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Guadalupe Condos, LLC  
298 E. Regent Park Court  
Midvale, Utah 84047

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11/21/2017 04:05 PM \$111.00  
Book - 10622 Pg - 2182-2232  
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## DECLARATION OF CONDOMINIUM

for

## GUADALUPE CONDOMINIUMS

Dated as of November 17, 2017

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**DECLARATION OF CONDOMINIUM  
FOR  
GUADALUPE CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM FOR GUADALUPE CONDOMINIUMS (this “**Declaration**”) is executed as of August \_\_, 2017, by GUADALUPE CONDOS, LLC, a Utah limited liability company (“**Declarant**”), whose address is 298 East Regent Park Court, Midvale, Utah 84047.

**ARTICLE 1 - DEFINITIONS**

As used in this Declaration, each of the following terms shall have the meanings indicated (other terms that are used only in one section and its subsections are defined in that section):

“**Act**” means the Utah Condominium Ownership Act, Utah Code Annotated, Title 57, Chapter 8, as in effect on, and as amended after, the date of this Declaration, and any successor or substitute provisions.

“**Annual Assessment**” shall have the meaning given it in Section 7.3.

“**Annual Budget**” means a budget that sets forth an itemization of the anticipated Common Expenses for the calendar year to which such Annual Budget pertains.

“**Articles of Incorporation**” means the Articles of Incorporation of the Association.

“**Assessments**” shall mean Annual Assessments, Special Assessments, Default Assessments, and any other charge imposed or levied by the Association against an Owner, including but not limited to those related to Common Expenses as well as miscellaneous assessments for capital improvements and for the purpose of restoring and reconstructing the Condominium Project in the event of casualty, all as provided in this Declaration.

“**Association**” means Guadalupe Condominiums Owners Association, Inc., a Utah non-profit corporation, which comprises all of the Owners acting as a group in accordance with the Act and this Declaration.

“**Building**” means the Building to be constructed on the Land, as depicted on the Plat.

“**Bylaws**” means the bylaws of the Association, a copy of which is attached hereto as Exhibit C.

“**Common Elements**” means all parts of the Project that are not Units, including but not limited to the Land, all portions of the Buildings not contained within the Units, including but not limited to the foundation, columns, girders, beams, supports, perimeter and supporting walls, roofs, patios, balconies, entrances and exits, and the mechanical installations of the Building consisting of the equipment and materials making up any central services which exist one or to serve more of the Units, including but not limited to pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith); yards,

outdoor lighting, fences, landscaping and sidewalks; and areas used for common disposal of trash and recycling.

**“Common Expenses”** means all expenses of operation (including common utilities and services), management, maintenance, repair or replacement of the Common Elements, including a reasonable reserve for the periodic maintenance, repair and replacement of the Common Elements, including but not limited to premiums for the insurance obtained by the Management Committee pursuant to this Declaration or the Act, and any other cost, expense or fee properly incurred by the Association in connection with the performance of its obligations under the Governing Documents.

**“Condominium Unit”** means a Unit together with the Undivided Interest appurtenant to such Unit.

**“County Records”** means the official real estate records of the Recorder of Salt Lake County, Utah.

**“Declarant Control Period”** shall mean the period commencing on the date on which this Declaration is recorded in the County Records, and ending on the date which is the earlier of (a) three years thereafter, or (b) the date on which Declarant no longer owns more than one Unit.

**“Default Assessment”** shall have the meaning given it in Section 7.3.

**“Eligible Mortgagee”** means a Mortgagee that has requested notice of certain matters from the Management Committee in accordance with Section 11.1.

**“Emergency Repairs”** means any repairs required immediately to prevent substantial damage to any Common Elements or to a Unit or Units.

**“Fine”** means a fine imposed by the Management Committee in accordance with the Rules and Regulations.

**“Governing Documents”** means the Act, this Declaration, the Plat, the Articles and Bylaws, and the Rules and Regulations, as applicable.

**“Land”** means that certain real property that is located in Salt Lake County, Utah and that is described on Exhibit A attached hereto. The Land includes any easements that benefit the Land from time to time including any easements that are set forth on the Plat.

**“Limited Common Elements”** means those portions of the Common Elements designated in this Declaration or the Plat as reserved for the use of a certain Unit or Units to the exclusion of the other Units. Without limiting the generality of the foregoing, any balcony or patio serving one Unit shall be a Limited Common Element appurtenant to that Unit.

**“Majority of the Owners”** means, with respect to any matter presented to the Owners for a vote, the Owners of more than fifty percent (50%) in the aggregate of the Undivided Interests held by Owners entitled to vote at the time such vote is taken.

**“Management Committee”** means the Management Committee of Guadalupe Condominiums, as described in Article 6. The Management Committee is the board of directors of the Association.

**“Mortgage”** means a mortgage or deed of trust secured by a security interest on any Condominium Unit.

**“Mortgagee”** means a mortgagee under a mortgage, a beneficiary under a deed of trust and a beneficiary under any indenture secured by a security interest on any Condominium Unit.

**“Owner”** means the person or persons owning each Condominium Unit in fee simple, as shown in the County Records. Declarant shall be deemed to be the Owner of each Unit that is created by the recording of the Plat and that has not yet been conveyed by Declarant. However, the term “Owner” does not mean a person obligated to purchase a Unit pursuant to a purchase agreement and shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

**“Person”** (whether or not capitalized) means an individual, corporation, partnership, limited liability company, association, trustee or other legal entity.

**“Plat”** means the condominium plat, recorded in the County Records concurrently with the recordation this Declaration, entitled “Plat of Guadalupe Condominiums, a Utah Residential Condominium Project,” as the same may be amended on or after the date of this Declaration.

**“Property”** means the Land, the Buildings, and all other structures and improvements constructed on the Land on or after the date of this Declaration and all easements, rights and appurtenances belonging to, and all articles of personal property (other than personal property owned by individual Owners) intended for use in connection with, the Land, the Building, the Units or any other structures or improvements on the Land. The Property comprises the Units and the Common Elements.

**“Rules and Regulations”** means the rules and regulations for the Property adopted by the Management Committee from time to time in accordance with this Declaration, as such rules and regulations may be amended by the Management Committee after the date of this Declaration.

**“Size”** means the approximate number of square feet of floor space within each Unit as computed by reference to the Plat and rounded off to a whole number. The Size of each Unit is set forth in the attached Exhibit B.

**“Special Assessment”** shall have the meaning given it in Section 7.3.

**“Super Majority of the Owners”** means the Owners of more than seventy-five percent (75%) in the aggregate of the Undivided Interests.

**“Two-Thirds Majority of the Owners”** means the Owners of two-thirds or more in the aggregate of the Undivided Interests.

**“Undivided Interest”** means an undivided interest, expressed as a percentage, in the Common Elements made appurtenant to each Unit by the provisions of this Declaration, as set forth in Exhibit B.

**“Unit”** means each separate physical part of the Property intended for any type of independent use, including one or more rooms or spaces located or to be located in one or more floors or part or parts of floors in the Building, as depicted on the Plat. Each Unit comprises an individual air space unit, consisting of enclosed rooms occupying part of the Building and interior non-supporting, non-bearing walls and bounded by the interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of such air space, together with all fixtures and improvements contained within such air space. Paint and other wall, ceiling and floor coverings on interior surfaces shall be deemed to be a part of the Unit concerned. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or the use and enjoyment of another Unit, and shall be part of the Common Elements: (a) bearing walls; (b) common walls, floors and ceilings between Units or between a Unit and another Common Element (except for the interior surfaces of walls, floors and ceilings, which interior surfaces shall be part of the Unit, as described above); (c) roofs; (d) foundations; (e) ceiling equipment; and (f) tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations and Utility Equipment, except the outlets of any of the foregoing when located within a Unit. The interior surface of a window or door means the location of such surface when such window or door is closed.

**“Utility Equipment”** means pipes, sprinklers, wires, ducts, flues, cables, conduits, public utility lines, transformers, switch gear vaults, and other utility equipment serving the Property.

## **ARTICLE 2 -PURPOSE; SUBMISSION TO ACT; GENERAL PROVISIONS**

**2.1 Purpose; Submission to Act.** Declarant intends, by recording this Declaration and the Plat, to create a Utah residential condominium project containing four Units, to be known as Guadalupe Condominiums. The Property is hereby submitted to the Act. The Property: (a) does not contain any convertible space; (b) is not an expandable condominium; (c) is not a contractible condominium; (d) is not a leasehold condominium; and (e) does not contain time period units, as all of such terms are defined in the Act.

**2.2 Description of Building.** The Property includes one Building, a parking area, and other improvements related thereto. The Building contains three stories and no



basements. The structural system for the Building consists of a concrete foundation system, wood-framed walls, and wood truss joists for floor and roof framing, with metal siding.

**2.3 Presumed Boundaries.** In interpreting the Plat or any deed or other instrument affecting the Building or a Unit, the boundaries of the Building or such Unit constructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building or any minor variance between the boundaries shown on the Plat and those of the Building or such Unit.

**2.4 Covenants Run with Land.** This Declaration and all of the provisions herein shall run with the land and may be enforced by Declarant, the Management Committee and any Owner and their respective successors in interest. Any Mortgage or other encumbrance of any Condominium Unit shall be subject and subordinate to all of the provisions of this Declaration, and in the event of foreclosure of any Mortgage or other encumbrance, the provisions of this Declaration shall be binding upon any Owner whose title is derived through the foreclosure. All Owners and their tenants and any other person who uses or occupies the Property shall be subject to the Governing Documents. All decisions and determinations made by the Management Committee in accordance with the Act or other Governing Documents shall be binding on all the Owners and occupants of the Property.

**2.5 Association.**

(a) *Association.* On or before conveying the first Unit to a purchaser, Declarant shall cause the Association to be incorporated. Each Owner shall automatically be a member of the Association. The Management Committee shall act as the board of directors of the Association.

(b) *Registration with the State.* In compliance with, and to the extent required by, Utah Code Ann. § 57-8-13.1 or any successor provision, the Association shall be registered with the state Department of Commerce, Division of Real Estate and shall update its registration as required by law.

(c) *Bylaws.* The Bylaws of the Association are attached to this Declaration as Exhibit C. The provisions of the Utah Revised Nonprofit Corporation Act, as in effect on, and as amended after, the date of this Declaration, shall supplement the Bylaws to the extent that such statutory provisions are not inconsistent with this Declaration or the express provisions of the Bylaws.

**ARTICLE 3 - UNITS**

**3.1 Subdivision of Property.** The Property is hereby subdivided into Condominium Units, each such Condominium Unit consisting of a Unit, the right to use

appurtenant Limited Common Elements, if any, and an appurtenant Undivided Interest, as set forth on Exhibit B attached to this Declaration.

**3.2 Nature of Units.** Each Condominium Unit shall for all purposes constitute real property and may be individually conveyed, leased, encumbered, inherited or devised by will. Any Condominium Unit may be held and owned by more than one person as joint tenants, as tenants in common or in any other real property tenancy relationship recognized under the laws of the State of Utah. Each Owner shall be entitled to the exclusive ownership and possession of its Unit and, to the extent applicable, the exclusive use of any Limited Common Elements appurtenant only to its Unit subject to the provisions of this Declaration. Each Owner may separately mortgage or otherwise encumber its Condominium Unit, provided that each Mortgage of any Condominium Unit shall be subordinate to this Declaration. No Owner may mortgage or otherwise encumber the Common Elements, except to the extent of the Undivided Interest appurtenant to its Unit.

**3.3 Nature of Undivided Interests.** Each Owner shall be entitled to an Undivided Interest in the percentage expressed in the attached Exhibit B. Each Owner may use the Common Elements on a nonexclusive basis, but only in accordance with the purposes for which they were intended, subject to the Governing Documents. Neither Undivided Interest nor the right of exclusive use of any Limited Common Elements shall be separated from the Unit to which it is appurtenant. The Common Expenses shall be charged to, and the voting rights shall be available to, the Owners according to their respective Undivided Interests.

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

**3.5 Improvement of Units.** Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet and otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the perimeter boundaries of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner may also construct partition walls, fixtures and improvements within the boundaries of that Owner's Unit; provided, however, that such walls, fixtures and improvements shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Property; impair the structural integrity of the Building; or encroach on or interfere with any Common Elements. No Owner shall remove or alter any interior bearing walls within a Unit without first providing to the Management Committee (at the Owner's expense) a structural analysis from a structural engineer (which engineer is reasonably satisfactory to the Management Committee) affirming that the removal and alterations

(and the reinforcement beams and supports) will not adversely impact the structural integrity of the Building and then providing structural reinforcement beams or supports for the modified bearing walls. No Owner shall do any work on or make any alterations or changes to the Common Elements without the prior written consent of the Management Committee.

### **3.6 Maintenance of Units and Limited Common Elements.**

(a) *Maintenance of Units.* Each Owner, at its sole cost and expense, shall keep the interior of its Unit, including, without limitation, interior walls, window glass, ceilings, floors and fixtures and other improvements, in good condition and repair and in a clean and sanitary condition.

(b) *Maintenance of Limited Common Elements.* Notwithstanding anything herein regarding maintenance of Common Elements, each Owner, at its sole cost and expense, shall maintain in good condition and repair all Limited Common Elements appurtenant to such Owner's Unit. Without limiting the generality of the foregoing, (i) each Owner shall maintain the window glass and doors forming or situated at the exterior boundary of its Unit and shall immediately repair or replace any such window glass or door on removal, breakage or other damage; provided, however, that any replacement of windows or doors or any other item that constitutes an exterior surface of a building, or any action that would affect the exterior appearance of any part of the Property, shall not be made without the prior consent of the Management Committee.

(c) *Failure to Maintain.* If any Owner fails to maintain its Unit or the Limited Common Elements for which such Owner is responsible, or if any Unit or appurtenant Limited Common Elements develops an unsanitary or unclean condition or falls into a state of disrepair and the responsible Owner fails to correct such condition promptly following written notice from the Management Committee, or if any removed, broken or damaged window glass or door referred to in the preceding subsection (b) is not immediately repaired or replaced by the Owner obligated to do so, then the Management Committee may (but is not obligated to), at the expense of such Owner and without liability to such Owner for trespass or otherwise, enter the Unit concerned and correct or eliminate such unsanitary or unclean condition or such state of disrepair or repair or replace such window glass or door, as the case may be. Any funds expended by the Management Committee pursuant to this Section, together with interest at the rate of eighteen percent (18%) per annum, both before and after judgment, and all costs of collection, including, without limitation, reasonable attorneys' fees, shall constitute a Default Assessment.

**3.7 No Division of Units.** No Unit may be further divided or subdivided or a fractional portion thereof sold or conveyed so as to be held in divided ownership (as opposed to joint tenancy, tenancy in common, or other form of joint undivided ownership).

3.8 **Separate Taxation.** Each Condominium Unit (consisting of a Unit and an appurtenant Undivided Interest) shall be deemed to be a separate parcel for purpose of assessment and taxation and shall be subject to separate assessment and taxation Neither the Property, any Building nor any of the Common Elements may be considered as a separate parcel for purposes of assessment or taxation.

#### **ARTICLE 4 - USES AND USE RESTRICTIONS**

4.1 **Permitted Uses.** The Property shall be used exclusively for residential use, and is restricted to such use. No person shall use any portion of the Property for commercial purposes or to conduct a business of any kind, except that a Unit may be used for "home office" purposes so long as no clients, customers, suppliers or delivery services enter the Property in connection therewith.

4.2 **Prohibited Activities.** No Owner shall do or permit anything to be done in its Unit which may: (a) increase the existing rate or violate the provisions of any insurance carried with respect to the Property; (b) create a public or private nuisance, commit waste or unreasonably interfere with, annoy or disturb any other Owner or occupant of the Property; (c) overload the floors or otherwise damage the structure of the Building; (d) violate any law, ordinance, regulation or requirement; or (e) otherwise detract from the appearance or value of the Property.

4.3 **Compliance; Rules and Regulations.** Each Owner shall comply strictly with the Governing Documents. The Rules and Regulations may be promulgated and amended from time to time by the Management Committee; provided, however, that (a) each Rule and Regulation must be reasonable, considering the nature of the Property; and (b) the Management Committee shall not discriminate against any specific Owner in promulgating, amending or enforcing the Rules and Regulations. Failure to comply with the Governing Documents shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association on behalf of the Owners, or in a proper case, by an aggrieved Owner or Owners.

#### **4.4 Parking.**

(a) Vehicles may be parked on the Property only in designated parking areas. Automobiles and motorized vehicles shall not be driven or parked on sidewalks or lawns. The Property contains four parking stalls, all of which are part of the Common Elements. The Management Committee shall designate one stall for the use of the each Unit, and no Owner or occupant of the Property shall park in any stall other than the stall designated for the use of the Owner or occupant of the Unit owned or occupied by such Owner or occupant. Each Owner and occupant shall ensure that his/her guests and visitors do not park in the parking stall designated for the use of any other Unit.

(b) Improperly parked vehicles may be towed or booted without notice, at the vehicle owner's expense.

(c) Vehicles that are non-functioning or that are in obvious disrepair shall not be parked or kept on the Property, and may be towed or booted without notice at the vehicle owner's expense. No maintenance or repairs shall be performed on vehicles at any time on the Property.

(d) No person shall park, store, or keep on the Property any commercial or recreational-type vehicle, including but not limited to delivery trucks, campers, buses, trailers, etc.; provided, however, that delivery trucks may be on the Property as reasonably necessary to make deliveries to Owners or occupants of the Units. Any vehicle parked on the Property in violation of the foregoing may be towed or booted without notice at the vehicle owner's expense.

**4.5 Signs Displayed from Units.** Without the prior written consent of the Management Committee or its designee, no Owner shall permit any signs, pictures, banners, flags, posters or other commercial, political, informational or directional signs, devices and objects of any kind to be displayed to the public view from any Unit, other than such signs as may be used by the Owner for the purpose of selling, renting or leasing such Owner's Unit. Nothing in this Section shall be deemed to prohibit or restrict an Owner or occupant from displaying the United States flag or political signs in space under the exclusive control of the Owner or occupant if such prohibition or restriction would constitute a violation of applicable law.

**4.6 Satellite Dishes.** Satellite dishes (not to exceed one meter in diameter), antennae, and other telecommunications reception devices may be located by an Owner or Tenant entirely within any area over which such Owner or Tenant has exclusive control, such as a balcony or patio, but may **not** be attached to or go through any part of the Building, Common Elements, roofs, windows or sills. If a satellite dish is used, such dish shall be installed in such a manner that it will not be accidentally dislodged or pose a safety hazard to any person. Any damage to property or injury to persons caused by any satellite dish or antennae shall be the responsibility of the Owner of the Unit in or for which the dish or antennae was installed.

**4.7 Pets.** No person shall bring or keep any animal on the Property except as expressly permitted in this Section. Cats and dogs which do not exceed twenty pounds in weight as adults shall be permitted in the Property, not to exceed two animals in any Unit, subject to compliance with all Rules and Regulations applicable to pets. Notwithstanding the foregoing, the Association shall grant reasonable accommodations for service or emotional support animals when necessary to afford persons with disabilities the equal opportunity to use and enjoy housing at Guadalupe Condominiums to the full extent required by applicable law.

**4.8 No Smoking or Noxious Odors; No Unreasonable Noise.** There shall be no smoking inside any Unit or any other portion of the Building, and each Owner shall keep such Owner's Unit free of objectionable noises and odors, including, without limitation, cigarette, cigar, pipe and similar smoke odors. Without limiting the

generality of the foregoing, no occupant of any Unit shall engage in any activity that generates unreasonable noise within a Unit which is audible within any other Unit.

4.9 **Window Coverings.** All window coverings visible from the exterior of the Building shall be specifically designed for use as window coverings. No foil, paper, sheets, or similar materials may be used as window coverings.

4.10 **Balconies and Patios.**

(a) Each Owner shall ensure that the patios or balconies appurtenant to such Owner's Unit(s) are kept clean and clutter free at all times.

(b) Storage of any materials or items (other than customary patio furniture in good repair, a reasonable number of live plants, and seasonal décor appropriate to the then-current season) shall not be allowed at any time on patios and balconies, except with the prior consent of the Management Committee.

(c) Patios and balconies shall not be used for the hanging or draping of clothing or any other materials. No blinds of any kind shall be hung from the ceilings or railings of balconies or patios.

(d) Drilling or nailing into wood or masonry on or around any patio or balcony is not permitted at any time.

(e) Open flame barbeques may not be used or stored on patios or balconies.

4.11 **Rental Restrictions.** In order to protect the value of the Units and the nature of Guadalupe Condominiums, no Owner may lease or rent such Owner's Unit except in compliance with the following:

(a) Except as otherwise provided in this Section, no Unit may be a Rental Unit without the prior written consent of the Management Committee, and there may not at any time be more than one Rental Unit in the Property. As used herein, "**Rental Unit**" means a Unit that is not occupied by the Owner of the Unit, except as follows:

(i) a Unit the Owner of which is in the military and is deployed is not a Rental Unit during the period of the Owner's deployment, even though it may be rented or leased to a tenant during such deployment;

(ii) a Unit occupied by the Owner's parent, child, or sibling is not a Rental Unit;

(iii) a Unit the Owner of which has been relocated by such Owner's employer is not a Rental Unit for a period of up to two years following such relocation, even though it may be rented or leased to a tenant during such period; or

(iv) a Unit owned by an entity that is occupied by an individual who: (A) has voting rights under the entity's organizing documents, and (B) has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or

(v) a Unit owned by a trust or other entity created for estate planning purposes is not a Rental Unit if the resident of the Unit or the parent, child, or sibling of the resident of the Unit is the person for whose estate the trust or other estate planning entity was created.

(b) In the event of a transaction (including but not limited to the conveyance of an undivided interest in a Unit) which appears to be undertaken for the sole purpose of circumventing the rental restrictions of this Section, the Management Committee shall have the authority to examine such transaction to determine whether the substance of the transaction is the rental of a Unit, regardless of the form of the transaction. If the Management Committee should determine, using objectively reasonable judgment, that the transaction constitutes a rental, the rental will be prohibited by this Section.

(c) The Rules and Regulations shall contain procedures to:

(i) determine and track the number of Rental Units in the Property; and

(ii) ensure consistent administration and enforcement of the rental restrictions contained in this Section.

(d) Notwithstanding anything to the contrary herein, the Declarant may lease or rent Units owned by the Declarant without complying with the foregoing restrictions so long as Declarant owns any Unit in the Property.

## **ARTICLE 5 - EASEMENTS**

**5.1 Easements for Encroachments.** If on or after the date of this Declaration: (a) any part of the Common Elements encroaches on any part of a Unit; or (b) any part of a Unit encroaches on a part of the Common Elements, then a non-exclusive easement for each such encroachment and for the maintenance of the same shall exist immediately and automatically, and Declarant reserves such easement for the benefit of each Unit and each Common Element. Such encroachments shall not be considered to be encumbrances on any Unit or the Common Elements. Such encroachments may include, without limitation, encroachments caused by error in the original construction of the Building or any other improvements, error in the Plat, settling, rising or shifting of the earth or changes in position caused by repair or reconstruction of the Property.

**5.2 Easements for Maintenance.** Some of the Common Elements may be located within the Units or may be conveniently accessible only through the Units.

Declarant grants the Management Committee a non-exclusive easement and the irrevocable right to have access to each Unit and to all Common Elements at reasonable times and under reasonable circumstances as may be necessary for: (a) the maintenance, repair, replacement and cleaning of the Common Elements; or (b) making Emergency Repairs, provided that the Management Committee shall make a reasonable effort to provide notice to the occupant of the Unit prior to entry. Such entry shall be made so as to minimize the inconvenience caused thereby, and the cost to repair any resulting damage shall be a Common Expense.

**5.3 Easements for Units.**

(a) Declarant reserves for each Unit:

(i) a non-exclusive easement for, and the right of, ingress and egress on, over and across the Common Elements as necessary for access to and from such Unit;

(ii) a non-exclusive easement for, and the right to, horizontal, vertical and lateral support from all surrounding Building elements;

(iii) a non-exclusive easement in common with all other Units for Utility Equipment and other Common Elements from time to time and at any time located in any other Units and serving the benefitted Unit.

(b) Declarant subjects each Unit to a non-exclusive easement in favor of all other Units for the installation, maintenance, repair and replacement of Utility Equipment and other Common Elements from time to time and at any time located in such Unit and serving any other Unit.

**5.4 General Provisions.** Each easement and right created by this Article is an appurtenance to the real property benefited thereby and is a burden on the real property burdened thereby. All conveyances of a Condominium Unit shall be deemed to be made together with and subject to the easements set forth in this Article. The easements created under this Article shall terminate upon the termination of the Declaration. The use of any easement granted under this Declaration shall not disturb unreasonably the quiet enjoyment of any other Unit by its Owner and occupants.

**ARTICLE 6 -MANAGEMENT COMMITTEE**

**6.1 Establishment.** Subject to the provisions of this Declaration, the Property shall be operated, managed and maintained by the Management Committee. The Management Committee, acting on behalf of the Association, shall be vested with, and shall have all rights, powers and authority given to a management committee or an association of unit owners under the Act and all rights, powers and authority as are necessary to perform its duties under the Governing Documents, which shall include, but not be limited to, the rights, powers and authority to:



- (a) administer and enforce the covenants, conditions, restrictions, easements, and other provisions of the Governing Documents;
- (b) maintain and keep in good order, condition and repair all the Common Elements;
- (c) without the vote or consent of the Owners, Mortgagees, or of any other person, grant or create (and/or to relocate), on such terms as it deems advisable, reasonable licenses, rights-of-way and easements over, under, across and through the Common Elements for utilities and other purposes reasonably necessary or useful for the proper operation and maintenance of the Property;
- (d) sue and be sued on behalf of the Association;
- (e) enter into contracts that are within the scope of the powers and duties of the Management Committee;
- (f) promulgate such Rules and Regulations as may be necessary or desirable to ensure that the Property is maintained and used in a manner consistent with this Declaration and the interests of the Owners and to establish penalties for the infraction of such Rules and Regulations;
- (g) levy and collect Assessments for the payment of Common Expenses;
- (h) perform any other acts and to enter into any other transactions authorized by the Governing Documents or the Act or which may be reasonably necessary for the Management Committee to perform its functions on behalf of the Owners.

## **6.2 Composition; Appointment.**

- (a) During the Declarant Control Period, the Management Committee shall have three members who shall be appointed by the Declarant.
- (b) After the expiration of the Declarant Control Period, the Management Committee shall whom shall consist of four natural persons, one appointed by the Owner of each Unit. Only Owners and officers, partners, managers, members and agents of Owners who are not natural persons shall be eligible for Management Committee membership. At each annual meeting of the Owners, the Owner of each Unit shall designate its appointed member of the Management Committee. Upon the sale or other conveyance of title to a Unit, the Management Committee member appointed by the grantor shall cease to be a member of the Management Committee at the time the deed conveying the Unit is recorded, and the new Owner of the Unit shall promptly appoint a member of the Management Committee for the Unit. If a Unit is owned by more than one person, all such persons must agree as to the member of the Management Committee appointed for such Unit, and if they fail to agree, no Management Committee member shall be appointed for that Unit until such time as such persons agree. If the Owner of any

Unit fails or refuses to appoint a member of the Management Committee, the Management Committee shall consist of the members appointed for the remaining Units.

**6.3 Officers and Agents.** The Management Committee shall perform its functions through those members who are elected as officers by the Management Committee in accordance with the Bylaws and through such agents or employees as the Management Committee may appoint or employ.

**6.4 Records.**

(a) The Management Committee shall keep detailed, accurate records in chronological order of the receipts and expenditures of the Association. Such records shall be available for examination by the Owners at convenient hours on weekdays. The Management Committee shall maintain up-to-date records showing (a) the name of each person who is an Owner, the address of the Unit owned by such Owner, and the mailing address and electronic mail address (if any) of such Owner; and (b) the name and address of each Eligible Mortgagee and the Unit that is encumbered by such Eligible Mortgagee.

(b) On any transfer of a fee interest in a Condominium Unit, the transferee shall furnish the Management Committee with evidence that the transfer has occurred and that the deed or instrument of conveyance is of record in the County Records. The Management Committee may rely on such information or, at its option, on current ownership information that is obtained from the County Records. The mailing address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless such Owner provides written notice to the Management Committee of a different mailing address.

(c) The Management Committee shall make available for inspection on request during normal business hours or under other reasonable circumstances to Owners and Mortgagees, current copies of this Declaration, the Plat, the Rules and Regulations and the books, records and financial statements of the Association.

**6.5 Professional Management.** The Management Committee may (but is not obligated to) engage a professional manager to perform any functions that are properly the subject of delegation. The manager shall be an independent contractor and not an agent or employee of the Management Committee, shall be responsible for managing the Property for the benefit of the Association and the Owners and shall, to the extent permitted by law and by the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself. Any such management agreement shall run for a reasonable period not to exceed to three years.

**6.6 Liability.** No member of the Management Committee or any officer of the Association shall be liable to the Owners for any mistake of judgment, for

negligence or on other grounds, except for such member's own willful misconduct, gross negligence, bad faith or more culpable conduct, subject to the following:

(a) *General.* Members of the Management Committee and officers of the Association: (a) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (b) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them in their capacity as such, except for their own willful misconduct, gross negligence, bad faith or more culpable conduct, nor for acts performed for them in their capacity as such; and (c) shall have no personal liability arising out of the use, misuse or condition of the Property, which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

(b) *Specific Listing.* Without limiting the generality of subsection (a) above, and notwithstanding any provision of the Governing Documents to the contrary, neither the Management Committee, the Association, nor any member of the Management Committee shall be liable for any loss, injury, death or damage (including any consequential damage) to persons, property or business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction or other defects of Utility Equipment, appliances, plumbing, air conditioning or lighting fixtures, construction, repair or alteration of the Property or other cause beyond such person's reasonable control.

(c) *Indemnity.* Each Owner and the Association shall indemnify each member of the Management Committee and each officer of the Association against all claims made by third parties arising out of any contract made by the Management Committee on behalf of the Owners, unless such contract was made in bad faith. The liability of any Owner arising out of any contract made by the Management Committee or an officer of the Association or out of the indemnification provision set forth in the immediately preceding sentence shall be limited to the total liability concerned multiplied by such Owner's Undivided Interest.

**6.7 Initial Agent for Service of Process.** The following shall be the initial person to receive service of process on behalf of the Property, the Management Committee and the Association:

Tyler Turner  
Griffiths and Turner Inc.  
512 East 4500 South, Suite 150  
Salt Lake City, Utah 84107

The Management Committee shall have the right to appoint a successor or substitute process agent at any time and from time to time. The name and address of any such successor or substitute agent shall be specified by an appropriate instrument recorded in the Salt Lake County

Recorder's office, a copy of which shall be delivered to each Owner. Service of process on two or more Owners in any action relating to the Common Elements or more than one Unit may be made on the agent designated above.

6.8 **General Standard.** Notwithstanding any provision in this Declaration to the contrary, the Management Committee shall act fairly and reasonably in discharging its duties under this Declaration and in so doing shall not discriminate between or among any Owners or any classifications of Owners.

#### **ARTICLE 7 - COMMON ELEMENTS; COMMON EXPENSES; ASSESSMENTS.**

7.1 **Common Elements.** The Management Committee shall be responsible for the operation, management, maintenance, repair and replacement of the Common Elements and the making of any additions or improvements to the Common Elements as may be reasonably necessary to keep them clean, safe, functional, attractive and generally in good condition and repair. The maintenance of the outdoor portions of the Common Elements shall include but not be limited to the removal of weeds and debris and periodic cleaning, sweeping, and removal of ice and snow. Without limiting the generality fo the foregoing, the Management Committee shall be responsible for maintenance of the water and sewer connections servicing the Project, except for those water and sewer connections which constitute a portion of a Unit.

7.2 **Annual Budget.** Before November 1st of each year the Management Committee shall prepare an Annual Budget for the next following calendar year. In preparing such Annual Budget, the Management Committee shall take into account any deficit or surplus anticipated to be realized during the then-current calendar year. Such Annual Budget shall be subject to the approval of a Majority of the Owners.

7.3 **Assessments.** Each Owner shall pay Assessments in accordance with the following:

(a) *Annual Assessments.* Prior to the first day of January of each calendar year, the Management Committee shall notify each Owner of the amount of its share of the Common Expenses for that calendar year as set forth in the Annual Budget for such year (the Owner's "**Annual Assessment**"). Each Annual Assessment shall be paid in monthly installments, each in an amount equal to one-twelfth of the Annual Assessment, which each such installment due on the first day of each calendar month.

(b) *Special Assessments.* The Board of Directors may levy in any calendar year one or more special assessments (each, a "**Special Assessment**", applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement within the Property or any facilities located in the Property, including the necessary fixtures and personal property related to it, or to make up any shortfall in the current Annual Budget. Notice of the amount and due dates for any Special Assessment shall be sent to each Owner at least 30 days prior to the due date. If any Special Assessment is to be used for the construction of

new facilities (as opposed to repair and reconstruction of existing facilities in the Property), and if the total amount of the Special Assessment levied for such construction exceeds 10% of the total Annual Budget for that year, then the Special Assessment shall require the approval of a Majority of Owners.

(c) *Late Payments and Assessments.* The Management Committee may establish and assess reasonable charges for delinquent payments of any Assessment or any installment thereof. A late fee equal to 5% of the delinquent amount and interest at the rate of 18% per annum on the delinquent amount shall be deemed to be reasonable. All payments made by an Owner under this Declaration shall be applied first to pay any costs of collection, next to outstanding Fines and late charges, next to interest and finally to Assessments or other amounts due from the Owner.

(d) *Default Assessments.* All Fines, penalties, interest or other charges or fees levied against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, and any expense (including without limitation attorneys' fees) incurred by the Association as a result of the failure of an Owner to comply with the Governing Documents, shall constitute a "**Default Assessment.**"

(e) *No Exemption.* No Owner may exempt itself from liability for its Assessment obligations by waiver of the use or enjoyment of any of the Common Elements or abandonment of its Unit. No diminution or abatement of any Assessments under this Declaration shall be claimed or allowed for any action or inaction of the Management Committee or the Association.

#### 7.4 Collection of Assessments.

(a) *Personal Obligation of Owner.* Every Owner shall pay Assessments in the amounts and at the times determined by the Management Committee in accordance with this Declaration and the Act. Each Assessment assessed against a Unit is a personal debt and obligation of the Owner of the Unit at the time the Assessment is made. In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the Unit up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. Suit to recover a money judgment for unpaid Assessments is maintainable without foreclosing or waiving the lien securing it.

(b) *Cessation of Services.* If an Owner shall be in default for the period of one month in the payment of Assessments, then the Management Committee may, at its option, and for so long as such default shall continue, cease to provide any or all services to such Owner's Unit pertaining to such Unit.

(c) *Collection of Rent.* If an Owner shall at any time lease or rent its Unit and shall default for a period of one month in the payment of Assessments, then the

Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, in compliance with applicable provisions of the Act and the Governing Documents.

(d) *Lien.* Each Assessment shall constitute a lien on the applicable Owner's Condominium Unit, which lien may be foreclosed in the manner of the foreclosure of a deed of trust or by any other method available under applicable law for the foreclosure of liens. For the purpose of foreclosure by trustee's sale, the Declarant appoints First American Title Insurance Company, having an address at 215 South State, Suite 380, Salt Lake City, Utah 84111, to have and exercise the power of the trustee and the power to bid on a Unit at a foreclosure or other sale and to acquire, hold, lease, mortgage and convey such Unit. Pursuant to Utah Code §§ 57-1-20 and 57-8-45, the Declarant hereby conveys and warrants to such trustee, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of Assessments under the terms of this Declaration. An Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the designated trustee. The Management Committee may appoint another qualified trustee by executing a substitution of trustee form. In any foreclosure of a lien for Assessments, the Owner concerned shall pay the costs and expenses of such proceedings and reasonable attorneys' fees, which shall be secured by the same lien. The Association may bid on such Unit at foreclosure or other sale and, if successful, hold, lease, mortgage or convey such Unit.

**7.5 Estoppel Statement.** The Management Committee shall, on the written request of any Owner or any Mortgagee or prospective Mortgagee or prospective purchaser of a Condominium Unit, and on payment of a reasonable fee in an amount to be determined by the Management Committee subject to any limitations imposed by the Act, issue to the requesting person or persons a written statement setting forth the amount of any unpaid Assessments for such Condominium Unit. Such written statement shall be conclusive on the remaining Owners and the Association in favor of all persons who rely on such written statement in good faith.

**7.6 Reserve Fund.**

(a) *Reserve Fund.* The Management Committee shall establish and maintain a reserve fund to cover the cost of repairing, replacing, or restoring Common Elements that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association, as determined by the Owners annually. Reserve funds may be collected as part of Annual Assessments or Special Assessments. If there are surplus monies after payment of all Common Expenses for any fiscal year, the Management Committee may, in its discretion, (i) retain surplus Association money and credit it against the Assessments for the following fiscal year, or (ii) deposit such surplus in the reserve fund. The Management Committee shall segregate money held for reserves from regular operating accounts.

(b) *Reserve Analysis.* The Management Committee shall, every five years, conduct an analysis (a “**Reserve Analysis**”) to determine the appropriate amount needed in the reserve fund to satisfy the purposes for which the reserve fund is maintained. The Management Committee shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every two (2) years. The Reserve Analysis report shall be prepared by a person or persons with (i) experience in current building technologies, (ii) a solid working knowledge of building cost estimating and life cycle costing for facilities, and (iii) the tools and knowledge to prepare a report.

(c) *Disclosure and Approval at Annual Meeting.* Annually, at the annual meeting of the Owners or a special meeting of Owners, the Management Committee shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount.

## ARTICLE 8 -INSURANCE

8.1 **Insurance.** The Association shall obtain insurance as required in this Declaration and as required by the Act. In addition, the Association may, as the Management Committee considers appropriate, obtain additional types of insurance, or greater coverage, than the insurance and coverages required below.

(a) *Property Insurance.* The Association shall obtain and maintain at all times blanket property insurance or guaranteed replacement cost insurance on the physical structures in the Property, including the Common Elements and the Units, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, with total coverage not less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding only items normally excluded from property insurance policies. Such property insurance shall include coverage for any fixture, improvement, or betterment installed at any time to a Unit or to a Limited Common Element, whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Element. Each Owner shall be an insured person under such property insurance policy.

(b) *Liability Insurance.* The Association shall obtain and maintain at all times liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements, in an amount determined by the Management Committee but not less than Two Million Dollars (\$2,000,000.00) for any single occurrence. Each Owner shall be an insured person under such liability insurance policy, but only for liability arising from (i) the Owner's ownership interest in the Common Elements; (ii) maintenance, repair, or replacement of Common Elements; and (iii) the Owner's membership in the Association.

(c) *Flood Insurance.* If any part of the Property 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 Property located within the Special Flood Hazard Area, 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 Property located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Property.

(d) *Directors and Officers Insurance; Theft and Embezzlement Insurance.* The Management Committee may, but shall not be obligated to, obtain (i) 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/or breach of contract, and (ii) insurance covering the theft or embezzlement of funds from the Association.

**8.2 Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

**8.3 Loss; Deductibles.**

(a) 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, then the Association's policy provides primary insurance coverage, the Owner is responsible for the Association's policy deductible, and the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(b) An Owner that has suffered damage to a Unit ("**Unit Damage**") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy (a "**Covered Loss**") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to the Unit Damage ("**Unit Damage Percentage**") for that Unit to the amount of the deductible under the Association's property insurance policy.

(c) If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Element appurtenant to the Unit, the Association may levy a Default Assessment against the Owner for that amount.

(d) 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.



(e) If, in the exercise of its business judgment, the Management Committee determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

(f) The Association shall provide notice to each Owner of the Owner's obligation under this Section 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.

**8.4 Association's Right to Negotiate Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are 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 remaining proceeds 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. 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.

**8.5 Insurance Trustee.** In the discretion of the Management Committee or upon written request executed by Owners holding at least 50% of the Undivided 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.

8.6 **Amendments to this Section to Comply with Applicable Law.** These insurance provisions are intended to comply with current Utah law. It is further intended that any future changes to the insurance law applicable to condominium associations shall apply to this Association. Notwithstanding anything contrary in this Declaration, the Management Committee may unilaterally, without approval of the Owners, amend this Article to comply with future changes to applicable law.

## **ARTICLE 9 -DESTRUCTION; CONDEMNATION; RESTORATION**

9.1 **Definitions.** As used herein, each of the following terms shall have the meaning indicated:

**“Available Funds”** means any proceeds of insurance, Condemnation awards, payments in lieu of Condemnation and other uncommitted funds held by the Management Committee, including amounts contained in any reserve or contingency fund. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Management Committee, including a Mortgagee, or that portion of any Condemnation award or payment in lieu of Condemnation payable to an Owner or its Mortgagee for the Condemnation of the Condominium Unit in which it is interested.

**“Condemnation”** means any action or proceeding in which any interest in the Property is taken for any public or quasi-public purpose by any lawful authority through exercise of the power of eminent domain or by purchase or other means in lieu of such exercise.

**“Estimated Cost of Restoration”** means the estimated cost of Restoration as determined by the Management Committee in its sole discretion.

**“Restoration”** means restoration of the Property to the extent reasonably possible in accordance with this Declaration, the Plat and the original plans and specifications for the Property and to substantially the same condition in which the Property existed prior to the damage or destruction concerned, with each Unit and the Common Elements having the same vertical and horizontal boundaries as before, and to the extent not so possible, “Restoration” means restoration of the Property to an attractive, sound and desirable condition. Any Restoration not in accordance with this Declaration, the Plat and the original plans and specifications for the Project shall require the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees.

**“Restored Value”** means the value of the Property after Restoration.

**“Substantial Condemnation”** means the occurrence of: (a) the Condemnation of all of the Property; or (b) the Condemnation of part of the Property where the Estimated Costs of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Condemnation”** means the occurrence of any Condemnation which is not a Substantial Condemnation.

**“Substantial Destruction”** means the occurrence of any damage or destruction of the Property where the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. **“Partial Destruction”** means the occurrence of any damage or destruction to the Property which is not a Substantial Destruction.

**9.2 Management Committee Determinations.** On the occurrence of any Condemnation of, or damage or destruction to, the Property, the Management Committee shall make a determination as to whether the Estimated Cost of Restoration is 75% or more of the estimated Restored Value of the Property. In making such determinations the Management Committee may (but is not obligated to) retain and rely on one or more qualified appraisers or other professionals.

**9.3 Restoration.** Restoration of the Property shall be undertaken by the Management Committee promptly without a vote of the Owners on the occurrence of Partial Condemnation or Partial Destruction, and shall also be undertaken on the occurrence of Substantial Condemnation or Substantial Destruction unless the election to not undertake Restoration is consented to by a Two-Thirds Majority of the Owners and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees. Within 30 days after the Management Committee has determined that Substantial Condemnation or Substantial Destruction has occurred, it shall send to each Owner and Eligible Mortgagee a written description of the Condemnation or the damage or destruction involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration. If Condemnation awards, payments in lieu of Condemnation or insurance proceeds actually received by the Management Committee exceed the cost of Restoration when Restoration is undertaken, then the excess shall be paid and distributed to the Owners in proportion to their respective Undivided Interests or, in the discretion of the Management Committee, shall be held to defray future Common Expenses. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee. If the cost of Restoration exceeds Available Funds, then all of the Units shall be assessed for the deficiency on the basis of their respective Undivided Interests. If all or any portion of one or more Units is damaged or destroyed but is not the subject of Restoration (even through the Property will continue as a condominium project) or is taken in a Condemnation, then the Undivided Interest of such Unit or Units shall immediately be reallocated to the remaining Units in accordance with the method set forth in Section 9.6 below.

**9.4 Sale of Property.** Unless Restoration is accomplished pursuant to Section 9.3, the Property shall be sold following the occurrence of Substantial Condemnation or Substantial Destruction. On such sale, condominium ownership under this Declaration and the Plat shall terminate and the proceeds of sale and any Available

Funds shall be distributed by the Management Committee to the Owners in proportion to their respective Undivided Interests. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

**9.5 Authority to Represent Owners.** The Management Committee, as attorney-in-fact for each Owner, shall represent all of the Owners in any Condemnation or in negotiations, settlements and agreements with the condemning authority for the acquisition of all or any part of the Property. The award in any Condemnation and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their Mortgagees as their respective interests may appear. The Management Committee, as attorney-in-fact for each Owner, shall have and is granted full power and authority to restore or to sell the Property and each Unit therein wherever Restoration or sale, as the case may be, is undertaken as provided above. Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale.

**9.6 Reallocation of Interests on Condemnation.** If any Unit is taken by Condemnation, then the Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests. The court shall enter a decree reflecting the reallocation of the Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit taken for its Undivided Interest as well as for its Unit. If any portion of any Unit is taken by Condemnation, then the court shall determine the fair market value of the portion of the Unit not taken, and the Undivided Interest appurtenant to such Unit shall be reduced in proportion to the diminution in the fair market value of such Unit resulting from such Condemnation. The Undivided Interest thus divested from the Owner of such Unit shall be reallocated among such Unit and the other Units in proportion to their respective Undivided Interests, with any Unit partially taken in Condemnation participating in the reallocation on the basis of its Undivided Interest as reduced in accordance with the preceding sentence. The court shall enter a decree reflecting the reallocation of the Undivided Interest so produced, and the award shall include, without limitation, just compensation to the Owner of any Unit partially taken for that portion of its Undivided Interest divested from it and not revested in it as well as for that portion of its Unit taken by Condemnation. If, however, the Condemnation of a portion of any Unit makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then the entire Undivided Interest appurtenant to such Unit shall thereafter be appurtenant to the remaining Units, being allocated to the remaining Units in proportion to their respective Undivided Interests, and the remaining portion of such Unit shall thereafter be part of the Common Elements. The court shall enter a decree reflecting the reallocation of Undivided Interests so produced, and the award shall include, without limitation, just compensation to the Owner of such Unit for its entire Undivided Interest and for its entire Unit.

9.7 **Allocation of Proceeds upon Partial Condemnation.** If a portion of the Common Elements is taken by Partial Condemnation, then the award for it shall be allocated to the Owners in proportion to their respective Undivided Interests; provided, however, that the Management Committee may elect to retain the award to defray Common Expenses rather than to distribute the award to Owners.

## **ARTICLE 10 - AMENDMENTS.**

10.1 **Amendment.** Except as otherwise provided in this Article, the vote of a Two Thirds Majority of the Owners shall be required and shall be sufficient to amend this Declaration or the Plat. Any amendment so authorized shall be accomplished through the recordation in the County Records of an instrument executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section for amendment has occurred and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

10.2 **Removal of Property from Act.** The Owners may remove the Property from the provisions of the Act by an affirmative vote of all (but not less than all) of the Owners, at a meeting of Owners duly called for such purpose, provided that the holders of all liens affecting the Condominium Units consent or agree by instruments duly recorded that their liens may be transferred to the undivided interest of the Owner concerned in the Property. On removal of the Property from the provisions of the Act, the Property shall be deemed to be owned in common by the Owners. The undivided interest in the Property owned in common by each Owner shall be equal to the Undivided Interest previously owned by such Owner. Any removal so authorized shall be accomplished through the recordation of an instrument in the County Records executed (solely) by the Management Committee. In such instrument the Management Committee shall certify that the vote required by this Section for removal has occurred. The removal provided for in this Section shall not bar the subsequent resubmission of the Property to the provisions of the Act.

10.3 **Sale of Property.** The Owners may, by an affirmative vote of a Super Majority of the Owners, at a meeting of Owners duly called for such purpose, elect to sell or otherwise dispose of the Property. Such action shall be binding upon all Owners, and it shall thereupon become the duty of every Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Notwithstanding the foregoing, sale of the Property in the event of damage, destruction, or condemnation shall be governed by the provisions of Section 9.4 above.

## **ARTICLE 11 - RIGHTS OF CERTAIN PARTIES**

### **11.1 Mortgagee Protection.**

(a) The lien or claim against a Condominium Unit for unpaid Assessments levied by the Management Committee pursuant to the Act or this Declaration shall be

subordinate to any Mortgage recorded on or before the date such Assessments become due, and shall not be affected by any sale or transfer of such Condominium Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Condominium Unit or the exercise of a power of sale available thereunder shall extinguish a subordinate lien for such Assessments which became payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the immediately preceding sentence may be reallocated and assessed to all Condominium Units as Common Expenses, including the Condominium Unit that is the subject of such sale or transfer. Any such sale or transfer pursuant to a foreclosure or power of sale shall not relieve the purchaser or transferee of such Condominium Unit from liability for, nor such Condominium Unit from the lien of, any Assessments or charges becoming due thereafter or reallocated pursuant to the immediately preceding sentence.

(b) On written request to the Management Committee by any Mortgagee (which request identifies the name and address of such Mortgagee and the Unit number or address of the Unit encumbered by the Mortgage concerned), such Mortgagee shall thereafter be deemed to be an Eligible Mortgagee and shall be included on the appropriate lists maintained by the Management Committee, and shall be entitled to timely written notice of any of the following:

(i) Any Condemnation or casualty loss that affects a material portion of the Property or any Unit on which there is a Mortgage held by such Eligible Mortgagee;

(ii) Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held by such Eligible Mortgagee, which delinquency remains uncured for a period of 60 days;

(iii) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Management Committee; and

(iv) Any proposed action under Section 9.3 that would require the consent of a specified percentage of Eligible Mortgagees as set forth in such Section.

(v) Notwithstanding anything to the contrary in this Declaration, the consent of Eligible Mortgagees holding Mortgages on Units which have appurtenant at least 51% of the Undivided Interests which are then subject to Mortgages held by Eligible Mortgagees shall be required to amend any material provision of this Declaration or the Plat that provides for any of the following: (a) voting; (b) Assessments, assessment liens or subordination of assessment liens; (c) reserves for maintenance, repair and replacement of the Common Elements; (d) insurance; (e) responsibility for maintenance and repair of the Property; (f) the allocation of Undivided Interests; (g) imposition of any restrictions on the right of an Owner to sell, transfer or otherwise convey a Unit; and (h) express protections or rights of Mortgagees or Eligible Mortgagees. An

addition or amendment shall not be considered material for purposes of this Section if it is for the purpose of correcting technical errors or for clarification only. Any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat (or to approve a decision of the Owners or the Management Committee with respect to the nature of Restoration or a decision not to undertake Restoration pursuant to Article 9) is mailed in the United States mail, postage prepaid, certified and return receipt requested, to the address for such Eligible Mortgagee shown on the list maintained by the Management Committee who has not delivered to the Management Committee a negative response within thirty (30) days from the date of such mailing shall be deemed to have approved such request.

### 11.2 Declarant's Rights .

(a) All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. All references in this Declaration to Declarant shall include any successor to Declarant, either by operation of law or through specific assignments of rights under the Declaration.

(b) Anything in this Declaration to the contrary notwithstanding, during the Declarant Control Period:

(i) Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Condominium Unit or any portions thereof. Recordation of such an amendment shall be deemed conclusive proof of the institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Property and all persons having an interest therein.

(ii) This Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant may unilaterally amend or terminate this Declaration prior to the closing of a sale by Declarant of any Unit.

### 11.3 Initial Development and Construction.

(a) As used in this Section, the following terms shall have the meanings given them below:

“**Contractor**” shall mean any contractor licensed in the State of Utah that furnished labor, materials, or equipment for the Initial Construction pursuant to a contract with the Declarant.

**“Design Professional”** shall mean any architect, engineer, or surveyor licensed in the State of Utah that performed professional services for the Initial Construction pursuant to a contract with the Declarant.

**“Initial Construction”** shall mean the design and construction of the Improvements, including all services, labor, materials, and equipment furnished for the improvement thereof, that achieved Substantial Completion within six (6) years of date of the recording of this Declaration.

**“Substantial Completion”** shall mean the stage in the progress of the Initial Construction when the Initial Construction or designated portion thereof is sufficiently complete so that it can be put to its intended use.

(b) In all claims and causes of action by the Association, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall attach as an exhibit to its first Complaint filed with a court of competent jurisdiction an affidavit of a third-party licensed in the State of Utah in the same profession, area of practice, or construction trade as each defendant and who is competent to testify. Each affidavit shall set forth specifically a professional opinion as to each act, error, or omission alleged in the Complaint against the respective defendant that caused the Association’s alleged damages and the factual basis for each such opinion. The Association’s failure to file the affidavit in accordance with this Section 12.9 shall result in dismissal with prejudice of any claim described in this Section 12.9 against the particular defendant for which such affidavit is required and an award of reasonable attorney fees and expenses incurred by the particular defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the allegations of the Complaint.

(c) The Association shall commence all claims and causes of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, a Contractor, any design consultants of a Design Professional, or any subcontractors of a Contractor not more than four (4) years after the respective date of Substantial Completion of each portion of the Initial Construction for which the claim or cause of action is made. The Association waives all claims and causes of action not commenced in accordance with this section.

(d) During the four (4) years following the date of Substantial Completion of the Initial Construction, the Association shall schedule an annual walkthrough of all common areas with the Association’s maintenance personnel and a representative of Declarant for the purpose of identifying items potentially in need of repair or maintenance within the next year. The Association shall give at least thirty (30) days prior written notice of the date and time of the walkthrough to Declarant, which time and date shall be during normal business hours. The Association shall conduct each walkthrough and keep a record of the items identified regardless of any lack of participation by Declarant.



(e) As an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, a Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor, the Association shall give written notice by United States Postal Service certified mail, return receipt requested, of an alleged defect in the Initial Construction to Declarant, all Design Professionals, and all Contractors within thirty (30) days of first discovering the alleged defect, and Declarant and each Design Professional and Contractor shall then have ninety (90) days from the mailing date of the last written notice to any of them to cure such alleged defect. The Association's failure to provide notice shall result in dismissal with prejudice of any claim and an award of reasonable attorney fees and expenses incurred by any defendant, its insurer, or any other person or entity on behalf of that defendant in defending against the alleged defect.

(f) To the extent damages are covered by insurance, the Association waives all rights against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor for damages, except such rights as the Association may have to the proceeds of such insurance.

(g) The Association waives any claim or cause of action for consequential damages arising out of or relating to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, and any subcontractors of a Contractor.

(h) A vote in favor of at least 75% of the voting members of the Association is an express condition precedent to the Association bringing any claim or cause of action, whether in contract, tort, or otherwise arising out of or related to the Initial Construction, against Declarant, any Design Professional, Contractor, any consultants of a Design Professional, or any subcontractors of a Contractor.

## **ARTICLE 12 - ENFORCEMENT**

**12.1 Certain Actions.** Without limiting the rights of any Owner, actions may be brought by the Management Committee, in its discretion, on behalf of two or more of the Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or any portion thereof or more than one Unit.

**12.2 Payment of Costs and Expenses.** If there is a dispute concerning any Governing Document or if the Management Committee or any Owner seeks to enforce its rights under a Governing Document against the Association, the Management Committee or any Owner, then the non-prevailing party shall pay all costs and expenses, including reasonable attorneys' fees, that the prevailing party reasonably incurs in connection with the dispute or enforcement or in pursuing any remedy provided hereunder or by relevant statutes or other laws, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any proceedings under any present or future federal bankruptcy act or state receivership act;

or in connection with any mediation, arbitration or other alternative dispute resolution proceeding initiated by the parties.

**12.3 Right to Cure.** If any Owner fails to perform any obligation under this Declaration, then the Management Committee may proceed to cure the default after 30 days written notice and failure of the Owner to commence, and thereafter diligently to prosecute, such cure, and the Management Committee shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the rate of 18% per annum from the date such costs were paid, plus collection costs. Furthermore, the Management Committee shall have a lien on the Unit of the defaulting Owner for all such amounts in the same manner as if it were a lien for nonpayment of Assessments.

**12.4 Fines.** The Management Committee may assess a Fine against an Owner for a violation of this Declaration or the Rules and Regulations,, in accordance with procedures set forth in the Rules and Regulations.

**12.5 Association's Right to Pay Delinquent Utilities and Winterize Units.**

(a) The Association may request that a utility provider supplying electricity or gas to the Property provide notice to the Association at least 10 days before the day on which such utility provider discontinues service to any Unit, by sending to the utility provider a written request including the address of each Unit in the Property, the name, mailing address, email address, and phone number of the Association, and the address to which the requested notice should be sent.

(b) If the Association receives notice that service will be discontinued to a Unit, the Association may (but shall not be obligated to) provide notice to the Unit Owner and then pay the delinquent utility charges if doing so would reasonably protect the Common Elements and the other Units from possible damage due to freezing water pipes or other causes. If the Association pays such delinquent charges, the amount of such payment shall be a Default Assessment against the Unit involved.

(c) If the Association decides not to pay the delinquent charges, the Association shall have the right to enter into the Unit for the purpose of "winterizing" the Unit for the purpose of preventing possible damage to the Common Elements or the other Units. In such event, the actual, reasonable costs incurred by the Association in entering and winterizing the Unit shall constitute a Default Assessment against the Unit involved.

**ARTICLE 13 - INTERPRETATION**

**13.1 Priority Over Act.** In the event of any conflict between the provisions of this Declaration and the provisions of the Act (or any successor or substitute provisions), the provisions of this Declaration shall control to the extent permitted by applicable law.

**13.2 Construction.** This Declaration shall inure to the benefit of, and be binding on, Declarant, the Management Committee, the Association, and each Owner and their respective heirs, personal representatives, successors and assigns. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah. Titles and headings of articles and sections of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. All pronouns shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person to whom reference is made may require. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

## **ARTICLE 14 - DISPUTE RESOLUTION**

**14.1 Agreement to Encourage Resolution without Litigation.** Declarant, the Association, and all persons bound by this Declaration agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Property without the emotional and financial costs of litigation. Accordingly, each person bound by this Declaration agrees that it shall not file any action in any court with respect to a Claim (as defined below) unless and until it has first submitted the Claim to the dispute resolution procedures set forth in this Article and engaged in a good faith effort to resolve the Claim. As used in this Article, “**Claim**” means any claim, grievance, or dispute arising out of or relating to (a) the interpretation, application, or enforcement of the Governing Documents, (b) the rights, obligations, and duties of any person bound by this Declaration; (c) the design or construction of the improvements on the Property; provided, however that none of the following shall be considered “**Claims**” or be subject to the provisions of this Article: (i) any suit by the Association to collect Assessments, to obtain a temporary restraining order or other emergency relief as a court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the Governing Documents; (ii) any suit between Owners which does not include Declarant or the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents; (iii) any suit in which any indispensable party is not bound by this Declaration; and (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may be reasonably necessary to comply with this Article.

### **14.2 Dispute Resolution Procedures.**

(a) **Notice.** The party asserting a Claim (the “**Claimant**”) against another party (the “**Respondent**”) shall give written notice (“**Notice**”) to each Respondent and to the Management Committee stating plainly and concisely: (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim, (ii) the legal basis

of the Claim (*i.e.*, the specific authority out of which the Claim arises), (iii) the Claimant's proposed resolution or remedy, and (iv) the Claimant's desire to meet with the Respondent to discuss in good faith possible resolutions of the Claim.

(b) **Negotiation.** The Claimant and the Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.

(c) **Mediation.** If the parties cannot resolve the Claim within 30 days after the date of the Notice despite good faith negotiation, the Claimant shall have an additional 30 days to submit the Claim to mediation through an independent agency providing dispute resolution services in the Salt Lake City area. If the Claimant does not submit the Claim for mediation within such additional 30 days, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not to third parties) on account of the Claim. If the parties fail to resolve the Claim within 30 days after submitting the Claim to mediation, or within such longer period determined to be reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and stating the date on which the mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its own costs of mediation, including attorney's fees, and each party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of a Claim shall be documented in writing and signed by the parties. If any party thereafter fails to comply with the terms of such settlement, then any other party may file suit or initiate administrative proceedings to enforce the settlement agreement without the need to comply with the procedures of this Article. In such event, the prevailing party shall be entitled to recover from the non-prevailing party all costs incurred in such enforcement, including but not limited to reasonable attorneys' fees and court costs.

## **ARTICLE 15 - GENERAL PROVISIONS**

15.1 **Exhibits.** Each of the exhibits that is referred to herein and that is attached hereto is an integral part of this Agreement and is incorporated herein by reference.

15.2 **Notices.** The Management Committee shall maintain records setting forth the names and mailing addresses of each Owner, and it shall be the responsibility of each Owner (and not the Management Committee) to insure that such records are current as to its Unit. All notices, writings, information, documents or other communications that are required or permitted to be given hereunder: (a) shall be in writing; (b) shall be deemed to be given and received either (i) on the date of delivery, if personally delivered or if delivered by electronic means; (ii) on the third business day following mailing, if delivered by certified mail, return receipt requested; (iii) on the next business day, if marked for next business day delivery and delivered by guaranteed

overnight express courier or delivery service, such as Federal Express, which provides for evidence of receipt at the office of the intended addressee; or (iv) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of the date of the attempted delivery or refusal to accept delivery, the date of the postmark on the return receipt, or the date of receipt of notice of refusal or notice of nondelivery by the sending person; and (c) shall be addressed to: (i) any Owner in accordance with the Management Committee's records; and (ii) the Association. All such notices from the Association may be delivered to each Owner by electronic means, including text message and/or electronic mail, unless such Owner delivers to the Association a written demand that the Association provide notice to such Owner by mail.

**15.3 Conflicts among Documents.** In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

*[Signature page follows]*



**EXHIBIT A**  
**Legal Description**

The following described property, situated in Salt Lake County, State of Utah:

Lots 51 and 52, Subdivision of the North half of Block 85, Plat "C", Salt Lake City Survey.

**EXHIBIT B**  
**Units, Sizes, and Ownership Percentages**

<i>Unit Designation</i>	<i>Square Footage of Unit</i>	<i>Percentage of Undivided Interests, Voting Rights, and Common Expenses</i>
Unit A	1,213	23.68%
Unit B	1,214	23.70%
Unit C	1,348	26.31%
Unit D	<u>1,348</u>	<u>26.31%</u>
<b>Totals:</b>	5,123	100%



**EXHIBIT C**  
**Bylaws**

*[See Attached]*

**BYLAWS OF  
GUADALUPE CONDOMINIUMS OWNERS ASSOCIATION, INC.**

The following shall be the Bylaws of Guadalupe Condominiums Owners Association, Inc., a Utah nonprofit corporation (the "**Association**"). All capitalized terms used but not defined herein shall have the meaning given them in the Declaration of Condominium for Guadalupe Condominiums, of even date herewith, pertaining to the Property (the "**Declaration**"), as it may be modified or amended from time to time.

**1. NAME AND LOCATION**

The name of the corporation is Guadalupe Condominiums Owners Association, Inc. The principal office of the corporation shall be located at 298 E. Regent Park Court, Midvale, Utah 84047, or such other location as may be designated by the Board of Directors from time to time, but the meetings of Members (as defined below) and of the Board of Directors may be held at such places in the State of Utah as may be designated by the Board of Directors.

**2. PURPOSE; ASSENT**

**2.1 Purposes.** The specific purposes for which the Association is formed are (i) to provide for the operation, administration, use and maintenance of the Units and the Common Elements within the Property; (ii) to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; (iii) to levy, collect and enforce the Assessments, charges and liens imposed pursuant hereto; (iv) to preserve, protect, and enhance the values and amenities of the Property; and (v) to promote the health, safety, and welfare of the Owners, occupants, and users of the Property.

**2.2 Assent.** All present and future Owners, Mortgagees, lessees and occupants of any Unit and any other persons who may use the Property or any portion thereof in any manner are subject to the Declaration, these Bylaws, and all Rules and Regulations made pursuant hereto and any amendments thereto. The acquisition, lease, or occupancy of a Unit shall constitute acceptance and ratification of, and an agreement to comply with, the provisions of the Declaration and these Bylaws and any Rules and Regulations made pursuant thereto, as they may be amended from time to time.

**3. MEMBERSHIP**

Each Owner of a Unit shall be, and no person or entity other than an Owner of a Unit may be, a member of the Association ("**Member**"). Membership in the Association for each Owner shall be mandatory, and not optional, and shall be appurtenant to and may not be separated from the ownership of a Unit. Membership in the Association shall begin immediately and automatically upon acquisition of a Unit and shall terminate immediately and automatically upon ceasing to be an Owner of a Unit, but such termination shall not relieve or release any such former Owner from any liability or obligation incurred under the Declaration during the period of such ownership. Neither the issuance nor the holding of shares of stock shall be necessary to

evidence membership in the Association. The rights and duties appertaining to membership in the Association, including voting rights, shall be governed by the Declaration. With respect to any matter coming before the Members for a vote, each Member shall be entitled to cast the number of votes equal to such Member's percentage ownership of the Common Elements of the Association, as set forth in the Declaration.

#### **4. MEETINGS OF MEMBERS**

**4.1 Annual Meetings** . The first annual meeting of the Members shall be held within one (1) year from the date of incorporation of the Association, and each subsequent regular meeting of the Members shall be held at some reasonable location in Salt Lake County, Utah on a date and at a time fixed by the Board of Directors. The purpose of the annual meetings is for the election of Directors and the transaction of such other business of the Association as may properly come before the meeting.

**4.2 Special Meetings** . Special meetings of the Members may be called at any time by the President or by the request of any two Members.

**4.3 Notice of Meetings** . Written notice of each meeting of the Members shall be given by the Association, by sending a copy of such notice not less than ten (10) nor more than forty-five (45) days before the meeting to each Member entitled to vote at the meeting. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Such notice shall be sent by electronic mail, to the Member's email address last appearing on the books of the Association; provided, however, that if a Member so requests by written notice to the Association, all notices to such Member shall be sent by first class U.S. mail, postage prepaid, addressed to the Member's mailing address last appearing on the books of the Association.

**4.4 Waiver of Notice** . Waiver of notice of a meeting of the Members will be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, will be deemed waiver by such Member of notice of the time, date, and place of the meeting unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting will also be deemed waiver of notice of all business transacted at the meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**4.5 Quorum** . The presence at the meeting of any two Members in person shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or be represented by proxy.

**4.6 Actions Binding on Members** . If a quorum is present, the vote of the majority of the votes held by Members present at the meeting in person or by proxy will be sufficient to make decisions binding on all Owners, unless a different percentage of votes is expressly required by statute or by the Declaration, the Articles, or these Bylaws.

**4.7 Action Taken Without a Meeting** . Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

(a) A written ballot is distributed to every Member entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time (not to exceed sixty (60) days) for the Member to return the ballot to the Association.

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

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

**4.8 Proxies** . At each meeting of the Members, each Member 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 Member or by his or her attorney thereunto duly authorized in writing. If title to a Unit is held by more than one person, the instrument authorizing a proxy to act must have been executed by all Owners of such Unit or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

**4.9 Designation of Voting Representative by Non-Individual Owners** . If title to a Unit is held by a corporation, partnership, association, limited liability company or other legal entity, the voting privilege appurtenant to that Unit may be exercised only by a proxy executed on behalf of such entity, filed with the secretary of the Association, appointing and authorizing one person or alternate persons to attend all annual and special meetings of the Members and to cast the vote allocated to that Unit at the meeting.

**4.10 Voting by Multiple Owners** . If title to a Unit is held by more than one Owner, the vote for such Unit shall be cast as determined by a majority of such Owners, and if a majority of the Owners for a Unit cannot agree, then the Owners of such Unit shall not be entitled to vote. An Owner may not revoke a proxy given pursuant to this Section 4.10 except by actual notice of

revocation to the person presiding over a meeting of the Association, which notice must be signed by a majority of the Owners of the Unit.

## 5. BOARD OF DIRECTORS, SELECTION, TERM OF OFFICE

5.1 **Number** . The affairs of the Association shall be managed by a Board of Directors. During the Declarant Control Period, there shall be three Directors, all appointed by the Declarant. After the expiration of the Declarant Control period, there shall be four Directors, with one Director appointed by the Owner of each Unit. Each Director shall be an Owner or, if a Unit is owned by an entity rather than an individual, a duly appointed representative of such Owner. Notwithstanding the foregoing, if any Owner fails to appoint a Director, the remaining Directors shall constitute the Board of Directors.

5.2 **Term of Office** . At each annual meeting of the Members, Directors shall be appointed, to serve until the following annual meeting. In the event that an Owner should convey ownership of its Unit, upon the recording of the instrument conveying title to the Unit, the Director appointed by the conveying Owner shall no longer be a Director, and the new Owner shall promptly appoint a Director.

5.3 **Compensation** . No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

5.4 **Action Taken Without a Meeting** . The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

## 6. MEETINGS OF DIRECTORS

6.1 **Regular Meetings** . The Board of Directors shall hold a regular meeting at least annually, without notice, at such place and hour as may be fixed from time to time by resolution of the Board of Directors. Should a regularly scheduled meeting date fall upon a legal holiday, then that meeting shall be held at the same time on the next business day which is not a legal holiday.

6.2 **Special Meetings** . Special meetings of the Board of Directors shall be held when called by the President or by any two (2) Directors, after not less than three (3) days notice to each Director.

6.3 **Quorum** . A majority of the number of Directors shall constitute a quorum for the transaction of business. In the event of a tie vote, the matter shall be presented to the Members for a vote, and the vote of a Majority of the Owners (as that term is defined in the Declaration) shall prevail.

6.4 **Actions Binding** . Every action taken or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present will be regarded as the act

of the Board. In the event of a tie vote, the matter shall be presented to the Members for a vote, and the vote of a Majority of the Owners (as that term is defined in the Declaration) shall then be regarded as the act of the Board.

**6.5 Waiver of Notice** . Attendance of a Director at any meeting will constitute a waiver of notice of such meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Before, at, or after any meeting of the Board of Directors, any member of the Board may waive in writing notice of such meeting, and such waiver will be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting.

**6.6 Action Taken without a Meeting** . The Directors will have the right to take any action which they could take at a meeting in the absence of a meeting by obtaining the written approval of all the Directors. Any action so approved will have the same effect as though taken at a meeting of the Directors.

## **7. POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**7.1 General Powers** . The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association. Except as provided by these Bylaws, the Declaration, or the Act, the Board of Directors may do all such acts and things which are not specifically required to be done by the members and may otherwise act in all instances on behalf of the Association.

**7.2 Specific Powers and Duties** . Without limiting the generality of powers and duties set forth in Section 7.1 above, the Board of Directors shall have all the powers and duties granted to the Management Committee in the Declaration, and the following powers and duties, subject only to applicable requirements of the Act:

- (a) To establish bank accounts for the operating account of the Association and for all separate funds as required or deemed advisable by the Board;
- (b) To cause to be kept and maintained full and accurate books and records showing all of the receipts, expenses or disbursements and to permit examination thereof by Members or their Mortgagees during convenient weekday business hours;
- (c) To cause to be maintained the insurance coverage as may be necessary to comply with the requirements of the Declaration, these Bylaws, and the Act;
- (d) To cause all officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate;
- (e) To prepare a budget before the close of each fiscal year of the Association in accordance with the Declaration and the Act;

(f) To suspend a Member's voting rights during any period in which such Member shall be in default in the payment of any Assessment levied by the Association or during any period in which such Member has failed to appoint a Director; and

(g) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles, or the Declaration.

**7.3 Manager** . The Board may (but shall not be required to) employ a professional management agent as a Manager, with compensation established to perform such duties and services as authorized by the Board. The Board may delegate to the Manager, subject to the Board's supervision, all of the powers granted to the Board by these Bylaws, except that the Board may not delegate the power to determine and levy annual, special, or other Assessments or any other powers or duties reserved to the Board by law. If the Board delegates to the Manager powers relating to collection, deposit, transfer, or disbursement of Association funds: (a) the Board, in its discretion, may require the Manager to maintain fidelity insurance coverage or a bond in such amount as the Board may determine, and (b) the Manager shall maintain all funds and accounts of the Association separate from the funds and accounts of the Manager and of other associations managed by the Manager.

## **8. OFFICERS AND THEIR DUTIES**

**8.1 Enumeration of Officers** . The officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer. One person may hold two offices, provided that the offices of President and Treasurer shall not be held by the same person.

**8.2 Election of Officers; Term** . The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members, and each officer shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**8.3 Resignation and Removal** . Any officer may be removed from office with cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**8.4 Vacancies** . A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

**8.5 Duties** . The duties of the officers are as follows:

(a) President:

The President shall preside at all meetings of the Members and the Board of Directors; shall see that orders and resolutions of the Board of Directors are carried out; shall sign all contracts to which the Association is a party.

(b) Vice President:

The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors.

(c) Secretary:

The Secretary (or the Manager at the direction of the Secretary) shall: (i) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Members; (ii) serve notice of meetings of the Board of Directors and of the Members; (iii) keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as may be required by the Board of Directors.

(d) Treasurer:

The Treasurer (or the Manager at the direction of the Treasurer) shall: (i) receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; (ii) keep proper books of account; if required by the Board of Directors, cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and (iii) prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

## 9. INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall provide any indemnification required by the laws of Utah and shall indemnify Directors, officers, agents and employees as follows:

9.1 **Third Party Litigation** . The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Director or officer of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order,



settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, or with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**9.2 Association Litigation** . The Association shall indemnify any Director or officer of the Association who was or is a party or is threatened to be made a party to any action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was a Director or officer of the Association, against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Association unless and only to the extent that the court in which such action or suit was brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**9.3 Expenses** . To the extent that a Director or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 9.1 or 9.2 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 9.4 below.

**9.4 Determination of Right to Indemnity** . Any indemnification under Section 9.1 or 9.2 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director or officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Section 9.1 or 9.2 above. Such determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding, or (ii) if such a quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel for the Association) in a written opinion; and any determination so made shall be conclusive.

**9.5 Advance of Expenses** . Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article 9.

9.6 **Other Indemnification Rights** . Agents and employees of the Association who are not Directors or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Directors of the Association.

9.7 **Benefitted Parties** . Any indemnification pursuant to this Article 9 shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

## 10. **BOOKS AND RECORDS; FISCAL YEAR**

10.1 **Fiscal Year** . The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation of the Association and end on the 31<sup>st</sup> day of the following December.

### 10.2 **Accounting**

(a) The books and accounts of the Association shall be kept in accordance with generally accepted accounting principles (or other accounting principles acceptable to the Board of Directors, consistently applied) under the direction of the Treasurer.

(b) At the close of each fiscal year, the books and records of the Association shall be reviewed by the Board of Directors, and, if required by the Board of Directors, by an independent public accountant approved by the Board of Directors, and financial statements shall be prepared and distributed to all Members.

10.3 **Inspection of Records** . The membership register, books of account and minutes of meetings of the Association, the Board of Directors and committees of the Board of Directors and all other records of the Property maintained by the Association or Manager shall be made available for inspection and copying by any Member or his or her duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his or her interest as a Member, at the office where the records are maintained. The Board of Directors may establish reasonable rules with respect to:

(a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;

(b) Hours and days of the week when such an inspection may be made; and

(c) Payment of the cost of reproducing copies of documents requested by a Member.

Every member of the Board of Directors, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association.

## 11. AMENDMENTS

11.1 **Amendment Procedure** . These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a Majority of the Owners.

11.2 **Conflict** . In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.