

# DECLARATION OF CONDOMINIUM

FOR

# BEAR LODGE CONDOMINIUM

IN

PARK CITY, UTAH

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DECLARATION OF CONDOMINIUM  
FOR  
BEAR LODGE CONDOMINIUM

This Declaration Condominium for Bear Lodge Condominium (the “Declaration”) is recorded by the Cove at Sun Peak (the “Master Association”) and the Bear Lodge Association (the “Association”) upon its approval by the Owners of both Associations, and is effective as of the date it is recorded in the Summit County Recorder’s Office.

RECITALS

- A. Capitalized terms in this Declaration are defined in Article 1 or in other Sections of this Declaration.
- B. This Declaration affects and encumbers the Property, which is located in Summit County, Utah, and described on the attached Exhibit A, which is incorporated herein by this reference.
- C. The Cove at Sun Peak is a multi-neighborhood Condominium Project consisting of three distinct neighborhood areas, commonly referred to as the Estate Home Units, the Twin Homes Units, and the Bear Lodge Condominium Project.
- D. The Cove at Sun Peak and the Bear Lodge Condominium are part of the Master Planned Community of Sun Peak. To that end, the Cove at Sun Peak and the Bear Lodge Condominium are subject to all the terms and conditions of that certain Master Declaration of Conditions and Restrictions for Sun Peak, Summit County, Utah, as amended. This Declaration is not intended to change, and does not change, the Cove at Sun Peak’s and the Bear Lodge Condominium’s membership in the Master Planned Community of Sun Peak
- E. On June 12, 1996, the Cove at Sun Peak Plat (the “First Plat”) was recorded in the Summit County Recorder’s Office as Entry No. 456153, creating the units contained within Estate Home Units and the Twin Homes neighborhood areas. The First Plat stated that “the Owners of Bear Lodge Condominiums share in the Ownership of the Common Areas of the Cove at Sun Peak Subdivision. Construction, maintenance, repair and eventual replacement of sewer laterals for the Bear Lodge Condominium through the Cove at Sun Peak’s Common Areas is permitted.”
- F. On June 12, 1996, the Bear Lodge Condominiums Plat (the “Second Plat”) was recorded in the Summit County Recorder’s Office as Entry No. 456154, creating the Bear Lodge Condominium Project (“Bear Lodge Condominium”) and the Units contained therein.
- G. The building and Units which comprised the Common Areas and Units of the Bear Lodge Condominium were delineated on the Second Plat.
- H. The Second Plat indicated that a specific Declaration of Covenants, Conditions and Restrictions would be recorded for the Bear Lodge Condominiums, but no such declaration was recorded.

- I. On June 12, 1996, the Declaration of Protective Covenants, Agreements, Conditions and Restrictions for The Cove at Sun Peak was recorded in the Summit County Recorder's Office as Entry No. 456155 (the "Initial Master Declaration") which subjected the entire Project to the provisions of the Utah Condominium Act and expressly contemplated the recording of supplemental Declarations for the Estate Home Units and the Bear Lodge Condominium Units.
- J. On March 3, 2004, the Amended and Restated Declaration of Protective Covenants, Agreements, Conditions and Restrictions for the Cove at Sun Peak (a/k/a Winter Park at Sun Peak) (the "First Master Restatement") was recorded in the Summit County Recorder's Office as Entry No. 690688, which purported to amend and restate the Initial Master Declaration in its entirety, but was not recorded against all of the Units in the entire Cove at Sun Peak.
- K. On July 10, 2007, an Amendment to the First Restatement (the "First Master Amendment") was recorded in the Summit County Recorder's Office as Entry No. 821372, which purported to amend the First Master Restatement.
- L. On November 22, 2010, the Amended and Restated Declaration of Protective Covenants, Agreements, Conditions and Restrictions for the Cove at Sun Peak (a/k/a Winter Park at Sun Peak) was supplemented and re-recorded against the entire Cove at Sun Peak on November 22, 2010, in the Summit County Recorder's Office as Entry No. 911522, and recorded against all of the Units the Project.
- M. On November 22, 2010, the Supplement to the Amended and Restated Declaration of Protective Covenants, Agreement, Conditions, and Restrictions of the Cove at Sun Peak (a/k/a Winter Park at Sun Peak) (the "Master Supplement") (the First Restatement, the First Amendment, and the Supplement together, "Restated Master Declaration") was recorded in the Summit County Recorder's Office as Entry No. 911523 against the entire Cove at Sun Peak.
- N. The Restated Master Declaration expressly contemplated the Bear Lodge Condominium Units were part of the Association, as well as a separate condominium project.
- O. Consistent with the rights and authority of the Association under the Utah Condominium Act, and as contemplated in the Initial Master Declaration and the Restated Master Declaration, the Association, with the consent of the Master Association, now desires to record this Declaration of Condominium for Bear Lodge Condominium, to subject the Units, the Common Area and the Project to the terms and conditions hereto: (a) to set out a system of ownership that conforms to the Utah Condominium Ownership and other Utah laws; (b) create a governance structure and procedures for the Association; (c) make clear that the Bear Lodge Condominium Units are a separate condominium and also part of the Master Association; (d) follow the dictates of Utah law which requires a separate condominium declaration; and (e) clarify and more fully define the rights and responsibilities of the Association, the Master Association, the Estate Home Units, and the Owners.
- P. This Declaration of Condominium for Bear Lodge Condominiums is effective as of the date this instrument is recorded with the Office of Recorder for Summit County, Utah, and supersedes and replaces in its entirety any other declarations or amendments recorded

against the Project alone. It does not affect, and does not supercede, the Restated Master Declaration, or any other declarations recorded against the entirety of the Cove at Sunpeak. This Declaration is in addition to any master declaration affecting the entire Cove at Sun Peak and the Master Association. The Terms and Conditions herein are established for the mutual benefit and burden of the Association, present and future Owners, Occupants, Lenders and others acquiring any interest in the Project.

- Q. This Declaration is intended to and shall run with the land and shall be binding upon the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By taking title to a Unit, each Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the development of the Project and accepts the burdens and responsibilities that accompany these benefits.
- R. The Bear Lodge Condominiums are part of, and a Neighborhood within, the Cove at Sun Peak.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, the Association hereby adopts this Declaration.

#### ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean and refer to the Utah Condominium Ownership Act codified beginning at § 57-8-1, Utah Code Annotated (“Utah Code Ann.”).
- 1.2 “Allocated Interest” shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated among the Units in accordance with Exhibit B.
- 1.3 “Articles” shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 “Assessment” shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration. Assessment shall also include any monetary charge imposed or levied by the Master Association pursuant to this Declaration or the Master Declaration.
- 1.5 “Association” shall mean and refer to the Bear Lodge Condominiums Owners Association, the membership of which shall include and be comprised of each Owner in the Project. The Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.6 “Bear Lodge Unit” or “Bear Lodge Condominium Unit” shall mean and refer to the particular Units which were created by the Second Plat, and which, collectively, comprise the Bear Lodge Condominium.

- 1.7 “Bear Lodge Condominium” shall mean and refer to the condominium project created by the Second Plat and this Supplemental Declaration which is being recorded against the Bear Lodge Units which shall create a Sub-Association known as the Bear Lodge Condominium.
- 1.8 “Benefitted Area” shall mean and refer to any real property and improvements designated by the Master Declaration in a Neighborhood within the Cove at Sun Peak, and includes the Bear Lodge Condominiums, and is further defined in the Master Declaration.
- 1.9 “Benefitted Area Assessments” shall mean and refer to assessments levied by the Master Association against all of the Units of the Bear Lodge Condominiums, which may include amounts for reserves for capital repairs and replacements. The Master Association’s right to levy Benefitted Area Assessments arises out of an assignment of an Association’s right to levy its own assessments pursuant to this Declaration, and the Master Association may not levy a Benefitted Area Assessment for so long as the Association is levying such Assessment. Benefitted Area Assessments levied by the Master Association shall be treated as Assessments under the Declaration.
- 1.10 “Benefitted Area Expenses” shall mean and refer to the estimated and actual expenses which the Master Association incurs or expects to incur to operate, maintain, repair and replace Common Area and Facilities within the Bear Lodge Condominiums, which may include amounts for reserves for capital repairs and replacements. The Master Association’s right or obligation to pay Benefitted Area Expenses arises out of an assumption of the Association’s obligation to operate, maintain, repair and replace a particular Common Area and Facilities of the Project pursuant to this Declaration and the Master Declaration, and the Master Association has no obligation to pay a Benefitted Area Expense if the Association collects its own assessments in order to pay for the operation, maintenance, repair, and replacement of the Common Area and Facilities of the Bear Lodge Condominium. The Master Association’s obligation to pay Benefitted Area Expenses shall only arise if the Master Association exercises its right to collect Benefitted Area Assessments.
- 1.11 “Bylaws” shall mean and refer to the Bylaws of the Association attached as Exhibit C, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.12 “City” shall mean and refer to the Park City Municipal Corporation, a political subdivision of the State of Utah, located in Summit County, Utah.
- 1.13 “Recreational Amenities” shall mean and refer to any and all of the recreation improvements constructed in the Project, which shall be maintained by the Association for the exclusive use and benefit of Owners and Occupants in the Project.
- 1.14 “Common Area and Facilities” or “Common Area” shall mean and refer to the real and personal property for the common use and enjoyment of the Owners not dedicated to the City, not property of the Master Association, not owned by all of the members of the Master Association in Common, not owned by the members of any association or sub-association within the Cove at Sun Peak, and not common area of the Master Association, and shall include, but not be limited to, the following: (a) all parts of the Project that are not a Unit and not part of the Common Area of a Master Association; (b) all Common

Area and Facilities designated as such on the Second Plat, including any area designated as open space not dedicated to the City, but shall NOT include any area designated as common areas on the First Plat; (c) any Recreational Amenities; (d) all utility installations and all equipment connected with or in any way related to the furnishing of utilities for the common use and for the Common Area and Facilities which serve more than one Unit; (e) any improvements on the real property within the Project not part of a Unit or the property of the Master Association or another sub-Association within the Cove at Sun Peak; and (h) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use, reserved for the exclusive use and enjoyment of the Owners and their respective family members, tenants, guests, and invitees, and all other parts of the Project outside of the Units not dedicated to the City or the public or which are necessary or convenient to the Project's existence, maintenance, and safety, or normally in common use.

- 1.15 “Common Expenses” shall mean and refer to the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area and Facilities which are maintained by the Association; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) extermination, security, landscape maintenance, and other services; (d) insurance and bonds required or allowed by this Declaration or Utah Law; (e) the establishment of reserves; (f) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.
- 1.16 “Community-Wide Standards” shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters prevailing in the Project or adopted by the Master Association. The Community-Wide Standards may or may not be set forth in writing.
- 1.17 “Design Guidelines” shall mean and refer to the Design Guidelines established for the Project and any valid amendments thereto.
- 1.18 “Design Review Board” shall mean and refer to the body responsible for review and approval of home and landscaping plans, construction and installation of the improvements identified therein in conformance with the requirements of the Design Guidelines. The responsibilities of the Design Review Board, if any, may be carried out by the Master Association.
- 1.19 “Estate Homes” shall mean and refer to the particular units which are located in the Estate Home Sub-Association and includes Lots 1 through 9 on the First Plat, and which, collectively, comprise the Estate Home Sub-Association. The Estate Home units are not part of the Association.
- 1.20 “Estate Home Sub-Association” shall refer to the sub-association created by a supplemental declaration encumbering the Estate Home Units which imposes additional covenants, restrictions and easements on the Estate Home Units.

- 1.21 “First Plat” shall mean and refer to the plat recorded in the Summit County Recorder’s Office as Entry No. 456153, creating the units contained within Estate Homes and the Twin Homes Neighborhood areas and incorporating the Units into the Master Association.
- 1.22 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other written instrument by the Association may exercise power or manage, maintain, or otherwise affect the Project. The Governing Documents include the Master Declaration.
- 1.23 “Lender” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.
- 1.24 “Master Association” shall mean and refer to the association of owners of the Cove at Sun Peak, the membership of which shall include and be comprised of each Owner in the Cove at Sun Peak, which includes the Owners in the Project. The Master Association shall have standing and authority to enforce this Declaration.
- 1.25 “Master Declaration” shall mean and refer to any additional restrictions, conditions or covenants currently in force and imposed on a Unit or an Owner as part of a master declaration of covenants, conditions and restrictions or similar document recorded against the entirety of the Cove at Sun Peak. Pursuant to the Second Amended and Restated Declaration of Protective Covenants, Agreements, Conditions, and Restrictions for The Cove at Sun Peak (A/K/A Winter Park at Sun Peak), the Project constitutes a Neighborhood within the Master Association, as such term is defined in the Master Declaration. If the Master Declaration covenants are more restrictive than the provisions of this Declaration, the more restrictive provision shall control. The Association shall have standing and authority to enforce the Master Association Covenants against the Units.
- 1.26 “Manager” shall mean and refer to the Person or Persons engaged by the Board of Trustees to manage the Project.
- 1.27 “Board of Trustees” shall mean and refer to the body with primary authority to manage the affairs of the Association and is also commonly referred to as a Board of Directors or the Board. If no Board of Trustees is voted into office, appointed or acting to manage the affairs of the Association, the board of trustees of the Master Association shall have all right, authority and obligations of the Board of Trustees of the Association.
- 1.28 “Declaration” shall mean and refer to this Declaration Condominium for Bear Lodge Condominiums, including all attached exhibits, which are incorporated by reference, and any and all valid amendments to this Declaration.
- 1.29 “Neighborhood” shall mean and refer to any of the distinct neighborhood communities which are within Cove at Sun Peak Master Association based on the type of dwelling, which shall include the Project and the Estate Homes.
- 1.30 “Sub-Association” shall mean and refer to the Association and the Estate Home Sub-Association which are or will be established for the governance of those particular Neighborhoods within the Project.



- 1.31 “Occupant” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit within the Project, including, without limitation, family members, tenants, and invitees of an Owner or an Occupant.
- 1.32 “Owner” shall mean and refer to the Person or Persons who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Summit County, Utah. The term “Owner” shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until such party acquires title to a Unit pursuant to foreclosure or any arrangement or proceeding in lieu thereof. More than one Owner is referred to herein as “Owners.”
- 1.33 “Person” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as “Persons.”
- 1.34 “Project” shall mean and refer to the Bear Lodge Condominium and all structures and improvements thereon including the Units and the Common Area and Facilities.
- 1.35 “Property” shall include all real property included in the Project, and shall include all easements and rights appurtenant thereto.
- 1.36 “Rules” shall mean and refer to the rules and regulations adopted by the Association.
- 1.37 “Second Plat” shall mean and refer to the plat recorded in the Summit County Recorder’s Office as Entry No. 456154, creating the Bear Lodge Condominium Project and the Units contained therein.
- 1.38 “Terms and Conditions” shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.39 “Unit” shall mean and refer to a subdivided Unit within the Project depicted as a separately identified parcel on the Second Plat, which may be independently owned and conveyed and is zoned or otherwise intended for use and occupancy as an attached or detached single family residence. Each dwelling shall be deemed to be a separate Unit.

## ARTICLE 2 THE PROJECT

- 2.1 Binding Effect of Governing Documents. The Association hereby declares and confirms that the Property is part of the Project and that the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall constitute equitable servitudes, covenants, and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including his/her heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 Nature of the Project. The Project is a residential development condominium project containing eighteen (18) Units.

- 2.3 Project Name. The Project is named the “Bear Lodge Condominium.” Notwithstanding, the name used by the Association for the Project may be different than the name identified in this Declaration and on the First Plat or Second Plat.
- 2.4 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.
- 2.5 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.

ARTICLE 3  
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA AND FACILITIES, AND  
ALLOCATED INTERESTS

- 3.1 The Unit. The Units are defined as follows:
- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
  - (b) The Unit consists of the space enclosed and bounded by the horizontal and vertical planes, as shown on the Second Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal boundaries of each Unit shall be the underside of the finished, but unpainted or decorated, ceiling of each level of the Unit, and the top of the finished, but undecorated, floor of each level in the Unit. The vertical boundaries of each Unit shall be the interior of the finished, but undecorated, walls located on the perimeter lines (boundary) of the respective levels of the Units, as shown on the Second Plat. All framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Second Plat), and all framing, structures, and concrete in any bearing walls are part of the Common Area. The Units shall include all pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical or horizontal boundaries of such Unit or located beyond the vertical boundaries of the Unit but designated and designed to serve only that Unit.
  - (e) Variances between the Plat and as-built construction. The original construction shall be the controlling dimension for any Unit. The original construction shall be the first installation of foundations, framing, wallboard, and the like.
- 3.2 Limited Common Area.
- (a) Specific Identification of Limited Common Areas. The Limited Common Area of a Unit, if any, shall include but not be limited to areas identified on the Second Plat as Limited Common Area that is spatially associated with that Unit.
  - (b) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Unit where so identified and may not be severed from the ownership of the Unit.

- 3.3 Allocated Interest of Each Unit in the Votes of the Association. The Owners of each Unit shall be entitled to vote their Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve. Each Unit shall have an Allocated Interest as defined in Exhibit B. Any difference in square footage, location, size, value, or other aspects of any Unit shall not be a reason to alter or change any Allocated Interest.
- 3.4 Plat. The Second Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between either the Plat and this Declaration, the Declaration shall control except to the extent provided for on the Plat or as otherwise provided by the application of controlling law.

#### ARTICLE 4 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION

- 4.1 Organization of Association. The Association shall serve as the organizational body for all Owners. In the event that the Association is not formed or is not in operation or not otherwise meeting its obligations under this Declaration, the Master Association shall assume all of the rights and duties of the Association. The Association hereby irrevocably delegates and assigns all of its rights, power and authority to the Master Association, and the Master Association accepts this delegation and assignment. The Association and the Master Association agree that if the Association operates and meets its obligations under this Declaration, then the Master Association need not, and shall not, operate and meet those obligations.
- 4.2 Legal Organization. The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Declaration and Bylaws.
- 4.3 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 4.4 Availability of Documents. The Association shall make available to the Owners copies of the Governing Documents as required by law.
- 4.5 Board of Trustees. The governing body of the Association shall be the Board of Trustees elected pursuant to the Bylaws. The Board of Trustees shall consist of three (3) members.

If no Board of Trustees has been appointed or elected, and the Board of Trustees is therefore not functioning, the Board of Directors of the Master Association shall have all of the right, power, authority, and obligations of the Board of Trustees. It is expressly contemplated by this Declaration that the Board of Directors of the Master Association may assume all of the powers of the Board of Trustees.

- 4.6 Board Acts for Association. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Board of Trustees, in all instances, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted by the Board of Trustees, unless the Master Association has assumed the rights and obligations of the Association due to the Association's failure to act, in which case such act, right, or obligation may be exerted by the board of Trustees of the Master Association.

4.7 Board of Trustees Members.

(a) Qualification.

- (i) To serve on the Board of Trustees, a Person must be an Owner current on payment of Assessments, and, if a natural individual, over the age of eighteen years old. If an Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, an officer, principal, shareholder, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Board of Trustees.
- (ii) The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Board of Trustees members.

- (b) Reasonable Ongoing Requirements for Board of Trustees Members. The Bylaws may place reasonable obligations and requirements on existing Board of Trustees members to retain their membership on the Board of Trustees, such as a requirement that a Board of Trustees member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Board of Trustees member who fails to comply with the reasonable requirements, which may include some action of the remaining Board of Trustees members. Any Bylaw requirements adopted pursuant to this section shall not be applicable retroactively and shall not apply to any Board of Trustees members on the Board of Trustees during the two-year term of the Board of Trustees member being served when they are adopted.

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

- (a) Except as provided herein, in the Bylaws, or in the Design Guidelines, neither any individual Board of Trustees member nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to:
- (i) amend or terminate any Governing Document;
  - (ii) elect or remove members of the Board of Trustees;

- (iii) establish or change the qualifications, powers and duties, requirements, or terms of Board of Trustees members or the Board of Trustees; or
- (iv) authorize or agree to any deviation or exception from the Terms and Conditions.

- 4.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board of Trustees or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Project to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.
- 4.10 Registration with the State. In compliance with the Act, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

## ARTICLE 5

### GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities set forth in this Article 5 in addition to any others set forth in the Governing Documents or provided by law. Notwithstanding anything to the contrary in the Declaration, it is the intention of the Owners, the Master Association, and the Association that in the event the Master Association has assumed the responsibilities of the Association as specified herein, the Master Association shall succeed to all of the rights, duties, obligations, powers, and authority of the Association and the Board of Trustees. This includes, but is not limited to, setting budgets and collecting assessments, enforcing use restrictions, adopting rules, obtaining insurance, giving notice, holding meetings, and any other right or obligation given to the Association or the Board of Trustees in this Declaration. If this happens, the board of the Master Association shall succeed to the rights and obligations of the Board of Trustees. All rights and obligations of the Association or the Board of Trustees in this Declaration may then be exercised by the Master Association and the board of trustees of the Master Association.
- 5.1.1 Establishing Control. If the Master Association has assumed responsibility for the Association due to the Association's failure to act, the Association may re-assert control and retain the rights, duties, obligations, powers and authority previously exercised by Master Association upon the vote of thirty percent (30%) of the Owners at a meeting of the Owners called for the purpose of holding such vote.
- 5.2 Maintenance. Each Unit Owner shall maintain, repair, and upkeep such Owner's Unit. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board of Trustees deems necessary to preserve and protect the Common

Area and the Project, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards, if they are adopted, by the Master Association.

- 5.2.1 Should the Association fail or cease to maintain the property which it responsible for operating, maintaining or repairing, the Master Association shall have the right and obligation to operate, maintain, repair and upkeep such property and shall collect Benefited Area Assessments from the Units for such operation, management, repair and upkeep. Such property shall be considered a Benefitted Area under the Master Declaration.
- 5.3 Master Association Assignment. The Association and the Units irrevocably consent and agree to the assignment of any and all rights necessary to operate, repair, replace, and maintain any Common Area, property owned by the Association, or property owned by the Association's members in common to the Association and to pay such assessments as necessary for the Master Association to exercise its obligation under this Assignment. The Master Association consents and agrees to exercise such rights and obligations only if the Association fails to do so.
- 5.4 Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (a) Subject to any applicable federal or state law or municipal ordinance, any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Board of Trustees alone. A material alteration to the Project, for example, is the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as the Entry Monument. Landscaping alterations and the addition or removal of signs or small structures are not material unless they cause other material changes such as those listed above.
  - (b) Subject to any applicable federal or state law or municipal ordinance, any capital improvement to the Project that does materially alter the nature of the Project, regardless of its cost, and prior to being constructed or accomplished, must be authorized by written consent of Owners holding at least thirty percent (30%) of the total Allocated Interests and must be approved of by the Board of Trustees.
- 5.5 Paying Expenses. The Association shall provide for the payment of Association expenses. The Master Association may provide for the payment of Association expenses if the Association has failed to do so.
- 5.6 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents. The Master Association may establish, collect and account for Assessments necessary to operate the Project with the requirements of the Governing Documents if the Association has failed to do so.
- 5.7 Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents and may include restrictions and regulations specific to any

Benefitted Area. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Board of Trustees' determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule. If the Master Association has taken over operation of the Project for the Association, the Master Association may adopt Rules as if it were the Association.

- 5.8 Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Board of Trustees in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Board of Trustees shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Board of Trustees at any time, with or without cause. **THE BOARD OF TRUSTEES HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.** The Master Association may hire a manager to manage the Project if the Master Association has taken over responsibility for the Project.
- 5.9 Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents. The Master Association shall have all such rights to act on behalf of the Association if it has taken over responsibility for the Project.
- 5.10 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights; (d) suspend rights to utilize the Recreational Amenities; and (e) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. The Master Association shall have all such rights to act on behalf of the Association if it has taken over responsibility for the Project.
- 5.11 Discretion in Enforcement.
- (a) Subject to the discretion afforded in this section, the Board of Trustees shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
  - (b) The Board of Trustees shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to: (i) impose sanctions; (ii) pursue legal action for a violation of the Governing Documents; (iii) compromise a claim made by or against the Board of Trustees or the Association; and (iv) pursue a claim for an unpaid Assessment.

- (c) Consistent with Subsection (b) of this Section 5.11, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Board of Trustees determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
  - (d) Subject to Subsection (e) of this Section 5.11, if the Board of Trustees decides under Subsection (c) above to forego enforcement, the Association is not prevented from later taking enforcement action.
  - (e) The Board of Trustees shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.
  - (f) The board of the Master Association shall have all such rights to act on behalf of the Association if it has taken over responsibility for the Project.
- 5.12 Reserve Fund. The Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required by Utah law. The Master Association shall maintain a reserve fund and shall obtain and update a Reserve Analysis as required by Utah law if it has taken over responsibility for the Project.
- 5.13 Preventing Conflicts with Service Providers and Vendors. The Association shall not allow any paid services or materials reasonably valued at more than \$2,500 to be performed or provided for the Association by (a) any Board of Trustees member; (b) any relative of any Board of Trustees member, Manager, or of any officer, employee, or owner of the Manager, except for responsibilities within the Manager's contract; or (c) any business or entity in which any Board of Trustees member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 10% ownership or beneficial, unless the relationship is disclosed to the Board of Trustees prior to any Board of Trustees vote on the issue. For the purpose of this Section 5.13, a relative is any natural individual known to be related by blood, adoption, or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.
- 5.14 Establishing Hearing Procedures. The Board of Trustees shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Board of Trustees shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Board of Trustees may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable



generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue. The Master Association shall have such powers if it has assumed responsibility for the Association.

- 5.15 Annual Meeting. The Association shall arrange for and conduct an annual meeting of the Owners as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association that are properly requested pursuant to the Governing Documents or the law. If the Master Association has assumed responsibility for the Association, it shall arrange and conduct the meeting. The meeting may be conducted immediately before or after the annual meeting of the Master Association.
- 5.16 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance or closing of a Unit. The payoff fee shall be \$50.00; however, the Board of Trustees may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.

## ARTICLE 6 BUDGETS & ASSESSMENTS

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 6.2 Budget and Regular Assessment.
- (a) The Board of Trustees is authorized and required to adopt a budget for the following year prior to the beginning of such year. The Board of Trustees may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next year. The Association may use a calendar or fiscal year, or may choose a different year. The budget shall estimate the total Common Expenses to be incurred for the next year (or that year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget shall include a line item that identifies the amount to be placed into the reserve fund.
  - (c) The Board of Trustees shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Unit.
  - (d) The Board of Trustees shall present the adopted budget to the Owners at an annual or special Association meeting.
- 6.3 Payment of Assessments. Unless otherwise established by the Board of Trustees and communicated to each Owner, each Owner shall pay the Association the Owner's regular

Assessment annually or on such other quarterly or monthly installment basis as the Board of Trustees or the Manager may determine.

- 6.4 Adjustments to Regular Assessments. In the event the Board of Trustees determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Board of Trustees, each Owner thereafter shall pay to the Association the Owner's adjusted Regular Assessment.
- 6.5 Personal Obligation for Assessment. Each Owner of a Unit, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents. Any and all Assessments together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Unit.
- 6.6 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Board of Trustees.
- 6.7 Rules Regarding Billing and Collection Procedures. The Board of Trustees shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.8 Certificate of Payment. Consistent with the Act, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Board of Trustees is authorized to charge a \$10.00 fee for issuance of a certificate; provided, however, the Board of Trustees may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.9 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.

- 6.10 Special Assessments to a Particular Unit. Special Assessments may be levied by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or Unit into compliance with the provisions of the Governing Documents;
  - (b) Any other charge designated by the Board of Trustees or the Manager as pertaining to the individual Unit consistent with the Governing Documents;
  - (c) Fines, late fees, collection charges, and interest; and
  - (d) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.11 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefits an individual Unit, and which can be accepted or not by the Unit Owner, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Unit, as may be determined by the Board of Trustees, in its discretion.
- 6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular year proves to be excessive in light of the actual Common Expenses, the Board of Trustees, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Unit in the Common Expenses of the Project, as the Board of Trustees deems appropriate. The decision of the Board of Trustees shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.13 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Board of Trustees is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 6.14 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

## ARTICLE 7

### NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 7.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Board of Trustees may, at its option, invoke any or all of the remedies granted in this Article 7. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by taking title to a Unit, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

- 7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of \$35. Thereafter, an additional late fee charge of \$35.00 per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments and Benefitted Area Assessments. To the extent permitted by law, the Owner and any future Owners of a Unit are jointly and severally liable for all Assessments related to that Unit accruing prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after he/she has lawfully transferred title to the Unit to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Unit.
- 7.4 Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of Initial Declaration and shall have priority over all encumbrances recorded after the Initial Declaration is recorded, except as otherwise required by law. To the fullest extent permitted by law, this Declaration is equitably subrogated to the lien priority position of the Initial Declaration. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the Notice of Assessment. The Association also has a lien on each Unit for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when: (a) the time for appeal described in the Act has expired and the Owner did not file an appeal or (b) the Owner timely filed an appeal under the Act and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (i) a lien or encumbrance recorded before the Initial Declaration was recorded; (ii) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment or Benefitted Area Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the

delinquent Owner and the Owner's Unit and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).

- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Association appoints Robert S. Rosing as trustee, who qualifies under Utah Code Ann. § 57-1-21(1)(a)(i). The Association hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and the Act to Robert Rosing, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 7.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote and right to utilize the Recreational Amenities and other common area and facilities; provided, however, that before termination of such rights the delinquent Owner be provided at least fourteen (14) days' prior notice, in accordance with the notice requirements in the Bylaws, of:
- (a) the impending termination of rights if payment is not received;
  - (b) the amount(s) past due, including any interest and late charges; and
  - (c) the right to request a hearing before the Board of Trustees.
- 7.9 Requiring Tenant to Pay Rent to Association.
- (a) Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant occupying any Unit for which an Assessment is more than sixty (60) days late; provided, however, that before requiring a tenant to pay lease payments to the Association, the Owner be provided at least fifteen (15) days' prior notice, in accordance with the notice requirements in the Bylaws, of:
    - (i) the Association's intent to demand the Owner's tenant pay his/her lease payments to the Association if payment is not received within fifteen (15) days;
    - (ii) the amount(s) past due, including any interest, late charges, collection costs and attorneys' fees; and
    - (iii) that any costs of collection, including, but not limited to attorneys' fees and other assessments that become due may be added to the total amount due and to be paid through collection of the tenant's lease payments;
  - (b) If the Owner fails to pay the amount owing after fifteen (15) days, the Association may exercise its rights to collect the lease payments from the delinquent Owner's

tenant by delivering written notice to the tenant, in accordance with the notice requirements in the Declaration or Bylaws, that:

- (i) due to the Owner's failure to timely pay Assessments, the Association has notified the Owner of the Association's intent to collect all lease payments until the amount owing is paid in full;
  - (ii) Utah 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 in full; and
  - (iii) the tenant's payment of the lease payments to the Association does not constitute a default under the terms of the tenant's lease agreement with the Owner.
- (c) The Association shall mail the Owner a copy of the notice given to the tenant.
  - (d) The tenant to whom a notice under Section 7.9(b) is given shall pay the Association all future lease payments as they become due and owing to the Owner beginning with the next monthly or other period payment until the Association notifies the tenant that the amount owed by the Owner is paid.
  - (e) The delinquent Owner shall credit each payment that his/her tenant makes to the Association pursuant to this Section 7.9 against any obligation that the tenant owes to the Owner as though the tenant made such payment to the Owner and Owner may not initiate suit or other action against the tenant for failure to make any lease payment that the tenant pays to the Association as required under Section 7.9(d).
  - (f) Within five (5) business days after the amount owing is paid, in full, the Association shall notify the tenant, in accordance with the notice provisions in the Bylaws, that the tenant is no longer required to pay future lease payments to the Association and a copy of said notice shall be mailed to the Owner.

7.10 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments or Benefitted Area Assessments, including but not limited to attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy (and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as reasonably necessary related to assert any non-dischargeability of debts, to assert claims against the bankruptcy estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt

to collect unpaid Assessments or Benefitted Area Assessments); and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

- 7.11 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to: obligations to pay assessments or maintain the Unit.

## ARTICLE 8 DESIGN CONTROLS

- 8.1 Design Review. All Design Review functions shall be performed by the Master Association and pursuant to the Master Declaration or any other relevant portion of the Governing documents.

## ARTICLE 9 RIGHT TO USE COMMON AREA AND FACILITIES

- 9.1 Rights and Nonexclusive License to Use Common Area and Facilities.

- (a) Subject to all other Terms and Conditions of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Area and Facilities. Such rights and nonexclusive license shall be appurtenant to and shall pass with title to the Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area and Facilities as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board of Trustees.
- (b) The Association shall have nonexclusive easements with the right of access over and across each Unit to make inspections, to prevent or mitigate damage to Common Area and Facilities, and to maintain, repair, replace or effectuate the restoration of the Common Area and Facilities and any other property or improvements for which the Association is responsible for maintaining which are accessible from such Unit. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area and Facilities for purposes necessary for the proper operation of the Project.
- (c) The right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Unit for the purpose of providing water, power, gas, or other utilities to the Common Area or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Association is reserved to the Association; provided, however, that the Association shall pay the actual cost of the water, power, gas, or other utility service utilized by the Association to the Owner of any such Unit.

- 9.2 Limitation on Easement. Notwithstanding anything to the contrary in foregoing Section 9.1, an Owner's rights and license for the use and enjoyment of the Common Area and Facilities shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner or guests who at any given time are permitted to use the Common Area and Facilities; and
  - (b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any roadway, parking area, or developed open space contained within the Project for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 9.3 Utilities. Easements and rights-of-way over, under and through the Project for the installation and maintenance of electrical lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined by the Board of Trustees to be helpful in serving the Project, the Units, or the Owners are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or for all of the Owners as their attorney-in-fact, to any Person, easements and rights-of-way in, on, over or under the Common Area and Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, irrigation systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner, by taking title to a Unit, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement or right of way can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.
- 9.4 Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area as a result of the manner in which it was constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.



- 9.5 Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

## ARTICLE 10 USE LIMITATIONS AND CONDITIONS

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners and this Declaration. Rules shall treat similarly situated Owners similarly.
- 10.2 Signs. The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules and Regulations. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit.
- 10.3 Holiday Decorations. The Association may regulate and restrict the time, place and manner of holiday decorations in the Project that are visible outside of the Unit in the Rules. The right to display holiday decorations may not be removed, but the Association may adopt Rules relating to when such decorations may be displayed, such as within a reasonable time period near the appropriate holiday, or related to how large, garish, bright, or loud such displays may be. "Holiday Decorations" shall include any type of object (including but not limited to flags, billboards, banners, lawn signs, window signs, wreaths, trees, lights, inflatable items, lasers, and religious symbols) used to convey a message, symbol, idea, identification, or for any other purpose related to a religious or secular holiday for which such items are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to another Unit or the Common Area.
- 10.4 Size of Household. The Association is without authority to regulate the composition or members of a household of an Owner except as provided herein. The Association may limit the Owners to no more than a single-family unit with occasional guests, and the Association may limit the number of Occupants permitted in a Unit based on the size of the Unit. The Association may also limit the leasing and transient occupancy of a Unit as provided in Article 18 of this Declaration.
- 10.5 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, city, county, state or federal body. It shall be a nuisance under this Declaration for any Owner to permit or create an unreasonable level of light pollution or allow excessive exterior lighting from the Owner's Unit or to permit or create an

unreasonable level of sound to emanate from the Owner's Unit. Unless and until the Association changes this standard by adoption of a Rule, it shall be a nuisance to allow noise to emanate from a Unit after 10:00 pm and before 7:00 am on a weekday, and after midnight and before 8:00 am on a weekend.

- 10.6 Temporary Structures. No structure or building of a temporary character, including a tent, trailer or shack, shall be placed upon the Project by any Owner.
- 10.7 Parking. Unless otherwise permitted by the Association in the Rules, no automobiles or other vehicles of any type (including, without limitation, oversized, commercial, or recreational vehicles, boats or trailers) shall be parked, stored, or located within any portion of the Project except: (1) in the Unit's assigned parking space or assigned garage at any time, and (2) during summer months of May 1<sup>st</sup> to October 31<sup>st</sup> also in front of a Unit's assigned garage. Inoperable vehicles are not permitted to be stored within the Project. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project by Owners, Occupants, and their respective family members, tenants, and invitees, including, without limitation: (a) the right to remove or immobilize or cause to be removed or immobilized any vehicles that are improperly parked; (b) restrictions on the type and condition of vehicles allowed within the Project; (c) restrictions on the time period and duration of temporary parking; and (d) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict or limit parking on City or public roadways within the Project by Owners, Occupants and by people associated with the use of Units. No Owner shall post, or permit to be posted, a for sale sign or similar sign within any vehicle on such Owner's Unit. Automobile repair or service is not permitted within the Project.
- 10.8 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to City ordinance, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.9 Repairs. No repairs of any motor vehicles, detached machinery, equipment, or fixtures shall be made within the Project except as may be permitted by the Board of Trustees in the Rules.
- 10.10 Unsightly Items. All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Refuse containers, machinery, and equipment not a part of the Unit, shall be prohibited on a Unit unless screened from view of neighboring Units and Common Area and Facilities. Trash and garbage shall be properly and promptly disposed of. Furniture, fixtures, firewood, appliances, machinery, equipment or similar personal property may not be stored in such a way as to be visible from the Common Area or from another Unit. Tasteful lawn ornaments are permitted only if they are made of natural woods, stone or metal and conform to the general landscaping of the Project.
- 10.11 No Fires or Fireworks. No open fires or fireworks are permitted anywhere in the Project, other than in approved residential fire pits. No open burning of any kind, including but not limited to, yard trimmings, construction waste, or other materials is permitted.

- 10.12 Shooting and Hunting. Shooting of any type of firearm or bow is strictly prohibited within the Project. Hunting, including bow-hunting, anywhere within the Project is prohibited. Capturing, trapping, or killing wildlife is prohibited, except in circumstances posing an imminent risk to the safety of persons or pets in the Project or when authorized and supervised by the Association accordance with a game management program.
- 10.13 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets are allowed in the Project, subject to the terms and conditions of this Declaration; provided, however, that no more than two (2) animals of any type may be kept in a Unit. No livestock, poultry, or dangerous reptile may be kept in any Unit. Notwithstanding the foregoing, no animal may be kept within a Unit which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Board of Trustees, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Board of Trustees may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. The Board of Trustees may adopt Rules adding further Terms and Conditions related to animals within the Project not inconsistent with this Declaration including, but not limited to, requirements for registration, specific fees or deposits for Owners or Occupants that have animals, the use of leashes, and restrictions on noise. Incessantly barking dogs will not be permitted. An Owner who keeps an animal within the Project shall be liable for any and all damage caused by such animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal.
- 10.14 Residential Occupancy.
- (a) No trade or business may be conducted in or from any Residential Unit unless:
    - (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Unit, or the Common Area and Facilities;
    - (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
    - (iii) the business activity does not involve solicitation of Occupants or Owners of the Project;
    - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Board of Trustees, in its sole discretion.
    - (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
    - (vi) the business activity is disclosed to the Board of Trustees before business is commenced along with a description of the business activity, a

statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;

- (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
- (viii) the Owner of the Unit resides in the Unit in which the business activity is proposed for the entire time any business activity is conducted; and
- (ix) the Board of Trustees' ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.

- (b) Except as allowed under Section 10.14(a) above or as allowed under Article 18 herein, no Residential Unit may be used for any purpose other than a residential purpose.

10.15 No Subdivision or Timeshare of Unit or Recording by Owners of Terms and Conditions. No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Board of Trustees and/or Owners (as required in this Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section 10.15 shall be null, void, and of no legal effect.

10.16 Hazardous Substances.

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. Notwithstanding, the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project shall not be deemed a violation of this Section 10.16.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of

Hazardous Substances on the Project. The obligations of each Owner under this Section 10.16 shall survive any subsequent sale of the Unit by an indemnifying Owner.

- (c) As used in this Section 10.16, “Hazardous Substances” are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section 10.16, “Environmental Law” means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety or environmental protection.

- 10.17 External laundering. External laundering, including clotheslines, is prohibited within the Project.
- 10.18 Mining. No Owner shall use a Unit or the Common Area for mining, drilling or quarrying activity at any time.
- 10.19 Utilities. All Utility installations made by any Owner or on behalf of any Owner shall be underground to the maximum extent possible.
- 10.20 Outside Items. Playground equipment, swimming pools, trampolines, and similar items are not permitted in the Project.
- 10.21 Window Covers. The Board may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.

## ARTICLE 11 INSURANCE

- 11.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers, and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. If the Master Association has assumed responsibility for the obligations of the Association, the Master Association is authorized and required to obtain the insurance specified herein for dwellings and common elements of the Association and to include the cost of such insurance as part of the Common Expense for the Association. The Association irrevocably nominates and appoints the Master Association as its attorney-in-fact for the purpose of executing any documentation required to obtain such insurance.
- (a) If the Master Association assumes the responsibility for insurance required under this Article, the Master Association may, at its discretion, include the coverages required herein as part of the Master Association's insurance policies, so long as such policy meets the coverage requirements contained herein.
- 11.2 Annual Insurance Report. Prior to each annual meeting of the Association, the Board of Trustees shall obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and Utah law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage, and, if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION;" and (d) a description of any flood insurance and material exclusions and limitations for that coverage; and, if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION." The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. The most recent annual insurance report shall be made available to the Owners at or before the annual meeting of the Association and shall be made available to any Owner at any other time upon written request.
- 11.3 Property Insurance.
- (a) Hazard Insurance.

- (i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project to include the Common Area and Facilities and the physical structure of all Units and attached dwellings, limited common areas appurtenant to such Units and attached dwellings, fixtures, betterments, and the structures' service equipment.
- (1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies, including, without limitation, any single-family detached Unit. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry, and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas and Facilities, Units, or Limited Common Areas, including, but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.
  - (2) At a minimum, the blanket policy shall afford protection against loss or damage by: (a) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (b) all other perils normally covered by "special form" or "all risks" property coverage.
  - (3) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
  - (4) The blanket policy shall include either of the following insurance endorsements to assure full insurable value replacement cost coverage: (a) a "Guaranteed Replacement Cost Endorsement" under which the insurer agrees to replace the insurable property regardless of the cost; or (b) a "Replacement Cost Endorsement" under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an "Agreed Amount Endorsement" which must waive or eliminate the requirement for coinsurance.
  - (5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (a) "Inflation Guard Endorsement," if available; (b) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (c) "Equipment

Breakdown,” if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000), or the insurable value of the building containing the equipment.

- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
  - (i) The Association's policy provides primary insurance coverage; and
  - (ii) Notwithstanding Subsection 11.3(b)(i) and subject to Subsection 11.3(b)(iii), the Owner is responsible for the Association’s insurance deductible; and the property insurance portion of the Owner’s insurance policy applies to that portion of the loss attributable to the Association’s insurance policy deductible.
  - (iii) As used in this Subsection (3):
    - (1) An Owner who owns a Unit that has suffered Unit Damage (as defined in the Act) as part of a Covered Loss (defined in the Act) is responsible for an amount calculated by applying the Unit Damage Percentage (defined in the Act) for that Unit to the amount of the deductible under the Association's property insurance policy.
    - (2) If an Owner does not pay the amount required under Subsection (11.3)(b)(iii)(2) within thirty (30) days after substantial completion of the repairs to the Unit or the Limited Common Area appurtenant to the Unit as may be applicable, the Association may levy an Assessment against the Owner for that amount.
- (c) Flood Insurance.
  - (i) Except for single-family detached Units, if any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that is not part of a building and all Common Area and Facilities within the Project (“Insurable Property”) in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of the Insurable Property.
  - (ii) If the Project is not situated in a Special Flood Hazard Area, the Association may, nonetheless, in the discretion of the Board of Trustees, purchase flood insurance to cover water and flooding perils to Common Areas and Facilities not otherwise covered by blanket property insurance.



- (d) Earthquake Insurance. The Association may purchase earthquake insurance as the Board of Trustees deems appropriate for Common Area and Facilities and buildings or structures for which the Association has a legal obligation to obtain property insurance.
  - (e) Association's Right to Not Tender Claims that are under the Deductible. If, in the exercise of its business judgment, the Board of Trustees determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area and Facilities; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in section 11.3(b)(iii)(2), recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.
  - (f) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under this Article 11 for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it may be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.
- 11.4 Comprehensive General Liability ("CGL") Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and Facilities and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one individual or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Trustees, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Board of Trustees, the policy may also include coverage for any Manager and any employees of

the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months' regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Board of Trustees members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the Association; and (iv) officers, directors, and employees of any Manager of the Association.
- 11.7 Workers' Compensation Insurance. The Board of Trustees shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law.
- 11.8 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 Named Insured. The named insured under any policy of insurance shall be the Association. Subject to Sections 11.1 and 11.3(a)(i), each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee (defined below) if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association, shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete, and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lienholders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner. In the discretion of the Board of Trustees or upon written request executed by Owners holding fifty percent (50%) of the total Allocated Interests, the Board of Trustees shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust

agreement, for the purpose of exercising such rights under this Section as the Owners or Board of Trustees (as the case may be) shall require.

- 11.11 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.12 Waiver of Subrogation Against Owners and the Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any individuals residing with a Unit Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.13 Right of Action. Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.14 Applicable Law. This Declaration is specifically subjecting the Association to the applicable insurance requirements and provisions of Act, and any amendments thereto enacted by law. It is the intent of this Section that any future changes to the insurance law applicable to Utah condominiums be applicable to the Association.

## ARTICLE 12 EMINENT DOMAIN

- 12.1 Taking of Common Area. If the Common Area and Facilities, or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Board of Trustees shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 12.2 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project shall be terminated and the Board of Trustees shall wind down the Association in accordance with applicable law.
- 12.3 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

## ARTICLE 13 AMENDMENTS

- 13.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.

- 13.2 Scope of Amendments. This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association.
- 13.3 Execution and Effective Date of Amendments. An amendment that has been adopted as provided in Section 13.1 shall be executed by the President of the Association and the Secretary of the Association shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the Office of the Recorder for Summit County, Utah.
- 13.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including deleting, adding, or modifying Common Area and Facilities, deleting, adding or modifying Benefitted Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.
- 13.5 Amendment to Conform to Law. The Board of Trustees may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has a significant experience and a regular practice in area of community association law a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section,
  - (b) The members of the Board of Trustees must unanimously agree to the Amendment at the time it is recorded,
  - (c) The Board of Trustees must provide to the Owners: (i) the proposed amendment instrument; (ii) the language of this section of the Declaration; (iii) the law that

conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (iv) the attorney opinion letter required for the amendment; and (v) a notice in which the Association: (1) notifies the Owner that it intends to amend the Declaration pursuant to this section; (2) provides the Owner a right to object to the amendment within thirty (30) days; and (3) provides instructions on how, when, and where to properly return the objection. The Board of Trustees may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.

- (d) Within forty-five (45) days of providing the information to the Owners required by this Section 13.5, no more than thirty percent (30%) of the Allocated Interest holders have objected, in writing, to the amendment.
- (e) Having otherwise complied with all of the requirements of this Section 13.5, the Board of Trustees members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Allocated Interest holders objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the Summit County Recorder's Office, Summit County.

#### ARTICLE 14

##### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 14.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Declaration, the Second Plat, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and the Master Declaration, (or rules or policies adopted pursuant to any such Master Declaration), the Master Declaration shall control unless prohibited by law.
- 14.2 Interpretation of Declaration and Applicability of the Act. The Association intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 14.3 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, simultaneously, consecutively, or alternatively.

- 14.4 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 14.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a condominium community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 14.6 Applicable Law. Except as otherwise expressly provided in this Declaration, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 14.7 Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 14.8 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 15

### NOTICE

- 15.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:
- (a) Notice to an Owner from the Association:
    - (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
    - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

- (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent;
  - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (v) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.
  - (vi) Notwithstanding anything to the contrary in this Section 15.1, the Association shall send all notices to an Owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit address.
  - (vii) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (i) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
  - (ii) In case of any emergency involving immediate and substantial damage to a Unit, the Common Areas and Facilities, property of the Master Association or common area of the Master Association, or another Unit, before entering the Unit, the Association shall: (1) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (2) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (3) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (iii) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before

entering a Unit, the Association shall: (1) give notice to the Owner that an entry is required at least one (1) week in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Unit; (b) the date and time of the entry; (c) the purpose of entering the Unit; (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit; (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit; and (f) any other information the Association deems appropriate to include; and (2) post the written notice described above on the front door to the Unit at least three (3) days prior to entry into the Unit.

- (c) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
  - (i) by a written notice delivered personally to the Manager or President of the Association, which shall be effective upon delivery;
  - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
  - (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered seventy-two (72) hours after it is sent; or
  - (iv) by facsimile (whether to a machine or by other means) to the Association sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

## ARTICLE 16 ATTORNEYS' FEES AND COSTS

### 16.1 Legal Costs Associated with Disputes with Owners.



- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in "costs," as the term is used in the Utah Rules of Civil Procedure.
- (c) Exception to Owner's Liability for Fees and Costs. If, related to: (i) any dispute with an Owner; (ii) any challenge by an Owner to a position of the Association on a Term and Condition; or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## ARTICLE 17 RESERVES

- 17.1 Requirement for Reserves. The Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:
- (a) Collection. Reserve funds may be collected as part of regular or special Assessments or Benefitted Area Assessments.
  - (b) Amount. In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Trustees determines, based on the reserve analysis, to be prudent. For purposes of this Section 17.1, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
  - (c) Owner Veto. Within 45 days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the total Allocated Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not

vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

- (d) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts.
- (f) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.
- (g) Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person or Persons with: (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the Reserve Specialist (RS) designation available through the Community Association Institute (CAI), the Professional Reserve Analyst (PRA) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (h) Summary and Copies of Reserve Analysis. The Association shall annually provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

## ARTICLE 18 LEASING AND NON-OWNER OCCUPANCY

- 18.1 Declaration and Rules Govern Non-Owner Occupancy. Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a

Unit shall be governed by this Article 18, the Rules, and procedures adopted as provided herein.

18.2 Definitions. For the purpose of this Article 18, the following definitions shall apply:

- (a) “Non-Owner Occupied” Unit means: a Unit occupied by someone who has given consideration, including money, to the Owner of the Unit in return for the right to occupy the Unit.

18.3 Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 18.4, 18.5, and 18.6, Units may be leased or Non-Owner Occupied.

18.4 Requirements for Non-Owner Occupancy. Owners of Non-Occupied Units must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for a term of at least thirty (30) days, and shall provide as a term of the agreement that the Occupant shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant. No lease or agreement for occupancy of twenty-nine (29) days or less is permitted.
- (b) If required in the Rules or requested by the Board, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or required by the Board.
- (c) An Occupant of a Non-Owner Occupied Unit may not occupy any Unit for transient, short-term (less than thirty days (30) days), vacation, or seasonal use (whether for pay or not).

18.5 Permitted Rules. The Board may adopt Rules requiring reporting and procedural requirements related to Non-Owner Occupied Unit and the Occupants of those Units other than those found in this Article 18, including requiring informational forms to be filled out by Owners, and other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

18.6 Owner Responsibility for Occupants. In all cases of Non-Owner Occupancy, the Owner is nonetheless responsible for the behavior of all Occupants and any fines assessed against such Owner’s Unit. The Owner of a Unit shall be responsible for the Occupant’s or any guest’s compliance with the Declaration, Bylaws, and Rules.

## ARTICLE 19 GENERAL PROVISIONS

19.1 Enforcement. The Association, Master Association, or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation, including, but not limited to attorneys’ fees and costs incurred in conjunction with such enforcement.

- (a) Each Owner, by taking title to a Unit, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorneys' fees.
- 19.2 No Liability of Officers. To the fullest extent permitted by applicable law, neither the Board of Trustees nor any officer of the Association nor the board of Trustees of the Master Association nor any officer of the Master Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 19.3 Use of Funds Collected by the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.
- 19.4 Owner Liability and Indemnification. Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area and Facilities that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 19.5 Areas of Owner Responsibility. Except to the extent that maintenance, repair and upkeep of Unit exteriors has been assigned to the Association, each Owner shall be responsible for the maintenance, repair, and upkeep of the Owner's Unit, including snow and ice removal during winter months. The Association may promulgate Rules and take on maintenance responsibilities otherwise assigned to Owners.
- 19.6 Variances. The Board of Trustees, at its option and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Declaration if the Board of Trustees determines, in its discretion: (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of

circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial affect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Community-Wide Standards and not prohibited by the Development Agreement. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board of Trustees. No variance may be granted that is inconsistent with the Development Agreement, City Ordinance or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Unit is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.

- 19.7 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 19.8 Security. The Association and the Master Association shall not, in any way, be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. The Association and the Master Association shall not be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that the Association and the Master Association have no duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Association, the Master Association, nor the Board of Trustees or the Master Association board of trustees are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.
- 19.9 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the

time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

- 19.10 No Representations and Warranties. **EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE BOARD OF TRUSTEES HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.**

Dated this 17<sup>th</sup> day of December, 2021<sup>AK</sup>.

BEAR LODGE CONDOMINIUM

By: Charles M Brown  
Signature

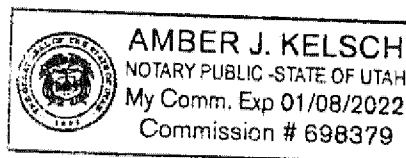
Charles M Brown  
Printed

Its: Designated Board Member

STATE OF UTAH )  
COUNTY OF Summit ) ss.

On this 17<sup>th</sup>, day of December, 2021<sup>AK</sup>, personally appeared before me Charles M. Brown, whose identity is personally known to me, (proven on the basis of satisfactory evidence) and who by me duly sworn/affirmed, did say that he/she is the Designated Board Member, of Bear Lodge Condominium and that said document was signed by him/her in behalf of said Corporation with all necessary authority, and acknowledged to me that said Corporation executed the same.

Amber J. Kelsch  
Notary Public



## EXHIBIT A

### LEGAL DESCRIPTION

The Property referred to in the foregoing document is located in Summit County, Utah and is described more particularly as follows:

All of the Bear Lodge Condominiums as shown on the plat map recorded with the Summit County Recorder's Office on June 12, 1996 as Entry No. 456154, including all common area and improvements shown thereupon.

Parcel Nos.:

BL-100-A  
BL-101-A  
BL-102-A  
BL-103-B  
BL-104-B  
BL-105-B  
BL-200-A  
BL-201-A  
BL-202-A  
BL-203-B  
BL-204-B  
BL-205-B  
BL-300-A  
BL-301-A  
BL-302-A  
BL-303-B  
BL-304-B  
BL-305-B



EXHIBIT B

**BYLAWS  
FOR  
BEAR LODGE CONDOMINIUMS**

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**AMENDED  
BYLAWS  
OF  
BEAR LODGE CONDOMINIUM**

Initial bylaws for the Bear Lodge Condominium Owners Association were not established. Pursuant to the authority reserved to the Owners and the Association in the Declaration and the Act, the Association hereby adopts these Bylaws (these “Bylaws”) for the Association. These Bylaws replace and supersede any previous Bylaws in all respects. These Bylaws and any valid amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants of the Project.

**ARTICLE I  
DEFINITIONS**

- 1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the this Declaration of Condominium for Bear Lodge Condominiums (the “Declaration”) shall have the same defined meanings when used in these Bylaws.
- 1.2 Notice. Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II  
OWNERS**

- 2.1 Annual Meetings.
- (a) Requirement. An annual meeting of the Owners shall be held no less than once each calendar year. The annual meeting may take place immediately after or before the annual meeting of the Cove at Sun Peak.
  - (b) Date and Time. The date, time and location of the annual meeting shall be determined by the Board of Trustees, in its discretion.
  - (c) Purpose. The Annual Meeting shall be held for the following purposes.
    - (i) electing members of the Board of Trustees;
    - (ii) distributing of the budget, if it was not distributed before the meeting;
    - (iii) announcing the current deductible for the Association’s property insurance and the Owners’ potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
    - (iv) transacting such other business as may properly come before the meeting.
  - (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Board of Trustees’ discretion, by the Board of Trustees at a subsequent meeting of the Board of Trustees.
  - (e) Election of Board of Trustees Members. If the election of the Board of Trustees members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board of Trustees shall cause the

election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

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

2.3 Place of Meetings. The Board of Trustees may designate the office of the Manager or any place within Summit County, Utah as the place of meeting for any annual or special meeting.

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

2.5 Owners of Record. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than thirty (30) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Person appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 Quorum. The Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business.

2.7 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the

final time to deliver proxies) to the Secretary of the Association or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting.

- 2.8 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, votes equal to the Allocated Interest of such Owner's Unit. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but one Owner shall be counted for the purposes of establishing a quorum.
- 2.9 Ballots and Written Consent. The Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act.
- 2.10 Minutes of Meetings. The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum: (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request consistent with Section 4.4 of the Declaration.

### ARTICLE III BOARD OF TRUSTEES

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) Number of Members. Unless the powers and duties of the Board have been assumed by the board of the Master Association, the Board of Trustees shall be composed of three (3) individuals meeting the qualifications stated in the Declaration and Section 3.1(b) below.
  - (b) Member Requirements. Candidates must also be current on Assessments. No requirements from this Declaration shall apply to any members of the board of trustees of the Master Association.
  - (c) Term. The term of each Board of Trustees member shall be three (3) years. The terms of the Board members shall be staggered so that one Board Member seat shall be up for election each year. If, at the time of the adoption and recording of this Declaration, the terms are not properly staggered, the Board members shall adjust their terms so that they are properly staggered. If that Board cannot agree on how the terms should be adjusted, the decision shall be by coin-toss.
  - (d) Nominations. At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her own name or the name of any other willing and otherwise qualified person to serve on the Board of

Trustees. If the Association gives advance notice of any persons seeking election to the Board of Trustees, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Board of Trustees members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.

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

### 3.2 Meetings.

- (a) Regular Meetings. If in operation, the Board of Trustees shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) Who Is Entitled to Attend. Consistent with the Act, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Board of Trustees is in executive session.
- (c) Special Meetings. Special meetings of the Board of Trustees may be called by or at the request of any two Board of Trustees members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Board of Trustees member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.



- (d) Quorum and Manner of Acting. A majority of the Board of Trustees members shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Board of Trustees members present at any meeting at which a quorum is present and for which proper notice was provided to the Board of Trustees members shall be the act of the Board of Trustees. The Board of Trustees members shall act only as a Board of Trustees, and individual members shall have no powers as such.
- (e) Place and Notice of Meetings. The Board of Trustees may designate any place in Summit County, UT, as the place of meeting for any regular meeting called by the Board of Trustees but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Board of Trustees members and Owners shall be given at least ten (10) days' notice of regular meetings.
- (f) Executive Session.
  - (i) The Board of Trustees or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session and, if they enter executive session, shall discontinue any executive session by motion and a vote. A member of the Board of Trustees who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Board of Trustees.
  - (ii) The minutes of the meeting at which an executive session is held shall include:
    - (1) The purpose(s) of the executive session in sufficient detail. By way of example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," "to discuss the pending litigation with XYZ," or "to discuss a complaint of a Rule violation."
    - (2) Any decisions made during executive session. Decisions made in executive session that cannot be properly and fully documented without disclosing attorney-client privileged information shall be recorded in the minutes of the meeting as "Decision made regarding attorney-client privileged issue that are recorded in Separate and attorney-client privileged minutes of the Executive Session" and separate executive session minutes shall be created that shall fully describe the decision as would normally be required in regular minutes. The separate executive session minutes shall state on their face that they contain attorney-client privileged information and shall be disclosed to non-committee members only as required by law for the disclosure of attorney-client privileged information.
  - (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the

Board of Trustees or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

- (iv) Executive sessions may be held to discuss and make decisions related to the following matters:
  - (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;
  - (2) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
  - (5) The Board of Trustees or the Sub-Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Board of Trustees shall be entitled to be present at executive committee meetings of the Board of Trustees. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.

### 3.3 Informal Action and Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if each and every Board of Trustees member, in writing, either:
  - (i) votes for the action; or
  - (ii) votes against or abstains from voting, and fails to exercise his/her right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (i) describing the action taken;
  - (ii) signed by each Board of Trustees member; and
  - (iii) not revoked pursuant to subsection 3.3(d).
- (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to

take the action at a meeting at which all of the Board of Trustees members then in office were present and voted.

- (d) A Board of Trustees member may revoke consent to any action given pursuant to this section by communicating, in writing, that the member has changed his/her vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
- (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Board of Trustees and may be described as an action taken at a meeting of the Board of Trustees members in any document.
- (g) For purposes of this section:
  - (i) “Signed” or “signature” is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the requirement for a signature.
  - (ii) “Writing” shall refer to an email, letter, facsimile, or any other physical or electronic document.
  - (iii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (iv) Any response to any electronic communication shall be:
    - (v) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery); or
    - (vi) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  - (vii) A communication shall satisfy the requirement to “describe the action taken” if:
    - (1) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
    - (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
    - (3) the writing from the Board of Trustees member otherwise sufficiently references the proposed action.

3.4 Compensation. No Board of Trustees member shall receive compensation for any services that he/she may render to the Association as a Board of Trustees member; provided, however, that a Board of Trustees member may be reimbursed for expenses

incurred in the performance of his/her duties and to the extent such expenses are unanimously approved by the Board of Trustees.

- 3.5 Resignation and Removal. A Board of Trustees member may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Board of Trustees member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.
- 3.6 Vacancies. If vacancies shall occur in the Board of Trustees by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Board of Trustees member, the Board of Trustees members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board of Trustees members then in office, even though less than a quorum may be available. Any vacancy in the Board of Trustees occurring by reason of removal of a Board of Trustees member by the Owners may be filled by election by the Owners at the meeting at which such Board of Trustees member is removed. Any Board of Trustees member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their predecessor.

#### ARTICLE IV OFFICERS

- 4.1 Officers. The officers of the Association shall be a President, Secretary, and Treasurer.
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the first meeting of the Board of Trustees following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office except during any period in which there are only three (3) Board of Trustees members. All officers must be members of the Board of Trustees during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Board of Trustees member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Board of Trustees at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the

Board of Trustees shall ensure that the duties and responsibilities of the office are performed.

- 4.6 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board of Trustees. The President shall have the general authority to implement decisions of the Board of Trustees and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Board of Trustees approval as is necessary and prudent to preserve and protect property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Board of Trustees may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the Presidents absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Board of Trustees.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board of Trustees. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the President in the event of the President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Board of Trustees.
- 4.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board of Trustees.

## ARTICLE V SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Board of Trustees may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers, including,

without limitation, Neighborhood Sub-Committees. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Board of Trustees member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Trustees in a written resolution. The Board of Trustees may terminate any Sub-Committee at any time.

- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Trustees.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Board of Trustees hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Board of Trustees.
- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Board of Trustees due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board of Trustees, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## ARTICLE VI

### INDEMNIFICATION

- 6.1 Indemnification. No Board of Trustees member, officer, or member of a Sub-Committee (including any member of the Design Review Board) shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board of Trustees member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board of Trustees member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board of Trustees member,

officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Board of Trustees member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Board of Trustees members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Board of Trustees member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Board of Trustees, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE VII AMENDMENTS

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners of Units holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Summit County, Utah.

ARTICLE VIII  
WAIVER OF IRREGULARITIES

- 8.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting.
  - (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held,
  - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting,
  - (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting.
  - (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other Law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.
- 8.3 Irregularities that Cannot Be Waived. The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration.
  - (b) Any failure to obtain the proper number of votes required to pass a particular measure.

ARTICLE IX  
ASSUMPTION OF RESPONSIBILITIES BY MASTER ASSOCIATION

- 8.4 Assumption of Responsibilities by Master Association. If the Master Association has assumed the rights, power, obligations and duties of the Association pursuant to this Declaration, any requirement of these Bylaws shall be superseded by the requirements of the Bylaws of the Master Association, with the exception of the procedures for calling a special meeting, the indemnification provisions of this part, the amendment provisions. If a special meeting of the members is called pursuant to these Bylaws and the Act, then the provisions of these Bylaws applicable to meetings of the members shall apply. If the Association assumes its rights, power, obligations and duties under this Declaration, these Bylaws shall apply in full force and effect.