

**After Recording Return To:**  
The Richards Law Office, PC  
4141 So. Highland Dr., Suite 225  
SLC, UT 84124

12980650  
5/2/2019 4:43:00 PM \$103.00  
Book - 10776 Pg - 7931-7970  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
RICHARDS LAW PC  
BY: eCASH, DEPUTY - EF 40 P.

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
GRAPE IVY PLACE**

A. THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM for the Grape Ivy Place condominiums is made on the date evidenced below by the Grape Ivy Place Owners 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 Declaration of Condominium for Grape Ivy Place Phase 1 recorded February 25, 1995, as Entry No. 7269524, 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 of Grape Ivy Place Owners Association attached to the Original Declaration.

C. Pursuant to Utah Code Ann. § 57-8-39, at least sixty seven percent (67%) of the voting interests have affirmatively approved the adoption of this Amended Declaration.

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 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 Grape Ivy Place 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 1**

### **DEFINITIONS**

**1.1 Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in the Declaration shall have the meanings set forth in this Article 1.

**1.2 “Act”** shall mean the Utah Condominium Ownership Act, as amended from time to time (Title 57, Chapter 8, Utah Code Annotated).

**1.3 “Association”** shall mean Grape Ivy Place Owners Association, Inc., a Utah nonprofit corporation, organized to be the Association referred to herein.

**1.4 “Board of Trustees” or “Board” or “Management Committee”** shall mean and refer to the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation and Bylaws of the Association.

**1.5 “Common Areas”** shall mean and refer to that part of the Property which is not included within the Units, including all roadways within the Project and all improvements other than utility lines now or hereafter constructed or located hereon.

**1.6 “Common Facilities”** shall mean all equipment, facilities and fixtures and other personal property and real properly improvements owned by the Association for the use and benefit of all Owners, and all equipment, facilities and fixtures hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Except as otherwise expressly provided in this Declaration, Common Facilities shall be deemed to be part of the Common Areas.

**1.7 “Condominium”** shall mean a Unit and the undivided interest in the Common Areas appurtenant to such Unit.

**1.8 “Declarant”** shall mean First Home, Inc., a Utah corporation, its successors or assigns.

**1.9 “Family”** shall mean : A. One or more persons related by blood, marriage, adoption, or legal guardianship, including foster children, living together as a single housekeeping unit in a dwelling unit, and including up to two additional unrelated people; or B. A group of not more than three (3) persons not related by blood, marriage, adoption, or legal guardianship living together as a single housekeeping unit in a dwelling unit; or C. Two (2) unrelated persons and their children living together as a single housekeeping unit in a dwelling unit.

**1.10 “Governing Documents”** shall mean and refer to 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.

**1.11 “Limited Common Areas”** or “Limited Common Areas and Facilities” shall mean any common areas or Common Facilities designated for the exclusive use of the Owner of a particular Unit. Any porches, patios, landscaping, storage facilities and other areas that are immediately contiguous to the Unit and identified and designated on the Map as reserved for exclusive use of the Owner of a certain Unit shall be Limited Common Areas for the exclusive use of the Owner of the Unit bearing the same number or designation and or/as specified on the Map.

**1.12 “Manager”** shall mean the person, firm, or company, if any, designated from time to time by the Association, to manage, in whole or in part, the Affairs of the Association and the Project.

**1.13 “Map” or “Plat”** shall mean the Record of Survey Maps for Grape Ivy Place Phase One and Phase Two pertaining to the Project and recorded in the office of the County Recorder for Salt Lake County, state of Utah, as the same has been or may be amended from time to time.

**1.14 “Member”** shall mean a member of the Association

**1.15 “Mortgage”** shall mean any mortgage, deed of trust, or other security instrument by which a Condominium or any part thereof is encumbered.

**1.16 “Mortgagee”** shall mean either of the following who has requested in writing to the Association that they be afforded the rights granted in this Declaration: (i) any person named as the mortgagee or beneficiary under any Mortgage by which the interest of any owner is encumbered, or (ii) any successor to the interest of such person under such Mortgage.

**1.17 “Owner”** shall mean any person or entity or combination thereof at any time owning a Condominium within the Project, as shown on the records of the Recorder’s Office of Salt Lake County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Condominium Unit under contract until such contract is fully performed and legal title conveyed of record.

**1.18 “Project”** shall mean the Subject Land, all Condominiums and All Common Areas and Facilities, including all Limited Common Areas and Facilities.

**1.19 “Subject Land”** shall mean the land upon which the Project is situated, as more particularly described in Exhibit A.

**1.20 “Total Votes of the Association”** shall mean the total number of votes appertaining to the Condominiums in the Project, as shown in Exhibit “B” attached hereto.

**1.21 “Unit”** shall mean one half of the duplex building located on the Subject Land, and shall include, without limiting the generality of the foregoing, walls, foundations, roofs, windows,

doors, and all other improvements to such building, as well as all pipes, condensers, vents, ducts, shafts, flues, chutes, conduits, wires, and other utility and service lines, improvements and equipment both (i) inside the walls, foundations and physical bounds of the building and (ii) outside the walls, foundations and physical bounds of the building, where the same exist for the exclusive use of the Unit, from the point they leave the building until they connect to another pipe, cable, line or conduit that services other Units or Property. Mechanical equipment servicing a Unit but located outside the building and in the Common Area or Limited Common Area shall be considered a part of the Unit. A Unit holder's interest shall be held in fee simple.

## **ARTICLE II**

### **SUBMISSION AND DIVISION OF PROJECT**

**2.1 Property Subject the Declaration, Bylaws and the Act.** The Project has been and is hereby again submitted 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 Board or 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 Division into Condominiums.** The project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas as set forth in Exhibit "B" attached hereto. Each Unit shall have an equal undivided interest in the Common Areas and Facilities.

**2.3 Easements.** The Association, its successors and assigns, shall have a transferable easement over and on the Common Areas and Facilities, including roads providing ingress and egress to the Project, for the purpose of maintenance, repair and replacement and making improvements on the land within the Project, for the purpose of doing all things reasonably necessary and proper for the operation and maintenance of the Project.

## **ARTICLE III**

### **IMPROVEMENTS**

**3.1 Description of Improvements.** The improvements included in the project are now or will be located upon the Subject Land. The Map shows the fifteen (15) units which are to be contained on the project. Each Unit shall be one half of a duplex building. Each of the Units shall be principally constructed of wood frame, brick, vinyl siding, sheetrock interiors and asphalt shingle roofs, and such other materials as allowed by current building codes.

**3.2 Description and Legal Status of Units.** The Map shows the Unit number of each Unit, its location, dimensions, and those Limited Common Areas and Facilities which are reserved for the use of its Owner. All Condominiums shall be capable of being independently owned, encumbered and conveyed.

**3.3 Contents of Exhibit "B".** Exhibit "B" to this Declaration furnishes the number of votes of the Owner of the Condominium as a Member of the Association.

#### **ARTICLE IV**

#### **NATURE AND INCIDENTS OF CONDOMINIUM OWNERSHIP**

**4.1 Interior of Units.** Each Owner shall have the exclusive right to repair, reconstruct, paint, repaint, tile, wax, paper, carpet, or otherwise maintain and decorate all interior surfaces and improvements within the Unit.

**4.2 Maintenance of Units and Limited Common Areas.** Each Owner shall, at his sole cost, have the right and obligation to maintain (in a clean and sanitary condition and in a state of good repair) the exterior of his Unit, including without limitation, the walls, windows, foundation and roof of his Unit, and permanent fixtures and appurtenances thereto, and the Limited Common Areas and Facilities appurtenant to his Unit, including, but not limited to patios and decks; provided however, that no Owner shall repair, materially alter, reconstruct, or paint any exterior portion of his Unit or any part of the Limited Common Areas appurtenant to his Unit, without first obtaining the approval of the Board of Trustees of the Association. The Board shall have the right to insure that all repair, reconstruction and painting of the exterior of the Units and Limited Common Areas in the Project is done in a good and workmanlike manner and in conformity with the general architectural and design specifications and criteria (the "Criteria") that presently exist in the Project as a whole, as said Criteria may be reasonably modified from time to time by the Board to reflect the passage of time, so as to allow the Project to maintain a consistent and reasonably unified appearance.

While Owners shall generally maintain and repair all Limited Common Areas appurtenant to their Units, the Association nonetheless shall be responsible and shall have the right (i) to remove snow from the driveways and walks in front of Units (but not patios, porches or stairways), and (ii) to maintain the lawns, plants, trees and other landscaping and the related sprinkler systems that exist in the Common Areas and Limited Common Areas of the Project.

In the event that any Unit or Limited Common Area should develop an unsanitary or unclean condition or fall into a state of disrepair, and in the event that the Owner of such Unit or the Unit to which the exclusive right to use the Limited Common Area appertains should fail to correct such condition or state of disrepair promptly following written notice from the Association, the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit or Limited Common Areas and Facilities and correct or eliminate said unsanitary or unclean condition or state of disrepair.

**4.3 Fences.** Owners may install, at their own expense, a fence which separates equally the back and side yards of their Units and Limited Common Areas up to the rear of the front entry porch

or as determined by the Board of Trustees. Such fencing is not to enclose an area exceeding twelve by six feet and must be constructed of white maintenance-free PVC material, consistent with the fencing which is located at the front of the Project along Ninth East Street. Any fence installed must not limit the free access by personnel for the purpose of reading or repairing utility meters.

**4.4 Title.** Title to a Condominium within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title or any other real property may be held or owned in the state of Utah, including without limitation joint tenancy or tenants in common.

**4.5 Prohibition Against Subdivision of Unit.** Except as provided in this Article IV, no Unit Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Unit to be separated into physical tracts or parcels smaller than the whole Unit as shown on the Map.

**4.6 Ownership of Common Areas and Facilities.** All Units shall have an equal undivided interest in the Common Areas and Facilities appurtenant thereto. The appurtenant undivided interest applicable to each Unit shall have a permanent character and shall not be altered without the consent of two-thirds of the Owners expressed in a duly recorded amendment to this Declaration. Except as otherwise provided in this Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas and Facilities in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Except as otherwise provided in this Declaration, each Owner shall have the exclusive right to use and enjoy the Limited Common Areas and Facilities that may be designated for exclusive use by such Owner. In addition, notwithstanding the fact that the driveway and walkway leading from the front street to the garage and front door, respectively, of a Unit constitute Common Area or Limited Common Area, as the case may be, no Owner, invitee, guest or other person shall have the right to drive, park or otherwise use the driveway or walkway in front of a particular Unit except for that Unit's owner and his or her guests and invitees. Each Owner will be responsible for his percentage share of taxes, insurance, maintenance and all other costs relating to the Common Areas and Facilities, with such percentages to be the same as the Owner's percentage interest in the Common Areas.

**4.7 Limited Common Areas.** Each patio and landscaped area designated on the Map as Limited Common Areas shall be Limited Common Areas for exclusive use by the Owner of the particular Unit which is contiguous to such patio, landscaped area or driveway. Any undesignated parking stalls shown on the Map shall constitute Common Areas. No Limited Common Areas may be rebuilt, replaced or materially altered without the approval and consent of the Board of Trustees of the Association as described in Section 4.2 above.

**4.8 Inseparability.** Title to no part of a Condominium within the Project may be separated from any other part thereof, and each Unit and the undivided interest in the Common Areas and Facilities appurtenant to each Unit shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Condominium. Every devise, encumbrance, conveyance or other disposition of a Condominium or Unit, or any part thereof, shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Condominium,

together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth.

**4.9 No Partition.** The Common Areas and Facilities shall be owned in common by all of the Owners, and no Owner may bring any action for partition thereof except as allowed by the Act.

**4.10 Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Condominium. No Owner shall attempt to or shall have the right to mortgage or otherwise encumber the Common Areas and Facilities or any part thereof, except the undivided interest therein appurtenant to his Condominium. Any mortgage or other encumbrance of any Condominium within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure or otherwise.

**4.11 Separate Taxation.** Each Condominium Unit within the Project shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the state of Utah or of any political subdivision thereof or of any special improvement district or of any taxing or assessing authority. All such taxes, assessments and other charges on each respective Condominium Unit shall be separate levied against the Owner thereof. No forfeiture or sale of any Condominium Unit for Delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Condominium Unit.

**4.12 Mechanics Liens.** No labor performed or material furnished for use in connection with any Unit or Limited Common Area Facility with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Condominium of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Areas and Facilities, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed or such materials shall have been furnished.

**4.13 Description of Condominium.** Every contract for the sale of a Condominium and every other instrument affecting title to a Condominium within the Project may describe a Unit by its identifying address, number or symbol as indicated in this Declaration or as shown on the Map. Such description will be constructed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership of a Condominium within the Project and all of the limitations on such ownership. Each Unit Owner shall have an unrestricted right of ingress and egress to his or her Unit. This right shall be perpetual, and such right shall pass with the Unit estate as transfers of ownership of the Unit occur. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of an individual interest in the Common Areas will be void unless the Unit to which the interest is allocated is also transferred.

**4.14 Non-Exclusive Easements.** All entrances to, exits from, and roads in, the Project providing access to public roads outside the Project shall be Common Areas. Notwithstanding anything on the Map to the contrary, these easements are for the non-exclusive use of the Owners.

**4.15 Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

“Unit No. \_\_\_\_\_ of Building No. \_\_\_\_\_ of GRAPE IVY PLACE, together with all improvements located thereon, as said Unit is identified in the Plat recorded in the office of the Salt Lake County Recorder and in the Declaration of Condominium for Grape Ivy Place, also recorded in the Office of Salt Lake City County Recorder, State of Utah, as Entry No. \_\_\_\_\_ and in the Declaration of Condominium for Grape Ivy Place, recorded in the Office of the Salt Lake County Recorder, State of Utah, as Entry No. \_\_\_\_\_. TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, as provided for and in the percentage shown, in said Declaration of Condominium.”

Whether or not the description employed in such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

## **ARTICLE V** **EASEMENTS**

**5.1 Easements for Encroachments.** If any part of the Common Area encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, and an easement for such encroachment and for the maintenance of the same shall and does exist. Such easement must extend for whatever period the encroachment exists. Such encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of one or more of the Buildings or any improvements constructed or to be constructed within the Project, by error in the Map, by settling, rising, or shifting of the earth, or by any changes in position caused by repair or reconstruction of the Project or any part thereof.

**5.2 Easements of Maintenance, Cleaning or Repair.** The Association shall have the irrevocable right to have access from time to time to all Common Areas and Facilities upon giving reasonable notice to the affected Owner or Owners with respect to Limited Common Areas, during such reasonable hours as may be necessary, for the maintenance, cleaning, repair or replacement thereof as may be the responsibility of the Association to perform, or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas and Facilities. The Association is also granted a right of entry to any Unit to perform emergency repairs or to do other work for the maintenance of the Project. In addition, the Association shall have the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes necessary for the proper operation of the Project.

**5.3 Right to Ingress, Egress and Support.** Each Owner shall have the right to ingress and egress over, upon and across the Common Areas as necessary for access to such Owner's Unit



and to any Limited Common Areas appurtenant to such Unit, and such rights shall be appurtenant to and pass with the title to each Condominium Unit.

**5.4 Association's Right to Use Common Areas and Facilities.** The Association shall have an easement to make such use of the Common Areas as may be necessary or convenient to perform the duties and functions that it is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain in the Common Areas (except on driveways or walkways) facilities for use by Owners generally.

**5.5 Easements Reserved by Association.** The Association shall have power to grant and convey to any third party easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under Common Areas and Facilities for the purpose of construction, erecting, operating or maintaining lines, cables, wires, conduits or other devices for electricity, cable, television, power, telephone, and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project.

## **ARTICLE VI**

### **RESTRICTIONS ON USE**

**6.1 Residential Uses Only.** Each Unit contained in the Project is intended to be used as single family residential housing and is restricted to such use. No trade, craft, business, profession, commercial or similar activity that causes additional and burdensome pedestrian or vehicular traffic or creates a sight or noise nuisance, all as determined solely by the Board, shall be conducted in any Unit or in any portion of the Project.

**6.2 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause a disturbance or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

**6.3 Restriction on Vehicles.** Parking of boats; trailers; oversized or commercial vehicles (vehicles more than 8 1/2' wide (including mirrors) by 19 1/2' long, any vehicle that has more than two axles, or vehicles weighing more than 6,000 pounds); vehicles displaying commercial advertising, logos, or business names exceeding three square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle; inoperable vehicles; truck campers; motor homes; RVs; and like vehicles and equipment in or upon any of the Common Area is prohibited.

**6.4 Restriction on Signs.** Except as may be temporarily necessary to caution or warn of danger, and except conventional 18"X 24" real estate signs which may be posted as appropriate when a Unit is advertised for sale, no signs or advertising devices of any nature, including without limitation commercial, political, informational or directional signs or devices, shall be erected or maintained on any portion of the Project without the prior inspection and written approval of the

Board. If the Board consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Board.

**6.5 No Structural Alterations.** No Owner shall, without the written prior consent of the Board as required in Section 4.2 above, make or permit to be made any structural alteration, improvement or addition in or to his Unit, to the Limited Common Areas appurtenant hereto, or to the Common Areas. Notwithstanding the foregoing, installation of 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, are permissible provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible.

**6.6 No Obstructions.** There shall be no obstruction of the Common Areas by any Owner. Except with prior written consent of the Board, Owners shall neither store nor lease any of their property in the Common Areas.

**6.7 Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Board, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project which may result in cancellation of any insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest or invitee of any Owner harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees or invitees.

**6.8 Rules and Regulations.** The Owners shall comply with all of the rules and regulations governing use of the Units, Limited Common Area, and Common Areas and Facilities, as such rules and regulations may from time to time be adopted, amended or revised by the Association, consistent with this Declaration, in the sole discretion of the Board.

**6.9 Pets and Animals.** No animals or birds of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that domestic dogs and cats and common household birds and fish may be kept in Units, subject to the rules and regulations adopted by the Association and provided they are not kept, bred, or maintained for any commercial purpose and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the Project upon ten (10) days written notice from the Board. No dog that exceeds 20 inches measured at the back hips may be kept in a Unit or the Project. Any pet allowed may be present on the Common Areas only if on a leash held by a person.

**6.10 Leases.** Any lease agreement between an Owner and a lessee respecting a Unit or Condominium shall be subject in all respects to the provisions of this Declaration, the Articles

and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All such lease agreements shall be in writing. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

## **ARTICLE VII** **THE ASSOCIATION**

**7.1 Membership.** Each owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium Unit is held by more than one person, the membership appurtenant to that Condominium Unit shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Condominium Unit is held. An Owner shall be entitled to one membership for each Condominium Unit owned by him. Each Unit shall have only one vote appurtenant thereto. Each membership shall be appurtenant to the Condominium Unit to which it relates and shall be transferred automatically by conveyance of the Condominium Unit. Ownership of a Condominium Unit within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Condominium Unit shall be constructed to be a devise, encumbrance, conveyance or other disposition, respectively, of the Owner may be a member of the Association, and the rights appurtenant there. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium Unit. The Association shall make available to the owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

**7.2 Bylaws.** The Bylaws of the Association shall be as set forth in Exhibit "C" attached hereto and by this reference made a part hereof, as the same shall be amended from time to time.

**7.3 Amplification.** The provisions of the Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association, provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

## **ARTICLE VIII** **CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**8.1 The Common Areas.** The Association, by action of its Board of Trustees, and subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Facilities and all improvements thereon, and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair, except where each Owner is required to keep the Limited Common Areas designated for use in connection with his Unit, if any, in a good, clean, safe, sanitary, and attractive

condition as required above. The Association shall also be responsible for the maintenance and repair of the driveways, fences, walkways, playground area and equipment, and other improvements constituting Common Areas and for the maintenance of those portions of the Common Areas as described in Section 4.2 above. The Association shall also be responsible for maintenance, repair and replacement of all Common Facilities, improvements, or other material located within or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. In addition, the Association shall maintain all landscaped areas located between the Project and any public records contiguous to the Project, such as the park strip between the sidewalk and curb, even though such areas are not technically part of the Project. It shall also be the responsibility of the Association to provide snow removal from the public sidewalk along Ninth East Street. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

**8.2 Miscellaneous Goods and Services.** The Association, by action of its Board of Trustees, may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter. In addition to the foregoing, the Association may acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas and other necessary or desirable utility services for the Common Areas and insurance, bonds and other goods and services common to the Units.

**8.3 Real and Personal Property.** The Association may acquire, hold and own real, personal and mixed property of all types for the use and benefit of all of the Owners and may dispose of such property by sale or otherwise. The maintenance, repair and replacement of all such property, including Common Facilities, shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such fund.

**8.4 Rules and Regulations.** The Association, by action of its Board of Trustees, may make reasonable rules and regulations governing the use of the Units, Limited Common Area and Common Areas and Facilities, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association, by action of its Board of Trustees, may take action, including judicial action, against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorney's fees, from the offending Owner.

**8.5 Granting of Easements.** The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility, ingress, egress, construction and similar easements over, under, across and through the Common Areas.

**8.6 Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonable implied from the existence of any right or privilege given to it herein or reasonable necessary to effectuate any such right or privilege.

**8.7 Reserves.** The Association shall maintain an adequate reserve fund for maintenance, repairs and replacements of those Common Areas and Limited Common Areas and Facilities that must be replaced by the Association on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article IX below. Reserve funds and requirements for a reserve study shall be in compliance with the requirements of the Condominium Ownership Act 57-8-7.5 as it may be amended from time to time.

**8.8 Availability of Project Documents.** The Association shall maintain current copies of this Declaration, the Articles of Incorporation, Bylaws and other rules concerning the Project, as well as its own books, records and financial statements available for inspection by Unit Owners or by holders, insurers or guarantors of first mortgages that are secured by Units in this Project.

## **ARTICLE IX** **ASSESSMENTS**

**The Association hereby adopts Utah Code Chapter 57, Title 8 Sections 44-54 (the applicable portions of Utah's Condominium Ownership Act) as may be amended from time to time, that may supplement the provisions stated in this Article IX. Additional procedures may be required pursuant to the Act and may be further set forth in the assessing and collection policies adopted by the Board.**

**9.1 Agreement to Pay Assessments.** Each Owner of a Condominium by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article IX.

**9.2 Regular Assessments.** Regular assessments shall be computed and assessed against all Condominium Units in the Project as follows:

**9.2.1 Annual Budget.** On or before the 1<sup>st</sup> day of March of each year, the Association by action of its Board of Trustees, shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying the estimates made, shall be submitted to the Members on or before the 1<sup>st</sup> Saturday of March each year. Such budget, with any changes therein, shall be adopted by the Members at each annual meeting of the Members. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period which is prepared. Said

budget shall also constitute a major guideline under which the Association shall operate during such annual period.

**9.2.2 Basis of Annual Budget.** The annual budget shall be based upon the Board of Trustee's estimates of the cash required to provide for payment of expenses (the "Common Expenses" arising out of or connected with maintenance and operation of the Common Areas. Such actual expenses and estimated expenses may include, among other things the following: expenses of management, governmental taxes and special assessments; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the owners or by reason of this Declaration or the Act.

**9.2.3 Annual Assessments.** The Board shall establish a regular, equal monthly assessment to be paid by each Owner (the "Common Expense Fund"). The dates and manner of payment shall be established by the Board so long as the method it adopts is consistent with good accounting practices. Each monthly assessment of the regular assessment shall bear interest at a reasonable rate, and be subject to a late charge, all as established by the Board from time to time, from the date it becomes due and payable until paid. Failure of the Board to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Condominium for such assessment. The Board of Trustees of the Association shall have the responsibility for levying and collecting annual assessments for the Common Expenses.

**9.2.4 Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board may increase the annual assessment or may levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall not be necessary.

**9.3 Special Assessments.** In addition to the regular assessments authorized above, the Association may levy, at any time and from time to time, upon affirmative vote of at least a majority of the Total Votes of the Association, special assessments, payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred by the Association. This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. The Board shall have the responsibility for levying and collecting special assessments. Any amounts assessed pursuant hereto shall be assessed to Owners equally. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been made. All unpaid portions of any special assessment shall bear interest at the rate of one and one half percent (1 1/2%) per month from the date such portions become due until paid and shall be subject to a late charge in the amount established by the Board from time to time.

**9.5 Lien for Assessments.** All sums assessed to the Owner of any Condominium Unit within the Project pursuant to the provisions of Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Condominium Unit in favor of the Association. The lien for assessments shall be subordinate to a first mortgage on the Unit if the mortgage was recorded before the delinquent assessments were due. A lien for Common Expense assessment will not be affected by the sale or transfer of a Unit, unless a foreclosure of a first mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments. To evidence a lien for sums assessed pursuant to this Article IX, the Association may prepare and record a written notice of lien recorded in the office of the County Recorder for Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment for the assessment. Such lien may be enforced by judicial or nonjudicial foreclosure by the Association in the same manner in which mortgages on real property or trust deeds may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay the Association any assessments against the Condominium Unit which shall become due during the period of the foreclosure. The Association shall have the right and power to bid at any foreclosure sale, and to own, lease, mortgage or convey the subject Condominium Unit.

**9.6 Personal Obligation of Owner.** 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. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association, by action of its Board of Trustees, without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any Common Areas and Facilities or by abandonment of his Condominium, or by waiving any services or amenities.

**9.7 Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Condominium and payment of any reasonable fee assessed, the Board shall issue a written statement setting forth the following: (a) The amount of unpaid assessments, if any, with respect to such Condominium, and (b) the amount of the current regular assessment with respect to such Condominium and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

**9.8 Assessments Part of Common Expense Fund.** All funds received from assessments under this Article IX shall be a part of the Common Expense Fund.

## **ARTICLE X**

### **INSURANCE**

#### **10.1. Association Insurance.**

**10.1.1. 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.

**10.1.2. Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, 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.

**10.1.3. 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.

**10.1.4. Directors and Officers (D&O) Insurance.** The Association shall purchase and maintain insurance on behalf of any person who was or is a Board 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.

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

**10.1.6. Loss Not Exceeding Deductible.** If, in the exercise of the business judgment rule, the Board 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.

**10.1.7.** 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.

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

**10.1.9. 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.

**10.1.10. 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.

**10.1.11.** The Association, or insurance trustee if any, shall to 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.

**10.1.12.** 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.

**10.2. *Unit Owner Insurance Responsibility.*** For units, the Association's policy is primary but the unit owner is responsible for the deductible as follows:

**10.2.1.** 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.

**10.2.2.** 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.

**10.2.3.** The deductible under the Association's policy is subject to change from time to time by the Board. The Association shall provide notice to the unit owners of any change in the amount of the deductible.

**10.2.4.** The Association's policy does not cover the contents of a unit or a unit owner's personal property. Each unit 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 XI**

### **DAMAGE OR DESTRUCTION**

**11.1 Damage or Destruction to Common Areas.** In the event any of the Common Areas of the Project are damaged or destroyed, as soon as practicable the Association shall cause such damage or destruction to be repaired. The cost of accomplishing such repair shall be paid from the proceeds of insurance carried by the Association and insuring such Common Areas, or in the event there are no insurance proceeds or insufficient insurance proceeds, then the same shall be paid for by a special assessment made to all of the Owners in the Project.

**11.2 Damage or Destruction to Units.** Unless otherwise provided in the bylaws, if the insurance proceeds are insufficient to reconstruct the building, damage to or destruction of the building shall be promptly repaired and restored by the manager or Board, using proceeds of insurance, if any, on the building for that purpose, and the unit owners shall be liable for assessment for any deficiency. However, if three-fourths or more of the building is destroyed or substantially damaged and if the unit owners, by a vote of at least three-fourths of such unit owners, do not voluntarily, within one hundred days after such destruction or damage, make provision for reconstruction, the manager or Board shall record, with the county recorder, a notice setting forth such facts, and upon the recoding of such notice:

- (a) The property shall be deemed to be owned in common by the unit owners;
- (b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;
- (c) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property; and
- (d) The property shall be subject to an action for partition at the suit of any unit owner, in which even the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent sufficient for the purposed, all liens on the undivided interest in the property owned by each unit owner.

## **ARTICLE XII**

### **REMOVAL FROM ACT**

Subject to the prior written approval of the Secretary of Veterans Affairs, all of the Owners may remove the Project from the provisions of the Act if (i) the holders of all liens affecting the Condominiums consent or agree by duly recorded instruments that their liens be transferred to

the undivided interest of each Owner in the Project owning the affected Condominium, and (ii) all Owners agree to and execute an instrument providing for such removal of the Project and the same is duly recorded. Upon removal of the Project from the provisions of the Act, the Project shall be deemed to be owned in common by the Owners. The undivided interest in the Project which shall appertain to each Owner shall be the percentage of undivided interest owned by such Owner in the Common Areas. This Article XII shall not be amended without prior written approval of the Secretary of Veterans Affairs and unless the Owners of all Condominiums in the Project unanimously consent and agree to such amendment by a duly executed and recorded instrument.

### **ARTICLE XIII** **CONDEMNATION**

**13.1 Condemnation.** If at any time or times all or any part of the Project shall be taken or condemned by say public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

**13.2 Proceeds.** All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association for the benefit of the Unit Owners and Mortgage holders and shall be distributed by the Association as herein provided.

**13.3 Complete Taking.** In the event the entire project is taken by power of eminent domain, condominium ownership with respect to the Project shall terminate and the condemnation award shall be allocated among and distributed to the Owners in proportion to their respective undivided interest in the Common Areas. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

**13.4 Partial Taking.** In the event that less than the entire Project is taken by power of eminent domain, the following shall occur:

**(a) Allocation of Award.** As soon as practicable, the Association shall, reasonably and in good faith, apportion the condemnation award between compensation, severance damages, or other proceeds, and shall allocate apportioned amounts and pay the same to the Owners as follows:

**(i)** The total amount apportioned to the taking of or injury to the Common Areas be allocated and distributed to all Owners (including Owners whose entire Units have been taken) in proportion to their respective undivided interest in the Common Areas.

**(ii)** The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit based upon the relative value of each Unit;

(iii) The total amount apportioned to consequential damages and any other takings or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(iv) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable; and

(v) Distribution of allocated proceeds shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

**(b) Continuation and Reorganization.** If less than the entire Project is taken by power of eminent domain, condominium ownership with respect to the Project shall not terminate but shall continue. If any partial taking results in the taking of an entire Unit, the Owner thereof shall cease to be a Member of the Association. The Association shall relocate the voting rights and the undivided interest in the Common Areas appertaining to such Unit in accordance with the Act. If any partial taking results in the taking of a portion of a Unit and a determination is made by judicial decree with respect to whether the Owner of such Unit shall continue to be an Owner in the Project, then the Association shall take all steps necessary to effectuate such judicial decree.

**13.5 Appointment of Association.** In the event of condemnation of the Project, the Association shall be appointed as attorney in fact to represent the Unit Owners in any related proceedings, negotiations, settlements, or agreements.

#### **ARTICLE XIV**

#### **CONPLIANCE WITH DECLARATION AND BYLAWS**

**14.1 Compliance.** Each owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief, or both, maintainable by the Association or by an aggrieved Owner.

**14.2 Enforcement and 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 Board 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 Board 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 of the Association shall be subject to a fine in the amount of \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$10 a day for a continuing violation, or such other amount or amounts as may be determined by the Board from time to time by resolution. A subsequent violation of the same specific type 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. Any hearing to protest or dispute a fine shall be conducted in accordance with the standards promulgated by resolution of the Board from time to time, or if none, in accordance with the standards determined by the Board at the hearing itself (which need not be written). The levying and collections of fines shall be consistent with the requirements of the Condominium Association Act, Utah Code Title 57 Chapter 8, Section 37 as may be amended.

(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 a Member, 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 other Owners to enforce the Governing Documents and the Association shall be entitled to recovery of its attorneys' fees and costs in such case.

**14.3 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.

**14.4 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.

**14.5 Notification of First Mortgagee.** The Board 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.

**ARTICLE XV**  
**MORTGAGEE PROTECTION**

**15.1 Mortgagee Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosure of Trustee's sale.

**15.2 Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Condominium prior and superior to all other liens except (1) all taxes, bonds, assessments and other levels which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Condominium made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

**15.3 Prior Liens Relate Only to Individual Units.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Condominium and to the Project as a whole.

**15.4 Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of Record which obtains title to a Condominium by the foreclosure of the Mortgage on the Condominium or by deed or assignment on lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Condominium free of any claims for unpaid assessments and charges against the Condominium which accrued prior to the date of the acquisition of unpaid assessments and charges against the Condominium which accrued prior to the date of the acquisition of title to such Condominium by such acquirer (except for claims for the pro rata reallocation of such assessments or charges to all Condominiums in the Project, including the mortgaged Condominium). Any unpaid assessments shall be deemed to be Common Expenses collectible from all of the Condominiums in the Project, including the Condominium that has been acquired in accordance with the provisions of this Section.

**15.5 Amendment.** No provision of the Article XV shall be amended without the prior written consent of at least two thirds of all first Mortgagees as appear on the official records of Salt Lake County, State of Utah, as of the date of such amendment.

**ARTICLE XVI**  
**GENERAL PROVISIONS**

**16.1 Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision, restriction, covenant or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant or condition or of any other provisions, restrictions, covenants or conditions.

**16.2 Construction.** The provisions of this Declaration shall be in addition and supplemental to the Act and to all other provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section, or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

**16.3 Registration of Mailing Address.** Each owner shall register from time to time with the Association his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. Mail, postage prepaid, addressed to the Owner at his registered mailing address, or, if no address has been registered, to the Unit of such Owner. All notice or demands intended to be served upon the Association may be sent by first class U.S. mail, postage prepaid, addressed to the Association at the address of its primary contact as reflected on the Utah Homeowner Associations Registry maintained by the Utah Department of Commerce. Any notice of demand referred to in this Declaration shall be deemed given when deposited in the U.S. Mail, postage prepaid, electronic means as provided for in this Declaration and Bylaws, and in the form provided for in this Section. Nothing herein prevents the Association from giving notice to an owner or owners by other means than by mail.

**16.4 Audit.** Any Owner may at any reasonable time, upon appointment and at his or her own expense, cause an audit inspection to be made of the books and records maintained by the Association.

**16.5 Amendment.** Except as provided below or elsewhere in the Declaration, this Declaration may be amended upon the approval of Owners holding at least sixty-seven percent (67%) of the total votes of the Association. In addition, approval must be obtained from Mortgagees where required by other provisions of this Declaration. Any amendments approved by the Owners shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Salt Lake County, State of Utah.

**16.6 Effective Date.** This Declaration shall take effect upon recording.

**16.7 Agent for Service.** 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.

**16.8 Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of one of the Buildings, or from any of its pipes, drains,



conduits, appliances, or equipment, or from any other place. No diminution or abatement of any assessments under this Declaration, shall be claimed or allowed for inconvenience or discomfort arising from the making repairs, maintenance, or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.

**16.9 Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting or selling his Condominium under contract. The Owner of a condominium within the Project shall have no obligation for expenses or other obligations accruing after he conveys title to such Condominium.

**16.10 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.

**16.11 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in the Governing Documents shall be resolved by the Board, 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 Board except where powers are expressly restricted.

**16.12 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.

IN WITNESS WHEREOF, Grape Ivy Place Owners Association, has executed this Declaration this 2<sup>nd</sup> day of May, 2019.

GRAPE IVY PLACE  
OWNERS ASSOCIATION



By: MARK GOODMAN  
Its: HOA PRESIDENT

STATE OF UTAH                    )  
  )ss:  
County of Salt Lake            )

The foregoing instrument was acknowledged before me on this 2<sup>nd</sup> day of May, 2019 by Mark Goodman, of Grape Ivy Place Owners Association.

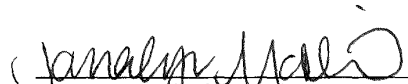
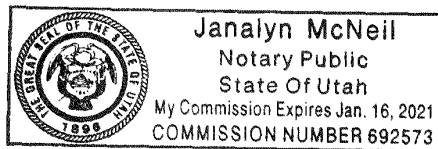
  
Notary Public for Utah

EXHIBIT "A"

LEGAL DESCRIPTION

All Units, GRAPE IVY PLACE PHASE ONE, a Utah condominium project, according to the official plat thereof on record with the Salt Lake County Recorder, Utah.

First parcel # in Phase One is 16323340010000

All Units, GRAPE IVY PLACE PHASE TWO, a Utah condominium project, according to the official plat thereof on record with the Salt Lake County Recorder, Utah.

First parcel # in Phase Two is 16323340140000

EXHIBIT "B"

Each unit shall have one vote and a 6.66667% undivided interest in the Common Areas

EXHIBIT C

**BYLAWS OF  
GRAPE IVY PLACE OWNERS ASSOCIATION  
(A Utah Non-Profit Corporation)**

**ARTICLE I  
OFFICES**

The Grape Ivy Place Owners Association (the "Association") may have offices within the State of Utah, as the Board of Trustees may designate or as the business of the Association may require from time to time.

**ARTICLE II  
DEFINITIONS**

Except as otherwise provided herein or as otherwise required by the context, all terms defined in the Declaration of Condominium for the Grape Ivy Place, a Utah condominium project, as amended from time to time, (the "Declaration") shall have such defined meanings when used in these Bylaws.

**ARTICLE III  
MEMBERS**

**Section 1. Annual Meetings.** The annual meeting of the members of the Association shall be held on the second Saturday in March each year at the hour of 10:00 o'clock a.m., or such other date and time as determined by the Trustees from time to time by resolution or in the notice of the meeting, for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the election of Trustees shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient.

**Section 2. Special Meetings.** Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statute, may be called from time to time by the Board of Trustees or by the president, and shall be called and conducted (including setting the date, time and location of the special meeting) by the president upon written request of members holding not less than fifty percent (50%) of the total votes of the Association (8 of the 15 Unit Owners), such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the president. In case of failure to call such a meeting within twenty (20) days after such request, such members may call the same.

**Section 3. Place of Meetings.** The Board of Trustees may designate any place in Salt Lake County, State of Utah, as the place of meeting for any annual meeting or for any special meeting called by the Board of Trustees or president. The most convenient location for any such meeting could in the Unit of the president or a member of the Board of Trustees. A waiver or notice signed by all of the members may designate any place, within the State of Utah, as the place for holding such meeting.

**Section 4. Notice of Meetings.** The Board of Trustees shall cause written notice of time, place, and purpose of all meetings of the members, whether annual or special, to be delivered not more than fifty (50) nor less than ten (10) days prior to the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. Mail addressed to the member at his or her registered address, with first class postage thereon prepaid. Each member shall register with the Association such member's current mailing address for the purposed of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, the member's Unit address shall be deemed to be the registered address for the purposes of notice hereunder. Notice may be given by electronic means as provided for in this Declaration and the Bylaws.

**Section 5. Fixing of Record Date.** Upon purchasing a Unit in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Unit has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than fifty (50) nor less than ten (10) days prior to the meeting. If no record date is designated, the date on which the notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing on the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members and any adjournments thereof.

**Section 6. Quorum.** At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, a minimum of fifty eight percent (58%) of the total votes of the Association (9 of the 15 Unit Owners) shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a later date. Notice thereof shall be delivered to the members as provided above. At the reconvened meeting, the members and proxy holders present, regardless of number, shall constitute a quorum for the transaction of business.

**Section 7. Proxies.** At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is

jointly held, the instrument authorizing a proxy to act may be executed by any holders of such membership or their attorney's thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

**Section 8. Votes.** With respect to each matter, other than the election of Trustees, submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law.

**Section 9. Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and method of ascertaining members shall be deemed waived if no object thereto is made at the meeting.

**Section 10. Informal Action by Members.** Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof or if written ballots are distributed to the members in accordance with the Utah Revised Nonprofit Corporation Act, as amended from time to time.

#### **ARTICLE IV** **BOARD OF TRUSTEES**

**Section 1. General Powers.** The property, affairs, and business of the Association shall be managed by the Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law, the Articles of Incorporation, these Bylaws, or the Declaration, except those powers which are by law or by the foregoing documents vested solely in the members. The Board of Trustees shall, among other things, prepare or cause to be prepared, plan and adopt an estimated annual budget for the estimated annual common expenses, provide the manner of assessing and collecting assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Areas. The books and records shall be available for examination by all members at convenient hours on working days upon at least 14 days' notice to the Association. All books and records shall be kept in accordance with good accounting procedures. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, responsibilities, functions and powers as are properly delegable.

**Section 2. Board of Trustees.** The Board of Trustees shall be composed of three (3) Trustees, or up to five (5) Trustees if the number is increased pursuant to the provisions of the Articles of Incorporation. The Trustees must be members of the Association.

**Section 3. Regular Meetings.** The regular meetings of the Board of Trustees shall be held pursuant to the notice requirements set forth in Section 10 below. The Board of Trustees may provide by resolution the time and place, within Salt Lake County, State of Utah, for the holding of additional regular meetings without other notice than such resolution.

**Section 4. Special Meetings.** Special meetings of the Board of Trustees may be called by or at the request of any of the Trustees. The person or person authorized to call special meetings of the Board of trustees may fix any place, within Salt Lake County, State of Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered to each Trustee. If mailed, such notice shall be deemed to have been delivered when deposited in the U.S. Mail so addressed, with first class postage thereon prepaid. Any Trustee may waive notice of a meeting. The attendance of a Trustee at a meeting shall constitute a waiver of notice of such meeting, except where a Trustee attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Notice of any special meeting of the Board of Trustees shall be given to Owners pursuant to Section 10 below.

**Section 5. Quorum and Manner of Acting.** A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. Except as otherwise required by these Bylaws, the Articles of Incorporation, or the Declaration, the act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

**Section 6. Compensation.** No Trustee shall receive compensation for any services that he may render to the Association as a Trustee; provided, however, that a Trustee may be reimbursed for expenses incurred in performance of his duties as a Trustee to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as Trustee.

**Section 7. Resignation and Removal.** A Trustee may resign at any time by delivering a written resignation to either the president or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee may be removed at any time for or without cause, by the affirmative vote of the Owners of a minimum of seventy five (75%) of the total number of votes (12 of the 15 Unit Owners) appurtenant to all Units in the Project, at a special meeting of the members duly called for such purpose.

**Section 8. Vacancies.** If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Trustee, or if the authorized number of Trustees shall be increased, the Trustees then in office shall continue to act, and such vacancies or newly created trusteeships shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancy in the Board of Trustees occurring by reason of removal of a Trustee by the members may be filled by election at the meeting at which the Trustee is removed.



## **Section 9. Action Taken Without a Meeting.**

9.1 The Board shall have the right to take any action in the absence of a meeting which they could take at a meeting or that is required to be taken at a meeting in the Governing Documents if each and every member of the Board does one of the following in writing: (1) votes for the action, (2) votes against the action and waives the right to demand that action not be taken without a meeting, or (3) abstains from voting and waives the right to demand that action not be taken without a meeting.

9.2 An action taken pursuant to this section may not be effective unless the Association receives writings satisfying subsection 9.1 and: (i) describing the action taken and (ii) signed by all directors. A writing may be received, signed and transmitted electronically pursuant to Article VIII below and an email originating from a known sender's account shall constitute and fulfill the requirement of a signed writing from such sender.

9.3 Action is taken under this section only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the directors then in office were present and voted.

9.4 Any action so taken shall have the same effect as though taken at a meeting of the Board members.

## **Section 10. Open Meetings: Executive Sessions.**

10.1. Open Meetings. Except as provided elsewhere herein, all meetings of the Board shall be open to Owners. At each meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board 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 Board meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board meeting. The Board may adopt policies governing meetings of the Board 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 Board shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of the Board of Directors, whether in person or by means of electronic communication in real time under Article X Section 2, at which the Board can take binding action. However, the Board may agree that it will not take binding action at a gathering and it shall not be deemed a meeting.

10.2 Notice of Board Meeting. At least 48 hours before a Board meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Board meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner, or the meeting is to address an emergency, and each Board member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (i) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (ii) state the time and date of the meeting; (iii) state the location of the meeting; and (iv) if a Board member may participate by means of electronic communication

under Article X Section 2, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

10.3 Executive Sessions. Consistent with Utah Code, Title 57, Section 8, Chapter 57 (as may be amended), in the discretion of the Board, the Board may close a Board meeting and adjourn to executive session as provide to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (f) discuss a delinquent assessment or fine.

10.4 Executive Session Procedure. Except in the case of an emergency, the Board shall vote in an open meeting whether to meet in executive session. If the Board 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.

## **ARTICLE V** **OFFICERS**

**Section 1. Officers.** The officers of the Association shall be a president, a secretary, a treasurer and such other officers as may from time to time be appointed by the Board of Trustees.

**Section 2. Election, Tenure and Qualifications.** The officers of the Association shall be elected by the Association members at the annual meeting of the Association. Members interested in running for a specific office may designate themselves as a nominee by announcing their candidacy via flyers or other appropriate material distributed to other members prior to the election, however, all candidates must be nominated by members (members can nominate themselves) during the annual meeting of the Association. The current president will act as or appoint the meeting Chair who will preside at the elections. The Chair will call for nominations from the floor, beginning with the office of the president. Once all nominations for president have been made (there is no limit to the number of candidates which can be nominated), nominations will cease. Each candidate will be designated by the Chair to count the ballots. The successful candidate will be the one that receives the most votes.

Once the election for president has been decided, the chair will call for nominations for the office of secretary. The same procedure will be followed. The chair will then call for nominations for treasurer. Again the same procedure will be followed until a treasurer has been elected. An unsuccessful candidate for one office may thus run for other offices during the same election. In the event the Board of Trustees chooses to expand the Board to five members, the same process will be followed in electing members to the Board of Trustees once the other officers have been elected. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until

his resignation, disqualification or removal in the manner provided in these Bylaws; whichever first occurs. Any one person may hold any two or more of such offices; provided, however, that the president may not also be the secretary. No person holding two or more offices shall act in or execute an instrument in the capacity of more than one office. There are no term limitations.

**Section 3. Subordinate Officers.** The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officer or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be Trustees or members of the Association.

**Section 4. Removal.** Any officer may resign at any time by delivering a written resignation, to the president or to the Board of Trustees. Any officer or agent may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 5. Vacancies.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

**Section 6. President.** The president shall be the principal executive officer of the Association and, subject to the control of the Board of Trustees, shall in general supervise and control all of the business affairs of the Association. He shall, when present, preside at all meetings of the members of the Board of Trustees. He may sign any deeds, mortgages, bonds, contracts, amendments to Governing Documents, or other instruments which the Board of Trustees has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Trustees or these Bylaws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Trustees from time to time.

**Section 7. Secretary.** The secretary shall (a) keep the minutes of the Association and of the Board of Trustees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records; and (d) in general perform all duties incident to the office of secretary and such other duties from time to time may be assigned to him or her by the Board of Trustees.

**Section 8 Treasurer.** The treasurer shall (a) have charge and custody of and be responsible for all funds of the Association; (b) receive and give receipt for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, financial institutions, or other depositories as shall be determined by the Board of Trustees; (c) keep charge of the Association checking account, pay bills and write

checks and maintain and accurate current accounting of all income and expenditures; (d) create and annual report of all income and all expenditures to be presented at the annual meeting of the association; (e) help prepare a budget for the coming year to be presented at the annual meeting of the Association; (f) help prepare the Association's annual tax returns, and (g) in general perform all of the duties incident to the office of the treasurer and such other duties as from time to time may be assigned by the Board of Trustees.

**Section 9. Assistant Secretaries and Assistant Treasurers.** The Board of Trustees may appoint assistant secretaries and assistant treasurers who shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the Board of Trustees.

**Section 10. Compensation.** No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of duties as an officer to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in the capacity as an officer.

## **ARTICLE VI** **COMMITTEES**

**Section 1. Designation of Committees.** The Board of Trustees may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions and powers. No committee member shall receive compensation for services that he or she may render to the Association as a committee member; provided, however, that a committee member may be reimbursed for expenses incurred in performance of duties as a committee member to the extent that such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in the capacity as a committee member.

**Section 2. Proceedings of Committee.** Each committee designated hereunder by the Board of Trustees may appoint its own presiding and recording officers and may meet at such places and times upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceeding to the Board of Trustee.

**Section 3. Quorum and Manner of Acting.** At each meeting of any committee designated hereunder by the Board of Trustees, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than seven members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Trustees hereunder shall act only as a committee, and the individual members thereof shall have no powers as such.

**Section 4. Resignation and Removal.** Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the president, the Board of Trustees, or the presiding officer of the committee of which he is a member. Unless

otherwise specified herein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee.

**Section 5. Vacancies.** If any vacancy shall occur in any committee designated by the Board of Trustees hereunder, due to disqualification, death, resignation, removal or otherwise, the remaining members shall, until the filling of such vacancy, constitute the then total authorized membership of the committee and, provided that two or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Trustees.

## **ARTICLE VII** **INDEMNIFICATION**

**Section 1. Indemnification – Third Party Actions.** The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was a Trustee or officer of the Association, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by an adverse judgment, order settlement or conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal action or proceeding, that the person had reasonable cause to believe that his conduct was unlawful.

**Section 2. Indemnification -- Association Actions.** The Association shall indemnify any person who was or is a party or it threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association by reason of the fact that he is or was a Trustee or officer of the Association, against expenses (including attorney's fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to gross negligence or intentional misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication or liability and in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

**Section 3. Determination.** To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 1 or 2 of Article VII hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorney's fees) actually and reasonably incurred by him in connection

therewith. Any other indemnification under Section 1 or 2 of Article VII hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections 1 or 2 hereof. Such determination shall be made either (a) by the Board of Trustees by a majority vote of disinterested Trustees or (b) by independent legal counsel in a written opinion, or (c) by the members by the affirmative vote of more than fifty percent (50%) of the total votes of the Association at a meeting duly called for such purpose.

**Section 4. Advances.** Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this Article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or in behalf of the person to repay such amount of amounts unless it is ultimately determines that he is entitled to be indemnified by the Association as authorized by this article otherwise.

**Section 5. Scope of indemnification.** The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote of disinterested members or Trustees, or otherwise, both as to action in his official capacity and as to action shall apply to all present and future Trustees, officers, employees or agents of the Association and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

**Section 6. Insurance.** The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee or agent of the Association, or who was or is serving at the request of the Association as a trustee, director, officer, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit), against any liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

**Section 7. Payments and Premiums.** All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

#### **ARTICLE VIII** **FISCAL YEAR**

The fiscal year of the Association shall begin on the 1<sup>st</sup> day of April of each year and shall end on the 31<sup>st</sup> day of March next following; provided, however, that the first fiscal year shall begin on the date of incorporation.

#### **ARTICLE IX** **RULES AND REGULATIONS**

The Board of Trustees may from time to time adopt, amend, repeal and enforce reasonable rules and regulations governing the use and operation of the Project; provide, however, that such rules

and regulations shall not be inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Board of Trustees, and with copies of all amendments and revisions thereof.

## **ARTICLE X**

### **NOTICE, ELECTRONIC MEANS**

**Section 1. 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 Board 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 Board 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 Board, 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.

**Section 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, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the member if the Board 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 XI**

### **AMENDMENTS**

Except as otherwise provided by law, the Articles of Incorporation, the Declaration or these Bylaws, these Bylaws may be amended, modified or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty seven percent (67%) of the

total votes (11 of the 15 Units Owners) of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth the amended, modified, repealed or new bylaw shall have been executed and verified by the current president of the Association and recorded in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 2ne day of May, 2019.

(Sign):   
(Print Name): \_\_\_\_\_, President  
MARK GOODMAN HOA PRESIDENT