



WHEN RECORDED MAIL TO:

Waters Edge Properties LLC  
C/O John Curtis, Receiver  
15 W South Temple, Suite 500,  
Salt Lake City, UT 84101

File No.: 188175-TOF

## **FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF LAKE RESIDENCES AT BEAR LAKE**

In Reference to Tax ID Number(s):

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**FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM**

**OF**

**LAKE RESIDENCES AT BEAR LAKE**

Rich County, Utah

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This FIRST AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OF LAKE RESIDENCES AT BEAR LAKE, (this "Declaration," or "Condominium Declaration") is made this 22<sup>nd</sup> day of July, 2026, by WATER'S EDGE PROPERTIES, LLC, a Utah limited liability company (the "Declarant" as hereinafter defined) for itself, its successors and assigns.

**RECITALS**

A. The *Declaration of Condominium of Lake Residences At Bear Lake* was recorded in the Rich County Recorder's Office on November 18, 2021 as Filing No. 101882, Bk: S12, Pg: 1123.

B. This Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Association and shall completely replace and supersede in all respects all prior Declarations and amendments thereto (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.

C. Declarant holds both legal and equitable title to certain real property located in Rich County, Utah, which is described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

D. By this Condominium Declaration, Declarant has developed a condominium project on the Property known as the Lake Residences at Bear Lake, as shown on the Condominium Plat, for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project (defined below).

E. The Project will contain various Units and may include without limitation, open spaces, walkways and various other amenities and improvements.

F. The Project possesses great natural beauty which Declarant intends to preserve through the use of a coordinated plan of development and the terms of this Condominium Declaration. It is anticipated that the plan will provide for comprehensive land planning,

harmonious and appealing landscaping, and improvements. It is assumed that each purchaser of property in the Project will be motivated to preserve these qualities through community cooperation and by complying with not only the letter but also the spirit of this Condominium Declaration, and any amendments thereto.

G. It is desirable for the efficient management and preservation of the value and appearance of the Project to create a nonprofit corporation to which shall be assigned the powers and delegated the duties of: managing certain aspects of the Project; maintaining and administering the Common Area; administering, collecting and disbursing funds pursuant to the provisions regarding assessments and charges hereinafter created and referred to; and to perform such other acts as shall generally benefit the Project and the Owners. Lake Residences at Bear Lake Condominium Association, Inc., a Utah nonprofit corporation, incorporated under the laws of the State of Utah for the purpose of exercising the foregoing powers and functions.

H. Each Owner shall receive fee title to his or her Unit and a membership in the Condominium Association as provided in this Condominium Declaration, the Articles and the Bylaws.

I. The covenants, conditions and restrictions contained in this Condominium Declaration and in the Exhibits attached hereto shall be enforceable covenants and equitable servitudes and shall run with the land.

J. Recorded simultaneously herewith is the Condominium Plat of the Project as required by the Condominium Act.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees that each of the Recitals A through C is incorporated into and made a part of this Condominium Declaration for all purposes and further declares, covenants and agrees as follows:

## **ARTICLE I**

### **DEFINITIONS**

Unless the context clearly indicates otherwise, the following capitalized words, phrases or terms used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article I. (Certain terms not defined herein are defined elsewhere in this Declaration.)

1.1 Amendment means any Supplemental Declaration or any other amendment to this Declaration (or, as appropriate, the other Condominium Documents) made in accordance with the Declaration and the Condominium Act.

1.2 Building(s) means the buildings constructed as part of the Project, as described in Section 2.2.

1.3 Common Area Manager or Manager means the person, firm or company designated by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas and Facilities.

1.4 Common Areas and Facilities means all portions of the Project other than the Units, as described in Article IV below and as may be depicted on the Plat as "Common Area." The undivided interest in the Common Areas and Facilities appurtenant to each Unit is described in Section 4.2 hereof and is set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

1.5 Common Assessments means those assessments described in Article XII to fund the Common Expenses, and include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Association.

1.6 Common Expense Fund means one or more deposit or investment accounts of the Association into which are deposited the Common Assessments. The Common Expense Fund shall consist of one operating fund for daily operating expenses and one capital fund for reserve and replacement expenses.

1.7 Common Expenses means all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities, all premiums for insurance obtained by the Association for the benefit of the Project, and all other expenses denominated as Common Expenses by this Declaration or by the Condominium Act.

1.8 Condominium Act means the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann., as amended).

1.9 Condominium Articles or Articles means the articles of incorporation of the Condominium Association, as amended from time to time.

1.10 Condominium Association or Association means the Lake Residences at Bear Lake Condominium Association, Inc., a Utah nonprofit corporation, and its successors and assigns, organized for the purposes set forth in this Condominium Declaration, the Articles and the Bylaws.

1.11 Condominium Bylaws or Bylaws means the Bylaws of the Association, a copy of which is attached hereto as Exhibit "C" attached hereto and incorporated herein by this reference, as amended from time to time.

1.12 Condominium Declaration or Declaration means this Declaration of Condominium of Lake Residences at Bear Lake, , as amended from time to time, and all Amendments, modifications and supplements hereto.

1.13 Condominium Documents means this Condominium Declaration, the Condominium Articles and Condominium Bylaws, the Rules and Regulations promulgated by the Condominium Association, , as the same may be amended from time to time.

1.14 Condominium Plat or Plat means the condominium plat for the Project duly recorded together with all Supplemental Condominium Plats, as any of the foregoing may be

amended from time to time, and which are incorporated herein by this reference. The Plat may be amended at such time as the Building(s) are constructed in the event there are material changes in the Building or Unit boundaries or elevations as constructed. Such an amendment to the Plat is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners.

1.15 Convertible Space means those portions of the Project which may be converted into Units, Common Areas and Facilities, and Limited Common Areas, as provided in Article VIII hereof and as designated on the Plat

1.16 Declarant means Water's Edge Properties, LLC, a Utah limited liability company, or its respective successors, and any Person to whom it may expressly assign any or all of its rights under this Condominium Declaration.

1.17 Declarant Control Period means the period of Declarant control of the Association described in Section 9.3 below.

1.18 Developmental Rights means the right to exercise (1) any of the rights set forth in Article VIII, or Article X below and (2) any other right or easement reserved by Declarant pursuant to this Condominium Declaration, the Condominium Bylaws, or the Condominium Act.

1.19 Eligible Mortgagee means a First Mortgagee that has requested notice of certain matters from the Association in accordance with Section 18.1 below.

1.20 Limited Common Areas and Facilities means a portion of the Common Areas and Facilities designated by the Declaration or the Condominium Act, and as may be shown on the Plat as "Limited Common Area," for the exclusive use of one or more, but fewer than all, of the Units, which may include, without limitation, any porches, balconies, patios, decks, entryways, storage spaces and driveways.

1.21 Management Committee means the Board of Directors of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

1.22 Mortgage means any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A "First Mortgage" means a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

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

1.24 Nonprofit Act means the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Ann., as amended).

1.25 Owner means any person or entity, including Declarant, at any time owning a Unit within the Project, or any portion thereof or interest therein. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

1.26 Project means the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Condominium Act.

1.27 Project Design Guidelines means the written review standards promulgated by the Project Design Review Committee pursuant to this Declaration.

1.28 Project Design Review Committee means the design review committee created pursuant to Article XX of this Declaration.

1.29 Property means that certain real property situated in Rich County, Utah, more particularly described in Section 2.1 below, on which the Units and other improvements are located.

1.30 Regular Common Assessments means the annual assessments levied by the Association to pay the budgeted Common Expenses.

1.31 Rules and Regulations means the rules and regulations of the Association promulgated by the Management Committee covering the operation and maintenance of the Project and the Units, as the same may from time to time be amended.

1.32 Special Common Assessments means assessments which the Association may levy from time to time, in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

1.33 "Square Feet" or "Square Footage" means for purposes of calculating the undivided interest in the Common Areas and Facilities appurtenant to each Unit, the gross square feet of ground or floor space within each Unit, as calculated by Declarant in its sole and subjective discretion, as set forth in the Plat and Exhibit B hereto. Because this Declaration and the Plat are prepared and recorded prior to construction of the Project, based on the architectural plans and specifications for the Project, there may be differences in Square Footage between the Plat and the as-built Project. The Square Footage shall be determined as Declarant shall exclusively assign and as measured and unilaterally calculated by Declarant during the Declarant Control Period, and thereafter, the Management Committee, on a consistent basis, as set forth in the Plat and Exhibit B hereto. The calculation of Square Footage as contained in this Declaration and as shown on the Plat is final and binding upon all Owners irrespective of any later measurement of such Square Footages. In the event of any disagreement or uncertainty as to the calculation of Square Footage in the Project and/or as to which Units and improvements are constructed, Declarant, so long as it has any Developmental Rights hereunder, and thereafter, the Management Committee, shall have the sole and subjective power (but without obligation to take any corrective action) to make such determination, and such Declarant's or the Management Committee's determination shall be conclusive, final and unappealable.

1.34 Supplemental Condominium Plat means any amendment to the Condominium Plat, including without limitation those certain amendments recorded in connection with Declarant's



exercise of any of its Developmental Rights, and made in accordance with this Declaration and the Condominium Act.

1.35 Supplemental Declaration means any Amendment to this Declaration recorded in connection with Declarant's exercise of any of its Developmental Rights.

1.36 Total Votes of the Association means the total number of votes appertaining to all Units, as described in Article XXI hereof.

1.37 Unit means an individual portion of the Project designated as a Unit on the Plat and designed for separate ownership and occupancy as described in Article III hereof.

1.38 Unit Number means the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

## **ARTICLE II**

### **DESCRIPTION OF THE PROPERTY AND THE IMPROVEMENTS AND SUBMISSION TO THE CONDOMINIUM ACT**

2.1 Description of the Property. The Property on which the Units and improvements are located is situated in Rich County, Utah and more particularly described as follows:

See Exhibit A attached hereto and incorporated herein by this reference.

2.2 Initial Improvements. The initial improvements will consist of four (4) connected buildings containing eight (8) Units each for a total of thirty-two (32) Units. The Buildings will be of wood frame construction. The roofs may be a mix of membrane and asphalt shingles. The Buildings exteriors may be a mix of siding, stucco, stone and brick. The Building will be supplied with electricity, propane, water, and sewer service. There shall be no "front desk" or similar structure, concept, or arrangement existing or operating in the Project.

2.3 Submission to the Act. Declarant hereby submits the Property, the Buildings, and all other improvements thereon to the provisions of the Condominium Act. All of the Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a residential condominium project. All of the Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of the Project and division thereof into Units; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Declarant, the successors and assigns of the Declarant, and any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

## ARTICLE III

### DESCRIPTION OF UNITS

3.1 Unit Boundaries. The boundary lines of each Unit are as set forth on the Plat and consist of the undecorated and/or unfinished interior surfaces of its perimeter and interior walls as measured to the stud wall, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. The interior surfaces of the doors and windows mean the points at which such surfaces are located when such window or door is closed. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other material constituting part of the finished surface of a wall, floor, or ceiling. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior finished surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The Plat and/or Exhibit B hereto contain the Unit Number of each Unit in the Project.

3.2 As Constructed. Notwithstanding the description of Units described in Section 3.1 above, for the purposes of interpreting this Declaration and the Condominium Plat, the boundaries of all Units constructed in substantial accordance with the Condominium Plat and this Declaration shall be conclusively presumed to be the actual boundaries rather than the description and depiction of the Units set forth on the Condominium Plat, regardless of the settling or lateral movement of the Units and Buildings and regardless of minor variances between boundaries shown on the Condominium Plat and the constructed boundaries of the Units or Buildings. It is acknowledged that the Condominium Plat is prepared from the architectural drawings of the Project, prior to construction, and that there will be variances between the boundaries and other features shown on the Condominium Plat and the actual construction of the Project.

## ARTICLE IV

### DESCRIPTION AND OWNERSHIP OF COMMON AREAS AND FACILITIES

4.1 Description of the Common Areas and Facilities. The Common Areas and Facilities means and includes the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation: the foundation, columns, girders, beams, supports, perimeter and supporting walls, roofs, stairwells, vestibules, entrances and exits of the Building; the mechanical installations of the Building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating, refrigeration, central air-conditioning and incinerating which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith; trash rooms and storage rooms; the yards, sidewalks, walkways, paths, grass, shrubbery, trees, planters, driveways, roadways, landscaping, gardens and related facilities upon the Property; the elevators, pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, heat taping, gutters, attics, and, in general, all

apparatus, installations, and equipment of the Building existing for use of one or more of the Owners; and, in general, all other parts of the Project designated by Declarant as Common Areas and Facilities and existing for the use of one or more of the Owners. In the event of a conflict between this Declaration and the Plat, the provisions of the Declaration shall control.

4.2 Calculation of Undivided Interest. The undivided ownership interest in the Common Areas and Facilities appurtenant to each Unit shall be allocated in accordance with the assigned Square Footage of each Unit in the Project as set forth on the Condominium Plat and in the attached Exhibit B. The undivided interest in the Common Areas and Facilities appurtenant to each Unit shall be a fraction, the numerator of which is the Square Footage of the particular Unit, and the denominator of which is the total Square Footage of all Units in the Project, as set forth on the attached Exhibit B. Alternatively, such fraction may be expressed as a decimal number or percentage. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered. Provided, however, Declarant reserves the right to recalculate the undivided ownership interests with respect to Units created pursuant to **Error! Reference source not found.** hereof, and to adjust the undivided interest of each Unit in the Common Areas and Facilities following any addition of Units to the Project, in accordance with the formula set forth in this Section 4.2. in accordance with the formula set forth in this Section 4.2. The sum of the undivided interests in the Common Areas and Facilities allocated to all Units shall at all times equal one hundred percent (100%) (or one if stated as fractions). Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent (100%) (or one if stated as fractions).

## ARTICLE V

### DESCRIPTION OF LIMITED COMMON AREAS AND FACILITIES

5.1 Description. Limited Common Areas and Facilities means those parts of the Common Areas and Facilities which are limited to and reserved for the use of the Owners of one or more, but fewer than all, of the Units. Without limiting the foregoing, the Limited Common Areas and Facilities shall include any space designated as Limited Common Areas and Facilities on the Plat, including but not limited to, any individual fireplace chimney and flue, balcony, deck, patio, entryway, stairs, stairwells, or porch adjacent to a Unit, portions of landscaped areas adjacent to Units as designated on the Plat, any individual water and sewer service lines, and any plumbing or other installation servicing a Unit, including, but not limited to, all such items designated as Limited Common Areas and Facilities on the Plat or as provided for by the Condominium Act. The deck, balcony or patio and the fireplace chimneys which are accessible from, associated with, and which adjoin a particular Unit, without further reference thereto, shall be used in connection with such Unit to the exclusion of the use thereof by the other Owners, except by invitation. All furniture and other personal property of Owners placed on such deck, balcony or patio shall present a uniform appearance from the outside of the Units. All such furniture and personal property shall be installed only with the prior written approval of the Management Committee. The Management Committee shall have the right to establish rules limiting the style and type of furniture and other personal property that may be placed on decks, balconies or patios. No reference thereto need be made in any instrument of conveyance, encumbrance, or other instrument.

5.2 Use. The use and occupancy of designated Limited Common Areas and Facilities shall be reserved to the Units as shown on the Plat or as specified in this Declaration.

5.3 Reallocation. Owners may not reallocate or reassign Limited Common Areas and Facilities between or among Units in which they have an interest. Notwithstanding, Declarant hereby reserves the right and grants to the Association the right to reallocate or reassign Limited Common Areas and Facilities to the fullest extent permitted under the Condominium Act.

## ARTICLE VI

### NATURE AND INCIDENTS OF UNIT OWNERSHIP

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

6.2 Use of Property. Subject to the limitations contained in this Declaration, and subject to the Rules and Regulations adopted by the Declarant or the Association, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use his or her Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners. So long as Declarant or its assignee owns one (1) or more Units, Declarant grants and reserves unto Declarant or its assignee, as a Developmental Right, the exclusive right to create fractional interests within Units and to submit such Units and fractional interests to a fractional or club plan, together with the exclusive right to utilize and sell fractional interests and to manage and operate the Units subject to a fractional or club plan, which may include, but are not limited to, model Units, sales offices and/or management offices. Subject to the exclusive right of the Declarant to create fractional interests within Units and to submit such Units and fractional interests to a fractional or club plan as set forth in this Section 6.2, each Unit shall be used primarily for residential purposes only. In the event a fractional or club plan is created by the Developer, the Management Committee shall be entitled to designate a fractional or club committee to govern and manage such fractional or club plan.

6.3 Alteration of Units. Each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of his or her Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of his or her Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate, reassign, or change the boundaries of such Units. No Owner may subdivide their Unit.

6.4 Right of Entry. The Management Committee shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter into any Unit for the purpose of (i) maintenance, including, but not limited to, snow removal from any deck, balcony, or patio and window washing; (ii) repairs, including emergency repairs; and (iii) for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.

6.5 Rules Governing Use. The Association shall have the power to establish specific Rules and Regulations governing use of Limited Common Areas and Facilities.

## ARTICLE VII

### TITLE TO UNITS

7.1 Manner in Which Title May Be Held. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

7.2 Title Inseparable. Except as may otherwise be provided herein, title to no part of a Unit within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas and Facilities appurtenant to each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

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

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

7.5 Labor and Services; Indemnification. Except as may otherwise be provided herein, no Owner may request labor or services to be performed at the Project. Notwithstanding the foregoing, no labor performed, or services or materials furnished with the authorized or unauthorized consent of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner (including interest in any portion of the Common Areas and Facilities). Labor performed or services or materials furnished for the Common Areas and Facilities, if authorized by the Association and provided for in this Declaration, shall be deemed to be performed or furnished

with the express consent of each Owner and may be the basis for the filing of a lien against each of the Units. In the event a lien against two or more Units or any part thereof becomes effective, the Owner may remove his or her Unit from the lien by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his or her Unit. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against any liability or loss arising from the claim of any mechanic's lien for labor performed or for materials furnished in work on such Owner's Unit against the Unit of another Owner or against the Common Areas and Facilities, or any part thereof.

7.6 Enforcement by Condominium Association. At its own initiative or upon the written request of any Owner (if the Association determines that further action by the Association is proper), the Association shall enforce the indemnity provided by the provisions of Section 7.5 above by collecting from the Owner of the Unit on which the labor was performed or materials furnished the amount necessary to discharge by bond or otherwise any such mechanic's lien, including all costs and reasonable attorneys' fees incidental to the lien, and obtain a release of such lien. In the event that the Owner of the Unit on which the labor was performed or materials furnished refuses or fails to so indemnify within seven (7) days after the Association shall have given notice to such Owner of the total amount of the claim, or any portions thereof from time to time, then the failure to so indemnify shall be a default by such Owner under the provisions of this Section 7.6, and such amount to be indemnified shall automatically become a default Assessment determined and levied against such Unit, and enforceable by the Association in accordance with Article XII below.

7.7 Legal Description of Units. Every contract for the sale of a Unit, and every other instrument affecting title to a Unit within the Project, may describe a Unit by the name of the Project, the recording date for this Declaration, Rich County wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

7.8 Notice of Ownership and Address. Any person, on becoming an Owner, will furnish the Secretary of the Association with a photocopy of the recorded deed or other instrument or such other evidence as may be specified by the Management Committee under the Bylaws or the Rules and Regulations, vesting the person with the interest required to make him an Owner. At the same time, the Owner will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Condominium Documents. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Owner will promptly give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Owner.

## ARTICLE VIII

### CONVERTIBLE SPACE

8.1 Reservation of Option to Convert Space. Declarant hereby reserves the option, pursuant to Section 57-8-13.4 of the Condominium Act, to create additional Units, Common Areas and Facilities and Limited Common Areas and Facilities within portions of the Property (collectively “the Option to Convert Space”) upon the terms and provisions set forth in this Section without the prior consent of the Owners or the Association at any time. Any portion of the Property which is so utilized is or may be referred to as land “Converted” under the option or “Convertible Space.” The terms and conditions of the Option to Convert Space shall be as follows:

8.1.1 The Convertible Space includes all those portions of the Project that have been designated on the Plat as Convertible Space

8.1.2 Subject to the provisions of Section 8.1.3 below, the Option to Convert Space may be exercised at different times as to portions of the Project described in Section 8.1.1 above and in any order elected by the Declarant. No assurance is made with regard to which portions of the Convertible Space if any, will be converted to Units, Common Areas and Facilities or Limited Common Areas and Facilities or the order in which such portions will be so converted. In the event the Option to Convert Space is exercised with respect to a portion of the Convertible Space, the Option to Convert Space may or may not, at Declarant’s sole discretion, be exercised with respect to any other portion of the Convertible Space.

8.1.3 Declarant shall not be restricted in the location of improvements on the Convertible Space or in the number of Units that may be created on the Convertible Space, except as may be required by applicable zoning requirements, ordinances or regulations.

8.1.4 The Units to be located on the Convertible Space may be used for residential purposes, and for any other purpose deemed appropriate by Declarant.

8.1.5 In accordance with Section 57-8-13.4(3) of the Condominium Act, the Convertible Space not converted in accordance with the provisions of this Article VIII and the Condominium Act shall be treated for all purposes as a single Unit, until and unless it is so converted. The Condominium Act and this Declaration shall be deemed applicable to the Convertible Space as though the same were a Unit. The Convertible Space shall be assessed its appropriate portion of the Common Expenses related to the Project, and Declarant shall pay its respective portion of the Common Expenses attributable to such Convertible Space.

8.1.6 To the extent Declarant creates Common Areas and Facilities or Limited Common Areas and Facilities in the Convertible Space, the ownership interest in the Common Areas and the corresponding responsibility for Assessments and votes for all Units in the Project shall be changed at the time Declarant records an Amendment and amended Plat reflecting Declarant’s exercise of the Option to Convert Space in accordance with the provisions set forth in Section 8.1.7 below. Said changes in ownership interest

and votes shall be reflected in an amended Exhibit B to this Declaration to be filed with the County Recorder simultaneously with the filing of the amended Plat. It is contemplated that there may be multiple amendments filed by Declarant and such amendments are hereby expressly authorized.

8.1.7 Declarant shall calculate and revise the undivided interest for each Unit in the Project based upon the following formula:

$$\frac{\text{Square Feet of a Unit}}{\text{Square Feet of all Units}} = \frac{\text{Ownership Interest in the Common Areas of the Project}}{\text{Project}}$$

8.1.8 Each Owner, by execution of a contract for deed or the acceptance of a deed to a Unit in the Project, shall be deemed to have consented to all provisions of this section, including the procedure for adjustment of Unit ownership interests pursuant to Subsection 8.1.7 above. Furthermore, Declarant shall not be required to obtain the consent of any Owners or of any other person or entity having any right or interest in all or any portion of the Project prior to or subsequent to converting all or portions of the Convertible Space.

After the filing for record of any amended Exhibit B to this Declaration and the amended Plat reflecting Declarant's exercise of the Option to Convert Space, or any part thereof, title to each Unit thereby created within the Convertible Space including its appurtenant ownership interest in the Common Areas and Facilities shall be vested in and held by Declarant and none of the other Owners shall have any claim or title to or interest in such Unit or its appurtenant ownership interest in the Common Areas and Facilities.

8.1.9 Declarant reserves the right to create Limited Common Areas and Facilities within the Convertible Space including storage areas and other space and facilities intended to serve a single Unit or multiple designated Units. In addition, Declarant reserves the right to designate hallways and other portions of the improvements to the Convertible Space as Limited Common Areas and Facilities in accordance with the other terms and provisions of this Declaration. The size, type and total number of such Limited Common Areas and Facilities shall be reasonable and shall be appropriate to the Units involved in light of the number and nature of Units created within the Convertible Space.

8.1.10 No provision of this Article VIII shall be amended without the prior written consent of Declarant.



## ARTICLE IX

### CERTAIN ADDITIONAL DEVELOPMENTAL RIGHTS

The following additional Developmental Rights are hereby granted or reserved by Declarant:

9.1 Completion of Improvements. Declarant hereby reserves an easement throughout the Project for a period of twenty (20) years from the recording of this Declaration for the purpose of completing all improvements contemplated by the Declaration and the Plat.

9.2 Sales and Management Offices. Declarant hereby reserves the right to maintain sales offices, management offices, signs advertising the Project and models in any of the Units which it owns or leases or on the Common Areas and Facilities of the Project, subject to applicable Garden City or Rich County regulations governing commercial use. Declarant may relocate sales offices, management offices and models to other Units or Common Areas and Facilities at any time.

9.3 Declarant Control Period. There is hereby established a Declarant Control Period, during which period Declarant or persons designated by it shall have the sole authority to appoint and remove the Association officers and members of the Management Committee. The Declarant Control Period shall terminate no later than the earlier of:

9.3.1 six (6) years after the first Unit is conveyed to an Owner; or

9.3.2 after Units to which three-fourths (3/4) of the undivided interest in the Common Areas and Facilities appertain have been conveyed to Owners, or

9.3.3 the surrender by Declarant, at its option and in its sole and subjective discretion, of such right by written notice to the Management Committee.

9.4 Amendment of Condominium Plat. Declarant may unilaterally amend the Condominium Plat at such time as the Buildings are constructed in the event there are material changes in the Buildings or Unit boundaries or elevations as constructed, as determined by Declarant in its sole and subjective discretion. Such an Amendment to the Condominium Plat is not required but is expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners.

9.5 No Consent Required to Exercise Developmental Rights. Declarant shall not be required to obtain the consent of any Owners, Mortgagees, the Management Committee or of any other person having any right or interest in all or any portion of the Project prior to or subsequent to its exercise of any Developmental Rights. It is contemplated that there may be multiple Supplemental Declarations and Supplemental Condominium Plats filed or recorded by Declarant and such instruments are hereby expressly authorized.

9.6 No Actions Adverse to Developmental Rights. The Association, the Management Committee, or any Owner may not take any action or adopt any rule or regulation that interferes with or diminishes any Developmental Rights hereunder, without Declarant's prior written

consent. Any action taken in violation of this Section 9.6 shall be null and void and have no force or effect.

9.7 Providing Copies of Certain Documents. During the Declarant Control Period, for any Unit that the Declarant sells to a third party, the Declarant shall give that third party a copy of the Condominium Documents and of the Association's most recent financial statement (which includes any reserve funds held by the Association or by a subsidiary of the Association, as such reserve funds are further described in Article XII below).

9.8 Submission of Project to Master Community Plan. So long as Declarant owns one (1) or more Units, Declarant grants and reserves unto Declarant, as a developmental right, the exclusive right to create and/or to submit the Project to a master community plan, subjecting the Project to the terms and conditions of any master community governing documents including without limitation, the obligation of Owners to pay assessments and costs promulgated and levied pursuant to any such master community documents. At Declarant's request, the Association and each Owner shall execute such documents as may be requested to submit the Project to a master community plan and all constituent documents related thereto, and to subordinate the Association's and Owner's rights to the terms and provisions of such master community plan.

## ARTICLE X

### RESTRICTIONS ON USE

10.1 Restrictions of Use of Units and Common Areas and Facilities. Subject to the Developmental Rights, the Units and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

10.1.1 No Unit shall be used for commercial purposes (as such term may be further defined in the Rules and Regulations); provided, however, that nothing in this Subsection 10.1.1 shall prevent (a) Declarant or an affiliated entity or a duly authorized agent from using any Unit owned or leased by Declarant as sales offices and model Units or a property management office as provided in Section 9.2 hereof, or (b) any Owner, including Declarant, or his or her duly authorized agent from renting or assigning the use of his or her Unit from time to time.

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

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

10.1.4 No signs, flags or advertising devices of any nature, including, without limitation, political, informational or directional signs or devices, shall be erected or maintained on any part of the Project, except as otherwise permitted by law, and except as

may be necessary temporarily to caution or warn of danger, except as may be used by Declarant as part of its sales program.

10.1.5 The Rules and Regulations of the Association may regulate the kind and number of pets from time to time.

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

10.1.7 No Owner shall, without the prior written consent of the Management Committee, make or permit to be made any exterior alteration, improvement or addition in or to any Unit or the Project. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities (including Limited Common Areas and Facilities). No Owner shall, without the prior written consent of the Declarant so long as the Declarant or an affiliate of Declarant owns any land or improvements in the Lake Residences at Bear Lake, improve or modify a Unit, any Limited Common Areas and Facilities or other Common Areas and Facilities in a manner that would increase the Square Footage of any Unit.

10.2 No Obstruction of Common Areas and Facilities. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Unit, except with the prior consent of the Management Committee.

10.3 Treatment of Units and Common Areas and Facilities. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which would increase the rate of insurance on the Project or any part thereof over what the Association but for such activity, would pay, without the prior written consent of the Management Committee. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or her or his or her guests, lessees, licensees or invitees.

10.4 No Violation of Condominium Rules. No Owner shall violate the Rules and Regulations for the use of Units and Common Areas and Facilities as adopted from time to time by Declarant or the Management Committee.

10.5 Leases Subject to Condominium Documents. Any lease agreement between an Owner and a lessee respecting a Unit shall be subject in all respects to the provisions of the Condominium Documents, and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. Other than the foregoing, there is no restriction on the right of any Owner to lease his or her Unit. An Owner shall be responsible and liable for any damage to the Project caused by his or her tenants.

10.6 Lake Use. The Project is located adjacent to a public lake and associated open space shoreline and beach area (the "Lake Area"), which is open to the general public for recreational use. Recreational use by the general public of the Lake Area may generate an unpredictable amount of visible, audible and odorous impacts and disturbances at all times of the day and night resulting from the general public's activities. The activities associated with the Lake Area include, without limitation: (a) vehicular and residential traffic, including, without limitation (i) buses, vans, trailers, boats and other watercraft, and other vehicles which transport residents and guests and public users of the Lake Area over, around and through the Lake Area and near the Project, and (ii) construction vehicles and equipment; (b) activities relating to, without limitation, the construction, maintenance, grooming and operation of public biking, hiking, horseback and all-terrain-vehicle trails, roads, pathways or bridges, and of boat docks and other boat-launch areas, including, without limitation, (i) tree and other vegetation cutting and clearing, grading and earth moving, and other construction activities, (ii) construction, operation and maintenance of access roads and pathways, boat equipment and other boat transportation systems; and (c) activities relating to the use of the Lake Area, including, without limitation, boating and operation of other watercraft, fishing, swimming, hiking, horseback riding, bicycling, all-terrain-vehicle use and other recreational activities and organized events and competitions relating to such activities.

10.7 No Representations Regarding Lake Area. Declarant is not the owner or operator of the Lake Area, and accordingly, Declarant cannot make any representations relating thereto. Neither Declarant nor any of its employees or agents have made any representations regarding use of the Lake Area and surrounding public areas in any given year.

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

10.9 Other Developments. By acceptance of a deed, each Owner acknowledges that other properties located in the vicinity of the Project may be developed pursuant to the land uses and restrictions set forth in the applicable zoning, with no representation being made herein concerning the planned uses of such other properties. Each Owner further acknowledges that the zoning for the property on which the Project is located and for other properties in the vicinity of the Project is established and governed by the Rich County Development Code, as the same may be amended or replaced from time to time.

10.10 Condominium Association Rules. All Owners are given notice that use of their Units and the Common Areas and Facilities is limited by the Rules and Regulations of the Association as modified from time to time. By acceptance of a deed, each Owner acknowledges

and agrees that the use and enjoyment and marketability of the Owner's Unit can be affected by this provision and that the Rules and Regulations may change from time to time.

## **ARTICLE XI**

### **ASSOCIATION AND MANAGEMENT COMMITTEE**

11.1 Membership in Condominium Association. The persons or entities who are at the time of reference Owners shall, together with all other Owners, be members of the Association, the characteristics and nature of which are determined by the Condominium Act, the Condominium Declaration, the Bylaws, the Articles and other applicable Utah law.

11.2 Management Committee. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of not less than three (3) nor more than five (5) natural persons as provided in the Bylaws. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

11.3 Powers of Management Committee. Except as otherwise provided herein, the Management Committee shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Nonprofit Act and the Condominium Act, this Declaration and the Bylaws, including but not limited to the following:

11.3.1 To make and enforce all Rules and Regulations covering the operation and maintenance of the Project and the Units, including but not limited to Rules and Regulations relating to transient use and occupancy of the Units.

11.3.2 To engage the services of the Common Area Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.

11.3.3 To operate, maintain, repair, improve and replace the Common Areas and Facilities in accordance with the Project Quality Standard, which right expressly includes the power and authority to oversee all aspects of the operation, maintenance, repair, improvement, replacement, and use (including any change in use) of any clubhouse that may exist within the Project; provided, however, that the use of any clubhouse shall be limited to Owners, unless the Management Committee expressly decides to the contrary.

11.3.4 To determine and pay the Common Expenses.

11.3.5 To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article XII hereinafter.

11.3.6 To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

11.3.7 To open bank accounts on behalf of the Association and to designate the signatories therefor.

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

11.3.9 To bring, prosecute and settle litigation for itself, the Association and the Project.

11.3.10 To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, as well as worker's compensation insurance.

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

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

11.3.13 To borrow money for the purpose of improving the Common Areas and Facilities in a manner designed to promote the enjoyment and welfare of the Owners.

11.3.14 To pledge, hypothecate or otherwise encumber current or future Assessments for any purpose permitted under this Declaration.

11.3.15 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws, the Nonprofit Act, and the Condominium Act.

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

11.3.17 To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

11.3.18 To grant easements and rights-of-way over the Common Areas and Facilities, which right expressly includes the power and authority to grant an easement or right-of-way to any postal or mail service for the delivery of mail in or to any clubhouse that may exist within the Project.

11.3.19 To approve signage for the Project.

11.4 Subjection of Common Areas and Facilities to Mortgage. The Management Committee may convey or subject to a Mortgage all or portions of the Common Areas and

Facilities of the Project if Owners entitled to cast a majority of the Total Votes of the Association agree to that action at a meeting or by written ballot distributed to Owners by mail or electronic transmission. Any such agreement shall comply with all other applicable provisions of the Condominium Act.

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

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

11.7 No Sale of Property. Neither the Management Committee nor the Common Area Manager shall sell any property of the Association except as permitted by the Condominium Act and this Declaration.

11.8 Common Area Manager. The Association acting through the Management Committee may enter into a contract with a Common Area Manager for the management of the Project. Pursuant to such management contract the Management Committee may delegate to a Common Area Manager all of the duties, powers, and responsibilities referred to in Section 11.3 above. The Common Area Manager so engaged shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the contract with the Association, be authorized to perform any of the functions or acts required to be performed by the Association itself. Any such management contract executed during the Declarant Control Period described in Section 9.3 shall not be binding after such Declarant Control Period expires or is terminated unless the management contract is then renewed or ratified by the consent of Owners of Units to which a majority of the Total Votes of the Association appertains. A contract for services executed on behalf of the Association during the Declarant Control Period is binding beyond the Declarant Control Period unless terminated by the Management Committee after the Declarant Control Period ends. Notwithstanding the foregoing,

a lease of recreational areas or facilities, or any other contract or lease designed to benefit the Declarant which was executed by or on behalf of the Association shall not be binding after the Declarant Control Period unless then renewed or ratified by the consent of Owners to which a majority of the Total Votes of the Association appertains.

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

11.10 Registration with the Department of Commerce. The Association shall register with the Utah Department of Commerce within ninety (90) days of the recordation of this Condominium Declaration. Within ninety (90) days after a change of any information provided in the Association's registration with the Utah Department of Commerce, the Management Committee shall submit an updated registration in the manner established by the Utah Department of Commerce and the Condominium Act.

11.11 Providing Payoff Information; Written Statement. The Management Committee may charge a reasonable fee for providing Condominium Association payoff information needed in connection with the closing of an Owner's financing, refinancing or sale of a Unit. Such fee shall not exceed the maximum amount (if any) set forth in the Condominium Act. The Management Committee must provide payoff information within five (5) business days after the closing agent for a transaction request of such information. Such request shall include all information required by the Condominium Act and be delivered in accordance with the requirements set forth in the Condominium Act. Even when not needed in connection with the closing of an Owner's financing, refinancing or sale of a Unit, an Owner may request in writing a written statement from the Management Committee indicating any unpaid Assessments with respect to the Owner's Unit. The Condominium Association may charge the Owner requesting the statement a fee not to exceed the maximum amount (if any) set forth in the Condominium Act.

11.12 Association's Right to Pay Delinquent Utilities.

11.12.1 Upon request in accordance with this Section, at least ten (10) days before the day on which an electrical corporation or a gas corporation discontinues service to a Unit, the electrical corporation or gas corporation shall give the Association: (a) written notice that the electrical corporation or gas corporation will discontinue service to the Unit ("Utility Notice"); and (b) an opportunity to pay any delinquent charges and maintain service to the Unit.

11.12.2 The Association may request the Utility Notice and opportunity to pay by sending a written request to the electrical corporation or gas corporation that includes: (a) the address of each Unit; (b) the Association's name, mailing address, phone number, and email address; and (c) the address where the electrical corporation or gas corporation may send notices.



11.12.3 If, after an electrical corporation or a gas corporation sends a Utility Notice to the Association and the Association does not pay the delinquent charges within ten (10) days after the day on which the electrical corporation or gas corporation sends the Utility Notice, the electrical corporation or gas corporation may discontinue service to the Unit. The Association may collect any payment to an electrical corporation or a gas corporation under this Section as a Common Assessment.

11.12.4 If, after the Association receives a Utility Notice, the Association decides not to pay the delinquent charges, the Association may, after giving notice as described in this Condominium Declaration to the Owner: (a) enter the Unit; and (2) winterize the Unit. A person who enters a Unit in accordance with this Subsection is not liable for trespass. The Association may charge an Owner for the actual and reasonable costs of winterizing a Unit in accordance with this Subsection.

11.13 No Liability for Latent Defects. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE XIV, THE CONDOMINIUM ASSOCIATION, THE MANAGEMENT COMMITTEE AND DECLARANT SHALL NOT BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY WEATHER CONDITIONS, THE ELEMENTS, OR OTHER OWNERS OR PERSONS.

## **ARTICLE XII**

### **ASSESSMENT OF UNITS BY THE ASSOCIATION**

12.1 Levying Assessments. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be subject to the following provisions, and any other provisions, if any, set forth in the Bylaws:

12.1.1 Liability for Common Expenses. Each Owner, including Declarant, for each Unit which it owns, shall be liable for a proportionate share of the Common Expenses, such share being the same as the ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him or her, subject to the subsidy provisions described in Section 12.6 below. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Article XII shall be the Common Expense Fund. Common Assessments shall include Regular Common Assessments, Special Common Assessments and any other assessments levied by the Association, which shall not include any assessments levied by Garden City, or any other regulatory or governmental authority. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses. After an assessment has been made by the Association, Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the

Bylaws. Regular Common Assessments shall be levied against each separate Unit, and shall commence as to all Units on the first day of the month following the closing.

12.1.2 Limit on Regular Common Assessments. The Association may not impose a Regular Common Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Regular Common Assessment, without first obtaining the affirmative vote the Owners holding a majority of the Total Votes of the Association, cast at a meeting of the Association at which a quorum is present or by written ballot. The Association shall provide notice, by first class mail to all Owners, of any change in the Regular Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

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

12.1.4 Interest; Late Fees. All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a reasonable late fee, established by the Management Committee from time to time. All payments of Common Assessments shall be first applied to accrued interest and late fees, costs of collection, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated or reassigned, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

12.1.5 Lien for Assessments. There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The recordation of this Declaration in the Office of the Rich County Recorder constitutes record notice and perfection of such assessment lien. In order to establish the priority of the lien pursuant to Section 12.1.7 below, a written notice of lien shall be recorded setting forth the amount of the Common Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Common Assessment. Such lien may be enforced by sale or foreclosure by the Management Committee or Common Area Manager conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Title 38, Chapter 1a, Utah Code Annotated, as amended from time to time.

12.1.6 Foreclosure. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Common Assessments against the Unit which shall become due during the period of foreclosure, together with interest and late fees as set forth herein, and all such Common Assessments shall be secured by the lien being foreclosed. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Condominium Act. The Declarant, Association and each Owner hereby convey and warrant pursuant to Utah Code Annotated Sections 57-1-20 and 57-8-45 to Metro National Title, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of Common Assessments under the terms of this Declaration. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1, Utah Code Annotated. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, for the sole purpose of securing each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. The Association may, through the Common Area Manager or other duly authorized agent, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same.

12.1.7 Priority of Lien. The lien of the Association has priority over each lien and encumbrance on a Unit except: (a) a lien or encumbrance recorded before recordation of this Declaration, (b) a first or second Mortgage on a Unit that is recorded before a recorded notice of lien by or on behalf of the Association, or (c) a lien of real estate taxes or other governmental assessments or charges against the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Condominium Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

12.1.8 Nonjudicial Foreclosure. At least thirty (30) calendar days before initiating a nonjudicial foreclosure, the Association shall provide notice ("Foreclosure Notice") to the Owner that is the intended subject of the nonjudicial foreclosure. The Foreclosure Notice shall: (i) notify the Owner that the Association intends to pursue nonjudicial foreclosure with respect to the Owner's Unit to enforce the Association's lien for unpaid assessments; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of nonjudicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested and be included with other Association correspondence to the Owner; and (iv) be in substantially the following form:

**NOTICE OF NONJUDICIAL FORECLOSURE  
AND RIGHT TO DEMAND JUDICIAL  
FORECLOSURE**

Lake Residences at Bear Lake Condominium Association, Inc., a Utah nonprofit corporation (the "Association"), the Association for the project in which your unit is located, intends to foreclose upon your unit and allocated interest in the common areas and facilities using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your unit and to collect the amount of an unpaid assessment against your unit, together with any applicable late fees and the costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that 'I demand a judicial foreclosure proceeding upon my unit,' or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is Lake Residences at Bear Lake Condominium Association, C/O John Curtis, 15 W South Temple, Suite 500, Salt Lake City, UT 84101

12.1.9 Demand for Nonjudicial Foreclosure. The Association may not use a nonjudicial foreclosure to enforce a lien if an Owner mails the Association a written demand for judicial foreclosure: (i) by U.S. mail, certified with a return receipt requested; (ii) to the address stated in the Foreclosure Notice; and (iii) within fifteen (15) days after the date of the postmark on the envelope of the Foreclosure Notice.

12.1.10 Liability upon Conveyance. In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his or her Common Assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement shall be furnished within ten (10) business days after receipt of the request and upon payment of a reasonable fee and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith. The grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount set forth in the statement furnished under this Section 12.1.10.

12.1.11 Action to Recover. The amount of any Common Assessment against any Unit shall be the personal obligation of the Owner of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his or her Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

12.1.12 Lien Unaffected. The lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case any First Mortgagee who obtains title to a Unit pursuant to the remedies in the Mortgage or through foreclosure will not be liable for Common Assessments or charges accrued before the acquisition of the title to the Unit by the First Mortgagee, but such acquisition shall not relieve any Owner from paying further assessments. If the Association's lien priority includes costs of collecting unpaid Common Assessments, the Association will be liable for any fees or costs related to the collection of such unpaid Common Assessments.

12.2 Capital Improvements. The Association through the Management Committee shall include in the Common Assessments amounts representing sums to be used for the replacement of or additions to capital items or improvements in the Project. Said amounts shall be dedicated for the uses provided in this Section 12.2. Upon the transfer of a Unit, the capital reserves previously paid by the transferring Owner shall remain the property of the Association, for the use and benefit of the Association in making future repairs, replacements, improvements and capital additions to the Project. Each year the Association shall provide a summary of the most recent reserve analysis,

including any updates, to each Owner. Owners may receive a complete copy of the reserve analysis upon a request submitted to the Board.

### 12.3 Reserves.

12.3.1 Use of Reserve Funds. The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established, or for litigation involving such matters. Nevertheless, the Management Committee may authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 12.3 hereof. In addition, the Management Committee shall ensure that payments or deposits to the reserve account will constitute at least 10% of the annual budget for the Association.

12.3.2 Reserve Analysis. At least once every six (6) years the Management Committee shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Management Committee shall, thereafter, review every three (3) years the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

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

12.3.2.2 Identification of the probable remaining useful life the components identified in Section 12.3.2.1 above, as of the date of the study.

12.3.2.3 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 12.3.2.1 above, during and at the end of its useful life.

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

12.3.2.5 A reserve funding plan that recommends how the Association may fund the annual contribution described in Section 12.3.2.4 above.

For the purposes of this Section, the term “reserve account requirements” means the estimated funds which the Management Committee has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Association is obligated to maintain.

12.3.3 Reserve Fund Line Item. The Association’s budget shall include a reserve fund line item as determined by the Management Committee, based on the reserve analysis and the amount the Management Committee determines is prudent under the circumstances. Within forty-five (45) days after the day on which the Association adopts its budget, the Owners may veto the reserve fund line item by the vote of fifty-one percent (51%) of the Total Votes of the Association at a special meeting called by the Owners for the purpose of voting whether to veto the reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

12.4 Working Capital Contribution. In addition to certain other amounts due to the Association and Declarant at the time of closing of the sale of a Unit, each Owner other than Declarant hereby agrees and acknowledges that he or she shall pay to the Association a non-refundable working capital contribution (“Capital Contribution”) at the time he or she acquires a Unit as a contribution to the Association’s working capital fund in accordance with the following provisions:

12.4.1 The purpose of the Capital Contribution is to ensure that the Association will have cash available for the operation of the Project. The working capital funds for the Project may, but shall not be required to, be maintained in a segregated account for the use and benefit of the Association. Each Owner’s Capital Contribution amount shall be a sum equal to three (3) monthly installments of the annual Common Assessments for its Unit. Each Owner’s Capital Contribution shall be collected and transferred to the Association at the time of the closing of the sale of that Unit. Interest on such Capital Contribution shall accrue to the benefit of the Association. Each Owner’s obligation to pay the Capital Contribution shall be enforceable in the same manner as payment of Common Assessments and shall be secured by the Common Assessments lien. The Capital Contribution shall not be considered advance payment of any regular Common Assessments.

12.4.2 Upon the conveyance of a Unit in connection with any sale of a Unit, the purchaser, as the new Owner, must pay at closing a Capital Contribution in accordance with the provisions of Section 12.4.1 above.

12.5 Leased Units. If an Owner fails to pay Common Assessments and other amounts due under this Condominium Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the

Association is paid the Amount Owing (defined below). Notices and collection of payments shall comply with the following provisions, provided, however, that if the requirements under the Condominium Act are less restrictive, the Association need only comply with the requirements thereunder. As used in this Section "Amount Owing" means the total of any assessment or obligation under this Condominium Declaration that is due and owing together with any applicable interest, late fee, and cost of collection; "Lease" means an arrangement under which a Tenant occupies a Unit, including nightly rentals, in exchange for the Owner and/or such Owner's rental or other property manager, receiving a consideration or benefit, including a fee, service, gratuity, or other compensation; and "Tenant" means a person, other than the Owner, who has exclusive occupancy of an Owner's Unit whether on a nightly rental or other basis, provided, however, if an Owner has contracted with a rental or other property manager to rent such Owner's Unit, the manager shall be considered the Tenant for purposes of this Section.

12.5.1 Landlord Notice. Before requiring a Tenant to pay Lease payments to the Association, the Common Area Manager or Management Committee shall give the Owner notice ("Notice to Landlord"), in accordance with this Condominium Declaration. The Notice to Landlord shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

12.5.2 Tenant Notice. If an Owner fails to pay the Amount Owing within fifteen (15) days after the applicable Common Area Manager or Management Committee gives the Notice to Landlord, the Common Area Manager or Management Committee may exercise the Association's rights to collect Lease payments by delivering written notice ("Notice to Tenant") to the Tenant. The Notice to Tenant shall state that: (i) due to the Owner's failure to pay an assessment within the required time, the Common Area Manager or the Management Committee has notified the Owner of the Association's intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease with the Owner. The Common Area Manager or Management Committee shall mail a copy of the Notice to Tenant to the Owner.

12.5.3 Lease Payments. A Tenant to whom the Notice to Tenant has been given shall pay to the Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the Common Area Manager or Management Committee shall



notify the Tenant in writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Association. For any Unit subject to a nightly rental contract, the amount paid to the Association pursuant to this Section shall be the amount that would otherwise be paid to the Owner.

12.5.4 Separate Account. The Association shall deposit money paid to the Association under this Section in a separate account and disburse that money to the Association until the Amount Owed is paid and any cost of administration, not to exceed the maximum amount set forth in the Condominium Act (if any) is paid. The Association shall, within five (5) business days after the Amount Owed is paid, pay to the Owner any remaining balance.

12.6 Declarant Subsidy. To the extent permitted by law, Declarant may without obligation pay the Association an amount less than its proportionate share of Common Expenses or other permitted Common Assessments for which it owes, provided Declarant has executed a subsidy agreement requiring Declarant to pay monies which are sufficient, together with the Assessments paid by all other Owners, to enable the Association to timely pay all of the Common Expenses. Any subsidy agreement shall require Declarant to pay its full proportionate share of all reserves for replacement and capital improvements assessed against the Units that it owns.

12.7 Reinvestment Fee. Except as otherwise provided in Section 57-1-46, Utah Statutes, each purchaser of a Unit within the Project, other than a purchaser initially purchasing a Unit directly from Declarant, shall pay to the Association at closing a reinvestment fee ("Reinvestment Fee") immediately upon becoming the Owner of the Unit in such amount as is established from time to time by Declarant or the Management Committee, to reimburse the Association for costs incurred by the Association in connection with transfer of title to such new Owner and for the payment of Common Expenses and reserves, as the Management Committee may determine in its sole and subjective discretion. Currently, the Reinvestment Fee is 0.5% of the total purchase price of the Unit (unless otherwise determined by the Management Committee and set forth in the Bylaws), which Reinvestment Fee shall increase annually in proportion to the cost of living adjustment set forth in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers (all items for the geographical Statistical Area in which the Project is located on the basis of 1982-1984 = 100). However, in no event shall the Reinvestment Fee exceed 0.5% of the total purchase price of the Unit. Declarant or the Management Committee shall have the right to collect and enforce the payment of the Reinvestment Fee in the same manner as enforcement and collection of delinquent Common Assessments as further described in this Declaration. In the event that the Reinvestment Fee is not paid at closing to the Association, then Declarant or the Management Committee shall have the right to impose a charge against the new Owner of the Unit in an amount as determined by the Management Committee from time to time in its sole and subjective discretion.

12.7.1 Scope of Reinvestment Fee. No such Reinvestment Fee shall be payable and a transfer shall not have occurred with respect to:

12.7.1.1 The creation of any Mortgage;

12.7.1.2 In connection with any foreclosure of a First Mortgage;

12.7.1.3 The exercise of a power of sale available under a First Mortgage;

12.7.1.4 The taking of a deed or assignment in lieu of a foreclosure by a First Mortgagee;

12.7.1.5 The conveyance by a First Mortgagee of a deed in respect of a Unit, or part thereof or interest therein, to a grantee if such First Mortgagee shall have obtained title to such Unit, or part thereof or interest therein, pursuant to Sections 12.7.1.2 to 12.7.1.4 above;

12.7.1.6 Any transfer, sale or conveyance between Declarant and an affiliate of Declarant; or

12.7.1.7 Any other transaction for which the payment of a Reinvestment Fee is unenforceable pursuant to applicable law.

12.7.2 Definition of "Transfer". For purposes of this Section 12.7, a "transfer" means, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Unit, including but not limited to:

12.7.2.1 The conveyance of fee simple title to any Unit;

12.7.2.2 The transfer of more than 50 percent of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Units; or

12.7.2.3 The transfer of more than 50 percent of the interest in net profits or net losses of any partnership, joint venture or other entity which, directly or indirectly, owns one or more Units.

12.7.3 A separate notice of the Reinvestment Fee required by this Section 12.7 has been or shall be recorded in the office of the Office of the Rich County Recorder.

## ARTICLE XIII

### MAINTENANCE, ALTERATION AND IMPROVEMENT

13.1 Maintenance of Common Areas and Facilities. The maintenance, replacement and repair of the Common Areas and Facilities shall be the responsibility of the Association, and the cost thereof shall be a Common Expense. All incidental damages caused to a Unit by the maintenance, replacement and repairs of the Common Areas and Facilities or utility services shall be repaired promptly and the cost thereof charged to the Association as a Common Expense.

13.2 Right of Entry. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association, its agents and contractors, shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary

for the cleaning, repair or replacement of any Common Areas and Facilities or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities or to any Unit. The Association shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Following advance written notice to the Unit Owner, such entry shall be made at a reasonable time and in a manner that does not disrupt use of such Unit and with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Association.

13.3 Owner's Obligation to Maintain Units. Notwithstanding anything in this Declaration to the contrary, the Owner at the Owner's expense shall maintain and keep in repair the interior of the Unit, including the fixtures and utilities located in the Unit to the extent current repair shall be necessary in order to avoid damaging other Units or the Common Areas and Facilities. All fixtures, equipment, and utilities installed and included in a Unit serving only that Unit, commencing at a point where the fixtures, equipment and utilities enter the Unit, shall be maintained and kept in repair by the Owner of that Unit. An Owner shall also maintain and keep in repair any entry door or doors serving such Unit. An Owner shall not allow any action or work that will impair the structural soundness of the improvements, impair the proper functioning of the utilities, heating, ventilation, or plumbing systems or integrity of any Building, or impair any easement or hereditament. Except as otherwise provided in this Declaration, an Owner shall also have the obligation to maintain and keep in repair all appurtenant Limited Common Areas and Facilities at such Owner's expense, including any exterior equipment locker, if any, appurtenant to a Unit. Except as otherwise set forth in Section 14.8, no Owner shall alter any Common Areas and Facilities without the prior written consent of the Association.

13.4 Failure to Maintain. In the event that portions of a Unit or other improvements are not properly maintained and repaired, and if the maintenance responsibility for the unmaintained improvement lies with the Owner of the Unit, or in the event that such improvements are damaged or destroyed by an event of casualty and the Owner does not take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction, then the Association, after written notice to the Owner and the expiration of a thirty (30) day cure period, and with the approval of the Management Committee, shall have the right to enter upon the Unit to perform such work as is reasonably required to restore the Unit and other improvements to a condition of good order and repair; provided, however, if such repair and reconstruction due to an event of casualty cannot be reasonably performed within such thirty (30) day cure period, the Owner shall have such time as reasonably required to perform such repair and reconstruction so long as the work has been commenced within such cure period and is diligently pursued to completion. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owner of the Unit, upon demand. All unreimbursed costs shall be a lien upon the Unit until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article XII of this Declaration.

## ARTICLE XIV

### INSURANCE

14.1 Insurance Policies. The Association shall at all times maintain in force insurance meeting the following requirements:

14.1.1 Blanket Insurance. A “master” or “blanket” type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities; Limited Common Areas and Facilities; Convertible Space; the Building; all Units, including any fixtures, improvements, or betterments installed at any time in a Unit or the Limited Common Areas and Facilities appurtenant thereto; fixtures, machinery, building service equipment, personal property and supplies comprising a part of the Common Areas and Facilities maintained for the service of the Project or owned by the Association, but excluding items normally not covered by such policies. References herein to a “master” or “blanket” type policy of property insurance are intended to denote single entity insurance coverage. At a minimum, such “master” or “blanket” policy shall afford protection against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, which are customarily covered with respect to projects similar to the Project in construction, location, and use. Such “master” or “blanket” policy shall be in an amount not less than one hundred percent (100%) of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from coverage. Each Owner is an insured person under a property insurance policy. If the Management Committee deems such advisable, the insurance 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) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); 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 no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). The deductible amount for such a policy covering the Common Areas and Facilities shall be determined by the Management Committee, subject to applicable law. The Association shall set aside an amount equal to the amount of the property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.

14.1.2 General Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas and Facilities, Building exteriors, public ways in the Project, all other areas of the Project that are under the Association’s supervision, and any commercial spaces owned by the Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Project in construction, location, and use. Nevertheless, such coverage shall be for at least Three Million Dollars (\$3,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include,

without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and Facilities, Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Project in construction, location, and use, including but not limited to (where economically feasible and if available), bailee's liability, elevator collision liability, garage keeper's liability, host liquor liability, contractual and all-written contract insurance, workers' compensation and employer's liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least thirty (30) days' prior written notice to the Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

14.1.3 Fidelity Bonds. The Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to the Common Area Manager, the Common Area Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Association, for the Common Area Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. In addition, the Common Area Manager shall, within a reasonable time period, submit evidence to the Association that he or she has secured such fidelity insurance. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association, or the Common Area Manager, as the case may be, at any given time during the term of each bond.

14.1.4 Name of Insureds. The name of the insured under each policy required to be maintained by Section 14.1 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name if required by law.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), for the use and benefit of the individual Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

14.2 Required Endorsements. Each policy required to be maintained by Section 14.1 shall contain the standard mortgage clause, or equivalent endorsement (without contribution),

commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

14.3 Additional Provisions. Each policy required to be maintained by Section 14.1 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

14.4 Management Committee Duties. In contracting for the policies of insurance required to be maintained by Section 14.1, the Management Committee shall make reasonable efforts to secure (where economically feasible and reasonably available) coverage commonly required by private mortgage investors for projects similar in construction, location and use.

14.5 Additional Insureds. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any Insurance Trustee, who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

14.6 Insurance Provider Performance Requirements. Each insurance policy maintained pursuant to the foregoing Sections 14.1.1, 14.1.2, and 14.1.3 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this Article XIV shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

14.7 Regular Review. All insurance policies shall be reviewed at least annually by the Management Committee in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

14.8 Owner to Insure. Notwithstanding anything in this Article XIV to the contrary, it shall be the responsibility of each Owner, at such Owner's expense, to maintain physical damage insurance on such Owner's personal property and furnishings and on any upgrade made to the structures and fixtures of the Owner's Unit. In addition, an Owner may obtain such other and additional insurance coverage on and in relation to the Owner's Unit as the Owner in the Owner's sole discretion shall conclude to be desirable. However, none of such insurance coverages obtained by such Owner shall affect any insurance coverage obtained by the Association or cause the diminution or termination of that insurance coverage, nor shall such insurance coverage of an Owner result in apportionment of insurance proceeds as between policies of insurance of the Association and the Owner. An Owner shall be liable to the Association for the amount of any such diminution of insurance proceeds to the Association as a result of insurance coverage maintained by the Owner, and the Association shall be entitled to collect the amount of the diminution from the Owner as if the amount were a default Assessment, with the understanding that the Association may impose and foreclose a lien for the payment due. Any insurance obtained by an Owner shall include a provision waiving the particular insurance company's right of subrogation against the Association and other Owners. Each Owner shall be responsible to provide insurance coverage for the amount of any additional value to any Unit caused by any improvement to the Unit made by such Owner and not initially made by Declarant, including, but not limited to, the value of structural upgrades or fixtures supplied by the Owner, or if the applicable insurance is to be provided by the Association, for any additional insurance costs associated with such increased value due to the improvements.

14.9 Payment by Owners. An Owner who owns a Unit that has suffered Unit Damage (as defined below) as part of a Covered Loss (as defined below) is responsible for an amount calculated by applying the Unit Damage Percentage (as defined below) for that Unit to the amount of the deductible under the property insurance policy of the Association. If an Owner does not pay such amount within thirty (30) days after substantial completion of the repairs to the Unit, the Association may levy an assessment against the Owner for that amount. As used in this paragraph, "Covered Loss" means a loss, resulting from a single event or occurrence, that is covered by a property insurance policy of the Association, "Unit Damage" means damage to a Unit or to Limited Common Areas and Facilities applicable to that Unit, or both, and "Unit Damage Percentage" means the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage. If, in the exercise of the business judgment rule, the Management Committee determines that a Covered Loss is likely not to exceed the property insurance policy deductible of the Association and until it becomes apparent the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (i) the Owner's policy is considered the policy for primary coverage to the amount of the policy deductible of the Association for Unit Damage; (ii) the Association is responsible for any Covered Loss to any Common Areas and Facilities; (iii) an Owner who does not have a policy to cover Unit Damage is responsible for that damage and the Association may recover any payments the Association makes to remediate the Unit Damage; and (iv) the Association need not

tender the claim to the Association's insurer. The Association shall provide notice to an Owner of such Owner's payment obligations described in this Subsection.

## **ARTICLE XV**

### **DESTRUCTION OR DAMAGE**

15.1 Appointment of Association. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

15.2 Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having substantially the same vertical and horizontal boundaries as before.

15.3 Association's Duties. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

15.3.1 The Association shall give timely written notice to any Eligible Mortgagee on a Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or Facilities or a Unit subject to such First Mortgage.

15.3.2 As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

15.3.3 If the proceeds of the insurance maintained by the Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

15.3.4 If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 12.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the



proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

15.3.5 If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote one-hundred percent (100%) of the Total Votes of the Association vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a unanimous vote to carry out such repair and reconstruction, and if, to the extent permitted by the Condominium Act, Eligible Mortgagees who represent at least fifty-one percent (51%) of the Total Votes of the Association subject to Mortgages held by Eligible Mortgagees do not approve such repair and reconstruction, the Association shall record in the office of the Office of the Rich County Recorder, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

15.3.5.1 The Project shall be deemed to be owned in common by the Owners;

15.3.5.2 Each Owner shall own an undivided interest in the Project equal to his or her percentage ownership interest in the Common Areas and Facilities;

15.3.5.3 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 respective Owner in the Project; and

15.3.5.4 The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the percentage of undivided interest owned by each Owner in the Project after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

15.3.6 In no event shall an Owner of a Unit or any other party have priority over the holder of any First Mortgage on such Unit with respect to the distribution to such Unit of any insurance proceeds.

15.4 Diligence. If the damage or destruction is to be repaired or reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney in fact for the Owners, and no consent or other

action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original architectural plans and specifications.

15.5 Repair Fund. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from Special Common Assessments made pursuant to Section 12.1.3 hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in accordance with their undivided percentage interest in the Common Areas and Facilities.

15.6 Amendment of This Article. This Article XV shall not be amended unless Owners entitled to vote at least seventy-five percent (75%) of the Total Votes of the Association (or sixty-seven percent (67%) of the Total Votes of the Association after the expiration or termination of the Declarant Control Period) consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

## ARTICLE XVI

### TERMINATION

16.1 Vote Required. Except as otherwise provided in Article XIV and Article XV, the Project may be terminated only by the affirmative vote of Owners holding at least 75% of the Total Votes of the Association at a meeting of the Owners duly called for such purpose.

16.2 Removal from the Condominium Act. The Owners may remove the Project from the provisions of the Condominium Act by an instrument duly recorded to that effect., provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project. Provided further, as long as Declarant has ownership rights in the Project, its consent shall also be required to remove the Project from the provisions of the Condominium Act.

16.3 Termination Agreement. A termination agreement may provide that all the Project shall be sold following termination. If, pursuant to the 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.

16.4 Sale of Property Following Termination. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 16.1 and 16.2. 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 effect 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. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the Owners respective undivided interest in the Common Areas and Facilities. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their 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 their successors in interest remain liable for all Common Assessments and other obligations imposed on Owners by this Declaration.

16.5 Distribution of Proceeds. 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 Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

## **ARTICLE XVII**

### **EMINENT DOMAIN**

17.1 Notices. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner shall be entitled to notice thereof and the Management Committee shall, and the Owners at their respective expense may, participate in the proceedings incident thereto.

17.2 Condemnation of Common Areas and Facilities. With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner shall be entitled to a share in the damages in the same proportion as his or her ownership interest in the Common Areas and Facilities. This provision does not prohibit a majority of the Owners from authorizing the Management Committee to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Declaration and the Plat are duly amended.

17.3 Condemnation of Units. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damages or destruction pursuant to Article XV above and shall be deposited with the Management Committee as trustee. Even though the damage or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his or her award with the Management Committee, then at the option of the Management Committee, either a Special Common Assessment shall be made against the defaulting Owner and his or her Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

17.4 Removal from the Condominium Act. In the event the Project is removed from the provisions of the Condominium Act pursuant to Article XVI above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities.

17.5 Result of Condemnation. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Condominium Act, the taking shall have the following effects:

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

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

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

## **ARTICLE XVIII**

### **MORTGAGEE PROTECTION**

18.1 Roster of Mortgagees. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit Number, any such First Mortgagee, insurer or governmental guarantor shall be entitled to timely written notice of:

18.1.1 Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

18.1.2 Any delinquency in the payment of Common Assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such

First Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

18.1.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

18.1.4 Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 18.2 below or elsewhere herein.

18.1.5 Any judgment rendered against the Association.

18.2 Consent of Eligible Mortgagees. Except as provided elsewhere in this Declaration, or except as provided by the Condominium Act, the vote or prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible Mortgagees holding First Mortgages on Units having at least fifty-one percent (51%) of the votes of the Units subject to First Mortgages held by Eligible Mortgagees shall be required to:

18.2.1 Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

18.2.2 Amend any material provision of the Declaration, Articles, Bylaws or Plat. "Material provisions" include any provision affecting the following (an amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors, to comply with applicable law, or for clarification only):

18.2.2.1 Changes in the method of calculating the Common Assessments, obligations, maintenance fees, or other charges which may be levied against an Owner;

18.2.2.2 Reductions in reserves for maintenance, repair, and replacement of Common Areas and Facilities;

18.2.2.3 Responsibility for maintenance and repairs;

18.2.2.4 Reallocation or reassignment of interests in the Common Areas and Facilities, except where otherwise specifically permitted by this Declaration, or rights to their use;

18.2.2.5 Substantial reduction in hazard or fidelity insurance requirements;

18.2.2.6 Imposition of any restrictions on the leasing of Units;

18.2.2.7 Imposition of any restrictions on Owner's right to sell or transfer his or her Unit;

18.2.2.8 Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or

18.2.2.9 The benefits of Mortgagees.

Any Mortgagee, insurer or governmental guarantor who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within sixty (60) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

18.3 Assessment Lien Subordinate. The lien or claim against a Unit for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due; and the First Mortgagee thereunder that comes into possession of or that obtains title to such Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned. All taxes, Common Assessments and charges that may become liens prior to the First Mortgage under Utah law relate only to the individual Units and not to the Project as a whole.

18.4 Payment of Taxes and Other Charges. In the event any taxes or other charges which may or have become a lien on the Common Areas and Facilities are not timely paid, or in the event the required insurance described in Section 14.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefore from the Association.

18.5 Interpretation of Condominium Declaration. This Declaration shall in no way be interpreted to give an Owner, the Association, or any other party priority over any rights of a First Mortgagee of the Unit pursuant to its Mortgage in the case of payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or all or portions of the Common Areas and Facilities.

18.6 Maintaining Association Records. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours and as required by the Nonprofit Act and the Condominium Act.

18.7 Amendment to this Article. No Amendment to this Article XVIII shall materially adversely affect the rights of an Eligible Mortgagee under this Article XVIII who has recorded a valid First Mortgage prior to the recordation of any such Amendment.

## ARTICLE XIX

### AMENDMENT

19.1 Amendment by Owners. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Plat shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Article shall be accomplished through the recordation in the Office of the Rich County Recorder of an instrument executed by the Association. In such instrument an officer or member of the Management Committee of the Association shall certify that the vote required by this Article for amendment has occurred.

19.2 Amendment by Declarant. The Declarant alone may amend or terminate this Declaration or the other Condominium Documents prior to the closing of a sale of the first Unit. Notwithstanding anything contained in this Declaration or the other Condominium Documents to the contrary, this Declaration and the other Condominium Documents may also be amended unilaterally at any time and from time to time by Declarant: (a) if such Amendment is necessary to bring any provision into compliance with any applicable governmental statute, ordinance, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such Amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Unit. Further, prior to the expiration of the Declarant Control Period, Declarant may unilaterally amend this Declaration or the other Condominium Documents for any other purpose so long as any such Amendment does not materially adversely affect title to any property without the consent of the affected Owner.

19.3 Amendment at Request of Government Agency. Anything in this Article or Declaration to the contrary notwithstanding, Declarant also reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, or as requested by any other federal, state or local governmental agency which requests such an Amendment as a condition precedent to such agency's approval of this Declaration or approval of the sale of Units, or by any lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of an Amendment duly signed by the Declarant, specifying the nature of the qualifying reason for such amendment pursuant to this Section 19.3. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Units and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Article deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control.

19.4 Condominium Plat Amendments. Notwithstanding anything contained in this Declaration to the contrary, because the Plat has been recorded prior to the construction of the Units, Declarant reserves the right to unilaterally amend the Plat at any time, and from time to time, if such amendment is necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Plat.

19.5 Preservation of Developmental Rights and Control. It is the desire of Declarant to preserve its Developmental Rights and retain control of the Association and its activities during the anticipated period of planning and development of the Project. Any Amendment pursuant to the provisions of this Article that diminishes or alters any Developmental Right or such control of the Association shall be deemed null, void, and of no effect whatsoever unless the Declarant has joined in the execution of such Amendment.

## **ARTICLE XX**

### **PROJECT DESIGN REVIEW COMMITTEE**

20.1 Purpose. Prior to any review or approval by Garden City, the Project Design Review Committee shall be the first to review, study and either approve, reject, or request resubmittal of proposed improvements to a Unit, all in compliance with this Declaration, and as further set forth in the rules and regulations of the Project Design Review Committee, and the Project Design Guidelines. The Project Design Review Committee reserves the right, but not the obligation, to promulgate, enforce and interpret the Project Design Guidelines.

20.2 Membership of Project Design Review Committee. The Project Design Review Committee shall be composed of individuals or entities as Declarant may determine in its sole and subjective discretion, who need not be Owners. So long as Declarant owns any Unit or other property within the Project, the Project Design Review Committee shall consist of four (4) regular members, two (2) of whom shall be appointed, removed and replaced by, and serve at the pleasure of, Declarant, in its sole and subjective discretion. At such time as Declarant no longer owns any Unit or other property within the Project, the Project Design Review Committee shall consist of such number of regular and alternate members as the Management Committee may deem appropriate from time to time (but in no event less than three (3) nor more than seven (7) regular members, nor less than one (1) nor more than three (3) alternate members), each of whom shall be appointed by, and serve at the pleasure of, the Management Committee in accordance with any rules and regulations of the Project Design Review Committee and the Project Design Guidelines. Declarant may at any time voluntarily surrender in writing its right, as Declarant, to appoint and remove two (2) members of the Project Design Review Committee pursuant to this Section 20.2 and in that event, Declarant may require, for so long as such Declarant owns any Unit or other property within the Project, that specified actions of the Project Design Review Committee, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

20.3 Expenses of the Project Design Review Committee. All expenses of the Project Design Review Committee shall be paid by the Association, subject to Declarant's or the Association's right to charge a reasonable design review fee to defray such expenses.



20.4 Project Design Guidelines. The Project Design Review Committee may adopt, establish, and publish from time to time the Project Design Guidelines. The Project Design Guidelines are designed to complement and be consistent with the purposes and operations at the Project, as described in the Condominium Documents. The Project Design Guidelines, if adopted, shall define and describe the design standards for the Project and the various uses within the Project and shall not contradict the purposes expressed in the Condominium Documents. The Project Design Guidelines may be modified or amended from time to time by the Project Design Review Committee. The Project Design Review Committee, in its sole discretion, may excuse compliance with such Project Design Guidelines as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. The Project Design Guidelines shall not be subject to modification or amendment by the Management Committee or Owners. The Project Design Guidelines shall be established solely by the Project Design Review Committee and Declarant. Should the Project Design Review Committee elect not to adopt Project Design Guidelines, proposed developments and improvements to a Unit shall be subject to reasonable review by the Project Design Review Committee in compliance with the overall nature of the Project.

20.5 Procedural Rules. As part of the Project Design Guidelines, if any are adopted, the Project Design Review Committee shall make and publish such rules and regulations as it may deem appropriate to govern its proceedings. Appeals shall be conducted as provided in the Rules and Regulations and Project Design Guidelines.

20.6 Limitation of Liability. The Project Design Review Committee shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Project Design Review Committee, nor any individual Project Design Review Committee member, shall be liable to any person for any official act of the Project Design Review Committee in connection with submitted plans and specifications, except to the extent the Project Design Review Committee or any individual Project Design Review Committee member acted with willful misconduct, intent to inflict harm on the Association or an Owner, or gross negligence. Notwithstanding that the Project Design Review Committee has approved plans and specifications, neither the Project Design Review Committee, any of its members, Declarant, the Association, nor the Management Committee, shall be responsible or liable to any Owner, other developer or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of the construction of any Unit or other improvement. Neither the Management Committee, the Project Design Review Committee, or any agent thereof, Declarant, any affiliate of Declarant, and any of Declarant's members, employees, agents or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Condominium Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Project Design Review Committee shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Project Design Review Committee's decision. The Association, however, shall not be obligated to indemnify any member of the Project Design Review Committee to the extent any such member of the Project Design Review Committee shall be adjudged to be liable for willful misconduct, intentional infliction of harm on the Association or an Owner, or gross negligence in the performance of his or her duty as a member of the Project Design Review Committee, unless and then only to the extent that the court in which such action or suit may be brought shall determine upon application that, despite the adjudication of liability

but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

## ARTICLE XXI

### VOTING

21.1 Voting Rights. At any meeting of the Association, each Owner of a Unit, including Declarant, either in person or by proxy, shall be entitled to the same number of votes as specified on Exhibit B, which votes shall be appurtenant to each respective Unit as set forth on such Exhibit B. The voting rights appurtenant to each Unit shall vest upon execution and recording of this Declaration.

21.2 Permanent Character. The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the consent of two-thirds of the Unit Owners expressed in a duly recorded Amendment.

## ARTICLE XXII

### EASEMENTS

22.1 Encroachment on Easements. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

22.2 Easement for Improvements. Improvements, including Units, Common Areas and Facilities and Limited Common Areas and Facilities, constructed as subsequent phases of the Project, if any, may encroach upon portions of the Common Areas and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and the activities necessary to repair, maintain and operate such improvements is hereby granted.

22.3 Easement for Other Facilities. It is acknowledged that Declarant and its affiliates may develop other residential and recreational facilities within or nearby the Lake Residences at Bear Lake, and that such facilities may be intended to create a community of accommodations and amenities. In furtherance of such objective, Declarant shall have the right to grant easements, licenses, leases, and other use rights in and to portions of the Common Areas and Facilities of the Project, at Declarant's sole and subjective discretion, without the vote or concurrence of Owners,

Mortgagees or the Association, which may benefit owners of interests in other projects within or nearby the Lake Residences at Bear Lake.

22.4 Easement over Common Areas and Facilities. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he or she is occupying and to any Limited Common Areas and Facilities appurtenant to his or her Unit, and shall have the right to the horizontal, vertical and lateral support of his or her Unit.

22.5 Association Easement. The Association shall have an easement to make such use of the Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas and Facilities for use by the Owners and the Association.

22.6 Construction Easement. The Declarant shall have a temporary construction easement over the Common Areas and Facilities for the purpose of doing all things that are reasonably necessary as a part of constructing future phases of the Project including all future Buildings and other physical improvements as well as all Units and Common Areas and Facilities. The Owners of Units which have been constructed in prior phases do hereby acknowledge and agree that there will be construction activities, congestion, increased parking area usage and varying parking configurations, construction stagings, cranes, blocked intersections, restricted access to and from the Project, traffic, noises, dust, odors, vibrations, and the like which may temporarily disrupt their quiet enjoyment of their Units and the Common Areas and Facilities appurtenant thereto, and such Owners do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the restrictions set forth in Article X hereof.

22.7 Easement for Infrastructure. Declarant, for itself and its successors and assigns, including Owners, retains a right and easement in and about the Building for the construction and installation of any duct work, additional plumbing, or other additional services or utilities in the Common Areas and Facilities in connection with the improvement or alteration of any Unit, including the right of access to such areas of the Common Areas and Facilities as is reasonably necessary to accomplish such improvements. In the event of a dispute among Owners with respect to the scope of the easement reserved in this Article, the decision of the Management Committee shall be final.

22.8 Grant Implied. All conveyances of Units within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

22.9 Satellite and Telecommunication Facilities. Declarant reserves a non-exclusive easement for itself and its assignees to construct, operate, maintain, repair and replace all types of satellite and telecommunication facilities within the Project. In connection with this easement, Declarant shall also be authorized to designate the location of all such facilities within the Project. Outdoor satellite and telecommunication facilities shall be centrally located on the roof of each Building, and the placement of all such facilities shall comply with applicable requirements

(including requirements relating to appearance) in the Rules and Regulations and Project Design Guidelines. Declarant further reserves a right of access to such facilities over, across, and through all other Common Areas and Facilities of the Project in order to access the telecommunications facilities to exercise the rights established herein. Declarant may transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of the rights under this Section 22.9 without the consent of any Owner, Mortgagee or the Association. The Association, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.

22.10 Utility Easement. There is hereby created a general easement upon, across, over, in, and under all of the Property for ingress and egress and for installation, replacement, repair, and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, irrigation, electricity, and a cable communication system. By virtue of this easement, it shall be expressly permissible and proper for the companies providing electrical, telephone, data transmission, and other communication services to erect and maintain the necessary equipment on or beneath the Property and to affix and maintain electrical, communications, and telephone wires, circuits, and conduits under the Property. Any utility company using this general easement shall use its best efforts to install and maintain the utilities provided without unduly disturbing the uses of the Owners, the Association, and Declarant; shall prosecute its installation and maintenance activities as promptly as reasonably possible; and shall restore the surface to its original condition as soon as possible after completion of its work. Should any utility company furnishing a service covered by the general easement request a specific easement by separate recordable document, Declarant or the Management Committee shall have, and are hereby given, the right and authority to grant such easement upon, across, over, or under any part or all of the Property without conflicting with the terms hereof. The easements provided for in this Section 22.10 shall in no way affect, avoid, extinguish, or modify any other recorded easement on the Property. Notwithstanding the foregoing grant of blanket utility easements, Declarant reserves the right to record an instrument which narrows and limits such grant of utility easement to the normal easement width of the utility in those specific areas of the Project which actually contain the utility facilities as described in such instrument and for the purposes described therein. Such reserved right is subject to the utility companies' rights then located under the real property depicted on the Plat.

22.11 Public Safety Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

22.12 Streets, Parking, and Facilities. Declarant reserves (a) the right to dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; and (b) the right to enter into, establish, execute, amend, and otherwise perform under contracts and agreements for the use, lease, repair maintenance or regulation of parking or recreational facilities, which may or may not be a part of the Property for the benefit of the Owners, or the Association. The Rules and Regulations may set forth additional requirements and restrictions on the size and types of vehicles that may be parked within the Project and the duration and location of such parking. Furthermore, the Plat may indicate or set forth particular driveways for which no parking

is allowed. Garages in Units appurtenant to such driveways must be labeled with a sign approved by the Project Design Review Committee that indicates that no parking is allowed.

22.13 Easement for Paths. Declarant reserves the right to grant easements for trails, pathways, sidewalks, pedestrian corridors, bike paths, and the like (collectively, "Paths") to and for the benefit of the Association, Owners, and other entities and individuals not within the Project, together with the right to enter into, establish, execute, amend, and otherwise perform under contracts and agreements for the use, repair, maintenance and regulation of such Paths. The Rules and Regulations may set forth additional requirements and restrictions on the use of the Paths.

## ARTICLE XXIII

### NOTICES

23.1 Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by electronic transmission. Consent to electronic notice is deemed granted in the event an Owner provides an e-mail or other electronic address to the Association. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if sent electronically, when the transmission is received, except that if the transmission is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address may be changed from time to time by notice in writing to the Management Committee addressed to:

Management Committee  
Lake Residences at Bear Lake Condominium Association  
C/O John Curtis, Receiver  
15 W South Temple, Suite 500  
Salt Lake City, UT 84101

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

## ARTICLE XXIV

### ENFORCEMENT

24.1 Compliance with Condominium Documents. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Condominium Documents and decisions issued pursuant thereto. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with provisions of the Condominium Documents or the decisions of the Association. Owners shall have a similar right or action against the Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Management Committee, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Management Committee to impose monetary penalties or fines, temporary suspensions of an Owner's right to the use of the Common Areas and Facilities, or other appropriate discipline so long as the Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Management Committee shall determine whether the Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Management Committee. The Management Committee may delegate to the Common Area Manager, the power and authority to carry out disciplinary actions duly imposed. Any fine that the Management Committee imposes against an Owner pursuant to this Section for a violation of the Condominium Documents shall be assessed in accordance with the provisions of Section 57-8-37 of the Condominium Act.

24.2 No Forfeiture; Exceptions. The Association shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of the Declaration or the Rules and Regulations for the Project except pursuant to:

24.2.1 The judgment of a court; or

24.2.2 A foreclosure for the failure of an Owner to pay assessments duly levied by the Association.

24.3 Judicial Authority Required. The Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.

## ARTICLE XXV

### DECLARANT

The term "Declarant" as used herein means and includes Declarant and any person or persons who might acquire title from it to all or some of the unsold Units (other than sales of Units in the ordinary course of Declarant's business), Convertible Space, through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Units or Additional Land in a sale in the nature of

a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Declaration and the Condominium Act. Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Rich County Recorder, State of Utah. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

## ARTICLE XXVI

### DISPUTE RESOLUTION

26.1 Mediation and Arbitration. The Bound Parties (defined below) agree that it is in the best interests of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees to first submit such Claim to the mediation procedures set forth in Section 26.2 in a good faith effort to resolve such Claim. If mediation fails, the Arbitration Provision (defined below) below shall apply.

#### 26.2 Mediation Procedures.

26.2.1 The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Management Committee stating plainly and concisely: (i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim; (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); (iii) the Claimant's proposed resolution or remedy; and (iv) the Claimant's desire to meet with the Respondent to discuss in good faith, ways to resolve the Claim.

26.2.2 The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Management Committee may appoint a representative to assist the parties in negotiating a resolution of the Claim.

26.2.3 If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Management Committee (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Rich or Salt Lake Counties. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

26.2.4 If the parties do not settle the Claim within 60 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to commence arbitration proceedings.

26.2.5 Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney's fees and court costs.

26.3 Opt-Out Right. IF AN OWNER DOES NOT WANT THE FOLLOWING ARBITRATION PROVISION TO APPLY, THE OWNER MUST SEND A LETTER TO DECLARANT, SIGNED BY THE OWNER (AND ANY CO-OWNER OF THE SAME UNIT) AND ADDRESSED TO WATERS EDGE PROPERTIES, LLC AT 15 W SOUTH TEMPLE, SUITE 500, SALT LAKE CITY, UT 84101, ATTN: ARBITRATION OPT-OUT. THE LETTER MUST BE SENT WITHIN THIRTY (30) DAYS AFTER THE CONVEYANCE OF AN OWNER'S UNIT TO SUCH OWNER, AND MUST STATE THAT THE OWNER DOES NOT WANT ARBITRATION TO APPLY TO THE MATTERS DESCRIBED IN THIS ARTICLE XXVI. ANY OPT OUT WILL RENDER THIS ARBITRATION PROVISION NULL AND VOID BUT WILL HAVE NO OTHER EFFECT ON THE OWNER'S RIGHTS.

26.4 Arbitration Terms Defined. In the arbitration provision described in this Article XXVI ("Arbitration Provision"), the following capitalized words, phrases or terms have the meanings set forth below:

26.4.1 "Institutional Party" means Declarant and its affiliates; the Association during the Declarant Control Period; any third party that provides any product or service to a Consumer Party in connection with this Declaration, if and only if such third party is named as a co-party with another Institutional Party in a Claim asserted by a Consumer Party; their successors and assigns; and the agents, representatives, members, employees, officers and/or directors of the foregoing entities.

26.4.2 "Consumer Party" means the Owners; their heirs, successors and assigns; and the Association after the Declarant Control Period.

26.4.3 "Bound Party" means any Institutional Party or Consumer Party who asserts a Claim or has a Claim asserted against such party.

26.4.4 "Claim" means any claim, dispute or controversy between an Institutional Party and a Consumer Party, other than an Exempt Claim, arising out of or relating in any way to this Declaration or any other documents governing the Project, the Property, or the



Units, including any such claim, dispute or controversy regarding or arising over the marketing and sale of Units; the terms of this Declaration or any other documents governing the Project; the design, specifications, surveying, planning, supervision, testing, observation of construction or construction of an improvement to, or survey of, the Property; or the maintenance or use of the Property. This includes, without limitation, disputes concerning the validity, enforceability, arbitrability or scope of this Arbitration Provision or this Declaration; disputes involving alleged fraud or misrepresentation, breach of contract, negligence or violation of statute, regulation or common law; and disputes involving requests for declaratory relief, injunctions or other equitable relief.

26.4.5 “Exempt Claim” means any of the following Claims, which will not be subject to this Arbitration Provision: (i) any individual action brought by a Consumer Party in small claims court or a relevant state’s equivalent court, unless such action is transferred, removed, or appealed to a different court; (ii) any action to effect a judicial or non-judicial foreclosure; (iii) any eviction or other summary proceeding to secure possession of real property or an interest therein; (iv) any action in any bankruptcy proceeding to assert, collect, protect, realize upon or obtain possession of the collateral for any amount owed; (v) any action to quiet title; (vi) any action insofar as it seeks provisional or ancillary remedies in connection with any of the foregoing; (vii) any self-help remedy, such as the refusal of an Institutional Party to allow a Consumer Party to use a Unit, or any individual action in court by one party that is limited to preventing the other party from using a self-help remedy and that does not involve a request for damages or monetary relief of any kind; and (viii) any dispute concerning the validity and effect of Section 26.10 below, the ban on class actions and certain other proceedings (the “Class Action Ban”). Notwithstanding the prior sentence, at the request of a Consumer Party, the Institutional Parties will agree to arbitrate under this Arbitration Provision any matter covered by items (ii)–(vi) above if arbitration will afford the parties substantially the same rights and remedies as a court action. Any dispute regarding the question of whether arbitration will afford the parties substantially the same rights and remedies as a court action is also an Exempt Claim and shall be determined exclusively by the court and not by an arbitrator. If one or more Institutional Parties are allowed to proceed outside arbitration with respect to any of the matters covered by items (ii)–(vi) above, the Consumer Party may assert in court on an individual basis any related defenses or Claims such Consumer Party may have.

26.4.6 “Administrator” means any of the following companies to be selected by the Bound Party initiating the arbitration: the American Arbitration Association (“AAA”), 1633 Broadway, 10th Floor, New York, NY 10019, <http://www.adr.org>; or JAMS (“JAMS”), 18881 Von Karman Ave., Suite 350, Irving, CA 92612, <https://www.jamsadr.com>. However, neither AAA, nor JAMS may serve as Administrator without the consent of all Bound Parties asserting or defending a Claim, if it adopts or has in place any formal or informal policy that is inconsistent with and purports to override the terms of the Class Action Ban.

26.5 Arbitration of Claims. Unless a Consumer Party has opted out of this Arbitration Provision, upon the election of any Consumer Party or Institutional Party asserting or defending a Claim, such Claim shall be resolved by binding individual (and not class) arbitration. Notice of an election to arbitrate a Claim may be given after a lawsuit begins and may be given in papers

filed in the lawsuit. Any arbitration will be conducted in accordance with this Arbitration Provision and, to the extent consistent with this Arbitration Provision, the rules of the Administrator in effect at the time the Claim is filed.

26.6 Fees. If a Consumer Party cannot obtain a waiver of any fees of the Administrator or arbitrator, the Institutional Parties will consider in good faith any request for them to pay such fees for the Consumer Party. Each Bound Party shall bear the fees and expenses of that Bound Party's attorneys, experts, and witnesses, provided that the Institutional Parties will bear the reasonable fees and expenses incurred by a Consumer Party if the Consumer Party prevails on a Claim the Consumer Party has asserted against the Institutional Parties. Also, the Institutional Parties will pay any arbitration, attorneys' and/or other fees and expenses they are required to pay by applicable law or they are required to pay in order to enforce this Arbitration Provision. If a participatory arbitration hearing is requested, it will take place in Rich or Salt Lake County, Utah or, if the Administrator determines that such location would be unfair to a Consumer Party, at a location reasonably convenient to such Consumer Party and the Institutional Parties.

26.7 Governing Law. This Arbitration Provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "FAA") and not state arbitration laws, provided that Utah law shall govern to the extent that state law is relevant under the FAA in determining the enforceability of this Arbitration Provision. The arbitrator shall be obligated to follow applicable substantive laws, statutes of limitations and privilege rules related to any Claim. The arbitrator shall award the remedies, if any, that would be available in an individual court proceeding if arbitration had not been elected. This includes, without limitation, compensatory, statutory and punitive damages (which shall be governed by the constitutional standards applicable in judicial proceedings); declaratory, injunctive and other equitable relief; and attorneys' fees and costs. Upon the timely request of any Bound Party, the arbitrator shall write a brief explanation of the grounds for his or her decision. In addition to the Bound Parties' rights under the Administrator's rules to obtain information prior to the hearing, any Bound Party may ask the arbitrator for more information from the other party. The arbitrator will decide the issue in his or her sole discretion, after allowing the other Bound Party the opportunity to object.

26.8 Appeal of Arbitrator's Decision. Any court with jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding, except for any appeal right under the FAA. However, for Claims involving more than \$50,000, any Bound Party may appeal the award to a three-arbitrator panel appointed by the Administrator, which will reconsider from the start any aspect of the initial award that is appealed. The panel's decision will be final and binding, except for any appeal right under the FAA. Fees and costs associated with an appeal shall be governed by Section 26.6 above.

26.9 Jury Trial Waiver. IF A BOUND PARTY ELECTS TO ARBITRATE A CLAIM, NO BOUND PARTY WILL HAVE THE RIGHT TO PURSUE THAT CLAIM IN COURT OR HAVE A JURY DECIDE THE CLAIM.

26.10 Class Action Ban. NO BOUND PARTY MAY PARTICIPATE IN A CLASS ACTION IN COURT OR IN CLASS-WIDE ARBITRATION, EITHER AS A REPRESENTATIVE, CLASS MEMBER OR OTHERWISE. NO BOUND PARTY MAY PARTICIPATE IN A PRIVATE ATTORNEY GENERAL PROCEEDING IN COURT OR IN

ARBITRATION. NO CLAIMS BY OR AGAINST A BOUND PARTY MAY BE JOINED OR CONSOLIDATED WITH CLAIMS BY OR AGAINST ANY OTHER PERSON (EXCEPT FOR CLAIMS INVOLVING THE HEIRS AND SUCCESSORS OF SUCH CONSUMER PARTIES). THE ARBITRATOR SHALL HAVE NO AUTHORITY TO CONDUCT A CLASS-WIDE ARBITRATION, PRIVATE ATTORNEY GENERAL ARBITRATION OR MULTI-PARTY ARBITRATION INCONSISTENT WITH THIS SECTION. NOTWITHSTANDING ANY LANGUAGE IN THIS ARBITRATION PROVISION TO THE CONTRARY, ANY DISPUTE ABOUT THE VALIDITY OR EFFECT OF THE ABOVE CLASS ACTION BAN SHALL BE RESOLVED BY A COURT AND NOT AN ARBITRATOR OR THE ADMINISTRATOR.

26.11 Severability. If a determination is made that any part of this Arbitration Provision is unenforceable (other than the Class Action Ban) or that this Arbitration Provision is unenforceable as to any party or parties, this provision shall nonetheless remain enforceable in all other respects and as to all other parties. If the Class Action Ban is held to be unenforceable in connection with any Claim subject to the Class Action Ban, this Arbitration Provision (other than this sentence) shall be null and void in such proceeding, provided that the Institutional Party seeking to enforce the Class Action Ban shall have the right to appeal at the earliest possible time any holding that the Class Action Ban is unenforceable.

26.12 Notice of Claim; Right to Address. Prior to asserting a Claim, the Bound Party with the Claim (the "Claimant") shall give the Bound Party that is the subject of the Claim written notice of the Claim and a reasonable opportunity, not less than thirty (30) days, to resolve the Claim. The Claimant's claim notice must include the Claimant's name, address and telephone number. Any claim notice must explain the nature of the Claim and the relief that is demanded. A Consumer Party may only submit a claim notice on his or her own behalf and not on behalf of any other party. The Claimant must reasonably cooperate in providing any information about the Claim that the other Bound Party reasonably requests. If: (i) a Consumer Party submits a claim notice in accordance with this Section on his or her own behalf (and not on behalf of any other party); (ii) the Institutional Party refuses to provide the requested relief; and (iii) an arbitrator subsequently determines that the Consumer Party was entitled to such relief (or greater relief), the arbitrator shall award the Consumer Party at least \$7,500 (not including any arbitration fees and attorneys' fees and costs to which the Consumer Party may be entitled under this Arbitration Provision or applicable law).

## ARTICLE XXVII

### DRONES

The operation of a drone in the Project, if allowed by the Association, must comply with all Federal Aviation Administration rules and the Association's Rules and Regulations. No Owner or any other person may operate, cause, allow or authorize the operation of a drone in the airspace above any portion of the Project in such a way as to invade the privacy of any Owner, guests, residents or vendors, whether equipped with a camera or otherwise. Prior written approval of the Management Committee must be given for the operation of a drone in a manner inconsistent with the Association's Rules and Regulations. For purposes of this Article XXVII, a "drone" is defined as an unmanned aircraft and all of the associated support equipment, control station, data links,

telemetry, communications and navigation equipment, etc., necessary to operate the unmanned aircraft.

## **ARTICLE XXVIII**

### **AGENT FOR SERVICE OF PROCESS**

The agent for service of process under the Condominium Act until the expiration of the Developer Control Period shall be Water's Edge Properties, LLC, C/O John Curtis, Receiver, with an address at 15 W South Temple, Salt Lake City, UT 84101. Thereafter, the agent for service of process shall be the Common Area Manager, or such other persons as the Management Committee may designate.

## **ARTICLE XXIX**

### **SEVERABILITY**

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

## **ARTICLE XXX**

### **CONFLICT**

In case of any conflict between this Declaration and the Condominium Articles or the Condominium Bylaws, this Declaration shall control. In case of any conflict between the Condominium Articles and the Condominium Bylaws, the Articles shall control. The foregoing to the contrary notwithstanding, in the event of any inconsistency between this Declaration or the Condominium Articles or the Condominium Bylaws, on the one hand, and or any applicable law, including the Nonprofit Act, the Condominium Act, or the Federal Fair Housing Administration Act, on the other, then in all events the applicable law shall control.

## **ARTICLE XXXI**

### **CAPTIONS**

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

## **ARTICLE XXXII**

### **LAW CONTROLLING**

This Declaration and the Plat and all issues and disputes arising out of either, shall be construed and controlled by and under the laws of the State of Utah.

**ARTICLE XXXIII**

**EFFECTIVE DATE**

This Declaration shall take effect when recorded in the Office of the Rich County Recorder,  
State of Utah.

[Remainder of page left intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date first set forth above.

DECLARANT:

WATER'S EDGE PROPERTIES, LLC, a  
Utah limited liability company

By : *John Curtis*  
John Curtis, Receiver

STATE OF UTAH )  
COUNTY OF Salt Lake ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of July, 2025, by John Curtis the Receiver of Water's Edge Properties, LLC, a Utah limited liability company, on behalf of such entity.



*Raani Erekson*  
Notary Public  
My Commission Expires: 9-15-2027


**LENDER CONSENT, SUBORDINATION AND NON-DISTURBANCE**

The undersigned, Construction Loan Services II, LLC ("Lienholder") is the beneficiary under that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents, Assignment of Contracts and Plans, and Fixture Filing (Loan No. 72750), dated as of June 24, 2022, between Water's Edge Properties, LLC, a Utah limited liability company as trustor, and Real Advantage Title, as trustee for the benefit of Lienholder, recorded in the official records of Rich County, Utah on June 30, 2022 as Document No. 103582 ("Deed of Trust"), consents to all the provisions contained in the attached First Amended Declaration of Condominium of Lake Residences at Bear Lake, , executed by Grantor and recorded in the official records of Rich County, Utah (the "Declaration"), and covenants and agrees that the lien of the Deed of Trust and other related documents shall be junior, subordinate and subject to said Declaration, and that any foreclosure of the Deed of Trust and other related documents, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the attached Declaration. Any person or entity acquiring the Property, whether through Grantor, Lender, their successors or assigns, shall take such property subject to the attached Declaration and the provisions contained therein.

DATED this 14 day of July, 2025.

LIENHOLDER:

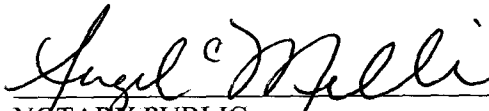
CONSTRUCTION LOAN SERVICES II,  
LLC

By:   
Name: Curt Altig  
Its: Chairman

STATE OF WASHINGTON                    )  
  :ss.  
COUNTY OF                                )

On this 14 day of July, 2025, personally appeared before me Curt Altig, the Chairman of Construction Loan Services II, LLC, and being duly authorized to do so, executed the foregoing instrument for the purposes set forth therein.



  
NOTARY PUBLIC  
Residing at: Puum Co

My Commission Expires: 4.25.2027



**LENDER CONSENT, SUBORDINATION AND NON-DISTURBANCE**

The undersigned Capital Community Bank ("Lienholder") is the beneficiary under that certain Deed of Trust, dated as of June 11, 2019, between Water's Edge Properties, LLC, a Utah limited liability company as trustor, and Capital Community Bank as trustee for the benefit of Lienholder, recorded in the official records of [ Rich ] County, Utah on June 12, 2019 as Document No. 95108 ("Deed of Trust"), consents to all the provisions contained in the attached First Amended Declaration of Condominium of Lake Residences at Bear Lake, , executed by Grantor and recorded in the official records of Rich County, Utah (the "Declaration"), and covenants and agrees that the lien of the Deed of Trust and other related documents shall be junior, subordinate and subject to said Declaration, and that any foreclosure of the Deed of Trust and other related documents, whether judicially or through the exercise of power of sale, or the exercise of any other rights and remedies thereunder shall not terminate or otherwise adversely affect the continuing validity and enforceability of any of the terms and provisions of the attached Declaration. Any person or entity acquiring the Property, whether through Grantor, Lender, their successors or assigns, shall take such property subject to the attached Declaration and the provisions contained therein.

DATED this 9<sup>th</sup> day of July, 2025.

LIENHOLDER:

Capital Community Bank

By: [Signature]

Name: David A. Frances

Its: Executive Vice President  
Chief Credit Officer

STATE OF Utah )

:ss.

COUNTY OF Utah )

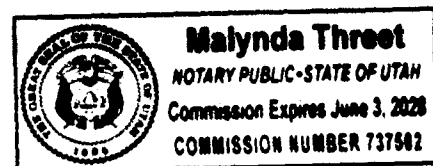
On this 9<sup>th</sup> day of July, 2025, personally appeared before me David A. Frances, the Executive Vice President of Capital Community Bank and being duly authorized to do so, executed the foregoing instrument for the purposes set forth therein.

[Signature]

NOTARY PUBLIC

Residing at: Coram, Utah

My Commission Expires: June 3, 2025



**EXHIBIT A**  
**LEGAL DESCRIPTION**  
**FOR**  
**LAKE RESIDENCES AT BEAR LAKE**  
**CONDOMINIUM ASSOCIATION, INC.**  
**SUBDIVISION BOUNDARY**

A parcel of land being a portion of the Parcel described in Exhibit "D" in Filing No. 107541 in the official records of Rich County, Utah, which parcel is also located in Section 21, Township 14 North, Range 5 East, Salt Lake Base and Meridian, Garden City, Rich County, Utah, and more particularly described as follows:

Commencing at the brass cap Monument found at the West quarter corner of said Section 21, from which the aluminum cap found at the West quarter corner of Section 16 bears North 00° 31' 22" East by record a distance of 5,414.12 feet;

Thence North 00° 31' 22" East 658.53 feet;

Thence South 89° 28' 38" East 1928.23 feet to the Southwest corner of Block 6, of the Garden City Survey;

Thence South 89° 05' 28" East 272.81 feet along the North right of way line of 150 South Street to a 5/8" rebar with aluminum cap labeled, "A. A. Hudson, PLS 370541", the True Point of Beginning;

Thence North 00° 59' 03" East 308.10 feet to a 5/8" rebar with aluminum cap set on the boundary of the said Parcel described in Exhibit "D";

Thence along the boundary of the said Parcel described in Exhibit "D" the following 5 courses:

Thence South 89° 01' 16" East 104.92 feet to a 5/8" rebar with aluminum cap;

Thence South 00° 58' 44" West 245.33 feet to a 5/8" rebar with aluminum cap;

Thence North 89° 01' 16" West 96.32 feet to a found JSH cap and rebar;

Thence South 00° 54' 32" West 62.76 feet to a found JSH cap and rebar;

Thence North 89° 05' 28" West 8.71 feet to the True Point of Beginning.

Containing 0.6 acres of land.

**EXHIBIT "B"****SCHEDULE OF UNITS, SQUARE FOOTAGE, PAR VALUE POINTS,  
VOTES AND UNDIVIDED INTERESTS IN COMMON AREAS****Schedule of Units, Square Footage,  
Votes and Undivided Interests**

Unit Identifying Number	Approx. Sq. Footage of Unit <sup>1</sup>	Undivided Interest Per Unit <sup>2</sup>	No. of Votes Per Unit <sup>3</sup>
101E	1635	2.8%	8
102E	1635	2.8%	8
201E	1635	2.8%	8
202E	1635	2.8%	8
301E	1635	2.8%	8
302E	1635	2.8%	8
401E	1635	2.8%	8
402E	1635	2.8%	8
101D	1635	2.8%	8
102D	1635	2.8%	8
201D	1635	2.8%	8
202D	1635	2.8%	8
301D	1635	2.8%	8
302D	1635	2.8%	8
401D	1635	2.8%	8
402D	1635	2.8%	8
101C	1635	2.8%	8
102C	1635	2.8%	8
201C	1635	2.8%	8
202C	1635	2.8%	8
301C	1635	2.8%	8
302C	1635	2.8%	8
401C	1635	2.8%	8
402C	1635	2.8%	8
101B	1635	2.8%	8
102B	1635	2.8%	8
201B	1635	2.8%	8
202B	1635	2.8%	8
301B	1635	2.8%	8
302B	1635	2.8%	8
401B	1635	2.8%	8

Unit Identifying Number	Approx. Sq. Footage of Unit <sup>1</sup>	Undivided Interest Per Unit <sup>2</sup>	No. of Votes Per Unit <sup>3</sup>
402B	1635	2.8%	8
Convertible Space (Building E – Phase 8A)	1241	2.1%	6
Convertible Space (Building D – Phase 8B)	1241	2.1%	6
Convertible Space (Building C – Phase 7A)	1241	2.1%	6
Convertible Space (Building B – Phase 7B)	1241	2.1%	6
Totals:	57,284	98%	280

<sup>1</sup> Once the Units are completed, Declarant has the unilateral right, but not the obligation to amend this Exhibit B to reflect the actual Square Footage of the Units, as constructed.

<sup>2</sup> May total slightly more or less than 100% or 100 due to rounding.

<sup>3</sup> Whole numbers shown reflect the correct rounded votes per Unit

**EXHIBIT C**

Association Bylaws

*[Attached hereto and incorporated herein by this reference.]*

**Exhibit C**  
**AMENDED BYLAWS**  
**OF**  
**LAKE RESIDENCES AT BEAR LAKE CONDOMINIUM ASSOCIATION, INC.**

The administration of the Lake Residences at Bear Lake Condominium Association, Inc. ("Association") shall be governed by the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Annotated) ("Nonprofit Act"), the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Annotated) ("Condominium Act"), the Declaration of Condominium of Lake Residences at Bear Lake, recorded in the Office of the Rich County Recorder, State of Utah ("Condominium Declaration"), the Articles of Incorporation of Lake Residences at Bear Lake Condominium Association, Inc. ("Articles") and these Bylaws (as the Condominium Declaration, Articles and these Bylaws may from time to time be amended). Terms which are capitalized in these Bylaws and which are not otherwise defined herein shall have the meaning set forth in the Condominium Declaration.

**ARTICLE 1**

**BYLAWS APPLICATION**

All present and future Owners, Mortgagees, lessees and occupants of Units and their employees and guests, and any other persons who may use the facilities of the Project in any manner are subject to the Condominium Declaration, these Bylaws and all rules and regulations made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance of a Unit, or the occupancy of any Unit, shall constitute an agreement that the provisions of the Condominium Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with, including, but not limited to, the creation of any fractional or club plan pursuant to the terms of the Condominium Declaration.

**ARTICLE 2**

**MANAGEMENT COMMITTEE**

2.1 The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by the Management Committee consisting of not less than three (3) nor more than five (5) Directors. The initial Management Committee shall be appointed by Declarant.

2.2 The Condominium Declaration establishes a Declarant Control Period of the Association, during which period Declarant or persons designated by it have authority to appoint and remove the officers of and Directors on the Management Committee. The Declarant Control Period shall terminate as set forth in the Condominium Declaration.

2.3 Within one hundred eighty (180) days following the termination of the Declarant Control Period, the Owners shall elect a Management Committee of three (3) but not more than five (5) Directors. The Directors and officers of the Management Committee shall take office upon election. Thereafter, at every annual meeting, the Association shall elect Directors to fill those positions becoming vacant at such meeting, pursuant to the terms of this Section 2 and the Act.

2.4 At least thirty (30) days prior to each annual meeting of the Association, the Management Committee shall elect from the Owners a nominating committee of not less than three (3) members. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. The nominating committee shall recommend to the Association at least one nominee for each position on the Management Committee to be filled at that particular annual meeting. Nominations for positions on the Management Committee may also be made by petition filed with the Secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by one (1) or more Owners and the nominee named therein indicating his or her willingness to serve as a Director on the Management Committee, if elected.

2.5 Voting for the Management Committee shall be by secret ballot (which may be delivered electronically as directed by the Management Committee). At any meeting of the Association, each Owner, either in person or by proxy, shall be entitled to the number of votes set forth in the Condominium Declaration for each Unit owned. If there are multiple positions to be filled at a single time, Owners may not cumulate votes. The positions on the Management Committee shall be as follows: President, Vice President, and Secretary-Treasurer. The initial Directors on the Management Committee shall be the following persons and each shall hold the office indicated

John Curtis	President
Chris Shurian	Vice President
Joel Prince	Secretary-Treasurer

2.6 Directors shall serve as follows:

(a) Directors shall serve for terms of two (2) years beginning immediately upon their election by the Association; provided, however, that the Directors elected at the first annual meeting following the termination of the Declarant Control Period to the positions of Vice President and Secretary-Treasurer shall serve for initial terms of one (1) year, and the Director elected to the office of President shall serve for an initial term of two (2) years. If there are more than three Directors elected at the first annual meeting following the termination of the Declarant Control Period, one-half of the additional Directors elected shall serve for one (1) year terms and the other half shall be elected to two (2) year terms. Thereafter, all Directors elected shall serve for two-year terms. The Directors shall serve until their respective successors are elected, or until death, resignation, or removal, whichever occurs first.

(b) Any Director on the Management Committee who fails to attend three (3) consecutive Management Committee meetings or fails to attend at least twenty-five percent (25%) of the Management Committee meetings held during any fiscal year shall be deemed, in the Management Committee's sole and subjective discretion, to have tendered his or her resignation. Upon acceptance by the Management Committee of such resignation that director's position shall be vacant.

2.7 Any Director may resign at any time by giving written notice to the President of the Association or to the remaining Management Committee Directors. The Owners, by a two-thirds (2/3) vote, either at a meeting of such Owners, or by written consent, may remove any Director with or without cause, other than a Director appointed by Declarant during the Declarant Control Period.

2.8 If vacancies shall occur in the Management Committee by reason of the death or resignation of a Management Committee Director, the Management Committee Directors then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee Directors then in office, though less than a quorum; provided, however, that the Management Committee acting to fill such vacancy. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee Director by the Association may be filled by election at the meeting at which such Management Committee Director is removed or any subsequent regular or special meeting of the Association. A vacancy resulting from a removal shall only be filled by the vote or written consent of a majority of the votes of the Association entitled to vote for that Director.

2.9 The Directors shall receive no compensation for their services unless expressly approved by the vote or written assent of a majority of the Total Votes of the Association; provided, however, that Directors shall be reimbursed by the Association for transportation expenses actually incurred and a reasonable per diem payment for attendance at regular and special meetings of the Management Committee. Any Director may be employed by the Association in another capacity and receive compensation for such employment; provided further, that such employment shall be approved by vote or in writing by all Directors not including the Director to be employed.

2.10 The Management Committee, for the benefit of the Project and the Association, shall manage the business, property and affairs of the Project and the Association and enforce the provisions of the Condominium Declaration, these Bylaws and the rules and regulations governing the Project. The Management Committee is authorized to adopt rules and regulations governing the use and operation of the Project, which shall become effective ten (10) days after adoption by the Management Committee. The Management Committee shall have the powers, duties and responsibilities with respect to the Project as contained in the Condominium Declaration, the Articles and these Bylaws.

2.11 The meetings of the Management Committee shall be held annually at such times and places within the Project, or some other reasonable and suitable location in Rich County, unless a meeting at another location would significantly reduce the cost to the Association and/or the inconvenience to Management Committee Directors, as the Management Committee shall determine. A majority of the Management Committee shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Management



Committee. Directors may participate in all Management Committee meetings by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time and by any other means permitted under Utah law. Such participation shall constitute presence in person at the meeting. The Management Committee shall annually elect all of the officers of the Association. The election of officers shall be conducted at the first meeting of the Management Committee held subsequent to the annual meeting of the Association.

2.12 Written notice of the time and place of Management Committee meetings shall be posted at a prominent place or places within the Project not less than ten (10) days prior to the meeting. Notice of Management Committee meetings shall also be given by e-mail to Owners who have requested such notice at least 48 hours before the meeting.

2.13 Special meetings of the Management Committee may be called by written notice signed by any two (2) Directors of the Association. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Special meetings shall be held within the Project or some other reasonable location in Rich County unless a meeting at another location would significantly reduce the cost to the Association and/or inconvenience to the Directors of the Association. Written notice of any special meeting shall be posted in a manner prescribed for notice of regular meetings of the Management Committee and shall be sent to all Directors of the Association not less than forty-eight hours prior to the scheduled time of the meeting; provided, however, that notice of such meeting need not be given to any Director signing a waiver of notice or a written consent to the holding of such meeting either before or after the time and date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail, with first-class postage thereon prepaid. The Association must also provide written notice of a Management Committee meeting to each Owner who requests such notice. Notice under this Section shall be provided via email to the email address provided by the Owner requesting notice. The notice must include the time, date, and location of the Management Committee meeting and must be given at least forty-eight hours before the Management Committee meeting. Additionally, if a Director may participate in the meeting by means of telephonic or electronic communication, written notice under this Section must provide the information necessary to allow the Owner to participate by the available means of communication. Notice under this Section is not required if: (a) notice of the Management Committee meeting is included in a meeting schedule that is previously provided to the Owner; or (b) the Management Committee meeting is to address an emergency, and each Management Committee member receives notice of the meeting less than forty-eight hours before the meeting is to be held.

2.14 Notices of all regular Management Committee meetings shall be given in writing or electronically to each Director of the Association not less than thirty (30) days nor more than sixty (60) days prior to the meeting, provided that this requirement shall not apply to any Director who has signed a waiver of notice or a written consent to the holding of a meeting.

2.15 The Directors shall act only as a Management Committee, and individual Management Committee Directors shall have no powers as such. All meetings of the Management Committee shall be open to Owners and the Management Committee shall provide each Owner a reasonable opportunity to offer comments related to the matters discussed or to be discussed at the meeting, provided that the Management Committee may limit such comments to one specific time

period during the meeting. The Management Committee may, with the approval of a majority of a quorum of its Directors, adjourn the meeting and reconvene in a closed executive session to consult with an attorney for the purpose of obtaining legal advice; discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; discuss a personnel matter; discuss a matter relating to contract negotiations including the review of a bid or proposal; discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; discuss a delinquent assessment or fine; or similar orders of business. The general nature of any and all business to be considered in closed executive session shall first be announced in open session.

2.16 Any or all Directors may participate in an annual, regular, or special Management Committee meeting 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.

2.17 Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if one or more consents in writing, setting forth the action so taken, are signed by all Directors and such signed consents are filed with the records of the Association. To take action by written consent, such consent must be signed by each Director indicating either: (a) a vote in favor of the action; or (b) a vote against the action or abstaining from voting on the action as well as a waiver of the right to demand that action not be taken without a meeting. Action may be taken under this Section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take such action at a meeting where all Directors were present. The consents of Directors may be sent to the Association by electronic transmission including facsimile, text message, email, or other form of wire or wireless communication providing a complete copy of the document, including a copy of the signature of the Directors.

2.18 After the election of the Directors on the first Management Committee following termination of the Declarant Control Period, Declarant may execute, acknowledge and record an affidavit stating the names of the Directors of the newly elected Management Committee. Thereafter, any two (2) persons who are designated of record as being Directors on the most recent Management Committee, whether or not they shall still be Directors, may execute, acknowledge and record an affidavit stating the names of all of the Directors on the then current Management Committee. The most recently recorded evidence or copy of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent Directors on the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

2.19 The fiscal year shall be determined by the Management Committee. In the absence of a Management Committee determination, the fiscal year shall be the calendar year.

2.20 When a Director is sued for liability for actions undertaken in his or her role as a Director on the Management Committee, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended

from the Director on the Management Committee who so acted. Directors are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose activity gave rise to the damages. The provisions of this Section are in amplification of the limitations on liability and indemnification provisions set forth in Sections 13.6 and 13.7 of the Condominium Declaration.

2.21 An officer, employee, agent or director of a corporate Owner of a Unit, a Director or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, a member of a limited liability company that owns a Unit, a fiduciary of an estate that owns a Unit, and any representative of Declarant may be considered an Owner for the purpose of determining eligibility for membership of the Management Committee. In all events where the person serving or offering to serve as an officer of or Director on the Management Committee is not the record Owner, he or she shall file proof of authority in the records of the Association.

2.22 The Management Committee or the officers appointed thereby may delegate to the Common Area Manager, or such other persons as it so determines, all of the duties and obligations of the Management Committee set forth herein and in the Condominium Declaration to the extent such duties and obligations are properly delegable.

2.23 The Management Committee or the officers appointed thereby reserve the right to make whatever tax and other elections which they deem necessary, including but not limited to, filing as a tax exempt entity under Section 528 of the Internal Revenue Code.

2.24 During the Declarant Control Period, Declarant shall have a right to disapprove any action, policy or program of the Association, the Management Committee and any committee which, in the sole and exclusive judgment of Declarant, would tend to impair rights of Declarant or any affiliate of Declarant under the Condominium Declaration or these Bylaws, or interfere with development, construction of any portion of the Project, or diminish the level of services being provided by the Association. No such action, policy or program shall become effective or be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Association, the Management Committee or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. Declarant, its representatives or agents shall make their concerns, thoughts, and suggestions known to the Management Committee and/or the members of the subject committee. Declarant shall have and is hereby granted an exclusive right to disapprove any such action, policy, or program authorized by the Association, the Management Committee or any committee thereof, if the approval of the Management Committee, any committee, or the Association is necessary for such action. This right may be exercised by Declarant, its successors, assigns, representatives, or agents at any time

within ten (10) days following the meeting held pursuant to the terms and provision thereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of the Management Committee, any committee, or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### **ARTICLE 3**

#### **MEETINGS OF THE ASSOCIATION**

3.1 The first meeting of the Association shall be held within one (1) year after the closing of the sale of the first Unit sold in the Project. Thereafter, there shall be an annual meeting of the Association held at the Project or at a meeting place reasonably close thereto, at the date and time selected by the Management Committee.

3.2 Special meetings of the Association may be called by Declarant, the President, a majority of the Management Committee, or Owners representing at least twenty-five percent (25%) or more of the Total Votes of the Association and may be held at the Project or at a meeting place reasonably close thereto, to consider matters which, by the terms of the Condominium Declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Special meetings shall be called by written notice signed by Declarant, a majority of the Management Committee or by Owners representing at least twenty-five percent (25%) or more of the Total Votes of the Association, which shall be delivered not less than fifteen (15) days prior to the date fixed for said meeting, to each Owner in the manner described in Section 3.3 below.

3.3 Notice of the annual meeting of the Association and of any special meetings of the Association shall be hand delivered, sent by electronic transmission, or sent by first-class or certified mail, no fewer than ten (10) nor more than sixty (60) days prior to the date fixed for said meeting to each Owner of record at such Owner's address as shown in the records of the Association or to any other mailing address designated in writing by the Owner. Consent to electronic notice is deemed granted in the event an Owner provides an e-mail address to the Association. Such notice shall specify the place, date and hour of the meeting and a description of any matters that must be approved by the Owners for which the Owners' approval is sought at such meeting. The notice of a special meeting shall also include a description of the purposes for which the meeting is called. If any annual or special meeting of the Owners is adjourned to a different date, time or place, notice need not be given of the new date, time and place if the new date, time and place are announced at the meeting before adjournment. Notwithstanding the foregoing sentence, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed pursuant to these Bylaws or applicable law, notice of the adjourned meeting must be given pursuant to the requirements of this Section 3.3 to Owners entitled to vote at the meeting.

3.4 The presence in person or by proxy of Owners holding twenty-five percent (25%) or more of the Total Votes of the Association at any meeting of the Association held in response to notice to all Owners of record properly given shall constitute a quorum. In the absence of a quorum at an Association meeting, a majority of those present in person or by proxy may adjourn

the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum by those in attendance shall be to a date not less than five (5) nor more than thirty (30) days from the original meeting date. The quorum for an adjourned meeting shall be ten percent (10%) of the Total Votes of the Association. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for regular meetings of the Association. At any special meeting of the Association, only those matters of business, the general nature of which was given in the notice of the special meeting, may be voted upon by the Owners. Unless otherwise expressly provided in the Nonprofit Act, the Condominium Declaration and these Bylaws, any action may be taken at any meeting of the Owners upon a majority vote of the Owners who are present in person or by proxy.

3.5 Any or all of the Owners may participate in an annual, regular, or special meeting 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.

3.6 In the event of a procedural dispute, Robert's Rules of order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Condominium Declaration or these Bylaws.

3.7 Any action that may be taken at any annual, regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

(a) A written or electronic ballot is distributed to every Owner entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Owner to return the ballot to the Association.

(b) The number of votes cast by ballot within the specified time under Section 3.7(a) equals or exceeds the quorum required to be present at a meeting authorizing the action.

(c) The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

(d) The written ballot distributed to Owners affords an opportunity for the Owner to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Owners shall be cast in accordance with the choice specified.

3.8 At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy. For any Unit owned by more than one Owner, all of the Owners of such Unit may sign a certificate designating one of the co-Owners as the Owner authorized to cast the votes appurtenant to such Unit. In such event, the Management Committee may rely on such certificate as being sufficient evidence of the authority of the Owner casting the votes appurtenant to such Unit. In the absence of such a certificate, if only one of several Owners of a Unit is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Unit. If more than one of the Owners of a Unit is present, the votes allocated to that Unit may be cast

only in accordance with the agreement of a majority in interest of such Owners. Absent a certificate of authorization, there shall be deemed to be majority agreement if any one of the Owners casts the votes allocated to the Unit owned without protest made promptly to the person presiding over the meeting by any of the other Owners of such Unit. 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 all of the Owners of a Unit if there is more than one Owner) or by its attorney (or all of the Owner's attorneys if there is more than one Owner) thereunto duly authorized in writing. The instrument authorizing the proxy to act shall be delivered, at the beginning of the meeting, to the Secretary of the Association, or such other officer or person who may be acting as the Secretary at the meeting. The Secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. An Owner may revoke a proxy given pursuant to this Section only by actual notice of revocation to the Association. A proxy is void if it is not dated or purports to be revocable without notice.

3.9 Minutes of the annual and special meetings of the Association shall be distributed to each Owner within a reasonable time after the meeting.

3.10 The rights and obligations of any Owner shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Unit, and then only to the transferee of ownership of the Unit. A transfer of ownership of a Unit may be effected by deed, intestate succession, testamentary disposition, foreclosure or such other legal process as is now in effect or as may hereafter be established under or pursuant to applicable law. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Unit shall operate to transfer the membership in the Association appurtenant to said Unit to the new Owner thereof. Each transferee shall notify the Association of his, her or its purchase of a Unit. A change in the ownership of a Unit shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded; the Management Committee shall thereafter be given written notice of such change and provided satisfactory evidence thereof.

3.11 Any or all of the Owners may participate in any annual, regular, or special meeting 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.

## **ARTICLE 4**

### **OFFICERS**

4.1 All officers and employees of the Association shall serve at the will of the Management Committee. So long as there are three (3) Directors on the Management Committee, the officers shall be a President, a Vice Presidents, and a Secretary-Treasurer. The Management Committee may appoint additional Vice Presidents and such other assistant officers as the Management Committee may deem necessary. No officer shall be required to be an Owner. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Management Committee and may be removed and replaced by the Management Committee. The Management Committee shall require that officers (and other employees of the Association) be subject to fidelity bond coverage.

4.2 The President shall be the chief executive of the Management Committee and shall preside at all meetings of the Association and of the Management Committee and may exercise the power ordinarily allowable to the presiding officer of an association, including the appointment of committees. The President shall exercise general supervision over the Project and its affairs. He or she shall sign, and the Secretary shall witness, on behalf of the Association, all conveyances, mortgages and contracts of material importance to its business. He or she shall do and perform all acts which the Management Committee may require.

4.3 The Vice President, if any, shall perform the functions of the President in his or her absence or inability to serve.

4.4 The Secretary shall keep minutes of all proceedings of the Management Committee and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Owners and the Management Committee.

4.5 The Treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to the Common Area Manager.

4.6 Any officer may prepare, execute, certify and record amendments to the Condominium Declaration on behalf of the Association.

## **ARTICLE 5**

### **COMMON EXPENSES; ASSESSMENTS**

5.1 All Common Expenses shall be assessed in accordance with the Condominium Declaration.

5.2 No Owner shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his or her Unit.

5.3 The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours and as required by the Condominium Act and the Nonprofit Act. In accordance with the actions of the Management Committee in assessing Common Expenses against the Units, the Treasurer shall keep an accurate record of such Common Assessments and of the payments thereof by each Owner.

5.4 All Common Assessments shall be a separate, distinct and personal liability of the Owners at the time each Common Assessment is made. The Management Committee shall have the rights and remedies contained in the Condominium Act, the Nonprofit Act, and in the Condominium Declaration to enforce the collection of Common Assessments.

5.5 Any person who shall have entered into a written agreement to purchase a Unit, by written request directed to the Management Committee, shall be entitled to obtain a written statement from the Treasurer setting forth the amount of the monthly, quarterly, annual or other periodic Common Assessments and the amount of unpaid Common Assessments charged against

such Unit and its Owner(s), and if such statement does not reveal the full amount of the unpaid Common Assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payment of an amount in excess of the unpaid Common Assessments shown thereon, provided that the former Owner shall remain so liable. Any such excess which cannot be promptly collected from the former Owner-grantor shall be reassessed by the Management Committee as a Common Expense to be collected from all Owners, including without limitation the purchaser of such Unit, his or her successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Common Assessments made after the date of transfer of title, even though the expenses incurred or the advances made by the Management Committee for which the Common Assessment is made relate in whole or in part to any period prior to that date. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.6 In addition to the statements issuable to purchasers, the Management Committee shall, upon ten (10) days' prior written request therefore, provide to any Owner, to any person who shall have entered into a binding agreement to purchase a Unit and to any Mortgagee, on request at reasonable intervals a current statement of unpaid Common Assessments for Common Expenses with respect to a Unit. The Management Committee is authorized to require a reasonable fee for furnishing such statements.

5.7 In all cases where all or part of any Common Assessments for Common Expenses and capital contributions and for any expenses of and advances by the Management Committee cannot be promptly collected from the persons or entities liable therefore under the Condominium Declaration or these Bylaws, the Management Committee shall reassess the same as a Common Expense without prejudice to its right of collection against such persons or entities, or without prejudice to its lien for such Common Assessments.

## **ARTICLE 6**

### **LITIGATION**

6.1 If any action is brought by a Director on behalf of the Association, the expenses of suit, including reasonable attorneys' fees, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners or against the Management Committee or the officers, employees or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorneys' fees, shall be a Common Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorneys' fees, shall not be charged to or borne by the other Owners, as a Common Expense or otherwise.

6.2 Except as otherwise provided by the Condominium Act or the Nonprofit Act, any action brought against the Association, the Management Committee or the officers, employees or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Management Committee, and shall be defended by the Management Committee; and the Owners and Mortgagees shall have no right to participate in such defense other than through the Management Committee. Actions against one or more, but less than all Owners, shall be directed



to such Owners, who shall promptly give written notice thereof to the Management Committee, and shall be defended by such Owners.

## **ARTICLE 7**

### **ABATEMENT AND ENJOINMENT OF VIOLATIONS BY OWNERS**

7.1 The violation of any Rules and Regulations, the breach of any provision contained herein or the breach of any provision of the Condominium Declaration shall give the Management Committee the right, in addition to any other rights set forth in these Bylaws:

(a) To enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner or Owners, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Management Committee shall not thereby be deemed guilty in any manner of trespass provided that items of construction may not be altered or demolished without proper judicial proceedings; and/or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

7.2 The Management Committee may assess a fine against an Owner for violations of the Condominium Documents provided that the Management Committee shall give notice to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within the time designated by the Management Committee, which shall be at least forty eight (48) hours. The Management Committee may levy fines in the amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Condominium Documents provided that cumulative fines for a continuing violation may not exceed five hundred dollars (\$500.00) per month unless otherwise allowed by law. An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within thirty (30) days from the date the fine is assessed.

7.3 The Management Committee shall have a right of action against Owners who fail to comply with any provision of the Condominium Documents or the decisions of the Association or Management Committee. Before pursuing such cause of action, the Management Committee shall provide the Owner notice of the alleged violation and the opportunity to request an informal hearing.

7.4 The Management Committee may impose a temporary suspension of an Owner's right to use the Common Areas and Facilities or other appropriate discipline against an Owner who has failed to comply with any provision of the Condominium Documents. Prior to such suspension or other discipline, the Management Committee shall provide the Owner notice of the alleged violation and the opportunity to request an informal hearing.

7.5 These remedies are cumulative to other remedies provided in the Condominium Declaration and these Bylaws, any Rules and Regulations adopted by the Management Committee, or in any applicable laws.

## ARTICLE 8

### ACCOUNTING

8.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.

8.2 A budget for each fiscal year shall be adopted by the Management Committee and distributed to all Owners prior to the beginning of the fiscal year to which the budget applies. The Management Committee may also elect, in its sole and exclusive discretion, to distribute a copy of the current budget to Owners through a community website or other similar electronic platform established by the Management Committee and used solely for dissemination of information between the Management Committee and Owners.

8.3 The Management Committee shall distribute to the Owners an unaudited financial statement, prepared by an independent public accountant approved by the Association, within one hundred twenty (120) days after the close of each fiscal year.

8.4 As further set forth in the Nonprofit Act and the Condominium Act, the membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Association, of the Management Committee and of committees of the Management Committee and all other records of the Project maintained by the Association, Common Area Manager or managing company shall be made available for inspection and copying by any Owner or his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Management Committee to defray the costs of reproduction, the Common Area Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Association may, as a condition to permitting an Owner to inspect the membership register or to its furnishing information from the register, require that the Owner agree in writing not to use, or allow the use, of information from the membership register for commercial or other purposes not reasonably related to the regular business of the Association and the Owner's interest in the Association. The Management Committee shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Owner desiring to make the inspection or obtain copies;
- (b) Hours and days of the week when such an inspection may be made; and
- (c) Payment of the cost of reproducing copies of documents requested by an Owner.

Every Director shall have the absolute right at any time to inspect all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association. This right of inspection shall include the right to make extracts and copies of records, subject only to the right of the Association to require that the Director agree in writing not to use, or allow the use of, the information from the membership register for commercial or other purposes

not reasonably related to the business of the Association and the Director's interest in such Association.

## **ARTICLE 9**

### **SPECIAL COMMITTEES**

The Management Committee by resolution may designate one or more special committees, each committee to consist of three (3) or more Owners, which to the extent provided in said resolution shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Management Committee. All special committees shall keep regular minutes of their proceedings and report the same to the Management Committee when required. The members of such special committee or committees designated shall be appointed by the Management Committee or the President. The Management Committee or the President may appoint Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

## **ARTICLE 10**

### **RENTAL OR LEASE OF UNITS BY OWNERS**

10.1 Any Owner who rents or leases or otherwise permits any other person to utilize his or her Unit shall be responsible for the conduct of his or her tenants or occupants, and upon written notice from the Management Committee or the Common Area Manager, said Owner shall be responsible for correcting violations of the Condominium Declaration, Bylaws or rules and regulations committed by such tenants or occupants. The Management Committee shall have the power to establish rules and policies governing or otherwise limiting the rental of Units.

10.2 If an Owner fails to correct violations by tenants within seventy-two (72) hours of such notice, or such other time period as determined by the Management Committee pursuant to any rules and policies governing the rental of units, the Management Committee or Common Area Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the reasonable costs of such action, including but not limited to fees and costs paid to third parties, to be assessed to the Owner and payable within thirty (30) days of Common Assessment. Such costs shall be collected and enforced in the same manner as Common Expenses under the Condominium Declaration.

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

10.4 As provided for in Section 13.5 of the Condominium Declaration, if an Owner shall at any time lease his or her Unit and shall default in the payment of Common Assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid. This Section 10 shall be incorporated by reference into every lease agreement entered into by and between an Owner and his or her tenant, whether or not this Section is expressly referenced therein.

## **ARTICLE 11**

### **AMENDMENT OF BYLAWS**

Except as otherwise provided in the Nonprofit Act, the Condominium Act, the Condominium Declaration or these Bylaws, the Bylaws may be amended by the vote of Owners holding a majority of the Total Votes of the Association present in person or by proxy at a meeting duly called for such purpose, or by written ballot without a meeting. Provided, however, the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Upon such an affirmative vote, the Management Committee shall acknowledge the amended Bylaws and notify the Owners, writing, of such amendment, setting forth the fact of the required affirmative vote of the Owners and the amendment shall be effective upon recording in the Office of the Rich County Recorder. Notwithstanding anything to the contrary contained or implied herein, Declarant reserves the right, without the consent of any other Owners, to amend any provisions of these Bylaws to comply with the then existing statutes, regulations or other requirements of any federal, state or local regulatory authority affecting the Project, together with all other unilateral amendment rights of Declarant set forth in the Condominium Declaration, including, but not limited to, the right to create a fractional or club plan in one more of the Units.

## **ARTICLE 12**

### **SEVERABILITY**

The provisions hereof shall be deemed independent and severable, and the invalid or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

## **ARTICLE 13**

### **WAIVER**

The failure of the Management Committee to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by the Management Committee.

## **ARTICLE 14**

### **CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

## **ARTICLE 15**

### **EFFECTIVE DATE**

These Bylaws shall take effect as of the date of the Condominium Declaration, having been duly adopted by the Management Committee.

## **ARTICLE 16**

### **COUNTERPARTS**

These Bylaws may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

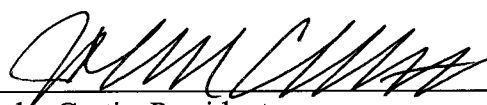
## **ARTICLE 17**

### **SEAL**

The Management Committee may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation and the words "Corporate Seal."

EXECUTED this 23<sup>rd</sup> day of July, 2025.

**MANAGEMENT COMMITTEE**

  
\_\_\_\_\_  
John Curtis, President