the date on which the ballots must be received by the

Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of Committee members; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Committee members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document. The Management Committee may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

2.15 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

### **ARTICLE 3 - MANAGEMENT COMMITTEE – SELECTION, TERM OF OFFICE**

#### **3.1 Number, Term and Qualifications.**

3.1.1 The affairs of the Association shall be governed by a Management Committee composed of at least three (3) and not more than seven (7) Committee members, as determined by the Committee.

3.1.2 Members of the Management Committee shall serve for a term of two (2) years. The terms shall be staggered so all Committee members are never elected in the same year.

3.1.3 All Committee members must be an Owner or the spouse of an Owner of a Unit, except that a husband and wife may not serve on the Committee at the same time. A representative of an entity which owns a Unit, and only one such representative, may serve on

the Committee, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Committee if the corporation, LLC, partnership, trust or estate owns a Unit.

3.2 Vacancies. Vacancies on the Management Committee, caused by any reason other than the removal of a Committee member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Committee members even though they may constitute less than a quorum. Each person so appointed shall be a Committee member until a successor is elected upon expiration of the term for which the person was elected by the other Committee members to serve. The Committee shall fill such a vacancy within the time period that the Committee reasonably determines.

3.3 Removal of Committee members.

3.3.1 At any annual or special meeting, any one or more of the Committee members may be removed, with or without cause, by a majority of the total voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Committee member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

3.3.2 A Committee member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular meetings of the Committee, or is absent from more than 25% of the regular meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the Management Committee his or her position shall be vacant. The vacancy shall be filled as provided in Section 3.2 above.

3.4 Compensation. No Committee member shall receive compensation for any service he or she may render to the Association as a Committee member.

#### **ARTICLE 4 - NOMINATION AND ELECTION OF MANAGEMENT COMMITTEE MEMBERS**

4.1 Nomination.

4.1.1 Method of Nomination. Nomination for election to the Management Committee shall be made in the manner determined by the Management Committee, which may include a nominating committee and/or nominations from the floor at a meeting. If one is established, the nominating committee shall make as many nominations for election to the Management Committee as it shall in its discretion determine, but not less than the number of vacancies. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. Nominations (including self-nominations) for positions on the Management Committee may also be made by petition filed with the Secretary of the Association at least forty-five days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Management Committee, if elected.

4.1.2 Nominating Committee. The nominating committee, if any, shall consist of a chairman, who shall be a member of the Management Committee, and one or more members of the Association who are not candidates for election to the Committee.

4.2 Election. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in elections shall be by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## **ARTICLE 5 - MEETINGS OF MANAGEMENT COMMITTEE**

### **5.1 Organizational Meeting.**

5.1.1 Location, Date and Time. The first meeting of a newly-elected Management Committee shall be held at such place, date and time as shall be fixed by the Committee members.

5.1.2 Procedure and Business. Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted Committee. At the organizational meeting, the Management Committee shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Management Committee shall be held at such place and hour as may be fixed from time to time by the Committee and distributed, or otherwise made available, to the Unit Owners, and if so fixed, no notice thereof need be given. If not so fixed, notice of a regular Management Committee meeting shall be given in writing (delivered personally, by electronic transmission, mail, or otherwise) to each member of the Management Committee and to each Unit Owner not less than ten (10) days prior to the meeting.

5.3 Special Meetings. Special meetings of the Management Committee shall be held when called by the president of the Association, or by any two (2) Committee members, after not less than three (3) days' notice to each Committee member personally or by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.8 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Unless other rules of order are adopted by resolution of the Management Committee: (a) Meetings of the Management Committee shall be conducted by the President; (b) A decision of the Management Committee may not be challenged because the appropriate rules of order were not used; (c) A decision of the Management Committee is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

### **5.5 Open Meetings; Executive Sessions.**

5.5.1 Open Meetings. Except as provided in subsection 5.5.2, all meetings of the Management Committee shall be open to Unit Owners. At each meeting, the Management Committee shall provide each Owner a reasonable opportunity to offer comments. The

Management Committee may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Management Committee meeting unless the Owner is also a member of the Committee. The president or Committee shall have the authority to exclude an Owner who disrupts the proceedings at a Committee meeting. The Committee may adopt policies governing meetings of the Management Committee from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Committee shall also supersede these Bylaws to the extent the policy restates then current Utah law.

5.5.2 Executive Sessions. In the discretion of the Committee, the following matters may be considered in executive session:

- (a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, confidential, private, or privileged nature at the discretion of the Committee.

5.5.3 Executive Session Procedure. Except in the case of an emergency, the Management Committee shall vote in an open meeting whether to meet in executive session. If the Committee votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. Meetings of the Management Committee may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Management Committee participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Action Taken by Committee without a Meeting.

5.7.1 Notice, Response. The Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Committee and each member of the Committee, by the time stated in the notice:

- (a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a meeting.

5.7.2 Content of Notice. The notice required by Subsection 5.7.1 (the “Notice”) shall state:

- (a) the action to be taken;
- (b) the time by which a Committee member must respond to the notice;
- (c) that failure to respond by the time stated in the notice will have the same effect as: (1) abstaining in writing by the time stated in the notice; and (2) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and
- (d) any other matters the Association determines to include.

5.7.3 Approval of Action/Decision. Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

- (a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Committee members then in office were present and voted; and
- (b) the Association has not received a written demand by a Committee member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

5.7.4 Waiver of Meeting. A Committee member's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Committee member in writing by the time stated in the Notice.

5.7.5 Revocation. A Committee member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

5.7.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 5.7, communications to the Association are not effective until received.

5.8 Waiver of Notice. Any Committee member may, at any time, waive notice of any meeting of the Management Committee in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Committee member at any meeting of the Committee shall constitute a waiver of notice by the Committee member, except where the Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Committee members are present at any meeting of the Committee, no notice to Committee members shall be required and any business may be transacted at the meeting.

5.9 Quorum and Acts. At all meetings of the Management Committee, a majority of the existing Committee members shall constitute a quorum for the transaction of business and the acts of the majority of the Committee members present shall be the acts of the Management

Committee. If, at any meeting of the Management Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.10 Proxies at Committee Meetings. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Committee member may be considered to be present at a meeting and to vote if the Committee member has granted a signed written proxy: (i) to another Committee member, or other person, who is present at the meeting; and (ii) authorizing the other Committee member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## **ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE MANAGEMENT COMMITTEE**

6.1 General Powers and Duties. The Management Committee shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Management Committee shall have the power to, in the Management Committee's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Committee member or officer shall discharge the Committee member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association. The Management Committee members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Committee member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Committee member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Committee member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Committee member, a sub-committee of the Association or Management Committee of which the Committee member is not a member if the Committee member reasonably believes the sub-committee merits confidence.

#### 6.4 Conflicts of Interest.

6.4.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Committee member, (2) a party related to a Committee member, or (3) an entity in which a Committee member is a director or officer or has a financial interest.

6.4.2 A Committee member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Committee member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Committee, (2) the Committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Committee members (even if the disinterested Committee members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

### **ARTICLE 7 - OFFICERS AND THEIR DUTIES**

#### 7.1 Designation and Qualification.

7.1.1 Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Committee may designate the office of assistant treasurer and assistant secretary and the Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Committee may, from time to time, determine.

7.1.2 Qualifications. The president and vice-president shall be a member of the Committee, but the other officers need not be Committee members or Owners. Any Committee member may be an officer of the Association.

7.1.3 Multiple Offices. A person may simultaneously hold more than one office.

7.1.4 Special Appointments. The Committee may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Committee may, from time to time, determine.

7.2 Election and Vacancies. The officers of the Association may be elected by the Committee at the organizational meeting of each new Committee or any Committee meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Committee shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Committee, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Committee. Upon an affirmative vote of a majority of the members of the Committee any officer may be removed, either with or without cause.



7.5 Compensation of Officers. No officer who is a member of the Committee may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Committee may fix any compensation to be paid to any officers who are not also Committee members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Committee, to the extent not inconsistent with these Bylaws or the Declaration. The Committee may delegate any powers or duties of officers to other persons or agents as the Committee deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Management Committee. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Committee. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association, have charge of such books, papers and records as the Management Committee may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Management Committee and disbursing funds as directed by resolution of the Management Committee.

## **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS**

Members of the Management Committee, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as

such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Community, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

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

Beyond (but subject to) the foregoing provisions of this Article, each officer and Committee member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Committee member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Committee member or officer or person may be entitled by law or agreement or vote of the members or otherwise.

## **ARTICLE 9 - RECORDS AND AUDITS**

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner as may be prescribed by a resolution adopted by the Management Committee.

### **9.1 General Records.**

(a) The Management Committee and managing agent or manager, if any, shall keep records of the actions of the Management Committee; minutes of the meetings of the Management Committee; and minutes of the meetings of the Association.

(b) The Management Committee shall maintain a Book of Resolutions containing the rules, regulations, and policies adopted by the Association and Management Committee.

(c) The Management Committee shall maintain a list of the names and addresses of the Owners. Any record of phone numbers of Owners kept by the Association shall be deemed

confidential and private and shall not be subject to inspection, viewing or copying by any Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 Records of Receipts and Expenditures. The Management Committee or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

9.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.4 Financial Reports and Audits.

(a) If requested within ninety days after the end of the fiscal year, the Management Committee shall provide an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities to a requesting Owner or mortgagee of a Unit.

(b) From time to time, the Management Committee, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Units.

9.5 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.6 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Unit pursuant to rules adopted by resolution of the Management Committee or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Management Committee shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.4 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Management Committee, by resolution, may adopt reasonable rules

governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.6 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in subsections (a) and (b) of this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.
- (d) Disclosure of information in violation of law.
- (e) Documents, correspondence or management or Committee reports compiled for or on behalf of the Association or the Management Committee by its agents or committees for consideration by the Management Committee in executive session held in accordance with these Bylaws.
- (f) Documents, correspondence or other matters considered by the Management Committee in executive session held in accordance with these Bylaws and the minutes of any executive session.
- (g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

## **ARTICLE 10 - AMENDMENTS**

The approval of members representing at least 51% of the total Percentage Interests and the approval of 51% of the Eligible Holders shall be required for any amendment or change to the Bylaws. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

## **ARTICLE 11 – NOTICE, AFFAIRS, ELECTRONIC MEANS**

### **11.1 Notices.**

11.1.1 Association. All notices to the Association or the Management Committee shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Management Committee may hereafter designate from time to time.

### 11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Management Committee deems the notice to be fair and reasonable. A Member may require the Association, by written demand, to provide notice to the Member by mail. The Management Committee is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Management Committee, or if no address has been designated, then to the Owner's Unit.

(c) If a Unit is jointly owned or the Unit has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

11.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Association, through the Committee, does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

## ARTICLE 12 - MISCELLANEOUS

12.1 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

12.2 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As

used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

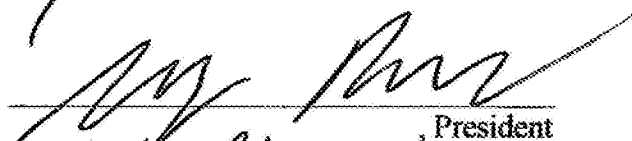
12.3 Fiscal Year. The fiscal year of the Association shall be determined by the Committee in its discretion.

12.4 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 15th day of July, 20 15.

(Sign):

(Print Name):

  
Sally Robinson, President