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RECORDER, SALT LAKE COUNTY, UTAH  
BRAD REYNOLDS CONSTRUCTION  
BY: EEA, DEPUTY - WI 90 P.

DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS

FOR

THE COTTAGES ON 78<sup>TH</sup>

A PLANNED UNIT DEVELOPMENT  
(P.U.D.)

IN

SALT LAKE COUNTY, UTAH

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 22 AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND IMPORTANT WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 23.**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

THE COTTAGES ON 78<sup>TH</sup>

THIS DECLARATION is adopted by RK Investments LLC (“the Declarant”), and is effective as of the date it is recorded in the Salt Lake County Recorder’s Office.

**RECITALS**

1. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
2. The Declarant hereby adopts this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Project.
3. This Declaration is adopted to define the rights of the Association, the Owners, and the Declarant, to provide for a general plan for managing the Project and Property, and in furtherance of the Declarant’s efforts to efficiently and economically provide a quality living environment and to enable the Association in the future to protect and enhance the value of the Units.
4. The Declarant hereby desires to establish the Terms and Conditions for the mutual benefit and burden of the Association and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project and/or Property.

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

**ARTICLE 1  
DEFINITIONS**

As used herein, unless the context otherwise requires:

- 1.1 “Act” shall mean the Community Association Act codified beginning at Section 57-8a-101, Utah Code Annotated.
- 1.2 “Allocated Interest” shall mean the interest of that Owner (expressed as a percentage in Exhibit B to this Declaration) in the Common Expense liability, for the purposes of voting in the Association, and for other purposes indicated in this Declaration or the Act.
- 1.3 “Articles” shall mean the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.4 “Assessment” shall mean any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.

- 1.5 “Association” shall refer to THE COTTAGES ON 78<sup>TH</sup> COMMUNITY ASSOCIATION, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.6 “Bylaws” shall mean the bylaws of the Association attached as Exhibit C, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.7 “Committee Member” shall mean a duly qualified and elected or appointed member of the Management Committee.
- 1.8 “Common Area” shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Project, except (1) to the extent any fixture, structure, or other area is within the boundaries of or a part of a Unit, and (2) private roadways in the Project. Except as identified on the Plat or in this Declaration, Common Area includes but is not limited to:
- (a) all real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple;
  - (b) all fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water;
  - (c) as applicable, all apparatus and installations clearly intended and existing for common use;
  - (d) all Limited Common Areas; and
  - (e) all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.9 “Common Expenses” shall mean the actual and estimated costs for: (a) maintenance, management, operation, repair and replacement of the Common Area which is maintained by the Association; (b) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (d) utilities (other than utilities that are separately metered and charged to the Units), extermination, security, gardening and other related services; (e) insurance and bonds required or allowed by this Declaration; (f) the establishment of reserves; (g) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (h) 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.

- 1.10 “Declaration” shall mean this Declaration, including all attached exhibits other than any Bylaws, which are incorporated by reference, and any and all amendments to this Declaration.
- 1.11 “Governing Documents” shall mean and refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.12 “Lender” shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.13 “Limited Common Area” shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of one or more Owners to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 1.14 “Manager” shall mean any entity or Person engaged by the Management Committee to manage the Project.
- 1.15 “Management Committee” shall mean the entity with primary authority to manage the affairs of the Association.
- 1.16 “Occupant” shall mean a Person or Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).
- 1.17 “Owner” shall mean 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 County Recorder of Salt Lake County, Utah; however, Owner shall not include a trustee for a deed of trust.
- 1.18 “Person” shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.
- 1.19 “Plat” shall mean the record of survey map or maps of the Project recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments and supplements thereto.

- 1.20 “Project” shall mean the Property and all structures and improvements thereon including the Units, the Common Area, and the Limited Common Areas.
- 1.21 “Property” shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.22 “Rules” shall mean and refer to the rules adopted by the Association.
- 1.23 “Terms and Conditions” shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.24 “Unit” shall mean and refer to any one of the individual townhomes in the Project, and may be designated on the Plat as a “Lot” or a “Unit.” Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest appurtenant to such Unit.

**ARTICLE 2  
THE PROJECT**

- 2.1 **Binding Effect of Governing Documents.** The Declarant and Association hereby confirm that the Property is part of the Project and declare and agree 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, to the extent they are included in recorded documents, constitute equitable servitudes and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.2 **Nature of the Project.** The Project is a town-home style community that contains or will contain 107 Units in 34 separate buildings. It includes roadways, parking areas, and open space. The Project is not a cooperative and is not a condominium.
- 2.3 **Project Name.** The Project is named “The Cottages on 78<sup>th</sup>” and is located entirely in Midvale, Salt Lake County. The name used by the Association for the Project may be different than the name identified in this Declaration and on the Plat.
- 2.4 **Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.5 **Registered Agent.** The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.6 **Expansion of Project.** The Project may be expanded by the Declarant.

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

3.1 The Unit.

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification herein, each Unit consists generally of all structures on or within the boundary of the Unit, including but not limited to: (1) all interior and exterior walls, wall surfaces, floors, ceilings, roofs, foundations, and fixtures; and (2) in all walls shared with or abutting another Unit, the Unit shall extend to the center of the wall, which shall form the boundary of the Units sharing that wall. Any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (1) is part of and an integral part of the Unit structure (such as bay windows, pop outs, eaves, etc., but not fences, or other appurtenant structures that merely connect to the Unit structure), and (2) was constructed as part of the original construction of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit shall be part of the Unit.
- (d) All exterior and interior doors, door jams, windows, window sills, window frames and all components therein, and garage doors in or on the boundary of any Unit are part of the Unit. Skylights, if any, and all installations related thereto are part of the Unit.
- (e) All garages located under or within structures shall be part of the Unit to the same extent as described above for the interior of the Unit.
- (f) 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, and wallboard. If the Management Committee determines (in its sole discretion) that the then current construction varies from the original as-built construction, then the Association may, at the expense of the Association or the Owner, in the Management Committee's discretion, require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return a condition to the original construction, the Management Committee shall consider: (1) whether the Owner caused the nonconforming construction; (2) whether the Owner sought or obtained Management Committee approval for any nonconforming construction regardless of whether any such approval was valid or not; (3) whether other Owners engaged in similar nonconforming construction;

(4) the overall culpability of the Owner as it relates to the nonconforming construction; (5) the reason for the nonconforming construction.

3.2 Limited Common Area.

- (a) Specific Identification of Limited Common Areas. The Limited Common Area of each Unit shall consist of areas identified on the Plat as Limited Common Area that are spatially associated with that Unit. This shall generally include, for most Units, driveways and rear yard areas that may or may not be fenced in. No roadways are Limited Common Areas.
- (b) No Severance of Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.
- (c) Owners shall be entitled to install fences, at the Owner's expense, on the border of exterior Limited Common Areas to the rear of the Unit, other than driveways. All such installations shall be approved by the Association and shall be subject to the provisions of the Governing Documents related to exterior modification of Units.

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. The Allocated Interests shall be as provided for on Exhibit B. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Allocated Interest.

3.4 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. If any conflict exists between the Plat and this Declaration, this Declaration shall control except to the extent provided for on the Plat or as otherwise provided by the application of controlling law.

**ARTICLE 4  
MAINTENANCE, REMODELING, AND UTILITIES**

4.1 Owner Responsibility for Maintenance of Units and Limited Common Areas.

- (a) Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following:
  - (1) all interior and exterior doors, including thresholds, door jams, hinges, doorbells, chimes, handles, and locks;
  - (2) all interior paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
  - (3) all drywall, wallboard, or similarly functioning materials within the Unit;
  - (4) all framing, insulation, and other materials associated with interior nonbearing walls;

- (5) all windows, window sills (including the regular cleaning and clearing of clogged weep holes), window screens, window frames, and skylights, including the interior and exterior cleaning of such windows and any door glass. The Association may elect to arrange and pay for the cleaning of exterior windows as a common expense, may require the Owners to pay a particular person or company to clean on a schedule determined by the Association, or may arrange for cleaning of windows and pass through the specific expenses associated with each particular Unit as an expense associated with that Unit;
- (6) all sewer and drainage pipes, water, power, and other utility lines, and any wiring related to the provision of television, telephone, or internet services, to the extent that they are located within an Owner's Unit;
- (7) all plywood decking and similar materials on interior floors;
- (8) any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting particular to a porch or patio but not including exterior lighting attached to a Unit for the purpose of lighting Common Area outside of those areas), fans, plumbing fixtures including plumbing pipes and lines, stoves, refrigerators, hot water heaters, air conditioning units (including compressors, wiring to such units, condensers, ducting, and forced air units), intercoms, security systems, and such other appliances, fixtures, and decorations;
- (9) concrete pads within garages and Units (not including foundations);
- (10) the paint and any other decorative finish inside the opening to any skylight;
- (11) garage doors and garage door openers;
- (12) fences surrounding any Limited Common Area associated with the Owner's Unit. Common fences on boundaries of Limited Common Areas shall be maintained as required by the Association and shall be paid for equally by the Owners of the Units sharing the common fence; and
- (13) any modifications or repairs to the Unit as necessary to mitigate any radon gas or other naturally occurring environmental contaminate.

- (b) The Owner shall be responsible for keeping the Unit, and all porches, patios, Limited Common Areas and exterior areas of a Unit associated with an Owner's Unit in a clean and sanitary condition, free of pests and rodents, and uncluttered. The Management Committee may set forth in the Rules any limits, restrictions, or guidelines on what may or may not be left, stored, or installed, stored, or placed on the exterior of any Unit, which may include a prohibition on leaving, installing, or storing any items or animals in such places.

4.2 Association Responsibility for Maintenance of Units and Limited Common Areas. The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair, and replacement of the following:

- (a) all foundations (not including concrete pads within a dwelling);
- (b) all framing and structural components in ceilings and floors (not including concrete pads or plywood decking);
- (c) all framing, structural components, and insulation in exterior and bearing walls;

- (d) except as otherwise provided herein, all framing, structural components, and insulation located exterior to any drywall or similar materials on the interior of the dwelling;
- (e) the outside exterior surfaces of the dwelling and all components that are a part of the outside surface of all exterior walls and outside surfaces of the dwelling, except as otherwise specifically assigned in this Declaration to the Owner for maintenance and repair;
- (f) the framing, structural components, and insulation in any walls common to two dwellings;
- (g) any patios, porches, and stairways on the exterior of any dwelling and any railings associated therewith, excepting only fences as allowed in this Declaration around Limited Common Areas;
- (h) the roofs, rain gutters, and window wells; and
- (i) all utility lines and plumbing lines to the extent that they serve more than one Unit.

#### 4.3 Modifications to Units.

- (a) Without the prior approval of the Association, an Owner shall not make any alterations, repairs, or modifications to any part of the exterior of a building including any area that the Owner is obligated to maintain such as windows, light fixtures, skylights, and exterior doors. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials or aesthetic requirements or other standards.
- (b) Except as otherwise provided herein, an Owner may complete any maintenance or upgrades to the interior of a Unit not otherwise defined as remodeling, without prior approval of the Association.
- (c) No Unit shall be joined with another Unit nor shall any partition wall be removed between Units.
- (d) Remodeling.
  - (1) For the purpose of this Declaration, remodeling shall include but not be limited to: removing or adding walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling. Changes in flooring shall not be considered remodeling.
  - (2) Before beginning any remodeling or deviating from a previously approved remodeling plan, the Owner shall:



(i) notify the Association and provide the following: (1) a written description of the proposed remodeling, (2) a description of how any debris or materials removed will be disposed of, (3) the date the remodeling will begin, (4) the date the remodeling is expected to be completed, (5) the names, contractor's license numbers, proof of current workers compensation insurance, and proof of current liability insurance, of all contractors and other persons expected or required to perform work in the remodeling, (6) any expected nuisance that the remodeling shall create such as noise or dust, (7) and the Owner's proposal for mitigating any expected nuisance, and

(ii) wait to begin the remodeling until the Association gives written approval. If the Association does not respond within fifteen (15) days of a notice of remodeling, the Owner may complete the remodeling consistent with the information provided in the notice. The Association may respond by approving the request, requesting additional information, or denying the request if the notice is not complete or if the remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information or denies the request, the Owner shall not begin the remodeling.

(3) Without prior written permission of the Management Committee and regardless of whether any response from the Association is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (1) any use of the Common Area or any roadways for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area or roadways by vehicles, materials, or persons, or (4) any use of any Association garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling or the replacement of flooring.

(4) The Management Committee shall have no authority to approve of any remodeling inconsistent with the Terms and Conditions, that modifies the exterior dimensions of any Unit from the original construction (unless any such modification is approved of as otherwise provided herein), or that would cause unsafe conditions or a legal nuisance.

- (e) All remodeling and other repairs and modifications to Units after the initial construction of the Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.
- (f) If the Management Committee determines in its discretion that plans or drawings need to be provided and reviewed by an architect and/or engineer due to the scope or nature of the remodeling, a fee not to exceed the actual cost of the review may be charged to the Owner.

4.4 Maintenance of and Modifications to Common Area, Limited Common Area, and Units.

- (a) Maintenance of Common Area. Except as maintenance obligations are otherwise assigned to the Owners in this Declaration, the Association shall repair, maintain, replace, clean, and pay all expenses associated with the Common Area as that area is defined in this Declaration and identified on the Plat. This shall include the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject to the obligation to get approvals for Material Alterations to the Project). The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration. The Association retains the absolute right to remove and replace any structure, item, or condition in the Common Area.
- (b) Capital Improvements. Capital improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
- (1) Any capital improvement to the Project that does not materially alter the nature of the Project may be authorized by the Management Committee alone. A material alteration to the Project is, for example, the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, a tennis court, playground equipment, or parking area. 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.
- (2) Any capital improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by written consent of Owners holding at least thirty percent (30%) of the undivided ownership interest in the Common Areas and must be approved of by the Management Committee. Notwithstanding anything to the contrary, no material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners and the written consent of Owners holding fifty percent (50%) of Allocated Interest in the Association.
- (3) Notwithstanding the provisions of Section 4.4(b)(1) & (2), above, the Association may, at any time and in its sole discretion, designate portions of the Common Area as parking areas, even if such areas are not so designated on the Plat. Designating portions of the Common Area as parking areas or spaces shall not constitute a material alteration to the nature of the project.
- (c) Snow Removal. The Association shall provide for the plowing of snow on private streets within the Project, at such times and pursuant to such conditions as the Management Committee shall reasonably establish. The Association shall have no obligation to, but may take reasonable efforts to remove snow from any sidewalks

in Common Area. Owners shall be responsible for removing snow from any Limited Common Area driveways and any porches or patios, if they so desire. The Association shall not be under any obligation to remove snow from the public streets in or near the Project, but, in the discretion of the Management Committee, may direct the Association to remove such snow. In the discretion of the Management Committee, the Association may provide for the removal of snow that would otherwise be the responsibility of the Owners in this Declaration.

- (d) **Standard of Maintenance.** The Management Committee shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area, Limited Common Area, and the portions of the Units for which the Association has maintenance responsibility, so long as those areas are maintained in the best interests of the Owners.
  - (e) **Assessment of Maintenance Expenses to Specific Owner.** Subject to the provisions related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by an Owner or an Occupant, the Association shall assess to the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.
- 4.5 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain a Unit or Limited Common Area as required in the Governing Documents, or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Project, then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Management Committee determines to be required and requesting that the same be carried out within a period of at least fourteen (14) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice then the Association may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.
- 4.6 **Utilities.** All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the Unit Owner.

## **ARTICLE 5 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

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

- 5.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws 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, to the extent possible and subject to any then existing legal requirements, adopt documents consistent with the terms of the Declaration and Bylaws.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.5 **Availability of Documents.** Subject to any legal requirements otherwise, the Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term "available" as used in this section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Management Committee determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.
- 5.6 **Management Committee.** The governing body of the Association shall be the Management Committee elected pursuant to the Bylaws. The Management Committee shall consist of five (5) members. Except as otherwise provided in this Declaration, Bylaws, or the Articles of Incorporation, the Management Committee shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. Except as may be specifically provided in the Declaration, Bylaws, Articles of Incorporation, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

5.7 Committee Members.

(a) Qualification.

(1) To be on the Management Committee, a Person must be an Owner and over the age of eighteen years old. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee.

(2) As further detailed and explained in the Bylaws, at least three members of the Management Committee must at all times have as their primary residence, a Unit in the Project. The Bylaws shall provide for procedures to ensure this requirement is maintained and may include, but are not limited to, the expulsion of Committee Members.

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

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

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

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

5.9 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee 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 Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

- 5.10 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

**ARTICLE 6  
GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 6.1 Rights and Responsibilities of the Association. The Association shall have the following rights and responsibilities in addition to any others set forth in the Governing Documents or provided by law:
- (a) Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements of the Association.
  - (b) Paying Expenses. The Association shall provide for the payment of Association expenses.
  - (c) 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.
  - (d) Entering Units. After having given the appropriate notice as required in Article 17, the Association shall have the right at all times upon reasonable notice (and at any time in case of an emergency) to enter into any Unit to abate any infractions, to make repairs or correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
  - (e) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- (f) **Hiring Managers and Delegating Responsibilities.** The Association shall hire a Manager to assist the Management Committee 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 Management Committee shall have the right to approve Association budgets, fines to Owners, and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE MANAGEMENT COMMITTEE 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.**
- (g) **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- (h) **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) collect rents directly from tenants if Owners fail to pay Assessments, and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (i) **Discretion in Enforcement.**
- (1) Subject to the discretion afforded in this section, the Management Committee shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (2) The Management Committee shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, and may include in this analysis:
- (i) whether to compromise a claim made by or against the Management Committee or the Association; and
  - (ii) whether to pursue a claim for an unpaid Assessment.
- (3) The Association may not be required to take enforcement action if the Management Committee determines, after fair review and acting in good faith and without conflict of interest, 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) a technical violation has or may have occurred; and  
(B) the violation is not material as to a reasonable Person or does not justify expending the Association's resources; or
- (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.

(4) Subject to Subsection (5), if the Management Committee decides under Subsection (2)(ii) to forego enforcement, the Association is not prevented from later taking enforcement action.

(5) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

- (j) Reserve Fund. The Association may maintain a reserve fund and shall obtain and update a Reserve Analysis as required in Article 19 of this Declaration.
- (k) Preventing Conflicts with Service Providers and Vendors. The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any Committee Member, (2) any relative of any Committee Member, Manager, or of any officer, employee, or owner of the Manager, (3) any business or entity in which any Committee Member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 1% ownership or beneficial interest, or (4) any business, entity, or Person with any familial or financial relationship with any Committee Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the manager and relatives of the manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.
- (l) Establishing Hearing Procedures. The Management Committee 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 Management Committee 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 Management Committee 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: (1) at least two weeks' notice of the hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.

- (m) **Annual Meeting.** The Association shall arrange for and conduct an annual meeting at least once a year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (n) **Payoff Information Fees.** The Association is specifically authorized to establish a fee of \$50.00 to provide payoff information related to the transfer, refinance, or closing of a Unit. The Management Committee may increase or decrease the amount charged if the new amount is identified in the Rules and is consistent with Utah law.
- (o) **Reinvestment Covenant Upon Sale or Transfer of Unit.** The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46, in an amount up to one half of one percent (.5%) of the value of the Unit at the time of the transfer. A transfer is any change in the ownership of the Unit as reflected in the office of the county recorder, regardless of whether it is pursuant to the a sale of the Unit or not. If a fee is required, the amount shall be set forth by the Management Committee in the Rules. The value of the Unit for purposes of this section shall be the higher of: (1) the value of the Unit as determined by the property tax assessor on the date of the transfer of title, (2) the purchase price paid for the Unit related to the transfer, or (3) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of ten appraisers selected by the Association. All or a portion of the reinvestment fee shall be used to pay the Association's costs directly related to the transfer of the Unit, not to exceed \$250. The reinvestment fee may not be enforced against: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents, (2) requirements for the timing of responses to requests such as the selection of the

appraiser, (3) default provisions if no selection is made such as allowing the Association to select the appraiser, and (4) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

- (p) Bulk Services Agreements. The Association shall have the right to enter into agreements, as the Management Committee deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

## **ARTICLE 7 BUDGETS & ASSESSMENTS**

- 7.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 7.2 Budget and Regular Assessment.
  - (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year not later than thirty (30) days prior to the beginning of each fiscal year. The Management Committee may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal 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. The budget may include contingencies and estimates as the Management Committee deems appropriate.
  - (c) The Management Committee shall send a written copy of the budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
  - (d) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Allocated Interest for each Unit.

- 7.3 Payment of Regular Assessments. Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 Adjustments to Regular Assessments. In the event the Management Committee 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 Management Committee, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 7.5 Personal Obligation for Assessment. Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with such interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due.
- 7.6 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 Management Committee.
- 7.7 Percentage Assessments. Except as otherwise provided herein, all Assessments (other than special Assessments to individual Units) shall be allocated to all Owners based on the Allocated Interest of each Unit.
- 7.8 Rules Regarding Billing and Collection Procedures. The Management Committee 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.
- 7.9 Certificate of Payment. The Association shall, within ten (10) business days after written demand, furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount

of delinquency, if any. A reasonable charge of fifty dollars (\$50.00) or such other amount allowed by law and provided for in the Rules may be collected by the Management Committee for the issuance of each such certificate. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.

- 7.10 Special Assessments. Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Association (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 7.11 Special Assessments to Individual Units. Special Assessments may be levied by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
  - (b) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
  - (c) Fines, late fees, collection charges, and interest; and
  - (d) Attorneys' fees, costs and other expenses relating to any of the above.
- 7.12 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a Special Assessment pertaining to that Unit, at the discretion of the Management Committee.
- 7.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee 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 Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.14 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.

- 7.15 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

**ARTICLE 8  
NONPAYMENT OF ASSESSMENTS &  
JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID  
ASSESSMENTS**

- 8.1 Delinquency. Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Monthly Assessments shall be due and payable on the first of the month and late if not received by the 10th of that month. Late fees shall be \$35.00 for each month that an Owner's account has an unpaid balance after the due date. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at 2% per month. The Association may also assess to the Owner a collection charge, late fee, and any other reasonable charge charged by a Manager related to collections.
- 8.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this paragraph 8.3 is separate and distinct from any lien rights associated with the Unit.
- 8.4 Lien. The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association 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 (1) the time for appeal described in Utah Code Ann. Section 57-8a-208(5) has expired and the Owner did not file an appeal, or (2) the Owner timely filed an appeal under Utah Code Ann. Section 57-8a-208(5) 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: (1) a lien or encumbrance recorded before this Declaration is recorded, (2) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.

- 8.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or its assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints John D. Morris as trustee, who qualifies under Utah Code Ann. Section 57-1-21(1)(a)(i). The Declarant hereby conveys and warrants pursuant to U. C. A. Sections 57-1-20 and 57-8a-302 to John D. Morris, with power of sale, the lot and all improvements to the lot 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.
- 8.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 8.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (1) rights to receive a utility service paid for by the Owner as a Common Expense, and (2) access to recreational facilities.
- 8.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late.
- 8.10 **Attorney Fees Incurred As a Result of a Default.** In addition to any attorney 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, including but not limited to attorneys' fees and costs incurred to: (1) obtain advice about a default, (2) collect unpaid Assessments, (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments, (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding, (5) examine the debtor or others related to collections, (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan, (7) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introduce 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 estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments, and (8) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

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

## **ARTICLE 9 PROPERTY RIGHTS IN UNITS AND COMMON AREA**

### 9.1 General Easements to Common Area and Units.

- (a) Subject to all other terms of the Governing Documents, each Owner shall have an equal undivided interest, right, and easement of use and enjoyment in and to the Common Area, except as it relates to the porches, patios, stairways, or driveways that exclusively serve one Unit, which shall be Limited Common Area for the exclusive use of the Occupants of the Unit to which they are appurtenant. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Unit over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Management Committee.
- (b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Unit

that the Association is responsible for maintaining which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project.

- 9.2 **Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Management Committee to be helpful in serving the Project, Units, or Unit Owners in the Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.
- 9.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the structure.
- 9.4 **Limitation on Easement—Suspension of Owner's Rights.** An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (i) for any period during which an assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of



- this Declaration or any Association Rule; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
- (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area; and
  - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

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

## **ARTICLE 10 USE LIMITATIONS AND CONDITIONS**

- 10.1 Rules. The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners. Pursuant to 57-8a-218(14), the requirements of 57-8a-218, Subsections (1) through (12), except Subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 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 people outside of the Unit.
- 10.3 Nuisance. No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 10.4 Smoking. It shall be a nuisance and prohibited under Section 10.3 to permit or cause any smoke to drift or otherwise enter into another Unit, or the Limited Common Area of another Unit. Neither an Owner complaining of smoke or the Association responding to that complaint shall be required to close windows or doors, make repairs, or otherwise make any physical alteration to the Project or to any Unit to prevent drifting smoke from

entering into that Unit or any patio or balcony associated with that Unit. It shall be the sole responsibility of the Owner causing the smoke to prevent or stop smoke from entering any other Unit or its Limited Common Area, which may require, if other attempts to stop it are unsuccessful, the termination of smoking.

- 10.5 Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless it is approved by the Management Committee.
- 10.6 Parking. Unless otherwise permitted by the Association in the Rules, and except for "customary parking" and "temporary parking," as permitted by this Section 10.6, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project, including any Unit or Common Area. "Customary parking" shall mean the parking of operable automobiles, motorcycles, noncommercial trucks, and vans within the parking garage or Limited Common Area drive way for each respective Unit. "Temporary parking" shall mean parking on public roadways of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within and in the area of the Project including, without limitation, (1) the right to remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary or temporary parking, (4) restrictions on the time period and duration of temporary parking, and (5) the assessment of fines to Owners who violate the Rules or Owners associated with people who violate such Rules. The Association may restrict entirely or limit parking on public streets by Owners and by people associated with the use of Units. These restrictions and limitations may apply to public roadways both within the Project and within five hundred (500) feet of the Project.
- 10.7 External Fixtures. To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Management Committee.
- 10.8 Window Covers. The Management Committee may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, or similar items.

- 10.9 External Laundering. Unless otherwise permitted by the Management Committee, external laundering and drying of clothing and other items is prohibited. If permitted, external laundering and drying of clothing and other items shall be permitted only in Limited Common Areas to the rear of units.
- 10.10 Outside Speakers and Amplifiers. Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.11 Repairs. No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except as may be permitted by the Management Committee in the Rules.
- 10.12 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 and machinery and equipment not a part of the Units, shall be prohibited in any Unit unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly and promptly disposed.
- 10.13 Animals. Animals generally kept in households such as dogs, cats, birds, fish, hamsters, and ferrets may be kept in the Project subject to the rules and requirements of this Declaration. No more than three animals of any type may be kept in a Unit. No livestock, poultry, or reptiles, may be kept in any Unit. All animals are subject to the Rules adopted by the Management Committee. Notwithstanding the foregoing, no animal may be kept within a Unit which: (1) is raised, bred, kept, or maintained for any commercial purposes, (2) causes a nuisance, or (3) in the good faith judgment of the Management Committee, 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 Management Committee 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 Management Committee may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including but not limited to requirements for registration, specific fees or deposits for Owners of Units that have animals, the use of leashes, and noise and barking limitations. In an effort to minimize anxiety and fear of the Owners generally or as may be otherwise required or beneficial for the Association to obtain insurance coverage, the Association may ban dogs of certain breeds (pure or partial) believed generally to be aggressive including but not limited to the following breeds, Pit Bull, Presa Canario, Chow Chow, Doberman Pinscher, Alaskan Malamute, and Rottweiler.
- 10.14 Landscape Maintenance. Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping in the Project without the written approval of the Management Committee.

- 10.15 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Owner and approved in writing by the Management Committee. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit.
- 10.16 **Residential Occupancy.**
- (a) No trade or business may be conducted in or from any Unit unless:
    - a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
    - b) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
    - c) the business activity does not involve Persons coming onto the Project who do not reside in the Project or solicitation of Occupants or Owners of the Project;
    - d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;
    - e) the business activity is disclosed to the Management Committee 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;
    - f) the business activity will not result in the increase of the cost of any of the Association's insurance;
    - g) 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
    - h) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
  - (b) No Units may be used as a time-share property.
  - (c) Except as provided in Section 10.16(a), no Unit may be used for any purpose other than a residential purpose.
- 10.17 **No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.** No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Management Committee and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section 10.17 shall be null, void, and of no legal effect.
- 10.18 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee or any Committee established by the Management Committee for that

purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, excavation, patio covers, screens, doors, evaporative coolers, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, and other work that in any way alters the exterior appearance of the Property. The Management Committee, or committee established by the Management Committee for that purpose, may designate the design, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Management Committee. Such designations shall be for the purpose of achieving uniformity of appearance and preservation and enhancement of property values.

- 10.19 Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Management Committee.
- 10.20 Variances. The Management Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Management Committee determines in its discretion (by unanimous vote): (a) either (i) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the 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 financial affect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with the Act. No variance may be granted that relates to the payment of Assessments unless it clearly appears after reasonable investigation under the circumstances 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.
- 10.21 Hazardous Substances.
- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury,

property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section 10.21 shall survive any subsequent sale by an indemnifying Owner.

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

## **ARTICLE 11 INSURANCE**

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** Not later than sixty (60) days prior to the annual meeting of the Association, the Management Committee may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION," and (4) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: "NO FLOOD INSURANCE HAS BEEN OBTAINED BY

THE ASSOCIATION.” The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

### 11.3 Property Insurance.

#### (a) Hazard Insurance.

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

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

which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

- (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) "Inflation Guard Endorsement," if available; (2) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.
  
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
  - (1) the Association's policy provides primary insurance coverage; and
  - (2) notwithstanding Subsection 11.3(b)(1) and subject to Subsection 11.3(b)(3):
    - (i) the Owner is responsible for the Association's policy deductible; and
    - (ii) building property coverage, often referred to as coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
  - (3) (i) As used in this Subsection (3):
    - (A) "Covered Loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy.
    - (B) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.
    - (C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.
  - (ii) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the association's property insurance policy.
  - (iii) If an Owner does not pay the amount required under Subsection (11.3)(b)(3)(ii) within thirty (30) days after substantial completion of the



repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

- (c) **Flood Insurance.**
  - (1) If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Project (“Insurable Property”) in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property.
  - (2) If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) **Earthquake Insurance.** The Association may purchase earthquake insurance as the Management Committee deems appropriate. If the Management Committee elects not to purchase earthquake insurance, a vote of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Management Committee shall purchase earthquake insurance within sixty (60) days of the vote.
- (e) **Association’s Obligation to Segregate Property Insurance Deductible.** The Association shall keep in a segregated bank account an amount equal to the Association’s property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) **Association’s Right to Not Tender Claims That Are Under the Deductible.** If, in the exercise of its business judgment, the Management Committee 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 (iii) an Owner who does not have a policy to cover the damage to that Owner’s Unit is responsible for that damage and the Association may, as provided in section 11.3(b)(3)(iii), recover any payments the Association

makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.

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

- 11.4 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death of or injury to any one Person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Management committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Management Committee members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.

- 11.7 **Workers' Compensation Insurance.** The Management Committee shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has not employees, as the Management Committee deems appropriate.
- 11.8 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 **Association's Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 11.11 **Insurance Trustee.** In the discretion of the Management Committee or upon written request executed by Owners holding 50% of the Allocated Interests, the Management Committee 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 paragraph as the Owners or Management Committee (as the case may be) shall require.

- 11.12 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 **Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with a Unit Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.14 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.
- 11.15 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in 2011 Senate Bill 167 (the final version as enacted by the legislature) that became law in 2011, along with updates adopted in 2013, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

## **ARTICLE 12 DESTRUCTION OF IMPROVEMENTS**

- 12.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Project, the Management Committee shall promptly take the following actions:
- (a) The Management Committee shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
  - (b) The Management Committee, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any.
  - (c) **Damage to a Portion of Project Insurance Proceeds.**
    - (1) If a portion of the Project for which insurance is required under this Declaration is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (i) the Project is terminated; (ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (iii) (A) Owners holding at least 75% of the Allocated Interests in the Association vote not to rebuild; and (B) each Owner of a Unit that will not be rebuilt votes not to rebuild.
    - (2) The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.
    - (3) If the entire Project is damaged or destroyed and not repaired or replaced: (i) the Association shall use the insurance proceeds attributable to the damaged Common Areas to restore the damaged area to a condition compatible with the

remainder of the project; (ii) the Association shall distribute the insurance proceeds attributable to Units and Common Areas that are not rebuilt to the Owners of Units that are not rebuilt and the lien holders; and (iii) the Association shall distribute the remainder of the proceeds to all the Owners or lien holders in proportion to their Allocated Interests.

(4) If the Owners vote not to rebuild a Unit: (i) the Unit's Allocated Interests are automatically reallocated upon the Owner's vote as if the Unit had been condemned; and (ii) the Association shall prepare, execute, and submit for recording an amendment to the Declaration reflecting the new reallocations.

- (d) If the Management Committee in good faith determines that none of the bids submitted under this Section 12.1 reasonably reflect the anticipated reconstruction costs, the Management Committee shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Management Committee as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Management Committee shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 12.2.
- (e) If the Management Committee determines that any Unit is uninhabitable by reason of its total or partial destruction, the Management Committee may abate Assessments against the Owner thereof until the Management Committee determines that habitability has been restored.
- (f) The Management Committee shall engage the services of a reputable licensed architect to advise and consult with the Management Committee on all actions and decisions under this Section 12.

12.2 Reconstruction by Vote. If reconstruction is not to take place pursuant to Section 12.1, as soon as practicable after the same has been determined, the Management Committee shall call a special meeting of the Owners by mailing a notice of such meeting to each such Owner. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Management Committee shall levy a uniform special Assessment against each Owner at such time and in such amount as the Management Committee shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

12.3 Procedure for Minor Reconstruction. If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Project, then the Management Committee shall contract with a licensed contractor or contractors to

rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Management Committee determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

- 12.4 Procedure for Major Reconstruction. If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Project, all insurance proceeds, together with such amounts from available reserves or special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Management Committee, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Salt Lake County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Management Committee. Disbursement of such funds shall be made only upon the signatures of two members of the Management Committee and upon the terms and conditions provided in this Section 12.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Management Committee shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Management Committee determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Salt Lake County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Management Committee shall furnish to the Management Committee before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances and deemed suitable by the Management Committee. The Management Committee may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.
- 12.5 Determination Not to Reconstruct Without Termination. If Owners of not less than seventy-five percent (75%) of the Allocated Interests in the votes of the Association

(including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt after a casualty) vote not to rebuild and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

- 12.6 Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.
- 12.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 12.8 Priority. Nothing contained in this article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

### **ARTICLE 13 EMINENT DOMAIN**

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

the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

- 13.3 Taking of Limited Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 13.4 Taking of Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.
- 13.5 Taking of Entire Project. In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.6 Priority and Power of Attorney. Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

#### **ARTICLE 14 TERMINATION**

- 14.1 Required Vote. Except as otherwise provided in Article 12 and Article 13, the Project may be terminated only by the approval of Owners holding 90% of the Allocated Interests.
- 14.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.



- 14.3 Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, provided that the contract is conditioned on the termination of the Project. The contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.5 Proceeds of Sale. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Management Committee. If any Owner disputes the appraised amount, they shall notify the Management Committee of the dispute within 10 days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly with the Association's appraiser select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.6 Allocation upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the

Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

## **ARTICLE 15 AMENDMENTS**

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty percent (60%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose. The vote of approval of any one Owner of a Unit is sufficient if there are multiple owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration. 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 or if the application is unclear, without incorporating other provisions of the Act that are not otherwise applicable to the Association.
- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Management Committee, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Salt Lake County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty percent (60%) of Owners in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein is obtained, each and every other Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, and (2) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

- 15.5 Amendment To Conform to Law. The Management Committee 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 Management Committee must unanimously agree to the Amendment at the time it is recorded,
  - (c) The Management Committee must provide to the Owners; (1) the proposed amendment instrument, (2) the language of this section of the Declaration, (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing, (4) the attorney opinion letter required for the amendment, and (5) a notice in which the Association (a) notifies the Owner that it intends to amend the Declaration pursuant to this section, (b) provides the Owner a right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly return the objection. The Management Committee 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, no more than thirty percent (30%) of the Owners have objected to the amendment.
  - (e) Having otherwise complied with all of the requirements of this section, the Management Committee members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the recorder of Salt Lake County.

**ARTICLE 16**  
**INTERPRETATION, CONSTRUCTION, AND APPLICATION**  
**OF DECLARATION**

- 16.1 No Waiver. Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Plat, the Declaration, the Articles, the Bylaws, and then the Rules.
- 16.3 Interpretation of Declaration and Applicability of the Act. The Declarant 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.
- 16.4 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 16.5 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 16.7 Applicable Law. This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the

Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.

- 16.8 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## **ARTICLE 17 NOTICE**

- 17.1 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner from the Association.
- (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
- (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery,
  - (ii) by a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit,
  - (iii) by written e-mail correspondence to an Owner: (1) that is sent to an e-mail address provided by the Owner for the purpose of Association communications, or (2) that is emailed to an e-mail address from which the Owner has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered. Any notice sent by e-mail shall be deemed delivered seventy-two (72) hours after it is sent,
  - (iv) by facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is 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 as provided for in the Act or otherwise provided for by law.

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

(3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit, whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit.

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

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

(1) In case of an emergency or condition requiring immediate entry in a Unit, before entering a 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.

(2) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior paragraph, before entering a Unit the Association shall: (1) give notice to the Owner that an entry is required at least two weeks 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, (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 seven days prior to entry into the Unit.

(c) Notice to a Lender. Notice to a Lender shall be delivered by first-class United States mail, postage prepaid, to the most recent address furnished by such Lender

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

- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

(1) by a written notice delivered personally to the managing agent, which shall be effective upon delivery;

(2) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;

(3) by written e-mail correspondence to the Association: (1) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an e-mail address from which the Managing Agent or the President of the Association has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed delivered seventy-two (72) hours after it is sent; or

(4) by facsimile (whether to a machine or by other means) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed delivered seventy-two (72) hours after it is sent.

## **ARTICLE 18 ATTORNEY FEES AND COSTS**

### **18.1 Legal Costs Associated with Disputes with Owners.**

- (a) 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 it 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 attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this

Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

- (c) **Exception to Owner's Liability for Fees and Costs.** If, related to (1) any dispute with an Owner, (2) any challenge by an Owner to a position of the Association on a Term and Condition, or (3) a request of an Owner for direction on the application of a Term and Condition: the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (1) the association could not establish an initial position on without having incurred the fees and costs, or (2) results in a substantial modification to a prior position taken by the Association; then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## **ARTICLE 19 RESERVES**

- 19.1 **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 Limited Common Area, pursuant to the following provisions:
- (a) **Collection.** Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
  - (b) **Amount.** In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Management Committee determines, based on the reserve analysis, to be prudent. 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 51% vote of the allocated voting 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.
  - (b) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
  - (c) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.



- (d) **Reserve Analysis.** The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. 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: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) 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 (5) 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.
- (e) **Qualifications for Person Preparing Reserve Analysis.** The reserve analysis shall be prepared by a Person or Persons with (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (f) **Summary and Copies of Reserve Analysis.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**ARTICLE 20  
LEASING AND NON-OWNER OCCUPANCY**

- 20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Unit shall be governed by this section, the Rules, and procedures adopted as allowed in this section.
- 20.2 **Definitions.** For the purpose of this section:
  - (a) “Non-Owner Occupied Unit” means:

- (1) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or
- (2) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(b) "Family Member" means:

- (1) the parent, sibling, or child of an Owner and that Person's spouse and/or children, or
- (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (i) a current Occupant of the Unit; or (ii) the parent, child, or sibling of the current Occupant of the Unit

20.3 No Restriction on Leasing and Non-Owner Occupancy. Subject to the requirements in Sections 20.4 and 20.5, any Unit may be leased or Non-Owner Occupied.

20.4 Permitted Rules. The Management Committee may adopt Rules requiring:

- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units other than those found in this Article 20, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.
- (b) reasonable fees related to the administration of leased and Non-Owner Occupied Units, and
- (c) other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

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

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the resident;
- (b) If required in the Rules or requested by the Management Committee, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Management Committee;

- (c) A Non-Owner Occupant may not occupy any Unit for transient, short-term (less than twelve months), hotel, resort, vacation, or seasonal use (whether for pay or not);
  - (d) Daily and weekly occupation by Non-Owner Occupants is prohibited (whether for pay or not); and
  - (e) The Owner(s) of a Unit shall be responsible for the resident's or any guest's compliance with the Declaration, Bylaws, and Rules. In addition to any other remedy for noncompliance with this Declaration, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Management Committee, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.
- 20.6 Exceptions for Family Members. If only Family Members occupy a Unit, then notwithstanding anything to the contrary herein,
- (a) Subsections 20.5(a), 20.5(c), & 20.5(d) of Section 20.5 shall not apply to that occupancy;
  - (b) no written agreement regarding occupancy needs to be created between the Family Member and the Owner; and
  - (c) any written agreement regarding occupancy, to the extent it exists, may not be requested by the Management Committee until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

## **ARTICLE 21 GENERAL PROVISIONS**

- 21.1 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 No Liability of Officials. To the fullest extent permitted by applicable law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 21.3 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety

for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

- 21.4 Notification of Sale or Transfer and Reinvestment Fee. Except as otherwise limited by law the Management Committee may establish a reinvestment fee Assessment, from time to time, which shall be no more than one-half of one percent (0.5%) of the value of the Unit and which shall be due and payable immediately after any sale or other transfer of any Unit. The Management Committee shall have authority to set forth in the Rules the date, time for payment, amount, the requirements for any information that is required from any transferee of any Unit upon any sale or transfer, and any other procedures or requirements related to the reinvestment fee Assessment. The reinvestment fee Assessment shall be due after the transfer.
- 21.5 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act 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 Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, 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.
- 21.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

- 21.7 Security. The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Association and/or residing in this Association, Owners and Occupants agree that the Association and the Management Committee are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 21.8 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.9 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 MANAGEMENT COMMITTEE 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.

## **ARTICLE 22 DECLARANT RIGHTS**

- 22.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have the rights provided for in this Article 22. If any other article in this Declaration contains the words "notwithstanding anything to the contrary," or words of similar import, they shall all nonetheless be subject to the terms in this Article 22.

- 22.2 Right to Appoint the Management Committee during Control Period. The Declarant shall have the right to appoint and remove all Management Committee Members during the Declarant Control Period. In the appointment of Committee Members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of fewer than the required number of members (with a minimum of three (3) members) until the Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee Members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 22.3 Control Period. Declarant shall have the right to retain control, power, and authority over, and all decision-making ability or authority for, the Association and/or the Project during the "Control Period." The Declarant shall determine whether to hire professional management during the Control Period. The Control Period shall extend until the Declarant elects, in writing, to terminate the Control Period.
- 22.4 Easement Rights. The Declarant shall have an easement for access across the entire Project and may utilize, allow anyone else to utilize, or may grant easements over and through any easement right reserved to anyone in the Declaration.
- 22.5 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant get approval from any Owner of a Unit that has any boundary modified by the Plat.
- 22.6 Assessment Rights. The Declarant shall have the right to set all Assessments, regular and special during the period of Declarant Control. Notwithstanding the Assessment of other Units, no Units owned by the Declarant shall pay Assessments until such time as the Declarant elects to pay Assessments and only for so long as the Declarant elects to pay Assessments.
- 22.7 Right to Amend Declaration, Bylaws, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to amend, revise, and modify this Declaration, the Bylaws, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including but not limited to the Owners. Any such amendment to the Bylaws or Declaration shall be effective upon the recordation by the Declarant of an amendment duly signed by an authorized officer or Manager of the Declarant, with such signature acknowledged. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including all Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Unit.

- 22.8 Expansion of Project / Additional Land. The Declarant may add land to or withdraw land from the Project and expand or contract the Project, at any time, and for any reason.
- 22.9 Assignment of Special Declarant Rights. Declarant may, at any time, by recording a written notice, assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person or entity prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project, or unfinished Units.
- 22.10 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in the Declaration as it relates to the Units owned by the Declarant.
- 22.11 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and specifically in this Article 22 and Article 23, shall not be substantively or procedurally altered without the written consent of the Declarant until fourteen (14) years have passed after the Control Period has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declarant or any provision of Article 22 or Article 23, without the consent of the Declarant. Any consent to waive, change, or alter any provisions of Article 22 or of Article 23 by any future Declarant (as a result of any voluntary or involuntary assignment of Declarant rights) shall effect a change to those provisions only as to that Declarant and shall not be applicable to any prior Declarant without that prior Declarant's specific consent.
- 22.12 Use of Units and Common Areas. During the Declarant Control Period, the Declarant shall have the right to use any Unit owned by it, and any part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one or more sales offices and model Units. Such offices and model Units may be located in any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices.

- 22.13 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this article do not impose any obligation, legal or equitable, related to the issues to which they might apply. Both the Association and any Owner hereby expressly waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 22.14 Declarant Exemption from Statutory Obligations. Pursuant to Utah Code Ann. 57-8a-217(6), Declarant is hereby exempt from the provisions of 57-8a-217. Pursuant to Utah Code Ann. 57-8a-211(10), Article 19 shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

### **ARTICLE 23 CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION**

- 23.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or any aspect of the Project; all prior to purchasing a Unit. Moreover, if any warranty has been provided, an Owner Warranty has been provided to each Owner identifying those items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to then seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners by purchasing a Unit and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce, from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners by and upon the purchase of a Unit, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages arising from defects of any kind related to construction or development of the Project. The intent of this section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the buildings and fixtures on the



Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

- 23.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.
- 23.3 Owner Warranties. The Declarant may have provided certain warranties to the Owners related to the Unit purchased. The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties from the Declarant to any Owner and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.
- 23.4 Waiver of Subrogation and Release. The Association and each Owner waives any right to subrogation against the Declarant and any builder in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant and builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant and builder, their officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.
- 23.5 Declarant and/or Builder Litigation.
- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein or by law after the following efforts at dispute resolution have been

completed: (1) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall immediately apply again and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period.

- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Developer, builder, or subcontractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall mutually work, in good faith, to agree upon the arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) "Notice of Claim" shall mean and include the following information: (1) The nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.
- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant or builder, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.
- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, the builder, or any

of their officers, directors, members, employees, or agents for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.

- (f) The Association shall indemnify and defend the Declarant, the builder, and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant and the builder from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that these warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant and builder (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim and to indemnify Declarant and builder from any liability arising therefrom.
- (g) Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Areas, and Limited Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.
- (h) If otherwise allowed by law notwithstanding the terms of this Declaration or if allowed in this Declaration; prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant or any builder or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have a meeting of the Owners, with proper notice, and have all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those people present, including the Management Committee, must permit discussion among the owners and questions from the owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the meeting must include the following information: (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font: "The association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and

attend the meeting on this issue.”, (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits, (iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years, (iv) a written statement of each Management Committee Member indicating that Person’s position on the litigation, (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information, (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation, (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action. In addition to the requirements above and before commencing any action, the Association must obtain the approval of 85% of all of the Owners (not 85% of those present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days after the meeting required above for notice, and no later than sixty (60) days after the meeting required above. The Association cannot special assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any such action, including but not limited to copying costs, deposition costs, expert witness costs, and filing fees.

- (i) Any agreement with a law firm or attorney under which the law firm would represent the association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (1) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action as necessary to prosecute the action as quickly as the court system will allow; (2) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum (a) the work that was completed in the last month, (b) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month broken down by time entry, person performing the work, and a description of each time entry, (c) the costs incurred by the attorneys and any experts in the prior month, (d) a running tally of all costs and time, by attorney and staff member, since the beginning of the action updated monthly, (e) a list of what is needed to move the action toward resolution, (f) the projected dates for each action that is needed to move the action toward resolution, (g) an explanation of why any projected action cannot be completed immediately; (3) the attorney or law firm will provide an opinion letter regarding the Association’s claims prior to

commencing any action that will, at a minimum, explain each claim, cite the law supporting the claim, cite the facts supporting the claim, provide an application of the law to the facts and analysis of each claim, cite any potential defenses or weaknesses to any claim including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Association's likelihood of success on each claim, an analysis of potential damages including citations to the law and facts supporting that analysis, and an opinion of the lawyer or law firm on the damages the Association would likely be awarded for each claim, (4) a requirement that the Association be permitted to terminate the engagement of the law firm or attorney at any time with no requirement to pay any attorney fees incurred under a contingency arrangement up to that date if, in the Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any disruption to the operations of the Association is not worth the continuation of the action, (c) the Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.

- (j) The existence of procedures and/or requirements in this section applicable to claims against the Declarant or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including but not limited to the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that is prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.
- (k) Prior to engaging any lawyer or firm to represent the Association related to any litigation described in this section, the Association shall obtain independent counsel to review the engagement letter governing that representation and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this declaration.

23.6 Land Owners. All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 23.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

RK Investments LLC (Declarant)

By: \_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed**

Its: \_\_\_\_\_

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this \_\_\_\_\_, day of \_\_\_\_\_, 2014, personally appeared  
before me \_\_\_\_\_, whose identity is personally

(Name of Document Signer)

known to me, (proven on the basis of satisfactory evidence) and who by me duly  
sworn/affirmed, did say that he/she is the

\_\_\_\_\_, of \_\_\_\_\_

(Title or Office)

(Name of Entity)

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.

\_\_\_\_\_  
Notary Public

# **EXHIBIT A**

## **LEGAL DESCRIPTION**



## EXHIBIT B

Unit #	%
107	.934579
Total	100%

**EXHIBIT C**

**BYLAWS  
FOR**

**THE COTTAGES ON 78<sup>TH</sup>**

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**BYLAWS  
OF  
THE COTTAGES ON 78<sup>TH</sup>  
COMMUNITY ASSOCIATION**

These bylaws are hereby adopted and established as the Bylaws of The Cottages on 78<sup>th</sup> Community Association ("the Association"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I  
DEFINITIONS**

1.1 Definitions. Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, and Restrictions for The Cottages on 78<sup>th</sup> ("the Declaration"), as amended, 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.
- (b) Date and Time. Unless changed by the Management Committee, the annual meeting of Owners shall be held in October of each year. The Management Committee may from time to time change the date and time for the annual meeting of the Owners.
- (c) Purpose. The Annual Meeting shall be held for the following purposes:
  - (1) electing members of the Management Committee;
  - (2) distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
  - (3) if no earthquake insurance has been obtained, voting to confirm this decision; and
  - (4) transacting such other business as may properly come before the meeting.

- (d) Approval of Minutes. The minutes of the annual meeting shall be approved by the Management Committee within 90 days of the annual meeting.
- (e) Election of Management Committee Members. If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee 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 Management Committee, 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 Management Committee may designate the office of the Manager or any place within five miles of the Project as the place of meeting for any annual or special meeting.

2.4 Notice of Meetings. The Management Committee 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 Management Committee may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.6 Quorum. At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than thirty percent (30%) of the Allocated

Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time the owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."

2.7 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 Owners' 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 person 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, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration. 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 Revised Nonprofit Corporations Act. The election of Committee Members shall be by secret ballot. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.

2.9 Ballots and Written Consent. The Association may utilize written consents and 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, (1) the identification of the Persons present at the meeting in person and by proxy, (2) the date of the meeting, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, (5) the 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 sent to all Owners within thirty (30) days of the annual meeting.

### **ARTICLE III MANAGEMENT COMMITTEE**

#### **3.1 Number, Tenure, Qualifications, and Election.**

- (a) **Number of Members.** The Management Committee shall be composed of five (5) persons meeting the qualifications stated in the Declaration.
- (b) **Member Requirements.** At all times, at least three (3) of the Committee Members must have as their primary residence a Unit in the Project. All candidates for the Committee shall indicate either in a written statement provided prior to the meeting or verbally at the meeting whether his or her Unit is that person's primary residence. Any candidate whose election or appointment would contravene this requirement shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss.
- (c) **Term.** The term of each Committee Member shall be two (2) years. The terms of the Committee Members shall overlap so that three (3) Committee Members shall be elected one year, two (2) the next, three (3) the following, and so on.
- (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 Committee. If the Association gives advance notice of any persons seeking election to the Committee, 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 Committee 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 Committee Member is alleged to not meet the qualification requirements in the Declaration and any Committee Member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Committee Member is qualified or not, and during this period shall not make any further decisions. If the Committee Member is not qualified, the Committee Member's membership on the Management Committee 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 Management Committee established that the Committee Member was not qualified. If a Committee Member becomes unqualified or was not qualified under the



Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Committee Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section or until the Committee Member is disqualified if no such notice is provided.

- (f) **Removal for Failure to Participate.** If any Committee Member shall fail to appear at four (4) successive regular Committee meetings in a row or fifty percent (50%) or more of the regular meetings within any calendar year, after having received proper notice of the meetings and after the Committee has attempted in good faith to schedule meetings consistent with all of the member's schedules, the other Committee Members may by unanimous vote remove that Member and appoint a new Member.

### 3.2 Meetings.

- (a) **Regular Meetings.** The Management Committee shall hold regular meetings at least quarterly, and more often at the discretion of the Committee.
- (b) **Who is Entitled to Attend.** Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.
- (c) **Special Meetings.** Special meetings of the Management Committee may be called by or at the request of any two Committee Members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Committee Member. 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.** Two Committee Members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Committee Members shall be the act of the Management Committee. The Committee Members shall act only as a Committee, and individual members shall have no powers as such.
- (e) **Place and Notice of Meetings.** The Management Committee may designate any place in Salt Lake County as the place of meeting for any regular meeting called by the Management Committee 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 Committee Members and Owners shall be given at least ten (10) days' notice of regular meetings.

(f) Executive Session.

- (1) The Management Committee 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 Management Committee 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 Management Committee.
- (2) The minutes of the meeting at which an executive session is held shall include
  - i. The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: “to discuss the terms of a management contract with XYZ Company,” “To discuss the pending litigation with XYZ” or “to discuss a complaint of a Rule violation.”
  - ii. 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.
- (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee 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.
- (4) Executive sessions may be held to discuss and make decisions related to the following matters:
  - i. Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association’s counsel,

- ii. Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases,
- iii. Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment,
- iv. 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 Management Committee 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 Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. 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 Management Committee may be taken without a meeting if each and every Committee Member, in writing, either:
  - (1) votes for the action; or
  - (2) votes against or abstains from voting, and waives in writing the 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:
  - (1) describing the action taken;
  - (2) signed by each Committee Member; and
  - (3) 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 management committee members then in office were present and voted.
- (d) A Committee Member may revoke consent to any action given pursuant to this section by communicating that the member has changed his or 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 Management Committee and may be described as an action taken at a meeting of the Committee Members in any document.
- (g) For purposes of this section:
- (1) "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.
  - (2) "Writing" shall refer to an email, letter, facsimile, or any other physical or electronic document.
  - (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (4) Any response to any electronic communication shall be:
    - (i) 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
    - (ii) to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
  - (5) A communication shall satisfy the requirement to "describe the action taken" if:
    - (i) 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;
    - (ii) 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
    - (iii) the writing from the Committee Member sufficiently describes or restates the proposed action.

3.4 Compensation. No Committee Member shall receive compensation for any services that he/she may render to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in the performance of his/her duties as a Committee Member to the extent such expenses are unanimously approved by the Management Committee.

3.5 Resignation and Removal. A Committee Member may resign at any time by delivering a written resignation to either the President or the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Committee 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 Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a

Committee Member, the Committee Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Committee Members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Committee Member by the Owners may be filled by election by the Owners at the meeting at which such Committee Member is removed. Any Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

#### **ARTICLE IV OFFICERS**

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer.

4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee 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. All officers must be members of the Management Committee during the entire term of their respective offices.

4.3 Subordinate Officers. The Management Committee 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 Management Committee 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 Committee 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 Management Committee 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 Management Committee 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 Management Committee shall ensure that the duties and responsibilities of the office are performed.

4.6 The President. The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who

(i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order" and (4) the right to designate the Manager or any other person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The President shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee 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 Vice President. The Vice President shall also act in the place and stead of the President in the event of the President's absence or inability or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.

4.8. 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 Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.

4.9. The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, 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 Management Committee. 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, Vice President, and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.

4.10. 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 Management Committee.

**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. The membership of each such Sub-Committee designated hereunder shall include at least one (1) Committee Member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.

5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Management Committee 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 Management Committee.

5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Management Committee, 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 Management Committee 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 Management Committee.

5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the President, the Management Committee, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee 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 Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, 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 Management Committee.

## ARTICLE VI INDEMNIFICATION

6.1 Indemnification. No Committee Member, officer, or member of a Sub-Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Committee 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 Committee 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 Committee 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 Committee 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 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 Committee 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 Committee 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 Management Committee, 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 percent (60%) 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 Salt Lake 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:

- (i) Any failure to comply with the provisions of the Declaration.
- (ii) Any failure to obtain the proper number of votes required to pass a particular measure.