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SIXTH AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF THE  
SHADYBROOK CONDOMINIUM PROJECT  
(Including Bylaws)

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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF THE**  
**SHADYBROOK CONDOMINIUM**  
**PROJECT**

A. THIS SIXTH AMENDED AND RESTATED DECLARATION OF CONDOMINIUM of the Shadybrook Condominium Project is made on the date evidenced below by the Shadybrook Homeowner's Association, a domestic nonprofit corporation (the "Association"), established to govern the common affairs of the Association's members and enforce the covenants, conditions, restrictions and rules of the Association.

B. This Amended and Restated Declaration of Condominium including Bylaws supersedes and replaces the Fifth Amended Declaration of Condominium of the Shadybrook Condominium Project recorded February 13, 1992, as Entry No. 5198513, records of the Salt Lake County Recorder, in its entirety and including all subsequent amendments or supplements thereto (the "Original Declaration") and including the Bylaws embedded within the Original Declaration.

C. Pursuant to Article III, Section 43 of the Original Declaration (as amended in 2009), at least sixty-seven percent (67%) of a majority of the Owners of the Association who have cast votes, in person, by proxy, by special ballot, or other method, have affirmatively approved the adoption of this document.

D. This Amended and Restated Declaration of Condominium including Bylaws shall be binding upon all real property described in Exhibit A attached hereto and it is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the property or any unit in the property regime created by this Declaration, that this Declaration, together with the Plat Map and plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the condominium development mutually beneficial in all of the described units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire property and upon each such unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of units under security instruments.

E. The Shadybrook Condominiums, a Utah condominium project, has been and continues to be submitted to Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et seq.* (the "Act"), as amended from time to time, with the rights, privileges and obligations as set forth herein and in the Act.

## ARTICLE I - DEFINITIONS

The following words when capitalized in this Declaration have the following meanings:

**1.1** “*Act*” means the Utah Condominium Ownership Act (Section 57-8-1 et seq., Utah Code Annotated, 1953), as the same may be amended from time to time.

**1.2** “*Assessment*” means any charge imposed or levied by the Association on or against an Owner or Unit pursuant to the terms of this Declaration, the Bylaws or applicable law.

**1.3** “*Association*” means and refers to the Shadybrook Homeowner’s Association, a Utah nonprofit corporation, and its successors and assigns, or all of the Unit Owners acting as a group in accordance with the Declaration and Bylaws.

**1.4** “*Bylaws*” means the Bylaws of the Association, as they may be amended from time to time and are attached hereto in their current form as **Exhibit “C.”**

**1.5** “*Common Area*” means, refers to, and includes: (a) The real property, excluding all Units as defined herein, and interests in the real property which this Declaration submits to the terms of the Act; (b) The real property, excluding all Units as defined herein, and interests which comprise the Project; (c) All common areas and facilities designated as such on the Plat Map and elsewhere herein; (d) All Limited Common Areas and facilities (except when the context otherwise requires for maintenance or use purposes); (e) All foundations, roofs, columns, girders, beams, supports and perimeter walls constituting a portion of or included in the improvements which comprise a part of the Project; (f) All installations for and all equipment connected with the furnishing of the Project’s utility services, such as electricity, gas, water and sewer, except as otherwise provided herein; (g) In general, all apparatus, installations and facilities included within the Project and existing for common use; (h) The Project’s outdoor lighting, fences, landscape, sidewalks, parking spaces, driveways and roads; (i) All portions of the Project not specifically included within the individual Units; (j) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; (k) All common areas as defined in the Act, whether or not enumerated herein, but excluding Limited Common Areas when the context requires for maintenance or use purposes.

**1.6** “*Common Expenses*” means sums which are required by the Association to effect the purposes of the Association and to perform or exercise its functions, duties, or rights under the Act and the Governing Documents.

**1.7** “*Community*” means the Shadybrook Condominiums, including all Units and Common Area, and all other real property and interests described in the Plat and herein.

**1.8** “*Eligible Holder*” means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Unit number to which the Eligible Holder’s mortgage interest applies.

**1.9** “*Governing Documents*” means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of

the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations.

**1.10 “Improvements”** means every structure or improvement of any kind, including but not limited to landscaping, Units, decks, porches, awnings, fences, garages, carports, driveways, parking spaces or other products created or installed on the Property, as well as landscaping, trees and shrubs.

**1.11 “Limited Common Areas”** means all of the real property identified as Limited Common Area on the Plat, and shall also include the following, if designated to serve a single Unit but located outside the Unit's boundaries (and not designated as part of a Unit pursuant to the definition of Unit below): pipes and conduits from the point of common origin to the Unit, patios, entrance ways, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, and any other fixture, as well as any private yard area. Limited Common Areas are Common Areas limited to the use of certain Units to the exclusion of other Unit Owners.

**1.12 “Management Committee” or “Committee”** means the Management Committee of the Association vested with the authority to manage the Community and to enforce this Declaration, Bylaws and Rules and Regulations. The term Management Committee is synonymous and interchangeable with the term “Board of Directors” as that term may be used in the governing documents of the Association or the Utah Nonprofit Corporation Act.

**1.13 “Manager” or “Managing Agent”** means the person or entity that may be retained from time to time by the Association to manage the Property.

**1.14 “Mortgage”** means any mortgage or deed of trust encumbering any Unit and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

**1.15 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.16 “Notice”** means notice as defined, and shall be carried out as set forth, in the Bylaws.

**1.17 “Owner”** means the person, persons or other entity owning any Unit, as such ownership is reflected in the records of the County Recorder, but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Unit.

**1.18 “Percentage Interest”** means the percentage of undivided ownership interest of each Unit Owner in the Common Areas as set forth in **Exhibit B** attached hereto.

**1.19 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the record of survey map recorded at the County Recorder's Office and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof.

**1.20 “Property” or “Project”** means the Shadybrook Condominium Project, including all Units and Common Area, and all other real property and interests described in the Plat and

herein.

**1.20 “Reinvestment Fee”** shall mean a charge against all Owners and their Units, imposed upon the transfer of a Unit, applied towards the operations of the Association as set forth in a separately recorded Notice of Reinvestment Fee.

**1.21 “Rules and Regulations”** means and refers to those rules and regulations adopted by the Association from time to time that are deemed necessary by the Association for the enjoyment of the Community.

**1.22 “Schedule of Fines”** means the established fines for particular violations, as adopted by the Management Committee.

**1.23 “Unit”** means a separate physical part of the Property intended for independent use and ownership, consisting of rooms and spaces located within a building structure. Subject to this section, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit; provided, however, that a Unit shall not include all pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and shall not include any load bearing walls or floors comprising a part of the Building in which the Unit is contained. Mechanical equipment and appurtenances located within any one Unit or located outside of said Unit but designated and designed to serve only that specific Unit, such as appliances, electrical receptacles and outlets, outside faucets, dedicated electrical utilities, air conditioning compressors and other air conditioning or air cooling apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors; all surfaces of floors and ceilings; all wallboard or drywall; paneling; tiles; wallpaper; paint; flooring; carpeting and tile. The vertical boundaries of each Unit shall be the interiors of the unfinished walls located on the perimeter lines of the respective Units as shown on the Plat. A Unit shall also include all windows and doors (and parts thereof) forming part of the vertical boundaries of a Unit, including thresholds and door jams; garage doors (and all parts thereof) all pipes, shut-off valves, breaker boxes, wires, conduits, public utility lines or installations serving only a specific Unit; and any structural features or any other property of any kind, including fixtures and appliances within any Unit which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the structure or building within which the Unit is situated.

## **ARTICLE II - PROPERTY DESCRIPTION**

**2.1. Property Subject the Declaration, Bylaws and the Act.** It is hereby confirmed and acknowledged that the Project is submitted and subject to the Act and shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and obligations of all parties interested in the Project shall be governed and controlled by, this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Association, and the Act and any amendments thereto as codified from time to time, and, to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control. This Declaration and covenants, conditions and restrictions herein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the

Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of the Association each Owner thereof.

**2.2. Description of Improvements.** The significant improvements within the Project consist of twenty-one buildings of frame construction containing 101 residential Units, as well as other improvements as shown on the Plat.

**2.3. Description and Legal Status of Units.** The Plat shows the Units and building designations, their locations, dimensions from which its areas may be determined, those Limited Common Areas which are reserved for such use, and the Common Areas to which it has immediate access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

**2.4. Ownership Interest in Common Areas, Percentage Interests.** Neither the percentage interest in the Common Areas nor the right of exclusive use of the Limited Common Areas shall be separated from the Unit to which it appertains, and even though not specifically mentioned in the instrument of transfer, the percentage interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate. The proportionate share of the Unit Owners in the Common Areas is based on the original square footages that each of the Units bore to the total square footage of all Units, as established for the Project in the Original Declaration. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Unit Owners according to their respective percentage or fractional undivided interests in the common areas and facilities as set forth in **Exhibit B**.

**2.5. Form of Unit Conveyance - Legal Description of Unit.** Each conveyance or installment contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Plat Map with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in the Governing Documents

**2.6 No Right of First Refusal.** The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

### **ARTICLE III - RESTRICTIONS ON USE**

#### **3.1 Animals.**

3.1.1. No animals, livestock or poultry of any kind shall be raised, bred, or kept in or on the Properties for commercial or other purposes, except for traditional household pets and excluding exotic pets, provided: (a) the animal owner abides by the rules and regulations adopted by the Committee, including having dogs kept on a leash or in a carrier when outside of a Unit and (b) the animal does not have a known propensity for violence. Subject to each Owner's right to keep traditional household pets, the Association may promulgate rules, beyond those stated herein, restricting the keeping of pets.

3.1.2. Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners, residents within the Community, or the Association. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof.

3.1.3. Upon violation of this Section, an Owner may be required to remove a pet, and if the Owner fails to comply, in addition to other remedies that may be available, the Association may levy fines or apply for appropriate judicial relief.

### **3.2 Leasing of Units.**

3.2.1. Rental Cap. No more than **fifteen percent (15%)** of the total Units in the Project may be rented at any given time, including grandfathered Units (pursuant to Section 3.2.5), but excluding Units rented pursuant to an exemption under Section 3.2.6 (the "Rental Cap").

3.2.2. Application Required. Prior to renting a Unit, the Unit Owner shall apply to the Association. The Association shall review the application and make a determination of whether the rental will exceed the Rental Cap and the Association shall deny the application if it determines that the rental of the Unit will exceed the Rental Cap.

3.2.3. Minimum Requirements. No Owner shall rent less than the entire Unit, and no Owner shall rent such Owner's Unit for an initial term of less than twelve consecutive (12) months. No short-term or overnight rentals of part or the whole Unit shall be permitted (including but not limited making the Unit part of a nightly rental program).

3.2.4. Definition of Rental and Transfer. "Rental," "Rented," or "Renting" means (a) a Unit that (i) is not owned by an entity or trust and (ii) is occupied by an individual while the Unit Owner is not occupying the Unit as the Unit owner's primary residence; or (b) an occupied unit owned by a trust regardless of who occupies the Unit. "Transfer" occurs when one or more of the following occur: (a) the conveyance, sale or transfer of a Unit by deed; (b) the granting of a life estate in the Unit; or (c) if the Unit is owned by a limited liability company, corporation or partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.

3.2.5. Grandfather Status. Notwithstanding Section 3.2.1, an Owner who has a rental in the Association at the time this Declaration is recorded and who submits to the Committee, within 60 days of recording of this Declaration, a written statement that the Owner is currently renting the Unit together with the Owner's name, address, Unit address, and phone number, shall be allowed to continue renting such Unit until: (a) the Unit Owner occupies the Unit; or (b) an officer, Owner, member, trustee, beneficiary, director or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit occupies the Unit.

3.2.6. Required Exemptions. The following Owners and Units are exempt from the restrictions on the number and term of rentals contained in this Amendment, but not from the requirement to apply to the Association in 3.2.2 (which application shall be granted upon a determination by the Management Committee that the Owner or Unit qualifies as one of the following): (a) an Owner in the military for the period of the Owner's deployment; (b) a Unit

occupied by an Owner's parent, child, or sibling; (c) an Owner whose employer has relocated the Owner for no less than two years; (d) a Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current resident of the Unit; or (2) for the parent, child, or sibling of the current resident of the Unit; (e) an Owner engaged in charitable or religious service causing the Owner to relocate for no less than two years; or (f) a Unit transferred to or administered by the heirs of a deceased Owner for a period of two years from the death of the Owner; and (g) a Unit owned by an entity that is occupied by an individual who: (i) has voting rights under the entity's governing documents; and (ii) has a 25% or greater share of ownership, control and right to profits and losses of the entity. The Management Committee may require an Owner to provide relevant proof in writing that the Owner qualifies under an above exemption.

3.2.7. The Lease Agreement. Any lease agreement between an Owner and a lessee must be in writing, and must provide, among other things, that the terms of the lease shall in all respects be subject to the provisions of the Declaration, the Articles of Incorporation of the Association, the Bylaws, and Association rules and regulations. The lease shall include the following provisions: (1) The tenant shall agree to comply with all of the terms and conditions of the Declaration, Bylaws and Association rules and regulations; (2) The tenant shall agree not to allow or commit any nuisance, waste, unlawful or illegal act upon the premises; and, (3) The owner and the tenant shall acknowledge that the Association is an intended third party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with the Declaration, Bylaws and rules and regulations, and to abate any nuisance, waste, unlawful or illegal activity upon the premises; and that the Association shall be entitled to exercise all of the owner's rights and remedies under the lease agreement to do so, including the right to terminate the lease and evict the tenant from the premises. The lease shall further provide that any failure by the occupant thereunder to comply with the terms of the foregoing documents shall be a default under the lease. If any lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the lease and binding on the Owner and occupants by virtue of their inclusion in this Declaration. All lease agreements shall contain as an attachment to the lease agreement, a copy of the current Rules and Regulations of the Association. Within 10 days of a Unit being rented, the Owner must provide the Association with a copy of the signed lease agreement and the name(s) of all occupants of the Unit, the contact information for any property management company used by the Owner, and any other information required by the Association, and the Owner must keep such information updated with the Association within 15 days of any change. The Association may require an Owner to terminate a lease and evict a tenant from the premises in the event a tenant fails to comply with the Governing Documents. Any expenses incurred by the Association in enforcing this Amendment, including attorney's fees and costs, shall be repaid to it by the defaulting Owner and shall constitute an assessment against the Unit.

3.2.8. Administration of Rental Restrictions. The Association shall create, by rule or resolution, procedures to: (a) determine and track the number of rentals and Units in the Association which are grandfathered or exempt pursuant to the provisions described in Subsections 3.2.5 and 3.2.6; and (b) enable or aid in the consistent administration and enforcement of the rental restrictions contained herein.

### **3.3 Occupancy of a Unit Limited.**

3.3.1. Fair Housing Act. The Community shall comply with the Fair Housing Act and the Fair Housing Amendments Act of 1988 (the "Fair Housing Act"), as they now exist or as they may be amended in the future.

3.3.2. Occupants. In order to maintain the safety and health, and to promote the general welfare of the Community, no more than two (2) persons may occupy any one bedroom Unit; no more than four (4) persons may occupy any two bedroom Unit; and no more than five (5) persons may occupy any three bedroom Unit, unless this has the practical effect of discriminating on the basis of familial status as defined in the Fair Housing Act in which case reasonable occupancy of any Unit will be permitted. In the Committee's sole discretion, the Committee may approve occupancy of a Unit by more persons than specified above upon written application to the Committee by an Owner.

### **3.4 Parking of Automobiles and Other Vehicles.**

Owners and occupants may only park their vehicles within their garages or in designated areas. Visitors may only park temporarily in designated spaces and in accordance with rules and regulations designated and promulgated by the Association. No Owners or occupants shall repair or restore any vehicle of any kind upon Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No garage may be altered or used in such a manner that the number of automobiles which may reasonably be parked therein after the alteration or use is less than the number of automobiles that could have been reasonably parked in the garage as originally constructed. No motor vehicle or trailer, including but not limited to any automobile, commercial vehicle, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailers, boat or other watercraft, boat trailer, or any other transportation device of any kind may be parked or stationed in front of any garage, walkway or Unit, or on any driveway or Common Area, except in designated parking areas. The Association may adopt further rules and restrictions regarding parking and vehicles within the Property and to govern the enforcement of parking and vehicle restrictions, which rules may require owner identification of vehicles, current license plate information and verification that all such vehicles have current registrations. In addition, the Committee, may at its discretion, issue and require vehicles of residents to have appropriately numbered identifying stickers affixed on the inside of the front or rear window. Vehicles in violation of the Governing Documents may be towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a vehicle pursuant hereto.

### **3.5 Recreational Vehicles Parking Area.**

The Association shall establish and collect a monthly use fee to be charged to each Owner who utilizes a recreational vehicle parking space in the recreational vehicle parking area shown on the Plat. Such monthly use fee shall be established and maintained at a level commensurate with the charges of commercial lessors of such spaces in the locality, but in no event less than a level that will defray all costs and expenses of the Association in any way connected with or related to the operation or ownership of such recreational vehicle parking area. The fees so collected shall be used to defray a portion of the Common Expenses. Each Owner who utilizes the recreational vehicle parking area shall bear full responsibility for any loss or damage to his or her vehicle

while parked or stored in said area and the Association shall not be liable for any such loss or damage. The Association may establish rules and regulations regarding the recreational vehicle parking area. The monthly use fee provided for in this Section shall be, constitute, and remain an assessment and continuing lien upon the Unit of the Owner using the recreational vehicle parking space for which such fee is charged. The limit per parking space is one vehicle or trailer, regardless of size.

**3.6 *Restrictions on Attachments.***

No Owner shall cause or permit anything, including, without limitations, an awning, flag, hanging plant, window-mounted air conditioning unit, or any exterior attachments or attachments visible from outside of a Unit, to hang, be erected, be displayed, or be visible or otherwise be placed on any part of the Community without the prior written consent of the Committee. If the Committee consents to the erection of any such attachment, the same shall be removed promptly at the request of the Committee. Seasonal Christmas decorative lights may be displayed without preapproval of the Committee between December 1 and January 10 only.

**3.7 *Windows and Window Coverings.***

The Committee shall have the right to establish rules regarding draperies, blinds, shades and other interior window coverings to regulate their appearance from the exterior of Buildings. No tinted windows shall be permitted. Aluminum foil, newspapers, reflective film coatings, after market or secondary or any other similar materials may not be used to cover the windows in any unit. All windows and window panes must be identical in size, design and quality to the other Units in the community.

**3.8 *Modifications to Unit or Common Area.***

No interior changes to a Unit shall be performed unless a building permit is first obtained, if one is required by a local authority, and a copy of which is provided to the Committee. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Committee, which approval may or may not be granted at the discretion of the Committee. Any approved change shall be subject to the oversight and control of the Committee and the Owner of the Unit may be required to undertake all responsibility (including liability) for maintenance, repair and replacement of any Common Area elements affected by the change. No structural changes whatsoever to any Unit, no plumbing, electrical and similar work within the Common Area, and no modifications to balcony railings, shall be commenced, erected, maintained, made or done without the prior written approval of the Committee. By way of illustration but not limitation the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like. Any required building permits must be provided to the Committee before approval will be granted by the Committee.

**3.9 *Signs.***

Unless written approval is first obtained from the Management Committee, no advertisement, sign, banner or poster of any kind may be posted in or upon the Properties unless expressly allowed by the Association by rule from time to time.

**3.10 *Antennas/Dishes.*** Satellite antennas, such as Direct Broadcast Satellite (“DBS”) antennas (dishes) one meter in diameter or less and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed only to the extent and in locations allowed herein and by local,

state or federal law. All other antennas are prohibited. "Antenna" as used herein includes satellite dish antennas.

(a) Antennas may only be installed inside the Owner's Unit or on Limited Common Area over which the owner has exclusive use and control under the terms of this Declaration. No Owner may install an antenna in or on the Common Area, including on the exterior or roof of any building. No antenna may extend beyond balcony railings. Owners need to be aware that their Unit may not be in a proper location to receive satellite broadcast signals even if they install an antenna. Prior to installation, Owners should check with a qualified and reputable company to determine if they are able to receive adequate signals at their unit. Owners shall notify the Committee in writing prior to any installation. Such notice shall include a description of the location for the antenna and the installation (attachment) method. No Owner may drill holes in walls, doors or window frames in order to install the antenna or run cable from the antenna to the television. All installations must be performed in such a manner as not to cause legitimate safety concerns. These would include, but not be limited to, danger of falling, danger of permanent damage to the building or proximity to power lines.

(b) Owners are responsible for any injury or damage to persons or property caused by their antenna. All installations must be performed in complete compliance with all applicable statutes, rules and regulations. If permits are required, the Owner will obtain all such permits prior to installation. These rules are meant to comply with 47 CFR § 1.4000, as may be amended from time to time. All requirements of such section are hereby incorporated herein. In the event any portion of this section is held to conflict with applicable law, those portions shall be deemed stricken and all other portions of this installation policy will remain in full force and effect.

(c) No portion of the installation policy in this Section may be waived or changed by the Committee verbally. Any such waiver or change will be effective only when in writing. If any Owner receives the benefit of any waiver or change of the installation policy, it shall be that Owner's responsibility and obligation to keep and safeguard the written waiver or change and to produce it upon any future request of the Committee.

### **3.11 Business Use.**

No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door to door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Committee.

The terms business and trade, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended to or does generate a profit; or (c) a license is

required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section.

**3.12 *Offensive Activities, Prohibited Behavior and Use.***

No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted in any Unit or portion of the Common Areas, nor shall anything be done in or placed upon any Unit or Common Area which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents. Residents may not disturb other residents and shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, amplifiers and any other device that emits sound. Residents may be fined for this and other offensive behavior. No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Nothing shall be done or kept within any Unit or on the Common Areas which will increase the cost of insurance to the Association or to other Owners or which will result in cancellation of insurance on any Unit.

**3.13 *Rubbish and Trash.***

No garbage, trash, or other waste may be kept or maintained on any part of the Property except within a trash container screened from public view.

**3.14 *Clothes Lines and Materials.***

No clothes lines, clothing racks, or other apparatus on which clothes, rags, or other items are exposed for the purpose of drying or airing shall be located on the Property except within a Unit or Limited Common Area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

**3.15 *Fences.***

No dog runs, animal pens, or fences of any kind shall be permitted to be installed by any Owner.

**3.16 *Association Rules and Regulations.***

In addition to the restrictions and requirements above, the Association from time to time may adopt such rules and regulations governing the conduct of persons and the operation, aesthetics and use of the Units and Common Areas, including Limited Common Areas, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property and the accomplishment of the purposes of the Association and the Community.

## **ARTICLE IV - MAINTENANCE OBLIGATIONS**

**4.1 *Owner's Responsibility.***

4.1.1. Units. Maintenance of the Units shall be the sole responsibility of the Owner(s) thereof, who shall maintain such Unit in good repair and in a clean and sanitary condition, all so as to not interfere in any way with other Owners' Units, or affect the value or use thereof, or the Common Areas, and so as to not detract from the appearance of the Community.

(a) Walls, ceilings, Floors, Windows, Doors. Each Owner shall be responsible at his or her sole expense to maintain, repair and replace: (1) the interior surfaces of the following: walls, ceilings, floors (including all wallboard, plasterboard, plaster, lath, furring, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting the finished surfaces of walls, ceilings and floors), forming the boundaries of his or her Unit; (2) all walls, ceilings, floors and doors within such boundaries; (3) all windows and doors (and all parts thereof) forming part of the vertical boundaries of a Unit, including thresholds, frames, door jams and hardware; and (4) garage doors and appurtenant features.

(b) Utility Facilities Servicing Only Unit. In addition, each Owner shall be responsible for the maintenance, repair or replacement of the following that may be in, connected solely with, or servicing solely his or her Unit: any utility facilities, plumbing fixtures, outside faucets and spigots, water heaters, heating equipment, air conditioners and air cooling units of any type, all sewer and drainage pipes, water and other utility lines (beginning at the point the utility line enters the building), lighting fixtures and bulbs (except exterior building mounted lights and walkway lights which are not located within patios and balconies), wiring, receptacles, switches, refrigerators, dishwasher, disposal equipment, ranges, toilets, fireplaces, or other appliances or fixtures.

4.1.2. Limited Common Area. Each Owner shall keep his or her appurtenant patio, porch, balcony, deck, and/or private yard area, if any, in a clean and orderly condition, but the Association shall otherwise maintain such areas and improvements, as well as any other Limited Common Areas.

4.1.3. Heating of Units in Colder Months. In order to prevent breakage or leakage of water pipes during colder months of the year resulting in damage to Units and Common Areas, increased common expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within all vacant or unoccupied Units shall be maintained with the heat in an "on" position and at a minimum of sixty (60) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) from October through April, inclusive, or whenever the temperature outside is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep the heating equipment including, but not limited to, the thermostat in good working order and repair.

#### **4.2 Maintenance by Association.**

4.2.1. The Association shall maintain the Common Areas, including the Limited Common Areas, except as otherwise provided in this Article. The Association shall provide for maintenance and cleaning of the eight (8) storm water catch basins within the Project as the circumstances require. The Committee shall determine, in its sole discretion, the appropriate maintenance of the Common Areas. If the Common Areas are damaged by the willful misconduct of an Owner, their guests, tenants, or invitees, the Owner shall be responsible for all such damage, and the cost to repair such shall be an assessment against that Owner and that Owner's Unit. However, any tenants shall be jointly and severally liable for any damage to the Common Areas.

4.2.2. Additionally, the Association, by and through the Committee, may, but shall not be obligated to, assume the Owner's general maintenance responsibility over a Unit, or take such other action as necessary if, in the opinion of the Committee, the Owner is unwilling or unable to adequately provide such maintenance, or if an Owner shall fail to observe any Association covenant, restriction or rule regarding such maintenance. Before assuming such maintenance responsibility, the Committee shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action within the time period stated in the notice, the Association may proceed to maintain the Unit. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as assessments pursuant to this Declaration.

4.2.3. To the extent not clarified herein, the Association may, by duly adopted resolution of the Committee, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall not be inconsistent with the provisions of this Declaration, unless such determinations merely reflect an established pattern of practice which has been in effect for five or more years, even though inconsistent with the provisions of this Declaration, in which case the resolution shall be recorded. Such determinations shall be set forth in a Committee resolution distributed to all Owners and shall be binding against all Owners.

4.2.4. If damage is incurred to the physical structure of a Unit, including any fixture, improvement, or betterment permanently part of or affixed to a Unit (but not including any personal property within a Unit), and including any Limited Common Area, in the course of maintenance, repair or replacement performed by the Association, or damage to the same results from a failure of an element for which the Association is responsible to maintain, repair and replace, such as water damage, the Association will repair such damage. However, beyond such damage, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the negligent or intentional act of the Association.

## **ARTICLE V - ASSESSMENTS**

**5.1. *Covenant for Assessments.*** Each Owner, by acceptance of a deed conveying any Unit to such Owner, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments. No member may exempt itself from liability for Assessments by abandonment of any Unit owned by such member. No offsets against Assessment amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers.

**5.2. *Reserve Funds.*** The Association shall establish and maintain a reserve fund or funds for maintenance, repair, replacement and improvement of the Common Areas and other areas for

which it is or may be responsible to maintain which has a useful life of between 3 and 30 years, and for any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose of the Association, by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Management Committee or of an amount and in the manner as may be required by law. The Association shall disclose to the members annually the amount contributed to the reserve fund.

### **5.3. *Annual Budget and Assessment.***

5.3.1. Adoption of Budget. The Management Committee shall prepare and adopt an annual budget for the Association which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. The budget shall become effective unless disapproved at the annual meeting by a vote of at least a majority of the Percentage Interests. If the Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect.

#### 5.3.2. Determination of Annual Assessment.

A. The Management Committee shall fix the amount of the annual assessment ("Annual Assessment") against each Unit for each assessment period at least thirty (30) days in advance of the beginning of the period (as determined by the Management Committee and notice provided to the Owners). Assessments shall be based on a 'par value' system, consistent with Utah Code 57-8-7(2), which is a percentage of costs allocation created to best reflect fixed and variable costs associated with each type of Unit and consistent with the historical policies of the Association.

Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

B. The omission by the Management Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

C. If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes the equitable change in the amount of the Annual Assessment.

**5.4. *Apportionment of Assessments.*** All Units shall pay a pro rata share of the Annual Assessment and Special Assessments commencing upon the date the Units are made subject to this Declaration. The pro rata share shall be based upon the percentage of undivided ownership

interests of Units. Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable as provided for below.

**5.5. Purpose of Assessments.** The Assessments levied by the Association shall be used for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Community and carrying out the purposes and obligations of the Association, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements; and (f) Any other items properly chargeable as a Common Expense of the Association.

**5.6. Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments (a "Special Assessment"). The Management Committee may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Owner may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners holding 30% of the Percentage Interests exists.

**5.7. Individual Assessments.** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Unit to reimburse the Association for costs or attorney fees incurred in bringing the Unit or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses that may be incurred by the Association relating to the cost of maintenance, repair, or replacement of the individual Units.

**5.8. Nonpayment of Assessments.** Unless otherwise provided by resolution of the Management Committee, the Annual Assessments shall be levied and due and payable on a monthly basis on the first calendar day of each month and shall be delinquent if not paid within ten (10) days after the due date or such other date established by the Committee (the "date of delinquency"). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

5.8.1. Interest. Delinquent payments shall bear interest at the rate of 18% per annum, or such other lower rate established by the Association from time to time.

5.8.2. Late Charge. Each delinquent payment shall be subject to a late charge in the amount established by the Association from time to time.

5.8.3. Acceleration. If the delinquent installments of Annual Assessments and any charges thereon are not paid in full, the Committee, or its authorized agent, may declare all of the unpaid balance of the Annual Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

5.8.4. Rent Payments by Tenant to Association. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Management Committee may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Committee, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association. The Association may terminate any lease agreement and bring an action to evict any tenant for failure of the tenant to pay such lease payments to the Association.

5.8.5. Termination of Common Service and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Management Committee may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Committee. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Committee shall immediately take action to reinstate the terminated utility services to the Unit.

5.8.6. Remedies under the Act and Other Law. The Association shall have each and every remedy for collection of assessments provided in the Utah Condominium Ownership Act, Utah Code Title 57, Chapter 8, as amended from time to time, and in Utah Code Title 12, and such remedies and provisions shall be deemed to be fully set forth herein. A collection fee shall be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, in addition to any other amount owed to the Association.

**5.9 Reinvestment Fee Covenant.** Upon the sale or transfer of a Unit, the Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit ("Reinvestment Fee") as provided for in Utah Code Ann. §57-1-46, as may be amended from time to time, in an amount not to exceed five hundred dollars (\$500). The specific amount shall be established by Resolution of the Management Committee. A transfer under this provision is any change in the ownership of the Unit as reflected in the office of the counter recorder, regardless of whether it is pursuant to the sale of the Unit or not. Any limitations to this fee are as set forth in Utah Code Ann. §57-1-46. The Association has the authority to record against all Units a Notice of Reinvestment Fee to effectuate this provision.

**5.10. Lien.** All Assessments and charges imposed, together with damages, fines, interest, costs of collection, late charges, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Units against which the Assessment is made and shall be construed as a real covenant running with the land. The recording of this Declaration constitutes record notice and perfection of the lien established herein. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**5.11. Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Unit and in a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter 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.

**5.12. Appointment of Trustee.** By acceptance of a deed for a Unit, each Owner as trustor conveys and warrants to Trustee in trust for the Association, as beneficiary, with power of sale, the Owner's Unit and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section, the Act, and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the trustee, or substitution thereof, by recording an appointment or substitution of trustee in the records of the local County Recorder. Each Owner hereby also grants to the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**5.13. Enforcement of Lien.** The lien provided for in this Article may be enforced by the Association by causing a Unit to be sold through nonjudicial foreclosure as though the lien were a deed of trust, or by foreclosing the lien through a judicial foreclosure, all in the manner provided by the Act and by the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts or the law for the foreclosure of a mortgage, as the case may be. The Association shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner, and an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, the costs and attorney fees associated with which shall be awarded to the Association or the purchaser, as the case may be. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**5.14. Subordination of Lien to Mortgages.** The lien provided for in this Article has priority over each other lien and encumbrance on a Unit except a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Unit. The sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Unit from liability or lien for any Assessments or charges thereafter becoming due, and shall not relieve any Owner of his or her personal obligation for such amounts.

**5.15. Statement of Unpaid Assessment & Payoff Information.** Consistent with Utah Code Ann. §57-8-6.3, as may be amended from time to time, the Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by the Association, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Unit up to the maximum amount allowed by law.

**5.16. Application of Payments.** All payments shall be applied first to costs and attorney fees, then to late charges, then interest, then to delinquent Assessments in the order of their coming due.

## ARTICLE VI - PROPERTY RIGHTS AND EASEMENTS

**6.1 Use and Occupancy.** Except as otherwise provided in Governing Documents from time to time, the Owner(s) of a Unit shall be entitled to the exclusive use and benefits of ownership of such Unit. Each Unit, however, shall be bound by, and the Owner, occupants and guests, shall comply with, the restrictions contained herein and all other provisions of the Governing Documents for the mutual benefit of the Owners.

**6.2 Restriction on Unit Division.** All Owners are prohibited from dividing any and all Units subject to this Declaration except through an amendment to this Declaration properly adopted as provided herein. However, Owners' allocated ownership interests in the Common Areas may not be altered without the consent of sixty-seven percent (67%) of all Owners.

**6.3 Easements Reserved.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

(a) Easements for Maintenance and Repair. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Unit for the purpose of performing maintenance authorized herein and determining whether or not the Unit is in compliance with the Governing Documents or whether the use of the Unit is causing damage or harm to the Common or Limited Common Areas. Reasonable notice shall be provided to the Unit occupant prior to entry. "Reasonable notice" means: (i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed

entry; or (ii) in the case of emergency repairs, notice that is reasonable under the circumstances, which, at the discretion of the Committee, shall mean attempting to contact the occupant or owner immediately prior to entry via contact information the Association has on record, or via knock on the Unit door. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit. The Association shall repair damage it causes to the Common Areas or to a Unit the Association uses to access the Common Areas within a time that is reasonable under the circumstances.

(b) Utility Easements. The Association and any public utility provider shall have an easement through all Units and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Each Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his or her Unit. The Committee may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area.

(c) Common Areas; Delegation of Rights: All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas which right and easement shall be subject to compliance by the Owner with the provisions of the Governing Documents and the right of the Association to limit the number of guests of residents. Except as to rights of ingress and egress to a Unit, any Owner not residing on the Property shall be deemed to have delegated his or her right of enjoyment and use of and to the Common Area facilities and amenities to any tenants, contract purchasers, or other occupants of the Unit who actually reside on the Property and no person other than residents and their guests (up to the number established by rule from time to time) may use any Common Area facility or amenity.

**6.4 No Encroachment.** No Unit shall encroach upon an adjoining Unit. If, however, an encroachment occurs due to the settlement or shifting of a structure/building or any other reason whatsoever beyond the control of the Management Committee or any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

## ARTICLE VII – THE ASSOCIATION

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Committee may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Management Committee as provided herein and in the Bylaws.

**7.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Units within the Community shall be a member of the Association. The membership shall

commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws and each Owner shall have such vote in matters of the Association for each Unit owned equal to the Percentage Interest appertaining to such Unit.

**7.4 Powers and Authority of the Association.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. The Association shall have the exclusive authority and right to provide for the management, use, maintenance, repair, operation or administration of the Community and Common Area. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

7.4.1 In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall contract with a professional property manager and accountant (which may be the same entity/person) to assist in carrying out these responsibilities. The Association shall also have the power and authority, including but not limited to: (i) pay and discharge any and all liens placed upon any Unit on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (ii) to defend, bring, prosecute, and settle litigation for itself and the Project, (iii) to obtain, contract and pay for, or to otherwise provide for such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Committee may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Committee may deem desirable, (iv) to delegate by resolution or contract to a Managing Agent any of its powers under this Declaration, (v) to repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act, (vi) to grant easements and rights-of-way over the Common Area and to approve signage for the Project, and (vii) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a majority of the voting interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

7.4.2 Except as limited in the Governing Documents or by the Act, the Committee acts in all instances on behalf of the Association.

7.4.3 Telecommunications/Fiber Optic/Related Contracts. The Management Committee shall have the power, in its own discretion, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with telecommunication service

providers and telecommunication facilities owners (both, a “Telecommunication Provider”), pursuant to which the Telecommunication Provider serves as the exclusive provider of telecommunication services and/or telecommunication facilities to each Unit. The Committee shall also have the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests.

7.4.4 Registration with the Department of Commerce. Consistent with Utah Code Ann. §57-8-13.1, as may be amended from time to time, the Association shall register with the Utah Department of Commerce and keep the registry up-to-day, as required by law, when Committee members change.

## **ARTICLE VIII – COMPLIANCE, ENFORCEMENT & DISPUTE RESOLUTION**

**8.1 Compliance.** All Unit Owners, tenants of such owners, employees of owners and tenants, or any other person who may in any manner use the Property or any part thereof shall be subject to and comply with the provisions of the Governing Documents and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**8.2 Remedies.** The voting rights of any Owner more than 60 days’ delinquent in his or her account with the Association shall be automatically suspended until the account is brought current. Violation of any provisions of the Governing Documents (including failure to timely pay an assessment) or of any decision of the Association made pursuant to such documents, shall give the Management Committee acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

(a) Subject to the provisions of this Declaration, to enter the Unit as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Management Committee shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished;

(b) To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

(c) To levy fines, and any violation of any express rule, regulation, covenant, restriction, or term of any of the Governing Documents shall be subject to a fine in the amount set forth in the Rules and the Schedule of Fines of the Association. After an initial warning, continuing violations may have fines levied every 10 days without further notice and repeat violations of the same type or nature occurring within 12 months of a prior violation shall be deemed the same violation for the purpose of notice and shall be subject to an immediate fine without further warning or Notice after an original warning is sent. Any hearing to protest or dispute a fine shall be conducted in accordance with the standards promulgated by the Association from time to time, or if none, in accordance with the

standards determined by the Committee at the hearing itself (which need not be written). The fining procedure may be further clarified by Committee Rule;

(d) To terminate the right to receive utility or other services paid for by the Association, and to terminate the right of access to and use of recreational and service facilities of the Association until the correction of the violation has occurred;

(e) To suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation;

(f) To bring suit or action against the Owner on behalf of the Association and/or other Owners to enforce the Governing Documents and the Association shall be entitled to recovery of its attorneys' fees and costs in such case.

**8.3 Action by Owners.** Subject to any limitation imposed under this Declaration, the Bylaws, or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy a thing or condition by appropriate legal proceedings.

**8.4 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or restrictions in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**8.5 Notification of First Mortgagee.** The Management Committee shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Unit Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

**8.6 Resolution of Disputes without Litigation.**

**8.6.1 Agreement to Encourage Resolution of Disputes without Litigation**

(a) The Association, the Management Committee, Unit Owners, and other persons subject to this Declaration agree that it is in the best interests of all concerned to encourage the amicable resolution of disputes involving the Association without the emotional and financial costs of litigation. Accordingly, each of the foregoing agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 8.6.2 in a good faith effort to resolve such Claim.

(b) As used in this Section, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to: (i) the interpretation, application, or enforcement of the Governing Documents; (ii) the rights, obligations, and duties of anyone arising from the Association's Declaration or Bylaws; (iii) the design or construction of improvements within the Association; except that the following shall not be considered "Claims" unless all parties to the

matter otherwise agree to submit the matter to the procedures set forth in Section 8.6.2: (1) any suit by the Association to collect assessments or other amounts due from any Owner; (2) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration; (3) any suit between Owners which does not include the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Association's Declaration or Bylaws; (4) any suit in which any indispensable party is not bound hereby; and (5) any suit as to which any applicable statute of limitations would expire within one hundred and eighty days of giving the Notice required in Section 8.6.2(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 reasonably be necessary to comply with this Article.

#### 8.6.2 Dispute Resolution Procedures.

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

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

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty days of the date of the Notice described in Section 8.6.2(a) (or within such other period as the parties may agree upon), the Claimant(s) shall have thirty additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Salt Lake City area. If the Claimant(s) does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant(s) shall be deemed to have waived the Claim, and the Respondent(s) shall be relieved of any and all liability to the Claimant(s) (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings, indicating that the parties are at an impasse and the date that mediation was terminated.

The Claimant(s) 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 the mediation, including attorney fees, and each party shall share equally all fees charged by the mediator.

(d) Arbitration. Any claim or controversy that cannot be resolved between any person bound by this Declaration and the Association or a representative of the Association that arises out of or relates to the ownership and use of a Unit or the Common Areas or Limited Common Areas of the Association, other than actions brought by and on behalf of the Association for 1) the collection of assessments and fines, or 2) respecting the enforcement of the Declaration of Condominium by or on behalf of the Management Committee, shall be submitted to arbitration according to regulations prescribed by the Association's Management Committee. In the absence of any such regulations, arbitration shall proceed pursuant to the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), although such arbitration need not proceed with the AAA. Each Owner, by acquiring or maintaining an ownership interest in the Association, agrees to arbitrate all such disputes according to this provision and the regulations prescribed by the Management Committee pursuant to this provision, and agrees that judgment on the award rendered by the arbitration may be entered in any court having jurisdiction thereof.

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

## ARTICLE IX - INSURANCE

### 9.1 *Association Insurance.*

9.1.1. Property and Liability Insurance. The Association shall maintain a master insurance policy which includes: (1) blanket property insurance with not less than 100% of the full replacement cost for the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and Units, and including fixtures, improvements and betterments to a Unit made by a Unit Owner, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and (2) liability insurance having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including medical payments 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 areas and facilities.

A. The Association's property insurance shall include coverage for any fixture, improvement, or betterment installed by a Unit Owner to a Unit or to a Limited Common Area, 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 Area element associated with a Unit.

B. Each Unit Owner is an insured person under the Association's property insurance policy. Each Unit Owner is an insured person under a liability insurance policy

that the Association obtains, but only for liability arising from: (i) the Unit Owner's ownership interest in the common areas and facilities, (ii) maintenance, repair, or replacement of common areas and facilities, and (iii) the Unit Owner's membership in the Association.

9.1.2. Fidelity Insurance or Bond. The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Committee, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Units plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

9.1.3. Flood Insurance. If any portion of the Project is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program, the Association shall be required to obtain and pay the premiums upon a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association but not less than the lesser of: (a) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (b) 100% of current replacement cost of all such buildings and other insurable property within such area.

9.1.4. Directors and Officers (D&O) Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Committee member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

9.1.5. Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Committee deems necessary from time to time, such as workers' compensation insurance.

9.1.6. Loss Not Exceeding Deductible. If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the policy deductible of the Association and until the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (i) for a Unit to which a loss occurs, the Unit Owner's policy is considered the policy for primary coverage for the damage to that Unit; (ii) the Association shall pay for any

loss for any common areas and facilities for which a loss occurs; (iii) a Unit Owner who does not have a policy to cover the damage to that Unit Owner's Unit is responsible for that Unit damage and the Association may, as provided herein, recover any payments the Association makes to remediate that Unit, and (iv) the Association need not tender the claim to the Association's insurer.

9.1.7. The Association shall set aside an amount equal to the amount of the association's property insurance policy deductible or \$10,000, whichever is less.

9.1.8. An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy.

9.1.9. Loss Due to Fault of Another. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the Unit Owner, if the Unit Owner resides in the Unit, and (b) the Unit Owner.

9.1.10. Power of Attorney, Insurance Trustee. The Association may enter into an insurance trust agreement with a trustee (the "Insurance Trustee") who shall thereafter have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Unit, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose. By purchasing a Unit, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

9.1.11. The Association, or insurance trustee if any, shall hold any proceeds of insurance in trust for Unit Owners and their first mortgage holders as their interests may appear. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members. The policies shall include: (1) a waiver of the right of subrogation against Unit Owners individually, (2) that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.

9.1.12. The Association shall use generally acceptable insurance carriers. Specific requirements for qualifications of insurance carriers may be found in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

**9.2. Unit Owner Insurance Responsibility.** For Units, the Association's policy is primary but the Unit Owner is responsible for the deductible as follows:

9.2.1. If a loss occurs that is covered by the Association's policy and by a Unit Owner's policy, the Association's policy provides primary insurance coverage, but the Unit Owner is responsible for the deductible of the association of Unit Owners, and Coverage A of the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

9.2.2. If a Unit, or limited common area element appurtenant to a Unit, suffers damage as part of a covered loss, the Unit Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Unit damage for that Unit to the amount of the deductible under the Association's policy. If a Unit Owner does not pay the amount required within 30 days after substantial completion of the repairs to, as applicable, the Unit or the limited common area appurtenant to the Unit, the Association may levy an assessment against a Unit Owner for that amount.

9.2.3. The deductible under the Association's policy is subject to change from time to time by the Management Committee. The Association shall provide notice to the Owners of any change in the amount of the deductible.

9.2.4. The Association's policy does not cover the contents of a Unit or an Owner's personal property. Each Owner is strongly encouraged to obtain insurance coverage for contents of their Unit, as well as for coverage in the event the Owner has to pay the Association's deductible as provided above.

## **ARTICLE X - AMENDMENT AND DURATION**

**10.1 Amendments.** Except as provided in Section 10.2 below, any and all of the conditions, restrictions, charges and terms contained in this Declaration may be annulled, waived, changed, modified or added to through a duly adopted amendment to this Declaration.

(a) How Proposed. Amendments to the Declaration shall be proposed to the membership only by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners holding twenty percent (20%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

(b) Approval Required. If a majority of the total voting interests of the Association are represented in person, or by proxy or by ballot, this Declaration may be amended if such amendment is then approved by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the voting interests of the majority represented at the meeting (subject to the approval of Eligible Holders as may be required herein). Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Management Committee without approval of the Owners if necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate County Recorder's Office.

**10.2 Duration and Termination.** This Declaration and the Project shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration after the vote and approval of (i) seventy-five percent (75%) of all of the Owners of the Units, and (ii) sixty-seven percent (67%) of the votes of Eligible Holders. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office.

## ARTICLE XI – MORTGAGEE RIGHTS

**11.1 Approval Required.** In addition to any other approvals required by this Declaration or the Bylaws, the prior approval of fifty-one percent (51%) of the Eligible Holders (based upon one vote for each Mortgage owned) must be obtained for the following:

(a) Any material amendment to this Declaration or the Bylaws. Except for an amendment to the Declaration or Bylaw if its purpose is clarification or to correct technical errors, a change to a provision(s) of the Declaration or Bylaws regarding the following would be considered as material: (1) voting rights; (2) funding of reserves for maintenance, repair, and replacement of the Common Areas; (3) general responsibility for maintenance and repairs (excluding minor changes); (4) redefinition of any Unit boundaries; (5) convertibility of Units into Common Area or vice versa; (6) expansion or contraction of the project, or the addition, annexation, or withdrawal of property from the project; (7) insurance or fidelity bond; (8) restoration or repair of the project (after a hazard damage or partial condemnation); (9) action to terminate the legal status of the project after substantial destruction or condemnation occurs; (10) assessments, assessment liens, or subordination of such liens; (11) rights to use of Common Areas; (12) the interest in the general or Limited Common Area; (13) leasing of Units; (14) any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit; (15) Any provisions that expressly benefit mortgage holders, insurers, or guarantors; or

(b) Use of hazard insurance proceeds for losses to any Project property for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute.

**11.2 Additional Rights.** In addition to the approvals required above, each mortgagee (or beneficiary of a trust deed or vendor and including guarantors) shall have the following rights: (a) Right to Examine Books and Records. All mortgagees shall have the right to examine the books and records of the Association upon reasonable notice and at reasonable times; (b) Right to Annual Reports. All mortgagees shall, upon written request, be entitled to receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; (c) Right to Receive Written Notice of Meetings. The Association shall give all mortgagees, upon written request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings.

**11.3 Request for Approval of Mortgagees.** If an Eligible Holder's consent is a condition for amending the Declaration or Bylaws, then, subject to Section 11.4, the Eligible Holder's consent is presumed if: (a) written notice of the proposed amendment or action is sent by certified or registered mail to the Eligible Holder's address provided to the Association by such Eligible Holder; (b) 60 days have passed after the day on which notice was mailed; and (c) the person designated for receipt of the response in the notice has not received a written response from the Eligible Holder either consenting to or refusing to accept the amendment or action.

**11.4 Rights of Eligible Holders.** In addition to the approvals required and the rights provided above, each Eligible Holder shall have the following rights:

(a) **Right to Receive Written Notice of Meetings.** The Association shall give all Eligible Holders written notice of all meetings of the Association, and such Eligible Holders shall be permitted to designate a representative to attend all such meetings.

(b) **Right to Notice of Proposed Amendments.** All Eligible Holders, upon written request to the Association, will be entitled to timely written notice of any proposed amendment effecting a change in: (1) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (2) the interests in the general or limited Common Areas appertaining to any Unit or the liability for common expenses appertaining thereto; (3) the number of votes in the Association appertaining to any Unit; or (4) the purposes to which any Unit or the Common Areas are restricted.

(c) **Other Rights to Notice.** All Eligible Holders, upon written request to the Association, will be entitled to timely written notice of: (1) any proposed termination of the condominium regime; (2) any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which the Eligible Holder holds a Mortgage interest; (3) any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to a Mortgage of the Eligible Holder, where such delinquency has continued for a period of 60 days; (4) any lapse, cancellation or material modification of any insurance policy maintained by the Association.

## **ARTICLE XII - MISCELLANEOUS PROVISIONS**

**12.1 Premises Liability.** The Association and the Management Committee are and shall remain wholly free and clear of any and all liability to, or claims by, all Unit Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and a Unit Owner shall defend, indemnify and hold harmless the Association and Management Committee against such claim, loss or liability asserted by such Unit Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Unit Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**12.2 Priority of Governing Documents.** To the extent possible under the law and in light of the requirement of the Act that organizational documents for a nonprofit corporation shall not

conflict with the rights and obligations found in the declaration and bylaws, in the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**12.3 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in the Governing Documents shall be resolved by the Management Committee, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Committee except where powers are expressly restricted.

**12.4 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Unit. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

**12.5 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**12.6 Joint Owners.** In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Management Committee, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**12.7 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners

harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**12.8 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Management Committee or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association, Management Committee or Owner as to any similar matter.

**12.9 Notice of Sale or Lease.** Immediately upon the sale, rental or other conveyance of any Unit, the Owner shall promptly inform the secretary or Association property manager of the name, Unit address, mailing address (if different than the Unit), telephone number and email address of said grantee or tenant, including any pets intended to be housed at the Unit. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it and the address of each Owner shall be deemed for all purposes to be the address of the Unit owned by such Owner unless the Management Committee is otherwise advised in writing.

**12.10 Person to Receive Service of Process.** The person designated to receive service of process on behalf of the Project, in the cases provided by the Utah Condominium Ownership Act, is the registered agent of the Association, as that agent may be designated by the Association from time to time and as reflected in the records of the Utah Division of Corporations and Commercial Code.

**[signatures appear on the next page – end of Declaration]**



## **EXHIBIT A**

### **Legal Description**

All Units and Areas within SHADYBROOK CONDO, SHADYBROOK PH 2 CONDO, SHADYBROOK PH 3 CONDO, SHADYBROOK PH 4 CONDO, SHADYBROOK PH 5 CONDO according to the official plat(s) thereof recorded in the records of the Salt Lake County Recorder.

First Parcel: 16-29-358-002-0000

## EXHIBIT B

### Unit Numbers and Undivided Interests in Common Areas

Unit Number	Percentage Ownership Interest in Common Areas	Par Value per Unit
1	.86	.97
2	.85	.96
3	1.19	1.05
4	1.19	1.05
5	.85	.96
6	.86	.97
7	1.20	1.05
8	1.19	1.05
9	1.19	1.05
10	1.20	1.05
11	1.20	1.05
12	1.19	1.05
13	1.19	1.05
14	1.20	1.05
15	.86	.97
16	.85	.96
17	1.19	1.05
18	1.19	1.05
19	1.19	1.05
20	1.19	1.05
21	.85	.96
22	.86	.97
23	1.02	1.00
24	1.00	1.00
25	1.00	1.00
26	1.02	1.00
27	1.02	1.00
28	1.00	1.00
29	1.00	1.00
30	1.02	1.00
31	1.02	1.00
32	1.00	1.00
33	1.00	1.00
34	1.02	1.00
35	1.20	1.05
36	1.19	1.05
37	1.19	1.05

Unit Number	Percentage Ownership Interest in Common Areas	Par Value per Unit
38	1.20	1.05
39	.86	.97
40	.85	.96
41	1.19	1.05
42	1.19	1.05
43	1.19	1.05
44	1.19	1.05
45	.85	.96
46	.86	.97
47	.86	.97
48	.85	.96
49	1.19	1.05
50	1.19	1.05
51	1.19	1.05
52	1.19	1.05
53	.85	.96
54	.86	.97
55	1.02	1.00
56	1.00	1.00
57	1.00	1.00
58	1.02	1.00
59	1.02	1.00
60	1.00	1.00
61	1.00	1.00
62	1.02	1.00
63	1.02	1.00
64	1.00	1.00
65	1.00	1.00
66	1.02	1.00
67	1.02	1.00
68	1.00	1.00
69	1.00	1.00
70	1.02	1.00
71	1.20	1.05
72	1.19	1.05
73	1.19	1.05
74	1.20	1.05
75	.86	.97
76	.85	.96
77	1.19	1.05
78	1.19	1.05

Unit Number	Percentage Ownership Interest in Common Areas	Par Value per Unit
79	.85	.96
80	.86	.97
81	.86	.97
82	.85	.96
83	1.19	1.05
84	1.19	1.05
85	.85	.96
86	.86	.97
101	.77	.94
102	.74	.94
103	.77	.94
104	.77	.94
105	.74	.94
106	.74	.94
107	.77	.94
111	.67	.92
112	.67	.92
113	.67	.92
114	.67	.92
115	.67	.92
116	.67	.92
117	.67	.92
118	.67	.92
Total Units: 101	Total: 100%	Total: 100%

**EXHIBIT C**

**BYLAWS**

**OF**

**SHADYBROOK HOMEOWNER’S ASSOCIATION**

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## ARTICLE 1 - DEFINITIONS

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

## ARTICLE 2 – NOTICE, AFFAIRS, ELECTRONIC MEANS

### 2.1 Notices.

2.1.1 Association. All notices to the Association or the Management Committee shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Management Committee may hereafter designate from time to time.

### 2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Management Committee deems the notice to be fair and reasonable. A Member may require the Association, by written demand, to provide notice to the Member by mail. The Management Committee is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring members to furnish the Association with a current email address.

(b) Except as otherwise provided in the Declaration, these Bylaws or law, all notices to any Owner shall be sent to such address as may have been designated by him or her, from time to time, in writing to the Management Committee, or if no address has been designated, then to the Owner's Unit.

(c) If a Unit is jointly owned or the Unit has been sold under a land sale contract, notice shall be sent to a single address, of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

2.2 Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, an electronic vote, a consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Association, through the Committee, does so in good faith and has no reason to believe it is not the act of the member. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

### ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM

3.1 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah as is designated in the notice of such meeting.

3.2 Special Meetings. The Association, by and through the Management Committee, shall notice, hold and conduct a special meeting of its members (1) on call of the Management Committee, or (2) if the Association receives one or more written demands for the meeting that state the purpose or purposes for which the meeting is to be held, and are signed and dated by Owners holding at least 25% of the voting rights of the Association. When a special meeting is demanded by the Owners, the Committee shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the demand and if notice of the meeting is not given by the Committee within 30 days after the date the written demand is delivered to an Association officer, a person signing the demand may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

3.3 Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, in a fair and reasonable manner, including by delivering a copy of such notice to each member entitled to vote thereat, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance of the meeting to provide fair and reasonable notice of the meeting, as determined by the Committee. Notice shall always be deemed fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

3.4 Voting. Each Unit shall be allocated such vote in the affairs of the Association equal to the Percentage Interest appertaining to such Unit. The Management Committee shall be entitled to vote on behalf of any Unit which has been acquired by or on behalf of the Association, except the Management Committee shall not be entitled to vote such Units in any election of Committee members.

3.5 Proxies, Absentee Ballots and Rights of Mortgagees.

3.5.1 Proxies. A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by the Committee by resolution or as stated in the notice of the meeting. A proxy shall be valid for, and only for, the meeting (and any adjournment of the meeting) for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports

to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting, or to the Committee if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

3.5.2 Absentee Ballots. A vote may be cast by absentee ballot.

3.5.3 Mortgagee Rights. An Owner may pledge or assign the owner's voting rights to a Mortgagee. In such a case, the Mortgagee or its designated representative shall be entitled to receive all notices to which the owner is entitled hereunder and to exercise the owner's voting rights from and after the time that the Mortgagee shall have given written notice of the pledge or assignment to the Management Committee. Any first Mortgagee may designate a representative to attend all or any meetings of the Association.

3.6 Quorum.

3.6.1 "Quorum" means the Owners holding the minimum number of Percentage Interests (when duly assembled at a meeting, represented by proxy, or casting a written ballot in an action without a meeting) necessary to make the proceedings valid.

3.6.2 At any regular annual meeting of the Association, the Owners that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, Owners holding one-third (1/3) of the Percentage Interests, represented in person, by proxy, or by written ballot, shall constitute a quorum.

3.6.3 If any meeting of Owners cannot be organized because of a lack of quorum, the Owners who are present may adjourn the meeting to a time at least 48 hours from the time of the meeting at which a quorum was not present and Owners holding twenty percent (20%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

3.6.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

3.7 Binding Vote. Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by the Governing Documents.

3.8 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of preceding meeting; (d) Reports of officers; (e)

Reports of committees, if any; (f) Election of Committee members; (g) Unfinished business; (h) New business; and (i) Adjournment.

3.9 Meeting Procedure. Rules of order may be adopted by resolution of the Management Committee, otherwise, the President shall conduct meetings according to the procedure he or she deems fit and shall have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used. All informalities or irregularities in calls or notices of meetings and in the manner of voting, credentials, and methods of ascertaining those present shall be deemed waived by those present if no objection is made at the meeting.

3.10 Election Inspectors. The Committee, in advance of any meeting of the Members, may appoint an election inspector or inspectors to act at such meeting (and at any adjournment thereof). If an election inspector or inspectors are not so appointed, the President may, or upon request of 10% of the Members entitled to vote at the meeting will, make such appointment. If any person appointed as an inspector fails to appear or to act, a substitute may be appointed by the President. If appointed, the election inspector or, inspectors (acting through a majority of them if there be more than one) will determine the Members entitled to vote, the authenticity, validity and effect of proxies and the number of Members represented at the meeting in person and by proxy; they will receive and count votes, ballots and consents and announce the results thereof, which announcement of results, as reflected in the minutes of the meeting, shall be conclusive evidence of such results for all purposes; they will hear and determine all challenges and questions pertaining to proxies and voting; and, in general, they will perform such acts as may be proper to conduct elections and voting with complete fairness to all Members.

3.11 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter not less than fourteen (14) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Committee members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document. The Management Committee may

elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.12 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty-day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to affect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

3.13 Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

#### **ARTICLE 4 - MANAGEMENT COMMITTEE MEMBERS – SELECTION, ELECTION, TERM OF OFFICE**

##### 4.1 Number, Term and Qualifications.

4.1.1 The affairs of the Association shall be governed by a Management Committee composed of five (5) regular Committee members and one (1) alternate who may only vote in the absence of a regular Committee member.

4.1.2 Members of the Management Committee shall serve for a term of two (2) years. The terms shall be staggered so all Committee members are never elected in the same year.

4.1.3 All Committee members must reside full-time within the Community and must be an Owner or the spouse of an Owner of a Unit, except that a husband and wife may not serve on the Committee at the same time. A representative of an entity which owns a Unit, and only one such representative, may serve on the Committee, such that a shareholder of a corporation, a

member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Committee if the corporation, LLC, partnership, trust or estate owns a Unit.

4.2 Nomination. Nomination for election to the Management Committee shall be made in the manner determined by the Management Committee, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) for positions on the Management Committee be made by petition filed with the Secretary of the Association at least thirty days prior to the annual meeting of the Association, which petition shall be signed by the nominee named therein indicating his or her willingness to serve as a member of the Management Committee, if elected. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. The Management Committee or, if established, the nominating committee, shall make as many nominations for election as it shall in its discretion determine, but not less than the number of vacancies. Self-nominated candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or promulgated by the Association at least 30 days before the applicable meeting.

4.3 Election. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 Vacancies. Vacancies on the Management Committee, caused by any reason other than the removal of a Committee member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Committee members even though they may constitute less than a quorum. Each person so elected shall be a Committee member until a successor is elected upon expiration of the term for which the person was elected by the other Committee members to serve. The Committee shall fill such a vacancy within the time period that the Committee reasonably determines.

4.5 Removal of Committee members.

4.5.1 At any annual or special meeting, any one or more of the Committee members may be removed, with or without cause, by a majority of the total voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Committee member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.5.2 A Committee member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular Committee meetings, or is absent from more than 25% of the regular Committee meetings held in any 12 month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the

Management Committee his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

4.6 Compensation. No Committee member shall receive compensation for any service he or she may render to the Association as a Committee member. However, any Committee member may be reimbursed for actual expenses incurred in the performance of his or her duties.

## **ARTICLE 5 - MEETINGS OF MANAGEMENT COMMITTEE**

### 5.1 Meeting.

5.1.1 Location, Date and Time. Meetings of the Management Committee shall be held at such place, date and time as shall be fixed by the Committee.

5.1.2 Procedure and Business. Meetings shall be chaired by the president, or in the absence of such person, the secretary, regardless of whether the president or secretary is as member of a newly constituted Committee.

5.2 Regular Meetings. Regular meetings of the Management Committee shall be held at such place and hour as may be fixed from time to time by the Committee, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Management Committee with notice to all members of the Management Committee.

5.3 Special Meetings. Special meetings of the Management Committee shall be held when called by the president of the Association, or by any two (2) Committee members, after not less than three (3) days' notice to each Committee member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Unless other rules of order are adopted by resolution of the Management Committee: (a) Meetings of the Management Committee shall be conducted by the President; (b) A decision of the Management Committee may not be challenged because the appropriate rules of order were not used; (c) A decision of the Management Committee is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

### 5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. Except as provided in subsection 5.5.2, all meetings of the Committee shall be open to Unit Owners. At each meeting, the Committee shall provide each Owner a reasonable opportunity to offer comments. The Committee may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Committee meeting unless the Owner is also a member of the Committee. The president or Committee shall have the authority to exclude an Owner who disrupts the proceedings at a Committee meeting. The Committee may adopt policies governing

meetings of the Management Committee from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Committee shall also supersede these Bylaws to the extent the policy restates then current Utah law.

5.5.2 Executive Sessions. In the discretion of the Committee, the following matters, in addition to matters provided for by law, may be considered in executive session:

- (a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;
- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, confidential, private, or privileged nature at the discretion of the Committee.

5.5.3 Executive Session Procedure. Except in the case of an emergency, the Management Committee shall vote in an open meeting whether to meet in executive session. If the Committee votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Committee, meetings of the Management Committee may be conducted by telephonic communication or by the use of a means of communication that allows all members of the Management Committee participating to hear each other simultaneously or otherwise to be able to communicate during the meeting.

5.7 Action Taken by Committee without a Meeting.

5.7.1 Notice, Response. The Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Committee and each member of the Committee, by the time stated in the notice:

- (a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a meeting.

5.7.2 Content of Notice. The notice required by Subsection 5.7.1 (the “Notice”) shall

(a) the action to be taken;

(b) the time by which a Committee member must respond to the notice;

(c) that failure to respond by the time stated in the notice will have the same effect as: (1) abstaining in writing by the time stated in the notice; and (2) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and

(d) any other matters the Association determines to include.

5.7.3 Approval of Action/Decision. Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

(a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Committee members then in office were present and voted; and

(b) the Association has not received a written demand by a Committee member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

5.7.4 Waiver of Meeting. A Committee member's right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Committee member in writing by the time stated in the Notice.

5.7.5 Revocation. A Committee member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

5.7.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender's known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 5.7, communications to the Association are not effective until received.

5.8 Waiver of Notice. Any Committee member may, at any time, waive notice of any meeting of the Management Committee in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Committee member at any meeting of the Committee shall constitute a waiver of notice by the Committee member, except where the

Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Committee members are present at any meeting of the Committee, no notice to Committee members shall be required and any business may be transacted at the meeting.

5.9 Quorum and Acts. At all meetings of the Management Committee, a majority of the existing Committee members shall constitute a quorum for the transaction of business and the acts of the majority of the Committee members present shall be the acts of the Management Committee. If, at any meeting of the Management Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.10 Proxies at Committee Meetings. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Committee member may be considered to be present at a meeting and to vote if the Committee member has granted a signed written proxy: (i) to another Committee member, or other person, who is present at the meeting; and (ii) authorizing the other Committee member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## **ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE MANAGEMENT COMMITTEE**

6.1 General Powers and Duties. The Management Committee shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law, the Declaration or by these Bylaws directed to be exercised and done by the Owners.

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Management Committee shall have the power to, in the Management Committee's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

6.3 Best Interest of Association and Reliance on Information. A Committee member or officer shall discharge the Committee member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association. The Management Committee members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Committee member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the

Committee member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Committee member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Committee member, a sub-committee of the Association or Management Committee of which the Committee member is not a member if the Committee member reasonably believes the sub-committee merits confidence.

#### 6.4 Conflicts of Interest.

6.4.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Committee member, (2) a party related to a Committee member, or (3) an entity in which a Committee member is a director or officer or has a financial interest.

6.4.2 A Committee member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Committee member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Committee, (2) the Committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Committee members (even if the disinterested Committee members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

6.5 Adopting and Enforcing Rules. The Association, by and through its Management Committee, may adopt rules and regulations for the operation of the Association. Rules shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness.

### **ARTICLE 7 - OFFICERS AND THEIR DUTIES**

#### 7.1 Designation and Qualification.

7.1.1 Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer.

7.1.2 Qualifications. The officers described in Section 7.1.1 must be Committee members. Any Committee member may be an officer of the Association.

7.2 Election and Vacancies. The officers of the Association may be elected by the Committee at the organizational meeting of each new Committee or any Committee meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal,

disqualification or any other cause, the Committee shall elect a successor to fill the unexpired term.

7.3 Resignation. Any officer may resign at any time by giving written notice to the Committee, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 Removal of Officers. Officers shall hold office at the pleasure of the Committee. Upon an affirmative vote of a majority of the members of the Committee any officer may be removed, either with or without cause.

7.5 Compensation of Officers. No officer who is a member of the Committee may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners. The Committee may fix any compensation to be paid to any officers who are not also Committee members.

7.6 Duties of Officers. Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Committee, to the extent not inconsistent with these Bylaws or the Declaration. The Committee may delegate any powers or duties of officers to other persons or agents as the Committee deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) President. The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Management Committee. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(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 by the Committee. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association, have charge of such books, papers and records as the Management Committee may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

(d) Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a managing agent, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Management Committee and disbursing funds as directed by resolution of the Management Committee.

## **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS**

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

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

Beyond (but subject to) the foregoing provisions of this Article, each officer and Committee member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Committee member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Committee member or officer or person may be entitled by law or agreement or vote of the members or otherwise

## ARTICLE 9 - RECORDS AND AUDITS

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act in the manner as may be prescribed by a resolution adopted by the Management Committee.

### 9.1 General Records.

(a) The Management Committee and managing agent or manager, if any, shall keep records of the actions of the Management Committee; minutes of the meetings of the Management Committee; and minutes of the meetings of the Association.

(b) The Management Committee shall maintain a Book of Resolutions (Rules) containing the rules, regulations, and policies adopted by the Association and Management Committee.

(c) The Management Committee shall maintain a list of the names and addresses of the Owners. Any record of email addresses or phone numbers of Owners kept by the Association shall be deemed confidential and private and shall not be subject to inspection, viewing or copying by any Owner.

(d) The Association shall retain within this state, all records of the Association for not less than the period specified in applicable law.

9.2 Records of Receipts and Expenditures. The Management Committee or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Community, itemizing the maintenance and repair expenses of the Common Area or Association property and any other expenses incurred.

9.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

### 9.4 Financial Reports and Audits.

(a) If requested within ninety days after the end of the fiscal year, the Management Committee shall provide an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities to a requesting Owner or mortgagee of a Unit.

(b) From time to time and in the sole discretion of Management Committee and at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Mortgagees of Units.

(c) The Association shall conduct a reserve analysis and an update thereof as required by Utah Code §57-8-7.5, as may be amended, or on a more frequent basis as determined by the Management Committee as an integral part of the fiscal administration of the community.

9.5 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.6 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Unit pursuant to rules adopted by resolution of the Management Committee or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Management Committee shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.4 above; and (3) The current operating budget of the Association.

(c) The Association, within five (5) business days after receipt of a written request by an owner, shall furnish the requested information required to be maintained under Subsection (b) of this section, subject to a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

(d) The Management Committee, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this section. The fee may include reasonable personnel costs incurred to furnish the information.

9.6 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

(a) Personnel matters relating to a specific identified person or a person's medical records.

(b) Contracts, leases and other business transactions that are currently under negotiation to purchase or provide goods or services.

(c) Communications with legal counsel that relate to matters specified in subsections (a) and (b) of this section, and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

(e) Documents, correspondence or management or Committee reports compiled for or on behalf of the Association or the Management Committee by its agents or committees for consideration by the Management Committee in executive session held in accordance with these Bylaws.

(f) Documents, correspondence or other matters considered by the Management Committee in executive session held in accordance with these Bylaws and the minutes of any executive session.

(g) Files of individual Owners, other than those of a requesting Owner or requesting mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

## ARTICLE 10 - AMENDMENTS

Any and all of the terms contained in these Bylaws may be annulled, waived, changed, modified or added to through a duly adopted amendment.

(a) How Proposed. Amendments to the Bylaws shall be proposed to the membership only by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners holding twenty percent (20%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

(b) Approval Required. If a majority of the total voting interests of the Association are represented in person, or by proxy or by ballot, these Bylaws may be amended if such amendment is then approved by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the voting interests of the majority represented at the meeting (subject to the approval of Eligible Holders as may be required herein). Notwithstanding anything herein to the contrary, these Bylaws may be amended by the Management Committee without approval of the Owners if necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with these Bylaws and is acknowledged and recorded in the appropriate County Recorder's Office.

## ARTICLE 11 - MISCELLANEOUS

11.1 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.2 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context

requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

11.3 Fiscal Year. The fiscal year of the Association shall be determined by the Committee in its discretion.

11.4 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 9 day of March, 2018.

(Sign): Barry Nangle  
(Print Name): BARRY NANGLE . President