

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS

FOR

THE ENCLAVE

A UTAH CONDOMINIUM PROJECT

IN

SUMMIT COUNTY, UTAH

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
The Enclave**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Enclave is recorded by the Enclave Owners Association, Inc., upon its approval by the Owners, and is effective as of the date it is recorded in the Summit County Recorder's Office.

RECITALS

A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.

B. The Condominium Declaration for The Enclave, a Utah Expandable Condominium Project, was recorded on December 16, 1983, in the official records of Summit County, as Entry No. 214227, in Book 282, beginning at Page 02 ("the Enabling Declaration"). The First Amended Condominium Declaration for the Enclave, a Utah Expandable Condominium Project, was recorded on December 27, 1984, in the official records of Summit County as Entry No. 228721, in book 325, beginning at page 380 (the Amended Declaration).

C. The "Articles of Incorporation of Enclave Owners Association, Inc., a Utah Nonprofit Corporation," was filed with the Utah Division of Corporations on February 24, 1993.

D. The Association, with the authority and approval of the Owners, hereby adopts this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Project and which shall amend and completely replace the Enabling Declaration and Amended Declaration and all other declarations and amendments, whether recorded or not, properly adopted or not, or referenced in this Declaration or not, prior to the date of the recording of this Declaration.

E. This Declaration is adopted to replace and update the terms of the Enabling Declaration and Amended Declaration and any amendments thereto, to further define the rights of the Association and the Owners, and to provide a general plan for managing the Project; all in furtherance of the Association's efforts to efficiently and economically protect and enhance the value of the Units and the Project, and to create a superior living environment.

F. All rights of the Declarant defined in the Enabling Declaration and the Amended Declaration have expired pursuant to the terms of the Enabling Declaration, the Amended Declaration, and Utah Code Ann. § 57-8-16.5. No declarant approval is required for this amendment.

G. The Association and Owners hereby desire to establish the Terms and Conditions for the mutual benefit and burden of the Association, all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project.

H. The Board of Directors has obtained the approval of the Owners necessary to adopt and record this Declaration and the attached Exhibits.

I. This Declaration affects the Property, which is located in Summit County, State of Utah, and described on the attached Exhibit A, which is incorporated herein by this reference.

NOW, THEREFORE, for the reasons recited above, the Association hereby adopts this Declaration.

ARTICLE 1

DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean the Condominium Ownership Act codified, beginning at Section 57-8-1, Utah Code Annotated.
- 1.2 "Articles" shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.3 "Assessment" shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
- 1.4 "Association" shall refer to Enclave Owners Association, Inc., the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity, or if the Owners act as a group without legal organization, "Association," as used in this Declaration, shall refer to that entity or group.
- 1.5 "Deck" shall refer to any balcony, patio, or deck associated with any Unit.
- 1.6 "Building" shall mean the buildings containing the Units in the Project.
- 1.7 "Bylaws" shall mean the bylaws of the Association attached as Exhibit C, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.8 "Board Member" shall mean a duly qualified and elected or appointed member of the Board of Directors.

1.9 "Board of Directors," or "Board," shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce all of the reasonable rules covering the operations and maintenance of the Project.

1.10 "Committee" shall mean a group designated by the Board as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The rights, obligations and duties of a Committee are more fully described in the Bylaws.

1.11 "Common Area" shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Project, except to the extent any fixture, structure, or other area is part of a Unit as defined herein. Unless otherwise specifically included or excluded on the Plat or in this Declaration, Common Area includes but is not limited to:

- (a) all real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple;
- (b) all fixtures and equipment related to the provision of electricity, gas, water, telephone, television, internet, and electronic services, the removal of waste water, if such fixtures and equipment are not owned by the utility, and to the extent such fixtures and equipment serve more than one unit;
- (c) all apparatus and installations clearly intended and existing for common use including, if any, stairways, roofs, tanks, pumps, ducts, fans, compressors, wiring, and central or common installations and equipment to provide power, light, water, heating, air conditioning, and garbage disposal;
- (d) all Limited Common Areas;
- (e) all windows and window frames in or on the garage stairwells;
- (f) All doors on the exterior boundary of a Unit that lead to a Garage or a Garage Stairwell and associated thresholds, jams, hinges, handles, and locks and all components therein exterior to the Unit located on Common Property;
- (g) all roadways and parking areas in the Project that are not otherwise specifically dedicated to a governmental body, or, by other means, specifically excluded from the Project in the Plat or Declaration; and
- (h) all other parts of the Project necessary or convenient to its existence, maintenance, safe operations, or normally in common use.

1.12 “Common Expenses” shall mean:

- (a) all sums lawfully assessed against all of the Owners;
- (b) expense of administration, maintenance, repair, or replacement of the Common Areas, and;
- (c) the costs for:
 - (1) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association as provided for in this Declaration (if any);
 - (2) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees;
 - (3) utilities (other than utilities that are separately metered and charged to the Units), extermination, landscape maintenance, and other related services;
 - (4) insurance and bonds required or allowed by this Declaration;
 - (5) amounts deposited in reserves;
 - (6) other charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and
 - (7) any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.

The definition of Common Area in this Declaration shall supersede the definition of “Common Area and Facilities” in the Act and shall apply in all instances when the term “Common Areas and Facilities” is used in the Act.

1.13 “Declaration” shall mean this Declaration, including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and any and all amendments to this Declaration.

1.14 “Electronic transmission” or “electronically transmitted” means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

1.15 “Governing Documents” shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.

1.16 “Lender” shall mean a holder of a mortgage or deed of trust on a Unit.

1.17 “Limited Common Area” shall mean a portion of the Common Area specifically designated in this Declaration or on the Plat for the exclusive use of Owners of one or more Units to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of the Unit.

1.18 “Lower Building” shall refer to the Building located on Woodland View Drive and containing Units number 1 through 12.

1.19 “Manager” shall mean any Person engaged by the Association to manage the Project.

1.20 “Occupant” shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).

1.21 “Owner” shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the County Recorder of Summit County, Utah; however, Owner shall not include a trustee for a deed of trust, unless such trustee has taken title to the Unit at a Trustee’s sale or through judicial foreclosure.

1.22 “Person” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.

1.23 “Plat” shall mean the record of survey map or maps of the Project (the “condominium plat” as used in the Act) recorded in the records of the County Recorder of Summit County, Utah, and all amendments and supplements thereto. The Original Plat was recorded on December 16, 1983, as Entry No. 214226. The Original Plat contains two pages. The First Supplemental Plat was recorded on December 27, 1984, as Entry No. 228722. The First Supplemental Plat contains one page.

1.24 “Project” shall mean the land, whether leasehold or in fee simple, the Building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith; as defined by the Plat and this Declaration and including the Units, the Common Area, and the Limited Common Areas. Project, as defined in this Declaration, is intended to have the same definition as “Property,” as defined in the Act.

- 1.25 "Property" shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.26 "Rules" shall mean and refer to the rules adopted by the Association.
- 1.27 "Terms and Conditions" shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.28 "Undivided Interest" shall mean the interest of that Owner (expressed as a percentage in Exhibit B to this Declaration) in the Common Areas, which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act.
- 1.29 "Unit" shall mean and refer to an individual condominium unit, unit, or condominium, (all as defined in the Act), which shall consist of a separate physical part of the property intended for independent use, including one or more rooms or spaces located in one or more floors, or parts of floors, in a building, and which is identified on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest appurtenant to such Unit.
- 1.30 "Upper Building" shall refer to the Building located on Sterling Drive and containing Units numbered 26 through 30.

ARTICLE 2 **THE PROJECT**

- 2.1 Submission to the Act. The Association hereby confirms and restates that the Project is a condominium project as defined in the Act.
- 2.2 Binding Effect of Governing Documents. The Property is part of the Project, and the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land, and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.3 Project Name. The Project is named the Enclave and is located entirely in Park City, Summit County, Utah.
- 2.4 Nature of the Project.

- (a) The Project primarily consists of two buildings with three stories, each of which includes an underground parking and storage level.
- (b) The Project contains 17 Units in two buildings with each building located on a separate parcel of land divided by Woodland View Drive.

2.5 Identification of Units. All of the Units are referenced specifically and identified by location on the Plat.

2.6 Registered Agent. The registered agent at the time of the recording of this Declaration shall be Robert Rosing, of Wrona Gordon & Dubois, at 1745 Sidewinder Drive, Park City, Utah 84060. If the registered agent moves or is no longer available as the registered agent of the Association, the registered agent for the Association may be as provided for in entity filings and HOA registration for the Association. The registered agent in this Declaration may be changed by a recorded document solely for the purpose of updating the registered agent information, which may be approved of by the Board without any need for Owner consent.

ARTICLE 3

DESCRIPTION OF THE UNITS, LIMITED COMMON AREA, AND UNDIVIDED INTERESTS

3.1 The Unit.

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification in this Declaration, each Unit consists of the space enclosed and bounded by the horizontal and vertical planes, as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal boundaries of each Unit shall be the underside of the finished, but unpainted or decorated, ceiling of each level of the Unit, and the top of the finished, but undecorated, floor of each level in the Unit. The vertical boundaries of each Unit shall be the interior of the finished, but undecorated, walls located on the perimeter lines (boundary) of the respective levels of the Units, as shown on the Plat. All framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat), and all framing, structures, and concrete in any bearing walls are part of the Common Area. Generally, all wallboard, dry wall, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit, and are Limited Common Area or Common Area. All materials constituting any part of the finished surfaces, or of the decorating in the Unit, are part of the Unit. Generally, all paneling, tile, wallpaper, paint, carpet, hardwood flooring, linoleum, and other materials constituting any part of the finished surfaces, or installed on the finished surfaces

in a Unit, are part of the Unit. All parts of exposed concrete structural components in the Building (including the surface), in or on the boundary of a Unit, shall be Common Area. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit.

- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures located inside the designated vertical and horizontal boundaries of a Unit, and those between the point at which the same enter the Owner's Unit, and the closer of the point where the same join the utility lines serving another Unit or exiting the Building, are part of the Unit. The intention of this paragraph is that such pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures that are located outside the Unit, but serve only one Unit, are the responsibility of that Unit, with the exception of the fire suppression system. Only the sprinkler heads of the fire suppression system are part of the Unit.
- (d) Variances between the Plat and as-built construction. The boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building, and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.
- (e) Each Unit, together with its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered and may be inherited or devised by will. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.
- (f) Each Unit shall be assessed separately for taxes, assessments, and other charges of the state of Utah, or of any political subdivision or special improvement district, or of any other similar authority. The Common Area shall not be subject to separate taxation or assessment.
- (g) Each Owner may separately convey, encumber, or mortgage the Owner's Unit. No Owner may encumber the Common Areas, except to the extent of the Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest, and in the event of any foreclosure (judicial or otherwise), the Person taking title shall be subject to this Declaration.

3.2 Limited Common Area.

- (a) Specific Identification of Limited Common Area. The Limited Common Area associated with each Unit shall consist of areas identified on the Plat or in this Declaration as Limited Common Area.
- (b) Parking Spaces and Storage Assignments. Storage spaces are assigned as designated on the Plat for the Lower Building, with each storage space reflecting the same number as its associated unit. For example, Unit 1 has storage space 1. Storage spaces are assigned as indicated on the Storage Space itself for the Upper Building. The Storage spaces shall be Limited Common Area associated with the Unit. Any Owner may upgrade its Storage Space door at its own expense, with permission of the Board. Locks may be changed by the Unit Owner without permission of the Board, but if the Association is forced to enter a storage unit in an emergency and does not have a copy of the key to the storage unit because the lock was changed, the Owner is responsible for repair of the storage unit. The Association may replace the storage unit structures and/or cages with different materials and may, if it deems appropriate, adjust the size or dimensions of the storage units/cages as necessary for the safety, accessibility, or overall benefit of all Owners, while, nonetheless, attempting to maintain the original sizes to the extent possible. Notwithstanding the above, any changes to the storage unit configuration shall only be deemed necessary for the addition of a boiler room to heat the driveways, if so authorized by the membership, or such other mandated use of the parking garage which requires such change. Each Unit shall have one unassigned parking space in the parking garage.
- (d) Decks. All Decks shown on the Plat as Limited Common Area shall be Limited Common Area of the Unit to which the Deck attaches. All Decks which are not shown on the Plat but which were constructed as of the date of the recording of this Declaration shall be Limited Common Area appurtenant to the Unit to which the Deck attaches.

Notwithstanding the foregoing, if, and to the extent that any portion of any Deck not shown on the Plat extends into areas identified on the Plat as Common Area on either side of the Unit to which it attaches (each, an “Encroaching Portion”), such Encroaching Portion shall be subject to removal in the event that: (i) the Common Area upon which such Encroaching Portion is located is sold to a third party or otherwise legally severed from the Project in accordance with applicable law and pursuant to the approval of the Owners required by the applicable provisions of this Declaration as provided in Section 6.1(p), and (ii) such removal or sale or other severance cannot be accomplished without the removal of such Encroaching Portion of such Deck. In addition, should the Association obtain the approval of Owners to make a material alteration to the Project, as provided for in Section 4.2(c), which approval includes the required sixty-six point sixty-six percent (66.66%) vote of the members, and the creation of such material alteration cannot be completed without the removal of an Encroaching Portion, such Encroaching Portion shall be subject to removal.

In the event the Association exercises its authority to remove an Encroaching Portion under this Section, the Association shall bear the cost of such removal and the Owner shall bear the cost associated with any repair or remediation of the non-Encroaching Portion of the deck, including repair to comply with applicable building codes and the movement or replacement of any footings.

Nothing in this Section 3.2(d) should be interpreted to permit any Owner to add to, or build, any Deck not already in existence at the time of the recording of this Declaration.

- (e) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
- 3.3 Undivided Interest of Each Unit in the Votes of the Association. The Owners of each Unit shall be entitled to vote their Undivided Interest for all matters related to the Association that Owners are permitted or required to vote or approve. The Undivided Interests shall be as provided for in Exhibit B. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Undivided Interest.
- 3.4 Plat. The Plat, and all dimensions, descriptions, and identification of boundaries therein, shall be binding on the Association and the Project. If any conflict exists between the Plat and this Declaration, this Declaration shall control.

ARTICLE 4

MAINTENANCE, REMODELING, AND UTILITIES

- 4.1 Owner Responsibility.
 - (a) The Owner of a Unit shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following with regard to the Owner's Unit:
 - (1) All paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior, surfaces of floors, ceilings, or walls;
 - (2) All drywall, wallboard, or similarly functioning materials within the Unit;
 - (3) All framing, insulation, and other materials associated with interior, nonbearing walls;
 - (4) All fixtures, appliances, and other improvements in the Unit;
 - (5) All equipment, lines, pipes, wiring, equipment, and fixtures related to the provision of sewer and water drainage and removal, hot and cold water, power, natural gas, internet, television, telephone, and any other utility

service, wherever they might be located (inside or outside of the Unit), that serve an Owner's Unit exclusively.

- (6) Any lower level Decks built on the first floor of any Unit ("Lower Deck"), although the Board may adopt standards for the maintenance, appearance and materials of the Lower Decks;
- (7) Any individual Unit Owner's Storage Unit assigned to a Unit and located in the garage of a Building.
- (8) Payment of the electrical cost and maintenance of the heat-tape in the rear of the Building (Royal Street side) and above Unit;
- (9) All windows and doors including thresholds, jams, hinges, doorbells, chimes, handles, and locks which are part of the Unit or attached to the Unit; and
- (10) Exterior light fixtures on the rear of building outside a Unit (Royal Street side). The board may adopt rules on lighting in the use restrictions in Article 10.

(b) Without the prior approval of the Board, an Owner shall not replace or make any alterations, repairs, or modifications to the surface of any door facing the interior Building hallway, Common Area, or any part of the exterior of a Building, including any door that the Owner is obligated to maintain, such as Deck doors. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials or aesthetics requirements or other standards.

(c) The Owner shall be responsible for keeping the following areas in a clean and sanitary condition, and free of pests and rodents:

- (1) the Unit,
- (2) the Decks appurtenant to the Unit,
- (3) any Limited Common Area storage areas associated with the Unit,
- (4) the interior and exterior surfaces of any window on the exterior boundary of the Unit.

(d) Limited Common Areas. The Board may set forth in the Rules restrictions on all or some items, or specific restrictions or guidelines on what may or may not be kept, installed, or left on or in any Deck, storage area, parking area, or other Limited Common Areas.

(e) Parking Spaces. Subject to an Owner's obligation to comply with this Declaration and the Rules related to parking areas that may include requirements to keep such areas free of clutter, debris, and other items, the Association shall be responsible for cleaning parking areas.

(f) Hot Tubs. Owners may install hot tubs on Lower Decks, subject to the following requirements: (1) prior approval of the Board, (2) compliance with all requirements for installation, maintenance, and standards for hot tubs established

by the Board and the City of Park City, and (3) obtaining any necessary permits. All hot tubs shall be maintained in good and aesthetically pleasing condition, and consistent with any Rules adopted by the Board related to hot tubs. The Board shall have authority to require the repair or removal of hot tubs due to violations of the above requirements. Hot Tubs may not be installed on Upper Decks.

(g) Snow Removal from Decks. Owners are responsible for removing snow from the rear decks appurtenant to the Owner's Unit. The Board may determine the frequency and type of such snow removal, and may adopt standards for snow removal from Limited Common Areas.

4.2 Association Responsibility.

(a) Except as maintenance and cleaning obligations are otherwise assigned to the Owners or others in this Declaration, the Association shall repair, maintain, replace, and clean the Common Area, which shall include, but not be limited to, the obligation to repair, maintain, replace, and clean (as appropriate) the following:

- (1) all foundations, concrete pillars, and suspended concrete slabs and pads;
- (2) all framing and structural components in ceilings and floors;
- (3) all framing, structural components, and insulation in exterior and bearing walls;
- (4) except as otherwise provided herein, all framing, structural components, and insulation located in any wall on the boundary to a Unit;
- (5) the exterior surfaces of the Building and all components that are a part of the exterior surface of the Building, except for windows and doors attached to an individual Unit;
- (6) all upper level Decks built on the second floor of any Unit ("Upper Decks"), and stairways on the exterior of any Unit and any railings associated therewith (including any water penetration related thereto);
- (7) the roof and all exterior stairwells and stairs;
- (8) all equipment, lines, pipes, wiring, equipment, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, Internet, television, telephone, and any other utility service, wherever they might be located, to the extent they serve more than one Unit; or to extent they serve only one Unit but are buried or embedded in the garage or foundation;
- (9) all Common Area walkways and common spaces including all equipment, lines, pipes, wiring and equipment for fire suppression in the garage;
- (10) all Limited Common Areas for which maintenance and cleaning are not assigned to the Owners elsewhere in this Declaration;
- (11) the installation, maintenance and repair of all heat-tape installed on the exterior of the Building and the electrical cost of heat-tape, to the extent not otherwise assigned to an Owner;

- (12) exterior light fixtures on the back of each Unit (Royal Street side) are Owner responsibility, and the board may adopt rules on lights in Article 10; and
- (13) the fire suppression system is the responsibility of the Association except for the sprinkler heads, which are part of the Unit. An Owner shall be responsible for any cost to the Association that arises out of necessary upgrades during a remodel, including the cost of purging the fire suppression system to upgrade the sprinkler heads to code.

(b) The Association shall have the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject only to the obligation to get approvals for material alterations to the Project). The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration.

(c) Owner approval for certain improvements. Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

- (1) Any improvement (repair, replacement, modification, or upgrade) to the Project that does not materially alter the Project may be authorized by the Board alone.
- (2) A material alteration to the Project or common property is the installation of a previously non-existent and materially significant fixture, or permanent removal of a materially significant fixture. A materially significant structure may be, but is not limited to, something that requires a permit from the city of Park City. General remodeling, the updating of existing fixtures such as boilers, electrical systems, plumbing equipment, and the addition or removal of signs or small structures are not material alterations to the Project, but still subject to the building permit requirements of the City of Park City
- (3) Regardless of its cost, and prior to being constructed or started, any improvement that would materially alter the Project must be authorized by the vote of Owners holding at least sixty-six point sixty-six percent (66.66%) of the Undivided Interests at a special meeting called for that specific purpose, and must be approved of by the Board. No material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners.

(d) Common Area Maintenance. The Board shall maintain the Common Area and the Limited Common Area in the best interests of the Owners. Landscaping and maintenance standards are to be a standard Annual Meeting agenda item.

(e) Assessment of Maintenance Expenses to Specific Owner. Subject to the provisions related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by an Owner or an Occupant, the Association

shall assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance. The cost of maintenance performed by the Association for Owner responsibilities, including the Lower Decks, shall be assessed to the Owners.

4.3 Remodeling, Maintenance, and Repair of Units.

- (a) An Owner may complete any maintenance or upgrades to the interior of a Unit, not otherwise defined as remodeling, without prior approval of the Association.
- (b) Remodeling.
 - (1) For the purpose of this Declaration, remodeling shall include any construction or renovation activity that requires a permit by the City of Park City. Generally, remodeling includes, but is not limited to, kitchen or bathroom modifications; moving or removing walls; altering the walls beyond painting, such as by adding interior brick, paneling, or glass; installation of an AC system or unit, any change to the electrical, mechanical, plumbing, gas, heating or hot water system, fire suppression system modifications or relocations, fireplace installations or relocations, or ventilation system. Remodeling shall not include typical items that are considered repairs, such as changing or replacing vent covers, outlet covers, faucets and light bulbs.
 - (2) Before beginning any remodeling, or deviating from a previously approved remodeling plan, the Owner shall:
 - (i) notify the Board and provide the following: (1) a written description of the proposed remodeling, including a diagram of the changes, (2) the date the remodeling is expected to begin and end, (3) and the names, contractors' license numbers, proof of current workers compensation insurance, and proof of current liability insurance for all contractors and other persons expected, or required, to perform work in the remodeling, if available (all of this information shall be provided to the Association before work begins). A copy of the permit must be provided to the Board before work begins.
 - (ii) wait to begin the remodeling until the Board gives written approval. If the Association does not respond within fourteen (14) days of a notice of remodeling, the Owner may complete the remodeling to the Unit consistent with the information provided in the notice and the requirements of this Declaration, unless the Board gives notice within the (fourteen) 14 days that it requires more time. The Board may take up to an additional twenty-eight (28) days, if necessary for review, but may only request additional time if the remodel affects the exterior of either building or health and safety (as discussed more fully in Section 4.3(b)(5)). The Board may respond by approving the request, requesting additional information, or denying

the request if the notice is not complete, or if the remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information, or denies the request, the Owner shall not begin the remodeling. In the event of emergency construction to repair or remediate a time-sensitive issue, the Owner shall give notice to the Board and the Board shall respond within twenty-four (24) hours. If no response is received, the emergency work may proceed. If the work is such that immediate action is required, the Owner may take such action as is necessary to prevent further injury or damage, but must give the required notice before proceeding further.

(iii) pay, or agree to pay, any fees or costs required by the Board that are associated with reviewing or monitoring the remodeling, such as a professional architect, if the plans are sufficiently complex that they require such review.

- (3) Without prior written permission of the Board, and regardless of whether any response from the Board is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (1) any use of the Common Area or any roadways for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area or roadways by vehicles, materials, or persons (expect for immediate loading or unloading of materials for a specific unit) or (4) any use of any Association garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling, or (5) modification to any Common Area. The Board shall not unreasonably withhold permission to use Limited Common Area of staging, storage, assembly or construction, but may condition any such use on reasonable limits related to noise, size, amount, time of day, time of year, or other factors.
- (4) The Board shall have no authority to approve of any remodeling inconsistent with the Terms and Conditions that modifies the boundaries of any Unit from the original construction (unless any such modification is otherwise specifically allowed in this Declaration or by law), or that would cause unsafe conditions or a legal nuisance.
- (5) The Board's authority to approve or deny a remodel that affects only the interior of Unit shall be limited entirely to issues of health and safety. The Board is without authority to deny a remodeling affecting only the interior of the Unit unless the Board finds that the proposed remodel would adversely affect the health and safety of the Project or an Owner or Occupant. If the Board finds that the proposed remodel would affect the health or safety of the Project or an Owner or Occupant, the Board may only require changes necessary to ameliorate the risk to health or safety. The Board shall presume that any remodel that has been properly permitted does not affect health and safety, but this presumption may be

overcome upon a vote of the Board. Health and safety of an interior remodel include, but are not limited to, changes or damage to the building envelope, changes to the electrical or gas system, changes to the plumbing, or changes to a load bearing wall. Health and safety of an interior model does not include issues related to aesthetics, quality of materials, type of interior materials, color, non-loading bearing walls, or the layout of rooms and walls (so long as no load-bearing walls are affected). This list of issues that are not health and safety is intended to be read broadly.

- (c) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures. The Board shall have no obligation to verify that any remodeling, or other repairs and modifications to Units, are completed as required herein.
- (d) The Board may adopt reasonable rules and regulations regarding remodeling that affect the exterior of the building or health and safety of the Project (whether interior or exterior), including architectural guidelines or a requirement for specific materials, specific quality of materials, specific building techniques, and any other building reasonable restriction imposed by the Board. This includes, without limitation, a restriction on the decibel level of any air conditioning Unit. The Board may not adopt any architectural guidelines for remodeling of the interior of any Unit, unless related to health and safety.
- (e) Units may be combined pursuant to the Utah Condominium Ownership Act.

- 4.4 Default in Maintenance. If an Owner or Occupant fails to: (1) maintain or clean a Unit or Limited Common Area as required in the Governing Documents, or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Project; then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating, with particularity, the nature of the default and the corrective action that the Board determines to be required, and requesting that the same be carried out within a period of at least thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice then the Board may cause corrective action to be taken (which may include completing the repairs and replacements), and may assess the Owner for all costs associated therewith.
- 4.5 Utilities. All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit, and such utility charges shall be the responsibility of the Unit Owner. If any utility is collectively metered and paid by the Association, that utility will be individually apportioned if it can be individually metered at each Unit. The

Association may provide and pay for utilities, such as cable or basic cable, as a Common Expense.

4.6 Snow Removal. The Association shall be responsible for removing snow from all Common Areas and Limited Common Areas, with the exception of the rear Decks, as such snow removal is the responsibility of the Unit Owner, if snow removal is so desired. The Board may determine the frequency and type of such snow removal and may adopt standards for snow removal from Limited Common Areas.

ARTICLE 5

ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

5.1 Organization of Association. The Association shall serve as the organizational body for all Owners.

5.2 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.

5.3 Legal Organization. The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.

5.4 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit, and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.5 Availability of Documents. The Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term "available," as used in this section, shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours, and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Board determines, in good faith, would

reveal sensitive, personal, or financial information of another Owner, or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information.

5.6 Board of Directors. The governing body of the Association shall be the Board of Directors elected and removed, as provided in the Bylaws. The Board shall consist of three (3) members. If possible, the Board shall recommend to the members the benefit of board members serving from both the Lower and Upper Building, with a maximum of 1 Board member from Upper and 2 Board members from Lower. This clause shall not create any obligation with regard to the Board, and shall not restrict any potential Board Member from running for the Board. Except as otherwise provided in this Declaration or the Articles of Incorporation, the Board shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Board. Except as may be specifically provided in the Declaration, Articles of Incorporation, or by applicable law, no Owner or group of Owners, other than the Board, may direct the actions of the Association.

5.7 Reasonable Ongoing Requirements for Board Members. The Bylaws may place reasonable obligations and requirements on existing Board Members to retain their membership on the Board, such as a requirement that a Board Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board Member who fails to comply with the reasonable requirements, which may include some action of the remaining Board Members.

5.8 Limitation on Authority of Owners, Board Members, Officers, and the Board.

(a) Except as provided herein or in the Bylaws, the Board, any individual Owner, and any individual Board Member or Officer shall have no authority to, and may not act on behalf of, the Association or the Board to:

- (1) amend or terminate any Governing Document;
- (2) elect or remove members of the Board;
- (3) establish or change the qualifications, powers and duties, requirements, or terms of Board Members or of the Board; or
- (4) authorize or agree to any deviation or exception from the Terms and Conditions.

5.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. From the date of the recording of this Declaration, no one may rely upon any authorization (from the Board or otherwise) contrary to the terms of the Governing Documents, regardless of the circumstances under which it is given, and no claim or defense of estoppel, or waiver, or similar equitable or legal claim or defense, may be raised by anyone related to any alleged reliance. It is the responsibility of anyone

interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association, is in compliance with the terms of the Governing Documents.

5.10 Registration with the State. In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

ARTICLE 6

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

6.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities, in addition to any others set forth in the Governing Documents or provided by law:

- (a) Paying Expenses. The Association shall provide for the payment of Association expenses.
- (b) Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments, as necessary, to operate the Project consistent with the requirements of the Governing Documents.
- (c) Entering Units. After having given the appropriate notice as provided for in this Declaration, the Association shall have the right, at the discretion of the Board, at all times upon reasonable notice (and at any time in case of an emergency), to enter into any Unit to search for any infractions upon reasonable belief that an infraction is occurring, or has occurred, to abate any infractions, to make repairs or correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant. Any charges incurred by the Association to enter a Unit will be the responsibility of the Unit Owner. When giving Notice prior to entering a Unit to search for an infraction, the Association shall include a description of the alleged infraction in the Notice. The Owner of the Unit may send back an explanation via email to the Board explaining why the alleged infraction is not occurring, and the Board may accept or reject the explanation. If the Board accepts the explanation, no entry into the Unit shall occur.
- (d) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents, so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted, or to be conducted, violates, or will violate, the Rules shall be conclusive, subject to a judicial determination, if any, is timely

sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- (e) Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Board in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Board shall have the right to approve Association budgets, fines to Owners, and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Board at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE BOARD OF DIRECTORS HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- (f) Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- (g) Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action, or seek any other remedy allowed by the Act or other applicable Utah law.
- (h) Enforcement. The Board shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (i) Reserve Fund. The Association shall establish and fund a reserve fund, and obtain and update a Reserve Analysis, as required in this Declaration.
- (j) Preventing Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Board Member, Manager, or of any officer, employee, or owner of the Manager; (2) any business or entity in which any Board Member, Manager, employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 1% ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Board Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the Manager and relatives of the Manager shall not apply to the management company as it relates to providing management services or other

directly contracted for services by the manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

- (k) Establishing Hearing Procedures. The Board shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum: (1) at least two weeks' notice of the hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue. In the case of violation citations, if any Owner desires to discuss the noted violation with the Board, the Board will make themselves available for a teleconference call to discuss the violation within 30 days of the notification of the violation and any penalty charged, or follow any other procedure required by law.
- (l) Annual Meeting. The Board shall arrange for, and conduct, an annual meeting at least once a year, as provided for in the Bylaws, and shall arrange for, and conduct, such other meetings of the Association, as shall be properly requested pursuant to the Governing Documents or the law.
- (m) Payoff Information Fees. The Association is specifically authorized to establish a fee up to the maximum amount allowed by law to provide payoff information related to the transfer, refinance, or closing of a Unit.
- (n) Bulk Services Agreements. The Association shall have the right to enter into agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.
- (o) Review and Audit of Association Finances. The Association may have an independent accountant conduct a review of the Association's finances. If a review or audit is conducted, the Association shall make the review available to the Owners. Any Owner may have an audit conducted of the Association's records, at that Owner's expense, and the Association shall cooperate in providing

access to any records needed for that audit. Upon receipt of a request signed by owners holding seventy-five percent (75%) of the outstanding ownership interests, the Board shall have an audit conducted of the Association's finances and shall make the audit available to the Owners.

(p) **Sale of Common Area.** The Association may sell or transfer part of the Common Area without otherwise affecting a termination of the Project in accordance with this paragraph and with any and all requirements imposed by Utah law. The Board or the Owners must call a special meeting for the purposes of voting on the sale of Common Area, where the Board will present the proposal related to the possible sale. At the meeting, Owners holding at least fifty percent (50%) of the outstanding ownership interests must vote in favor the sale, or a greater percentage if required by law. If the vote is sufficient, the Board may then proceed to take any and all steps to effectuate the sale, including, but not limited to, employment of attorneys, engineers, surveyors, and other qualified professionals, the recording of an Amendment to this Declaration necessary to effectuate the sale without further vote of the Members, and the recording of an amended Plat to effectuate the sale without further vote of the Members.

ARTICLE 7

BUDGETS & ASSESSMENTS

7.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.

7.2 **Budget and Regular Assessment.**

(a) The Board is authorized and required to prepare a proposed budget for each calendar year. The proposed budget for the following calendar year shall be prepared and sent to the Owners not later than thirty (30) days prior to the annual meeting.

(b) The proposed budget shall be approved of by the Owners at the annual meeting. If the proposed budget is not approved at the annual meeting, the prior year's budget shall remain in effect until such time as a new budget is approved at a meeting of the Owners.

(c) The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Board deems appropriate.

- (d) If the proposed budget is modified before adoption and after the mailing required prior to the annual meeting, the Board shall send a written copy of the final budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
- (e) The Board shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Undivided Interest for each Unit.

7.3 Payment of Regular Assessments. Regular assessments are due on the 30th day of the first month of the quarter.

7.4 Adjustments to Regular Assessments. In the event the Board determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses due to extraordinary snow removal charges or other unforeseen events that caused the budget shortfall, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Undivided Interest. Upon at least thirty (30) days' notice of the adjustment, and unless modified by the Board, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.

7.5 Personal Obligation for Assessment. Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with any interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment is assessed.

7.6 Improvements. Expenses for improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner as determined by the Board.

7.7 Allocation of Assessments. Except as otherwise provided herein, all Assessments (other than Special Assessments to individual Units) shall be allocated to Owners based on the Undivided Interest applicable to the Unit.

7.8 Rules Regarding Billing and Collection Procedures. The Board may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that

may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 7.9 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of fifty dollars (\$50.00), or such other amount allowed by law and provided for in the Rules, may be collected by the Association for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.10 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is assessed.
- 7.11 Special Assessments to Individual Units. Special Assessments may be assessed by the Association against a particular Unit and its Owner for:
 - (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
 - (b) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
 - (c) Fines, late fees, collection charges, and interest; and
 - (d) Attorneys' fees, costs and other professional expenses relating to any of the above.
- 7.12 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Unit, at the discretion of the Board.
- 7.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular calendar year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or refund the excess to the Owners in proportion

to the Undivided Interests of each Unit in the Common Expenses of the Project, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 7.14 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.15 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.16 Loans. Upon approval of Owners holding sixty-six point sixty six percent (66.66%) of the Undivided Interests by vote at a special meeting called for that purpose, the Association may borrow money, enter into leases, and may provide such security as necessary for the loan or lease, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the Contrary, no Unit shall be security for any loan to the Association without that Unit Owners' consent.

ARTICLE 8

NONPAYMENT OF ASSESSMENTS &

JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 8.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish substitute billing and collection procedures, including the amount of late fees and interest, in the Rules, the following shall apply. Quarterly Assessments shall be due and payable on the 30th day of the first month of the quarter, and late if not received by the 10th of the following month. Late fees shall be \$35.00 for each month that an Owner's account has an unpaid balance after the due date. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorneys' fees, interest (resulting in compounding of interest), late fees, and Assessments, at 2% per month. The Association may also impose and assess to the Owner a collection charge, late fee, and any other

reasonable charge imposed by a Manager related to collections, as the Board may establish in the Rules.

- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this paragraph 8.3 is separate and distinct from any lien rights associated with the Unit.
- 8.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, interest, collection charges, late fees, fines, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (1) a lien or encumbrance recorded before this Declaration is recorded, (2) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 8.5 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or it assigns the right and power to bring actions at law or lien foreclosures against such Owner, or Owners, for the collection of delinquent Assessments.
- 8.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Ann. Sections 57-1-20 and 57-8-44 to -53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to John D. Morris, as trustee, for the benefit of the Enclave Owners Association, Inc., for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

8.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

8.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to receive a utility service for which the Owner pays a Common Expense; and (2) access to recreational facilities.

8.9 Requiring Tenant to Pay Rent to Association. Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late.

8.10 Attorney Fees Incurred As a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorneys' fees and costs incurred to: (1) obtain advice about a default; (2) collect unpaid Assessments; (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (5) examine the debtor or others related to collections; (6) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (7) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (8) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

8.11 Association Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments, taxes, insurance, or to maintain the Unit. By taking a security interest in any Unit governed by this Declaration, Lenders agree not to make any claim against the Association for nonpayment of taxes, assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to any failure to pay assessments.

ARTICLE 9

PROPERTY RIGHTS IN UNITS AND COMMON AREA

9.1 General Easements to Common Area and Units.

- (a) Subject to limitations in the Governing Documents, each Owner shall have an Undivided Interest in, and easement of use and enjoyment in and to, the Common Areas for the purposes for which they were intended. Such use cannot hinder or encroach upon the lawful rights of the other Owners and may not extend into the Limited Common Area reserved for the use of an Owner of another Unit. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Unit over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Board.
- (b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Unit that the Association is responsible for maintaining, which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.

9.2 Public Utilities. Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Board to be helpful in serving the Project, Units, or Unit Owners in the Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, in

accepting the deed to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner, agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.

- 9.3 Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the Building is constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment, shall exist for the life of the structure.
- 9.4 Limitation on Easement—Suspension of Owner's Rights. An Owner's Undivided Interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
 - (a) The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Association Rule; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period;
 - (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who, at any given time, are permitted to use the Common Area; and
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 9.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way, except as may be provided by Rules. There is no warranty concerning the preservation of any view or view plane from the Project, and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

ARTICLE 10

USE LIMITATIONS AND CONDITIONS

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions, and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners.
- 10.2 Signs and Holiday Decorations. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules. The Association may further regulate and restrict Holiday Decorations, to the extent permitted by law, in the Rules. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. "Holiday Decorations" shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any religious holiday or national holiday, or used to convey a religious message, symbol, idea, identification, or for any other purpose that "Holiday Decorations" are typically understood, and which are placed in, on, or outside of Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Unless, and until, the Board adopts rules permitting Signs or Holiday Decorations, no Signs or Holiday Decorations are permitted on the exterior of the building or the Common Area, but there are no restrictions on the interior of the Unit.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be, or become, an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, or increase the rate of any insurance, or decrease the value of the Units. Sounds emanating from a Unit or created by an Owner or his guests or invitees that are, in the good faith judgment of the Board, excessively loud or obnoxious shall constitute a nuisance. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 10.4 Smoking. It shall be a nuisance and prohibited under Section 10.3 to permit or cause any smoke to drift or otherwise enter into another Unit, or the Limited Common Area of another Unit. Neither an Owner complaining of smoke, or the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project, or to any Unit, to prevent drifting smoke from entering into that Unit or any Deck associated with that Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or its Limited Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking.

10.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless it is approved by the Board.

10.6 **Parking.** Unless otherwise permitted by the Association in the Rules, and except for “customary parking” and “temporary parking,” as permitted by this Section 10.6, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project, including any Unit, Limited Common Area, or Common Area. “Customary parking” shall mean the parking of operable automobiles, motorcycles, noncommercial trucks and vans within allowed spaces in the parking garage. “Temporary parking” shall mean parking of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, without limitation: (1) rules allowing or causing to be removed any vehicles that are improperly parked; (2) restrictions on the type and condition of vehicles in any customary or temporary parking; (3) restrictions on the time period and duration of temporary parking, and; (4) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners who’s guests violate such Rules. There is only one unassigned parking space to each Unit, located in the Garage.

10.7 **External Fixtures.** To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or Deck enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Board.

10.8 **Window Covers.** The Board may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.

10.9 **External Laundering.** Unless otherwise permitted by the Board, external laundering and drying of clothing and other items are prohibited.

10.10 **Outside Speakers and Amplifiers.** Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.

10.11 Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project, except as may be permitted by the Board in Rules.

10.12 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and Limited Common Areas appurtenant to such Units and shall not be allowed to accumulate therein or thereon. Trash and garbage shall be properly and promptly disposed of as provided for in the Rules.

10.13 Animals. All animals in the Project must be kept in full compliance with animal control rules promulgated by the State of Utah and Summit County. No livestock or poultry may be kept in any Unit or anywhere on the Project. No animals shall be kept or bred in the Common Areas. All animals are subject to the Rules adopted by the Board.

Notwithstanding the foregoing, no animal may be kept within a Unit which: (1) is raised, bred, kept, or maintained for any commercial purposes; (2) causes a nuisance, or; (3) in the good faith judgment of the Board of Directors, results in an annoyance or threat of injury, or is obnoxious to, or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Directors may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Board of Trustees may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration, including, but not limited to, requirements for registration, specific fees or deposits for Owners of Units that have animals, the use of leashes, and noise and barking limitations. Unless, and until, the Board adopts different Rules related to the number of pets that may be kept in a Unit, an Owner may keep no more than two (2) pets in a Unit, but the renter or lessee of a non-Owner occupied Unit may not keep any animals in the rented or leased Unit.

10.14 Landscape Maintenance. Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, irrigation system or component, or other plantings in the Common Area without the written approval of the Board. Any such approval, if given, may be revoked by the Board. If any approval is given, the modification or alteration must be maintained by the Owner who requested and made such alteration or modification, including the watering of such plants from Unit provided water sources, if such plants are not already watered from existing irrigation. If the alteration or modification is not maintained to the level of the other landscaping in the Project, the Association may undertake such maintenance and specially assess the cost of such maintenance to the Owner who requested such modification. In the event the Owner who requested such modification desires to abandon it, that Owner must pay the cost of remediating and removing the landscaping alteration or modification.

10.15 Floor Load. There shall be no floor load in excess of the weight for which the Unit was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Owner and approved in writing by the Board. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit.

10.16 Residential Occupancy.

- (a) No trade or business may be conducted in or from any Unit unless:
 - 1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
 - 2) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
 - 3) the business activity does not involve Persons coming onto the Project who do not reside in the Project, or solicitation of Occupants or Owners of the Project;
 - 4) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;
 - 5) the business activity is disclosed to the Board before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
 - 6) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
 - 7) the business activity will not result in the increase of the cost of any of the Association's insurance;
 - 8) all Owners of the Unit reside in the Unit in which the business activity is conducted, for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
 - 9) the Board's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely as often as the Board shall determine in its discretion.
- (b) No Unit may be used as a time-share property.
- (c) Except as provided in this Section 10.16, no Unit may be used for any purpose other than a residential purpose.

10.17 No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.

No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat, or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat, or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Board and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat, or covenants, conditions, or restrictions recorded in violation of this Section 10.17 shall be null, void, and of no legal effect.

10.18 Architectural Control. No changes to anything outside of the boundary of Units shall be commenced, erected, maintained, made, or done without the prior written approval of the Board. By way of illustration, but not of limitation, the following are considered changes outside the boundary of a Unit: painting of the exterior of the Building; landscaping; excavation; Deck covers; modifying screens to a type inconsistent with screens located throughout the Project; changing doors leading to Decks or walkways; modifying the exterior surface of doors to Decks, Common Area, or Hallways; the addition or modification of an evaporative cooler, fireplace, stove, or other vent or exhaust, chimney, skylight, solar collector, shade screen, or awning; exterior window coating or tinting; window replacement; decorative alterations to the exterior of any Unit; and other work that in any way alters the appearance of the Project from anywhere outside of a Unit (not including changes made in and to a Unit visible through windows). The Board may designate the design, style, model and manufacturer of any such improvement or alteration. Such designations shall be for the purpose of achieving uniformity of appearance which is hereby deemed and agreed to be necessary to preserve and enhance the value of Units and the Project.

10.19 Lighting. Lighting fixtures outside of Units shall be allowed only to the extent approved by the Board. The Board may adopt rules related to external lighting fixtures that may be installed on the rear of an Owner's Unit by an Owner including, but not limited to, the size, brightness, type, location and angle of the light.

10.20 Variances. The Board may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Board determines in its discretion (by unanimous vote): (a) either (i) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recording of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board.

10.21 Hazardous Substances.

(a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project.

(b) Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.21 shall survive any subsequent transfers of the Unit (voluntary or otherwise).

(c) As used in this Section 10.21, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.21, "Environmental Law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

10.22 Common Area. Except for Ordinary and Customary Parking as discussed herein, no items of personal property may be left or stored in any Common Area, including without limitation, exterior stairwells and stairways and walkways.

ARTICLE 11

INSURANCE

11.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies.

11.2 Annual Insurance Report. Not later than sixty (60) days prior to the annual meeting of the Association, the Association may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage

in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage, and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION,” and; (4) a description of any flood insurance and material exclusions and limitations for that coverage, and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: “NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available, and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association, and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

11.3 Property Insurance.

(a) Hazard Insurance.

(1) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building service equipment.

- (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
- (iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including

the Units) at the time the insurance is purchased, and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

- (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost, but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement, which must waive or eliminate the requirement for coinsurance.
- (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) "Inflation Guard Endorsement," if available; (2) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and: (3) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000), or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

- (1) the Association's policy provides primary insurance coverage; and
- (2) notwithstanding Subsection 11.3(b)(1), and subject to Subsection 11.3(b)(3):
 - (i) the Owner is responsible for the Association's policy deductible, and;
 - (ii) building property coverage, often referred to as Coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (3) (i) As used in this Subsection (3):
 - (A) "Covered Loss" means a loss resulting from a single event or occurrence that is covered by the Association's property insurance policy;
 - (B) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit, and;

(C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.

(ii) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the association's property insurance policy, and;

(iii) If an Owner does not pay the amount required under Subsection 11.3(b)(3)(ii) within thirty (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 the Owner for that amount.

(c) Flood Insurance.

(1) If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building, and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard areas, or; (ii) one hundred percent (100%) of the insurable value of the Insurable Property.

(2) If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, at the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(d) Earthquake Insurance. The Association may purchase earthquake insurance as the Board deems appropriate. If the Board elects not to purchase earthquake insurance, a vote of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote.

(e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(f) Association's Right to Not Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and

until it becomes apparent the covered loss exceeds the Association's property insurance deductible, and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage, and the Association may, as provided in section 11.3(b)(3)(iii), recover any payments the Association makes to remediate that Unit, and; (iv) the Association need not tender the claim to the Association's insurer.

(g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 11.3(b) for the Association's policy deductible, and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

11.4 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of, or injury to, any one Person, or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

11.5 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees; (2) include coverage for monetary and non-monetary claims; (3) provide for the coverage of claims made under any fair housing act or similar statute, or that are based on any form of discrimination or civil rights claims, and; (4) provide coverage for defamation. At the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months regular Assessments in

addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and; (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board members of the Association; (b) employees and volunteers of the Association; (c) any Manager of the Association, and; (d) officers, directors, and employees of any Manager of the Association.

- 11.7 Workers' Compensation Insurance. The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law, and may purchase workers compensation insurance even if the Association has no employees, as the Board deems appropriate.
- 11.8 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and, upon written request, to any Owner or Lender.
- 11.9 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee, if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration, or the law, to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents, and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

11.11 Insurance Trustee. At the discretion of the Board, or upon written request executed by Owners holding 50% or more of the Undivided Interests, the Board shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Board (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.

11.12 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner’s authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner’s act or omission may not void an insurance policy, or be a condition to recovery under a policy.

11.13 Waiver of Subrogation Against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with an Owner if an Owner resides in the Unit, and the Association’s agents and employees.

11.14 Right of Action. Nothing in this Declaration shall prevent an Owner 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.

11.15 Applicable Law. This Declaration is specifically subjecting the Association to the insurance requirements and provisions in 2011 Senate Bill 167 (the final version as enacted by the legislature) that became law in 2011, along with any updates adopted in 2013, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE 12

DESTRUCTION OF IMPROVEMENTS

12.1 Reconstruction. In the event of partial or total destruction of the Building, the Association shall promptly take the following actions:

(a) Ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds. If the Board, in good faith, determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible.

(b) The Board, or any Insurance Trustee, if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any, or establish a procedure by which any insurance proceeds shall be available for either a cash payment or for reconstruction.

- (c) Engage the services of a reputable licensed architect to advise and consult with the Board or any Insurance Trustee on all actions and decisions necessary under this Article.
- (d) If an appraisal of any or all Units is required under this Article, the Board shall select the appraiser, and any appraisal relied upon by the Board shall be final and not subject to challenge by any Owner for purposes of this Article.

12.2 Insurance Proceeds Sufficient for Reconstruction. In case of fire or any other disaster, and if insurance proceeds are sufficient to reconstruct the Building and all Units suffering damage therein, then the insurance proceeds shall be applied to reconstruct the Building and any Units suffering damage. As used herein, reconstructing the Building shall mean restoring the Building and Units to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before.

12.3 Insurance Proceeds Insufficient for Reconstruction. If insurance proceeds will be insufficient for reconstruction, the following shall apply:

- (a) If the cost of reconstruction is equal to or less than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Project (prior to the damage and destruction), then the Association shall proceed forward with reconstruction, applying any insurance proceeds as provided for in Section 12.2. The cost of reconstruction in excess of insurance proceeds and reserves shall be a common expense.
- (b) If the cost of reconstruction is greater than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Project (prior to the damage and destruction), then the Board shall call a special meeting of the Owners for the purpose of voting on whether to reconstruct or not.
- (c) If the Owners, by a vote at such meeting of not less than seventy-five percent (75%) of the Undivided Interests, decide not to proceed with such reconstruction:
 - (1) the Property shall be deemed to be owned in common by the unit owners;
 - (2) the undivided interest in the Property owned in common, which shall appertain to each Owner, shall be the Owners' Undivided Interest, as determined in this Declaration;
 - (3) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Property, and;
 - (4) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of the sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of the undivided interest owned by each Owner in the Property, after first paying out of the respective shares of each Owner, to the extent sufficient, all liens on the undivided interest in the Property owned by each Owner.

(d) Unless Owners holding more than seventy-five percent (75%) of the Undivided Interests vote to not proceed with reconstruction, the Association shall proceed with reconstruction as provided for in Section 12.3(a).

ARTICLE 13

EMINENT DOMAIN

13.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes the adjustment required for this section. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.

13.2 Partial Taking of a Unit. Except as provided in Section 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.

13.3 Taking of Limited Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.

13.4 Taking of Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Board shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.

13.5 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.

13.6 Priority and Power of Attorney. Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

ARTICLE 14

TERMINATION

14.1 Required Vote. The Project may be terminated only by the approval of Owners holding sixty-six point sixty six percent (66.66%) of the Undivided Interests, or as otherwise provided in Article 13.

14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void, unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Summit County, Utah and is effective only on recording.

14.3 Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, provided that the contract is conditioned on the termination of the Project. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner, and his or her successors in interest, have an exclusive right to occupancy of the portion of the real estate that formerly

constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

- 14.5 **Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders, as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders, as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner, except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Board. If any Owner disputes the appraised amount, the Owner shall notify the Association of the dispute within ten (10) days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly, with the Association's appraiser, select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.6 **Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards, or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

ARTICLE 15

AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty-six point sixty-six percent (66.66%) of the total Undivided Interest. The vote must occur in a properly noticed, special meeting of the Owners held for that purpose. Any attempt to vote to amend this Declaration is void ab initio, if either taken at meeting where the vote to amend was not on the agenda, or taken at meeting where timely notice in accordance with this Declaration and the Act was not made. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The

right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration, but never in contravention to applicable laws.

- 15.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided herein shall be executed by the Board, through its agent, who shall certify that the amendment has been approved and adopted, and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Summit County, Utah.
- 15.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-six point sixty-six percent (66.66%) of Owners in the same manner, as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat, including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document, regardless of whether they approved of or consented to the change in the Plat, and; (2) grants the Association the power of attorney to sign necessary documents on that Owner's behalf, as necessary for the agreement, amendment, or correction.
- 15.5 Amendment to Conform to Law. The Board may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
 - (a) The Association must obtain from an attorney who has significant experience and a regular practice in the area of Community Association law, and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section.
 - (b) The members of the Board must unanimously agree to the Amendment at the time it is recorded.

- (c) The Board must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this section of the Declaration; (3) the law that conflicts with the existing Declaration language, or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment, and; (5) a notice in which the Association: (a) notifies the Owner that it intends to amend the Declaration pursuant to this section; (b) provides the Owner a right to object to the amendment within thirty (30) days, and; (c) provides instructions on how, when, and where to properly make the objection. The Board may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
- (d) Within forty-five (45) days of providing the information to the Owners required by this section, not more than thirty percent (30%) of the Owners object to the amendment in a written notice to the Association.
- (e) Having otherwise complied with all of the requirements of this section, the Board members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge, and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Summit County.

15.6 Amendments to Reassign Storage Units. This declaration may be amended solely to reassign storage units assigned to the Plat without any vote or meeting of the Owners, but only if the assignment complies with the requirements in Section 3.2 of this Declaration. The reassignment shall be effective when recorded. No other provision of this Declaration may be amended through any such reassignment instrument

15.7 Consent of Two-Thirds Owners to Alter Undivided Interests. Notwithstanding anything to the contrary herein, the consent of two-thirds of the Owners shall be required to alter any Undivided Interest.

ARTICLE 16

INTERPRETATION, CONSTRUCTION, AND APPLICATION

OF DECLARATION

16.1 No Waiver. Failure by the Association, or any Owner, to enforce any Term and Condition in any certain instance, or on any particular occasion, shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.

16.2 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Articles, the Bylaws, and then the Rules. The Declaration shall take priority over the Plat.

16.3 Interpretation of Declaration and Applicability of the Act. The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

16.4 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies, or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.

16.5 Severability. Invalidation of any one, or a portion, of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.

16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against, or strictly for or against the Association, any Owner, or any other Person subject to their terms.

16.7 Applicable Law. This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law, or unless the Association makes those amendments applicable by amendment to the Declaration.

16.8 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

16.9 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like, applicable thereto. The Association shall have no liability

whatsoever if any Term and Condition is determined to be unenforceable in whole, or, in part, for any reason.

ARTICLE 17

NOTICE

17.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:

(a) Notice to an Owner from the Association.

(1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:

(i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;

(ii) by a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association, for the purpose of giving notice, or, if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(iii) by electronic transmission to an Owner which includes: A) an email that is sent to an e-mail address provided by the Owner for the purpose of Association communications, or an email that is emailed to an e-mail address from which the Owner has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered. Any notice sent via e-mail shall be deemed delivered when received, or five (5) days after it is sent; (B) by facsimile (whether to a machine or computer) to a facsimile number provided by the Owner for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered when received, or five (5) days after it is sent, or; (C) by text message to a phone number provided by the Owner for the purpose of Association communications, or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Any notice sent by text message shall be deemed delivered when received, or five (5) days after it is sent;

(iv) by any other method that is fair and reasonable, as provided for in the Act, or otherwise provided for by law.

(2) Notwithstanding Subsection (1) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

(3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than

one notice per Unit, whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit.

(4) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit, and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given, or; (b) ten (10) days after the posting.

(b) Special Notice Prior to Association Entry into a Unit.

(1) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately, and without any notice.

(2) In case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute, and; (iii) where practicable, under the circumstances, attempt to call the Owner, or any Occupant, prior to entry to inform them of the entry.

(3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit the Association shall: (i) give notice to the Owner that an entry is required at least seven (7) days in advance with such notice stating: (a) that the Association, or its authorized Persons, will enter the Unit; (b) the date and time of the entry; (c) the purpose of entering the Unit; (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit; (e) the full name(s) of any Person(s) who will be entering into the Unit, and the phone number(s) and address(es) of the Person(s) entering the Unit, or of the company for whom the Person(s) entering the Unit are employed for the purpose of entering the Unit; (f) any other information the Association deems appropriate to include, and; (ii) post the written notice described above on the front door to the Unit at least seven days prior to entry into the Unit.

(c) Notice to a Lender. Notice to a Lender shall be delivered by first-class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing, to the Association, for the purpose of notice, or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.

(d) Notice to Association from an Owner.

(1) An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

(i) by a written notice delivered personally to the Manager, which shall be effective upon delivery;

- (ii) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
- (iii) by written e-mail correspondence to the Association: (1) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or; (2) that is emailed to an e-mail address from which the Manager, or the President, of the Association has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed delivered seventy-two (72) hours after it is sent.
- (iv) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications, and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

ARTICLE 18

ATTORNEY FEES AND COSTS

18.1 Legal Costs Associated with Disputes with Owners.

- (a) **Liability for Fees Incurred in Dispute.** If the Association, or any Owner, utilizes legal counsel: (1) to enforce any Term and Condition against another Owner or the Association; (2) after the Owner or the Association communicates or demonstrates an intent not to comply with the Term and Condition, or; (3) in any dispute between the Association and an Owner, or between two Owners that arises from, or, is related to the Owner's status as an Owner, or the Owner's ownership in the Project, the prevailing party shall be entitled to an award of attorneys' fees. If the Association is the prevailing party it may, after notice to the Owner that attorneys' fees and costs may be imposed or assessed, assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) **Costs.** The term "costs" as used in this section shall include all costs, including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) **Exception to Owner's Liability for Fees and Costs.** If, related to: (1) any dispute with an Owner; (2) any challenge by an Owner to a position of the Association on a Term and Condition, or; (3) a request of an Owner for direction on the

application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (1) the association could not establish an initial position on without having incurred the fees and costs, or; (2) results in a substantial modification to a prior position taken by the Association; then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is pending with regard to the Owner and the issues arise as part of and during the lawsuit.

ARTICLE 19

RESERVES

19.1 Requirement for Reserves. The Association shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Owners annually, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
- (b) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (c) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts.
- (d) Reserve Analysis. The Association shall cause a Reserve Analysis with an onsite evaluation to be conducted no less frequently than every six (6) years, or more frequently if required by statute. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years, or more frequently if required by statute. The Reserve Analysis shall, at a minimum, estimate the need for and appropriate amounts for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Areas that have a useful life of three (3) years or more. The Reserve Analysis and updates shall project a minimum of thirty (30) years into the future.
- (e) Qualifications for Person Preparing Reserve Analysis. The Reserve Analysis report shall be prepared by a Person or Persons with: (1) experience in current building technologies; (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and; (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other

designations by similar associations establishing that the Person has some formal training related to preparing a Reserve Analysis.

(f) Disclosure and Approval at Annual Meeting. If required by law, annually, at a special meeting, or at the annual meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.

ARTICLE 20

LEASING AND NON-OWNER OCCUPANCY

20.1 Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Unit shall be governed by this section and procedures adopted as allowed in this section.

20.2 Definitions. For the purpose of this section:

(a) “Non-Owner Occupied Unit” means:

(1) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner’s primary residence; or

(2) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(b) “Family Member” means:

(1) the parent, sibling, or child of an Owner and that family member’s spouse and/or children, or;

(2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of: (i) a current Occupant of the Unit, or; (ii) the parent, child, or sibling of the current Occupant of the Unit.

20.3 All Units are Permitted to be Non-Owner Occupied, Subject to the Provisions Herein.

20.4 Permitted Rules. The Board may adopt Rules requiring:

(a) Reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.;

(b) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce the requirements of this Declaration.

20.5 Requirements for Leasing and Non-Owner Occupancy. The Owners of all Units must comply with the following provisions:

- (a) All leases for a term greater than 30 days for otherwise allowable Non-Owner Occupancy must be in writing, and shall provide as a term of the agreement, that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident. No written lease is required for leases of less than 30 days;
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Board;
- (c) The Owner(s) of a Unit shall be responsible for the resident's or any guest's compliance with the Declaration, Bylaws, and Rules. All Owner(s) shall make available or provide to all non-Owner Occupants a copy a Board created (and guest specific) set of Rules, if such rules exist. In addition to any other remedy for noncompliance with this Declaration, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph, and the Owner shall indemnify and pay the defense costs of the Association, the Board, the Manager and any of their agents, arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

20.6 Exceptions for Family Members. If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein:

- (a) Subsections 20.5(a) shall not apply to that occupancy.
- (b) No written agreement regarding occupancy needs to be created between the Family Member and the Owner.
- (c) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Board until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

ARTICLE 21

GENERAL PROVISIONS

- 21.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 Nonliability of Officials. To the fullest extent permitted by applicable law, neither the Board nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence.
- 21.3 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area, and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area, and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or that Owner's guest or Occupant, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association, or; (b) the injury or damage occurred by reason of the intentional act of the Association.
- 21.5 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including, but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements, and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or

Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration, and shall not be affected by the disability of any such Owner or Occupant.

- 21.6 Security. The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason, including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner, guest, or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Project, and/or residing in this Project, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 21.7 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the Building, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 No Representations and Warranties. EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

Dated this 16 day of JUNE, 2016.

By:

Signature

14

Printed

Its: PRESIDENT

STATE OF UTAH)
COUNTY OF Ramsay)

On this 16th, day of June, 2016, personally appeared before me TERRANCE LANGE, whose identity is personally

(Name of Document Signer)
known to me, (or proven on the basis of satisfactory evidence) and who by me duly
sworn/affirmed, did say that he/she is the PRESIDENT, of The
Enclave Owners Association, Inc.; and that said document was signed by him/her in behalf of
said Corporation by Authority of its Bylaws, or Resolution of its Board of Directors, and
acknowledged to me that said Corporation executed the same.

Notary Public

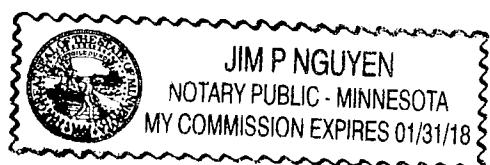


EXHIBIT A

LEGAL DESCRIPTION

Property located in Summit County, State of Utah, more particularly described as follows:

All of Parcel "B" of the Silver Lake Knoll No. 2 Subdivision, the plat of which being recorded February 9, 1983, as Entry No. 202075 in the Summit County Recorder's Office.

Containing approximately 1.08 Acres.

AND

Part of Parcel "A" of Silver Lake Knoll No. 2 Subdivision, a subdivision in Park City, Summit County, Utah, the plat of which being recorded February 9, 1983 as Entry No. 202075 in the Summit County Recorder's office, said part being more particularly described as follows:

Commencing at the intersection of the easterly right-of-way line of Woodland View Drive and the northerly right-of-way line of Royal Street West, said point being the southwest corner of Parcel "A" of Silver Lake Knoll No. 2 Subdivision, as recorded, and being on a 171.77 foot radius concave northerly from which the radius point bears North 07° 41' 11" West; thence easterly along said curve and northerly right-of-way line, through a central angle of 02° 47' 18", an arc distance of 8.36 feet to the point of reverse curvature of a 234.02 foot radius curve concave southerly from which the radius point bears South 10° 28' 29" East; thence easterly along said curve and right-of-way line, through a central angle of 17° 31' 39", an arc distance of 71.59 feet to the TRUE POINT OF BEGINNING; thence North 28° 00' 00" East 113.18 feet; thence North 63° 50' 00" East 78.00 feet to a point on the westerly right-of-way line of Sterling Drive; thence South 26° 10' 00" East 266.00 feet to a point on a 75.00 foot radius curve concave westerly from which the radius point bears South 63° 50' 00" West; 2) thence southerly along said curve, through a central angle of 64° 40' 00", an arc distance of 84.65 feet to the point of compound curvature of a 13.69 foot radius curve concave northerly from which the radius point bears North 51° 30' 00" West; 3) thence westerly along said curve, through a central angle of 104° 35' 50", an arc distance of 24.99 feet to a point on the northerly right-of-way line of Royal Street West, said point also being the point of compound curvature of a 167.21 foot radius curve concave northeasterly from which the radius point bears North 53° 05' 50" East; thence central angle of 15° 08' 15", an arc distance of 44.18 feet to the point of reverse curvature of a 234.02 foot radius curve concave southwesterly from which the radius point bears South 68° 14' 05" West; thence northwesterly along said curve and right-of-way line, through a central angle of 61° 10' 55", an arc distance of 249.89 feet to the point of beginning; containing 0.703 acres, more or less.

EXHIBIT B

UNDIVIDED INTERESTS, ASSIGNED STORAGE, AND ASSIGNED PARKING

<u>Unit No</u>	<u>Percentage of Ownership of Common Areas and Facilities</u>
1	6.471
2	6.506
3	5.534
4	5.534
5	5.534
6	5.534
7	5.534
8	6.506
9	6.506
10	5.534
11	5.534
12	5.507
26	6.506
27	6.533
28	5.582
29	5.582
30	5.563
	<u>100.000</u>

EXHIBIT C

THE ENCLAVE

BYLAWS

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**BYLAWS
OF
The Enclave**

These bylaws are hereby adapted and established as the Bylaws of the Enclave Owners Association, Inc. (“the Association”). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I
DEFINITIONS AND NOTICE**

1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE ENCLAVE (“the Declaration”), as amended, shall have the same defined meanings when used in these Bylaws. For reference, the following definitions are duplicated herein:

- (a) “Act” shall mean the Condominium Ownership Act codified beginning at Section 57-8-1, Utah Code Annotated.
- (b) “Association” shall refer to the Enclave Owners Association, Inc., the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- (c) “Board Member” shall mean a duly qualified and elected or appointed member of the Board.
- (d) “Board of Directors” or “Board” shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce all of the reasonable rules covering the operations and maintenance of the Project.
- (e) “Declaration” shall mean the Declaration and all attached exhibits other than these Bylaws, and any and all amendments to the Declaration.
- (f) “Manager” shall mean any Person engaged by the Association to manage the Project.

(g) “Occupant” shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).

(h) “Owner” shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the County Recorder of Summit County, Utah; however, Owner shall not include a trustee for a deed of trust.

(i) “Person” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.

(j) “Project” shall mean the land, whether leasehold or in fee simple, the Building, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith; as defined by the Plat and the Declaration and including the Units, the Common Area, and the Limited Common Areas. Project as defined in the Declaration is intended to have the same definition as “Property” as defined in the Act.

(k) “Property” shall mean the property legally described in Exhibit A to the Declaration and all easements and rights appurtenant thereto.

(l) “Rules” shall mean and refer to the rules adopted by the Association.

(m) “Undivided Interest” shall mean the interest of that Owner (expressed as a percentage in Exhibit B to the Declaration) in the Common Areas, which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in the Declaration or the Act.

(n) “Unit” shall mean and refer to an individual condominium unit, unit, or condominium, (all as defined in the Act), which shall consist of a separate physical part of the property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building, and which is identified on the Plat. Except where the

context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest appurtenant to such Unit.

1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

ARTICLE II **MEETINGS OF THE OWNERS**

2.1 Annual Meetings.

- (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year.
- (b) Date and Time. The annual meeting of Owners shall be held during March or April at a date and time selected by the Board. The Board may from time to time change the date and time for the annual meeting of the Owners, and may move the annual meeting to a different month other than March or April.
- (c) Purpose. The Annual Meeting shall be held for the following purposes:
 - (1) Electing members of the Board;
 - (2) So long as required by law, distributing the most recent reserve study, permitting discussion on reserve funding options, and voting on whether and how to fund the reserve account;
 - (3) Approval of the budget by a vote of the Owners;
 - (4) Distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
 - (5) If no earthquake insurance has been obtained, voting to confirm this decision;
 - (6) Approving the minutes of the prior annual meeting; and
 - (7) Transacting such other business as may properly come before the meeting.
- (d) Election of Board Members. If the election of the Board members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by the Board, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Undivided Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call a special meeting, provide notice of the special meeting, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Project or the Manager's offices shall be the place for any annual or special meeting unless special circumstances make it unavailable, in which case the meeting shall be held within five miles of the location of the Project.

2.4 Meetings by Telecommunications. Any or all of the Owners may participate in an annual or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting as allowed in this section is considered to be present in person at the meeting. The Board may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.

2.5 Notice of Meetings. The Board shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners, whether annual or special,, to be delivered to the Owners, not more than thirty (30) nor less than ten (10) days prior to the meeting.

2.6 Owners of Record. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.7 Quorum. At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the Undivided Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time the owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."

2.8 Proxies. Proxies may be delivered by electronic transmission and may be digitally signed. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owners' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act. Such instrument shall be delivered to the Secretary of the Association or to such other officer or person who has been authorized by the Association to accept proxies at the meeting. Such instrument shall be delivered either prior to or at the meeting, but no later than any point after the start of the meeting at which it is announced by the person in charge of the meeting as the final time to deliver proxies.

2.9 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Undivided Interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit. When voting for directors, cumulative voting is permitted.

2.10 Ballots and Action without a Meeting. The Association may utilize written consents to take action without a meeting or mailed ballots consistent with the requirements of the Revised Nonprofit Corporation Act. Any Owner may deliver written consent by electronic transmission. A written consent delivered by electronic transmission is considered to be written, signed and dated for purposes

of action without a meeting if the written consent is delivered with information from which the Association can determine that the written consent was sent by the member and the date on which the written consent was transmitted.

2.11 Minutes of Meetings. The secretary or someone appointed by the Board shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy, (2) the date of the meeting, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, (5) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section 2.10 does not invalidate any action taken at a meeting.

ARTICLE III BOARD OF DIRECTORS

3.1 Number, Tenure, Qualifications, and Election.

- (a) Number of Members. The Board shall be composed of three (3) persons. If possible, the Board shall recommend to the members the benefit of board members serving from both the Lower and Upper Building, with a maximum of 1 Board member from Upper and 2 Board members from Lower. This clause shall not create any obligation with regard to the Board, and shall not restrict any potential Board Member from running for the Board
- (b) Member Requirements. To be on the Board, a Person must be an Owner. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board. Any candidate or member of the Board shall, upon a request by any Owner, produce sufficient documentation establishing that person's right to serve on the Board.
- (c) Term. The term of each Board Member shall be two (2) years. The terms of the Board Members shall overlap so that one (1) Board Members shall be elected one year, two (2) the next, one (1) the following, and so on.
- (d) Nominations. Not less than thirty days (30) days prior to the annual meeting, a request for nominations for open or expiring board positions shall be provided to all Owners. An Owner may submit his or her own name or the name of any other Owner to serve on the Board at any time before the meeting. If an Owner submits the name of another Owner, the nomination shall not be valid until the Owner being nominated provides written confirmation that the Owner is willing to serve or confirms such willingness at the meeting. Nominations may be accompanied by a short biography or statement. Nominations shall be submitted to the Association

Secretary. Nominations may also be taken from the floor at the Meeting upon a nomination by a member prior to the vote. If the Association gives advance notice of any person seeking election to the Board in a notice, ballot, or proxy; it shall include the names of every person nominated at the time the ballot or proxy is prepared. Only persons who have been properly nominated may be elected to the Board.

- (e) Disqualification. If any Board Member is alleged to not meet the qualification requirements in the Declaration and any Board Member is notified of or discovers this alleged lack of qualification, the Board shall promptly investigate and verify whether the Board Member is qualified or not, and during this period shall not make any further decisions. If the Board Member is not qualified, the Board Member's membership on the Board shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Board established that the Board Member was not qualified. If a Board Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Board, the decisions and actions of the Board and that Board Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this section or until the Board Member is disqualified if no such notice is provided.
- (f) Removal for Failure to Participate. If any Board Member shall fail to appear (in person or by some other means allowing for participation) at four (4) successive regular Board meetings or fifty percent (50%) or more of the regular meetings within the preceding 12 months, after having received proper notice of the meetings and after the Board has attempted in good faith to schedule meetings consistent with all of the member's schedules, the other Board Members may by unanimous vote, except for the board member to be removed, remove that Member and appoint a new Member.

3.2 Meetings.

- (a) Regular Meetings. The Board shall hold regular meetings at least annually, and more often at the discretion of the Board.
- (b) Who is Entitled to Attend. All regular meetings shall be open to all Owners. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board is in executive session.
- (c) Notice to Owners. Any Owner may request notice of Board Meetings by requesting such notice from either a Board Member or the Manager and

providing a valid email address at which the Member will receive notice. Any Owner who has requested notice of Board Meetings shall be given notice along with the Board members.

(d) Owner comments at Board Meetings. At each Special or Regular Meeting of the Board, the Board shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Board may select a specific time period during the meeting and limit Owners comments to such a time period. The Board may set a reasonable length of time that each Owner may speak.

(e) Meeting by Electronic Communication. The Board may also hold any regular or special meeting by means of electronic communication that allows all members to communicate orally in real time, including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Board meets by electronic communication, the Board must provide information necessary to allow any Owner who has requested notice of meetings the ability to participate by the available means of electronic communication.

(f) Special Meetings. Special meetings of the Board may be called by or at the request of any two (2) Board Members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Board Member. No notice of special meetings is required to be provided to Owners, although any Owner may attend any special meeting.

(g) Quorum and Manner of Acting. Two (2) Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board. The Board Members shall act only as a Board, and individual members shall have no powers as such.

(h) Place and Notice of Meetings. The Board may designate any place in Summit County as the place of meeting for any regular meeting called by the Board but shall in good faith attempt to hold meetings at the Project, the Manager's offices, or in as close a proximity to the Project as reasonably possible. All Board Members and Owners shall be given at least ten (10) days' notice of regular meetings.

(i) Executive Session.

(1) The Board or a Committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.

- (2) Executive sessions may be held to discuss and make decisions related to the following matters:
 - (i) Obtaining legal advices on matters including pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel.
 - (ii) contracts and purchases related to the association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases.
 - (iii) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment.
 - (iv) Discussion of a delinquent assessment or fine.
 - (v) Discussion of a matter that involves an individual if the discussion is likely to the individual undue embarrassment or violate the individual's reasonable expectation of privacy.
- (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Board or the Committee.
- (4) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.
- (5) The minutes of the meeting at which an executive session is held shall include:
 - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," or "To discuss the pending litigation with XYZ."
 - (ii) Any decisions made during executive session.
- (6) Care shall be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of members of the Board or the Committee.

3.3 Informal Action and Action by Board Members without a Meeting.

- A. Any action required or permitted by law or the governing documents to be taken at a board of directors' meeting may be taken without a meeting if notice is transmitted in writing by letter or electronic transmission to each member of the board and either:
 - a. Each Board Member consents in writing (i.e. via letter or electronic transmission); or
 - b. Each member of the board by the time stated in the notice takes one of the following actions:
 - i. signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; or
 - ii. fails to demand in writing that action not be taken without a meeting, and
- B. The action is effective if the affirmative votes in writing for the action received by the Association and not revoked equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Board members were present and voted and the Association has not received a written demand by a director that the action not be taken without a meeting.
- C. Failure to demand that the action not be taken without a meeting by the time in the notice shall constitute waiver of the right to demand a meeting.
- D. The notice for action without a meeting shall state: (i) the action to be taken; (ii) the time by which a director must respond to the notice; (iii) that failure to respond by the time stated in the notice will have the same effect as: (A) abstaining in writing by the time stated in the notice; and (B) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and (iv) any other matters the nonprofit corporation determines to include.
- E. Action without a meeting without unanimous consent shall be effective at the time stated in the notice, unless the notice specifies a different time for voting and for the action to occur.

Action by unanimous consent is taken when the last Board Member to consent signs a writing describing the action taken, unless, before that time, any director revokes a previously given consent by sending a writing signed by that director to the secretary or person authorized by the Board to receive the revocation. The Board may choose a different effective date

- 3.4 Compensation. No Board Member shall receive compensation for any services that he/she may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in the performance of his/her duties as a Board Member to the extent such expenses are approved by the Board.
- 3.5 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to any other member of the Board or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Undivided Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose. If the Owners vote to remove all of the members of the Board, they shall immediately thereafter and at the same meeting elect new members of the Board using the procedures normally applicable for election of Board members at an annual meeting. If the Owners vote to remove less than all of the members of the Board, the Owners may vote to elect replacement members at the special meeting. If the Owners vote to remove less than all of the members of the Board and either due to inadvertence or choice do not elect replacements at the special meeting, the remaining members of the Board, by majority vote, shall appoint replacement members for the remainder of the term of the members who were removed.
- 3.6 Vacancies Other than by Removal by Owners. If vacancies shall occur in the Board by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, even though less than a quorum may be available.

ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Association shall be a President, Vice President/Secretary, and Treasurer.
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board annually at the first meeting of the Board following the annual meeting and thereafter at any time. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be members of the Board during the entire term of their respective offices.
- 4.3 Resignation and Removal. Any officer may resign any officer position at any time by delivering a written resignation to any Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. At any time, the Board may appoint new or different officers, with or without cause.

4.4 Vacancies and Newly Created Offices. If any vacancy shall occur by any cause, such vacancies may be filled by the Board at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Board shall ensure that the duties and responsibilities of the office are performed.

4.5 The President. The President shall preside at meetings of the Board and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive persons who may include but not be limited to any Person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order" and (4) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board. The President shall have the general authority to implement decisions of the Board and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.

4.6. The Vice President/Secretary. The Vice President/Secretary shall act in the place and stead of the President in the event of the President's resignation, absence, inability, or refusal to act. The Vice President/Secretary shall perform such other duties as required by the Board. The Vice President/Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board may require such person to keep

4.7 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association including the requirement to obtain a review by an independent accountant when necessary according to the terms of Section 6.1(o) of the Declaration and the preparation and filing of appropriate tax returns. The Treasurer shall also act in the place and stead of the President and Vice President/Secretary resignation, absence, inability, or refusal to act. The Treasurer shall perform such other duties as required by the Board.

4.8 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE V COMMITTEES

5.1 Designation of Committees. The Board may from time to time designate such committees (each a "Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Committee designated hereunder shall include at least one (1) Board Member. A Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in the minutes. The Board may terminate any Committee at any time.

5.2 Proceedings of Committees. Each Committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Committee may from time to time determine. If required by the Board, each such Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

5.3 Quorum and Manner of Acting. The Board may establish any procedural or quorum requirements for voting by the committee. The members of any Committee designated by the Board hereunder shall act only as a Committee, and the individual members thereof shall have no powers, as such. A Committee may exercise the authority granted by the Board.

5.4 Resignation and Removal. Any Committee member may resign at any time by delivering a written resignation to any member of the Board or any presiding officer of the Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any Committee.

5.5 Vacancies. If any vacancy shall occur in any Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the Committee and, provided that two (2) or more members are remaining, may continue to act.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification. No Board Member, officer, or member of a Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member, officer, or Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer of the Association, or a member of a duly formed Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer of the Association, or member of a Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board Member, officer, or Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

6.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII AMENDMENTS

7.1 Amendments. Except as otherwise provided herein or by the Act, these Bylaws may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty-six point sixty six percent (66.66%) of the total Undivided Interest. The vote must occur in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.

7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Summit County, Utah.

ARTICLE VIII

WAIVER OF IRREGULARITIES

8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) if the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue was made at the meeting;
- (b) if the objecting Person was not in attendance at the meeting but had proper notice of the meeting, they are waived if no objection to the particular procedural issue was made within sixty (60) days of the date the meeting was held;
- (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue was made within ninety (90) days of the date of the meeting;
- (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting; and
- (e) for any action, vote, or decision that occurred without a meeting, within one hundred twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.

8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Document or other Law

that has been violated and a brief statement of the facts supporting the claimed violation.

8.3 Irregularities that Cannot be Waived. The following irregularities cannot be waived under the prior subsection:

- (a) Any failure to comply with the provisions of the Declaration.
- (b) Any failure to obtain the proper number of votes required to approve of or take a particular action.

Affirmative Waiver. An Owner may affirmatively waive any notice required by the Declaration, Bylaws or other law. Any waiver specifically described in the Declaration or Bylaws, such as the Waiver of Procedural Irregularities in Section 8.1, may be accomplished as described therein and any waiver not described in the Declaration or Bylaws shall be made as follows: (i) in writing; (ii) signed by the member entitled to the notice; and (iii) delivered to the nonprofit corporation for: (A) inclusion in the minutes; or (B) filing with the corporate records. A waiver may be communicated by electronic transmission.

Parcel Numbers for the Enclave Deer Valley

ENC-1

ENC-2

ENC-3

ENC-4

ENC-5

ENC-6

ENC-7

ENC-8

ENC-9

ENC-10

ENC-11

ENC-12

ENC-1-S-26

ENC-1-S-27

ENC-1-S-28

ENC-1-S-29

ENC-1-S-30