

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**AND RESERVATION OF EASEMENTS**

(With Owners Association Bylaws)

WHEADON PRESERVE SUBDIVISION

Draper City, Salt Lake County, Utah

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RASHELLE HOBBS

Recorder, Salt Lake County, UT

RICHARDS LAW PC

BY: eCASH, DEPUTY - EF 58 P.

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION OF EASEMENTS for WHEADON PRESERVE SUBDIVISION (together with all amendments, supplements and other modifications hereto) (hereafter "Declaration") is made on the date evidenced below by the Wheadon Preserve Homeowners Associations, Inc. (hereafter "Association").

**RECITALS**

A. The property subject to this Declaration is the Wheadon Preserve Subdivision in Salt Lake County, State of Utah. Exhibit "A" of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association and each Owner of a Unit is a member thereof. The Association is created as a planned unit development and contains certain Common Area, Limited Common Area and easements for the benefit of the Owners of Units therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Wheadon Preserve Subdivision supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Wheadon Preserve Subdivision recorded January 4, 2011, as Entry No. 11110044, records of the Salt Lake County Recorder, State of Utah (the "Original Declaration");

D. Pursuant to Utah Code § 57-8a-104 and Article XIV, of the Original Declaration, 67% of the voting interests of the Association have voted affirmatively to adopt this Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

## ARTICLE I – GENERAL

**1.1 General Purposes.** The Project is a neighborhood having various attached and unattached single-family residential units, recreational open space, and private roads. This Declaration establishes and provides for the continued maintenance of the Project as an attractive and desirable residential community.

**1.2 Densities.** The densities for the Project are generally defined in the Development Plan and may be further set forth in one or more Development Agreements between Declarant and the City as the Project progresses.

**1.3 Association.** The Association has been created as a Utah non-profit corporation. The Members of the Association will be the Owners of Lots (as defined below) and Units (as defined below) within the Project. This Declaration delegates and assigns to the Association the powers of owning, maintaining and administering the Project's Common Elements, the duties of administering and enforcing this Declaration, and of levying, collecting and disbursing the assessments and charges hereinafter created.

**1.4 Declaration.** In order to further the general purposes stated above, this Declaration requires that all of the Property shall at all times be owned, held, sold, conveyed, occupied, used, and enjoyed subject to the provisions of this Declaration and to the covenants, conditions, restrictions, equitable servitudes, reservations, easements, assessments, charges, and liens provided, referred to or incorporated herein, all of which shall run with such properties and all of which shall burden, benefit, and be binding upon the Members, all other persons or entities having or acquiring any right, title or interest therein, and their respective successors, assigns, heirs, devisees and personal representatives.

**1.5 Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot or a Unit shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_ as identified on the Plat recorded in the Office of the Salt Lake County Recorder as Entry \_\_\_\_\_, Map # \_\_\_\_\_ contained within Plat " \_\_\_\_\_ " Wheadon Preserve, Draper City, Salt Lake County, Utah (as such Plat may have heretofore been amended or supplemented), SUBJECT TO the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements of the Wheadon Preserve Home Owners Association, as recorded in the Office of the Salt Lake County Recorder as Entry \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Elements described, and as provided for, in said Declaration (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any 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 Lot or Unit.

## ARTICLE II – DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

- 2.1 “**Act**” shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.
- 2.2 “**Articles**” shall mean the Articles of Incorporation of the Wheadon Preserve Home Owners Association, as such Articles may be amended from time to time.
- 2.3 “**Association**” shall mean the Wheadon Preserve Homeowners Associations, Inc., or such successor association of the Unit Owners acting under this Declaration.
- 2.4 “**Board**” or “**Board of Directors**” shall mean the Board of Directors of the Association, elected by the Owners, and is the governing body of the Association.
- 2.5 “**Bylaws**” means the Bylaws of the Association (attached hereto as **Exhibit B**), as they may be amended from time to time.
- 2.6 “**Capital Improvement Assessment**” shall mean the charge against each Owner and the Owner’s Lot or Unit for the purposes specified in Section 13.05.
- 2.7 “**Common Elements or “Common Area**” shall mean all the real property, Improvements, facilities and equipment owned or managed by the Association, or owned by another person subject to a lease, license, easement or other arrangement in favor of the Association, for the benefit of all of the Owners. The Common Elements within the Project shall include without limitation the community open space, any roads not dedicated to and accepted by the City, and any other areas within the Project clearly intended as and identified as common area or Association property, which areas may be specified in the Development Plan and, where applicable, in other separately recorded documents identifying Common Elements or specifying an interest of the Association with respect to any Common Elements. Common Elements shall also include any communications systems, electronic networks or cable TV systems operated, leased, or subscribed to by the Association for the benefit of all Owners within the Project.
- 2.8 “**Common Expenses**” means and refers to all sums which are required by the Association and the Board to perform or exercise its functions, duties, or rights under the Act or the Governing Documents.
- 2.9 “**Community**” means all of the land described in the Plats, including any property annexed into the Project and the living environment created by the members of the Association acting collectively.

2.10 **“Community Wide Standard”** means the standard of conduct, maintenance, or other activity generally prevailing in the community, as set forth in this Declaration, the Bylaws, and as defined or dictated by the Board from time to time.

2.11 **“Design Guidelines”** shall mean the design guidelines adopted by the Board of Directors and/or Design Review Committee in accordance with this Declaration, as amended from time to time.

2.12 **“Design Review Committee”** shall mean the Design Review Committee for the Project created herein.

2.13 **“Development Agreement”** shall mean any agreement executed by and between the City and the Association pertaining to the development of any portion of the Project.

2.14 **“Development Plan”** shall mean the preliminary plat for the Project approved by the City as the same may be amended from time to time, including without limitation the final Plat. The Development Plan is not intended to set forth the final approved configuration of all elements of the Project.

2.15 **“Director”** shall mean a member of the Board.

2.16 **“Dissolution”** shall mean acts or non-acts by the Association that cause the voluntary or involuntary dissolution of the Association.

2.17 **“Fire Lane” shall mean a portion of the roadway designated to allow access to emergency vehicles. To ensure access to all structures in the Association, parking is prohibited at all hours in the Fire Lane. Wheadon Preserve’s Fire lane includes the west side of Wheadon Court, both sides of the emergency vehicle turn-around (hammerhead) and both sides of Porter View Court (access alley). The Fire Lane was designated by the local fire authority based on universal fire codes and cannot be altered by the Association.**

2.18 **“Guest”** shall mean any invitee staying with a resident for a limited period of time. With respect to guest parking, the Association consists of 25 Owners who share 9 guest parking spaces. The Board of Directors shall establish a clear guest parking policy to promote safety and fair access to all residents and their guests and to minimize vehicle congestion.

2.19 **“Improvements”** shall mean all structures and appurtenances thereto of every type and kind, including, without limitation, buildings, out buildings, walkways, garages, carports, roads, driveways, parking areas, recreational amenities, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, and related fixtures and equipment.

2.20 **“Lot”** shall mean a residential lot within the Project as shown on the recorded Plat and upon which an attached structure designed and intended for use and occupancy as a separate, single-family residential living unit, possibly sharing a common wall with one or more adjacent units is to be constructed, together with all improvements located on the Lot concerned which are

used in conjunction with such a residence. If the term “Lot” only is used in this Declaration, Bylaws or Rules, it is hereby implied that this term includes any Improvements on the Lot and the Unit situated thereon.

**2.21** “**Managing Agent**” shall mean any person or entity appointed or employed as an agent to manage the Association.

**2.22** “**Member**” shall mean a member in the Association through ownership of a Lot or Unit within the Project.

**2.23** “**Mortgage**” shall mean any mortgage or deed of trust or other conveyance of a Lot or Unit given to secure a loan from an institutional lender in the business of making or holding residential real estate loans, provided that the loan is used to finance the purchase of the Lot or Unit and the lien and security interest for such loan will be void and reconveyed upon the repayment of such loan, and further provided that such lender is not affiliated in any way with the Owner of the Lot or Unit.

**2.24** “**Mortgagee**” shall mean a person to whom a Mortgage is made and shall include the beneficiary of a deed of trust. The term “First Mortgagee” shall include any Mortgagee who, by virtue of the Owner’s Mortgage holds a first and prior lien upon any Lot or Unit superior to the lien of any other Mortgagee.

**2.25** “**Mortgagor**” shall mean a person who mortgages the Owner’s Lot or Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a deed of trust.

**2.26** “**Owner**” shall mean the person, holding title of record to any Lot or Unit as reflected in the Public Records (including contract purchasers under executory contracts of sale), but excluding those persons having such interest merely as security for the performance of an obligation. For purposes of membership in the Association (i.e., voting) and being obligated to pay assessments levied against Lots and Units by this Declaration, the term shall refer to Owners of Lots and Units.

**2.27** “**Plat**” shall mean a recorded subdivision plat, as amended from time to time, covering residential Lots, Units, and/or Common Elements within the Project.

**2.28** “**Project**” shall mean the Wheadon Preserve Subdivision as it exists at any time.

**2.29** “**Property**” shall mean the real property located in Draper City, Utah as described on Exhibit A attached hereto.

**2.30** “**Public Records**” shall mean the Office of the County Recorder of Salt Lake County, Utah.

**2.31** “**Reserves**” shall mean those reserves anticipated in Sections 13.02(b) and 13.03.

**2.32** “**Rules and Regulations**” shall mean the Rules and Regulations for the Project’s Common Elements adopted by the Board pursuant this Declaration.

2.33 “**Shared Lot Common Area**” shall mean an area common to two or more Units, such as a shared wall, fence, or roof, which area is for the exclusive use and enjoyment of the Owners of the Lots or Units sharing such common feature between them.

2.34 “**Special Assessment**” shall mean the charge against each Owner and the Owner’s particular Lot for the purposes specified in this Declaration.

2.35 “**Specific Assessment**” shall mean the charge against a particular Owner and the Owner’s Lot for the purposes specified in this Declaration.

2.36 “**Supplemental Assessment**” shall mean the charge against an Owner and such Owner’s Lot for the purposes of maintaining Shared Common Lot Areas or Unit exteriors as specified in this Declaration.

2.37 “**Transfer**” shall mean any voluntarily or involuntarily abandonment, surrender, assignment or other form of transfer by the Association of any portion of or all of the Common Elements.

2.38 “**Unit**” shall mean a single-family residential unit, which unit may share a common wall with one or more adjacent units, constructed on the Property upon a numbered Lot reflected on the recorded Plat.

### ARTICLE III - PROPERTY DESCRIPTION & RIGHTS

3.1 **Association.** The Wheadon Preserve Home Owners Association shall do such things as are within its powers and as may reasonably be required to maintain the Project and its Common Elements as an attractive and desirable residential community. The Members of the Association shall be the Owners of Lots and Units within the Project. The duties and powers of the Association shall relate to the Project as a whole and to the ownership and use of the Common Elements, their care, maintenance and upkeep, including the imposition of assessments therefor upon the Owners and their Lots and Units.

3.2 **Duties and Powers of Association.** The Association, acting through the Board, shall have the powers and duties as provided herein and in the Articles and Bylaws together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter onto any Lot for the purpose of maintaining and repairing such Lot or any Improvement thereon if for any reason the Owner fails to maintain and repair such Lot or Improvement consistent with this Declaration or the Community Standard, or for the purpose of removing any Improvement

constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules and Regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Elements, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Lot or Unit on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

(i) Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Officers may from time to time deem desirable;

(ii) The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Officers may deem desirable.

**3.3 Operation and Maintenance.** The Association shall be responsible for the operation, management, regulation, maintenance, repair and replacement of the Common Elements. Without limiting the foregoing, the Association shall, as needed, operate, manage, regulate, maintain, repair and replace any surface, subsurface, or above-surface Common Elements, including roads, parks, trails, sidewalks or other Common Elements situated on or crossing any portion of the Project or which is the subject of an easement or license in favor of the Association over property that is not a part of the underlying Property within the Community but for such easement or license.

(a) The Association shall not be responsible for the repair and maintenance of the Shared Lot Common Areas and the exteriors of the Units. Each Owner shall be responsible for maintaining such Owner's Units, including the Shared Lot Common Areas and Unit exteriors, in a good and attractive condition and state of repair and in full compliance with this Declaration and the Design Guidelines (as defined below); *provided, however*, that the cost of the maintenance and repair of exteriors of such Units and the Pad Lot Common Area may be borne by the Owner(s) of the Lots through Supplemental Assessments levied by the Association against the affected Lots as set forth herein.

(b) The Board shall be responsible for ruling upon disputes between adjacent Owners with regard to Shared Lot Common Area issues, and the decision of the Board shall be deemed to be final and binding absent a clearly erroneous decision.

**3.4 Health and Safety.** The Association have any obligation to provide services for the maintenance of health and safety within the Project.

**3.5 Administration and Enforcement.** The Association shall have the power to:

(a) Grant easements or rights-of-way required by utilities to serve the Common Elements.

(b) Employ or contract with a manager to perform all or any part of the duties and responsibilities of the Association, and delegate its power to committees, officers and employees.

(c) Take such actions as may reasonably be necessary or desirable to adopt, comply with and enforce the Rules and Regulations.

(d) Contract with such persons as may reasonably be necessary or desirable to effectuate the purposes of this Declaration, including, without limitation, attorneys, accountants, and contractors to collect and dispose of solid waste and refuse, to maintain the landscaping, to provide security services, and the like, all with respect to the Common Elements.

(e) Take such actions as may reasonably be necessary or desirable to enforce the terms and provisions of the Articles, the Bylaws, or this Declaration.

(f) Collect such assessments and enforce such liens as may be reasonably necessary or prudent to maintain the Common Elements in the judgment of the Board or the City.

**3.6 Insurance.** The Association shall maintain such policy or policies of liability, fire and hazard insurance with respect to the Common Elements and personal property owned by the Association as required herein.

**3.7 Assessments.** The Association shall levy and collect all assessments as provided herein.

**3.8 Telecommunications Systems and Access.** Within the Project, the Association may provide for cable television facilities and services; other telecommunications systems and access to communications programming, including Internet access via cable or telephone facilities; other audio or video program services; and other telecommunications devices as the Board may deem appropriate bearing in mind the demand of Owners therefor and the costs of delivery thereof. Owners are obligated to pay, through common assessments, for these services whether the Owner(s) utilize any services offered to the membership-at-large.

**3.9 Membership in the Association.** Every Owner, upon acquiring title to a Lot or Unit in the Project, shall automatically become a Member of the Association and shall remain a Member



until such time as the ownership of the Lot or Unit giving rise to such membership ceases, for any reason, at which time the successor Owner of the Lot or Unit shall become the successor Member with respect to such Lot or Unit.

**3.10 Membership Appurtenant.** Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of a Lot or Unit. Ownership of a Lot or Unit shall be the sole qualification for membership in the Association, and such membership shall not be transferred, pledged, or alienated in any way except upon the transfer of title to the Lot or Unit giving rise to such membership, and then only to the successor in interest of such title. Any attempt to otherwise transfer a membership shall be null and void, and will not be reflected upon the books and records of the Association.

**3.11 Title to the Common Elements.** The Association shall be the Owner of all Common Elements (as defined herein) within the Plat.

**3.12 Taxes on Common Elements.** As may be applicable, real estate taxes or assessments levied or assessed against or upon the Common Elements shall be paid by the Association and shall constitute a portion of Common Expenses unless the applicable taxing or assessing authority is willing to prorate the same equally to each Owner's Lot or Unit. Each Owner shall execute such instruments and take such action as may be reasonably specified by the Association to obtain separate real estate tax assessments for the Common Elements on the Owner's Lot or Unit.

**3.13 Damage or Destruction to Common Elements.** Damage to or destruction of all or any portion of the Common Elements shall be handled in the following manner:

(a) If the insurance proceeds are sufficient to effect total restoration in the event of damage or destruction to any Common Element, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are insufficient to effect total restoration, then the Association shall cause such Common Element to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Capital Improvement Assessment against each of the Owners and their Lots and Units, in accordance with the provisions of this Declaration.

## **ARTICLE IV – EASEMENTS AND THIRD-PARTY RIGHTS**

**4.1 Property Subject to the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property and interests described in the Plats, including any property annexed into the Project, and including the Units described on **Exhibit A**

attached hereto, which this Declaration and all covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every Owner, Lot and Unit 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 each Owner thereof. 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.

**4.2 Description and Legal Status of Units.** The Plat shows the Lots, Units and building designations, their locations, dimensions from which its areas may be determined together with the Definitions above and the Common Elements. All Lots, and Improvements, thereon, and Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed.

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

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

(a) **Right of Entry.** The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot or Unit for the purpose of performing maintenance referred to herein and determining whether or not the Lot or Unit is in compliance with the Governing Documents or whether the use of the Unit is causing damage or harm to the Common or Limited Common Elements. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot or Unit.

(b) **Utility Easements.** The Association and any public utility provider shall have an easement through all Lots and Units and the Common Elements for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities unless permitted by the Board. The easement area within each Lot and Unit and all Improvements therein shall be maintained continuously by the Owner of the Lot or Unit in accordance with the terms herein, except for those Improvements for which a public authority or utility provider is responsible. Each Lot or Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in or on

any Lot or Units and serving his or her Lot or Unit.

(c) Police, Fire and Ambulance. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common and Limited Common Elements in the performance of their duties.

(d) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Elements. This easement is appurtenant to and passes with the title to every Lot and Unit. Common Element use is also subject to the following:

(1) The right of the Association to limit the number of guests of Members using the Common Elements.

(2) The right of the Association to suspend the voting rights of a Member for any period during which any assessment or portion thereof against his Unit remains unpaid or for any period of covenant, bylaw or rule remains in violation.

(3) The right of the Association to enter into agreements or leases which provide for use of Common Areas and facilities by a similar Association for use of the Common Elements and facilities of the other Association.

(4) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Association.

(5) The right of the Association to take such steps as are reasonably necessary or desirable to protect the Common Elements against foreclosure.

(6) Any terms and conditions contained in the Governing Documents.

(7) The right of the Association, through its Board, to adopt Rules and Regulations concerning the use of Common Elements.

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

**4.6 Limited Common Area.** An Owner is entitled to the exclusive use of the Limited Common Elements adjacent and appurtenant thereto, if any. The Association, through its Board, may adopt rules and regulations concerning use of the Limited Common Areas. Limited Common Area is subject to the rights of the Association as set forth herein.

**4.7 Delegation of Use.** An Owner is deemed to delegate his right of enjoyment to the Common Elements to the Members of his family, his tenants, or contract purchasers who reside on the Property. No one who is a non-resident shall have any such delegable right of enjoyment.

## **ARTICLE V – OWNERS’ RIGHTS AND OBLIGATIONS**

**5.1 Owners’ Easements of Enjoyment.** Every Owner and the Owners’ Guests shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to and over the Common Elements, which right and easement shall be appurtenant to and shall pass with fee title to the Owner’s Lot or Unit, subject to the rights of the Association as set forth in this Declaration, the Articles and Bylaws. The Common Elements shall be used only in a manner consistent with the Community Standard and with the use restrictions applicable to Owners of Lots and Units set forth herein and as further contained in the Rules and Regulations.

**5.2 No Exemption from Liability.** No Owner shall be exempt from personal liability for assessments to be levied by the Association, nor shall the Lot or Unit owned by such Owner be released from the liens and charges thereof by waiver of the use and enjoyment of the Common Elements or the facilities thereon or by abandonment of the Owner’s Lot or Unit.

**5.3 Obligations of Owners.** It shall be the duty of each Owner to abide by the provisions of the Declaration regarding Design Review Committee approval and the maintenance, repair and upkeep of the Owner’s Lot or Unit in a neat, sanitary and attractive condition. It shall also be the duty of each Owner to pay any and all assessments legally assessed pursuant to this Declaration for the maintenance of the Common Elements and the other purposes set forth herein.

**5.4 Maintenance and Repairs.** Each Owner shall, at the Owner’s own cost, maintain the Owner’s Lot and Unit in good condition and repair at all times. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Association. The painting, remodeling, rebuilding, or modification of any Unit exteriors or parts thereof must first be submitted to and approved by the Design Review Committee pursuant to its procedures. Subject to such Design Review Committee approval, all repainting/staining and other maintenance of the exteriors of the Units shall be performed by or at the direction of (and at the expense of) the Owners of the Lots, and all of such Units shall be maintained in a good and attractive condition and state of repair and in compliance with this Declaration and the Design Guidelines. No Owner shall openly or wantonly neglect his Lot or Unit or fail to take all reasonable steps to keep the same in a good and attractive condition and state of repair at all times.

If an Owner fails to repair and maintain such Owner's Unit or Lot pursuant to the standards set forth in this Declaration, the Board may provide written notice to such Owner of such failure. If an Owner (a) fails to take the maintenance or repair action(s) specified in the notice within thirty (30) days from the date the Association mailed the notice to the Owner, or (b) if the Owner fails to begin such action within thirty (30) days from mailing and further fails to diligently proceed with the required repair or maintenance action(s) until completion (except to the extent such maintenance or repair actions cannot reasonably be completed within one month), the Association shall have to right to perform such maintenance or repair action as the cost and expense of such Owner as a Specific Assessment as provided in this Declaration.

### **5.5 Maintenance of Shared Lot Common Areas.**

(a) In General: Every wall, roof area, or fence, including the foundation of adjoining Units, which is built as a part of the original construction of a Unit and placed on the boundary line between separate Units shall constitute and be a Shared Lot Common Area, and the Owner of a Unit immediately adjacent to a Shared Lot Common Area shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

(b) Rights in Shared Lot Common Area: Each Owner of a Unit, which is adjacent to a Shared Lot Common Area, shall have the right to use the Shared Lot Common Area for the support and protection of the structure originally constructed thereon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit, and ducts originally located therein and all replacements thereof.

(c) Damage to Shared Lot Common Area:

(1) If any Shared Lot Common Area is damaged or destroyed through the act or acts of any Owner of a Unit which is adjacent to such Shared Lot Common Area, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, whether such act is willful, negligent or accidental, such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Shared Lot Common Area Existed prior to such damage or destruction without costs therefore to the Owner of the other adjoining Unit.

(2) Any Shared Lot Common Area damaged or destroyed by some act or event other than one caused by the Owner of a Unit which is adjacent to such Shared Lot Common Area, or his agents, servants, tenants, guests, invitees, licensees, or members of his family, shall be rebuilt or repaired by the Owners of the adjacent Units to as good a condition as in which such Shared Lot Common Area existed prior to such damage or destruction at joint and equal expense of such Owners, and as promptly as is reasonably possible.

(3) In the event that any Owner shall fail, within a reasonable time after the occurrence of damage or destruction referred to in this Section, to perform the necessary repair or rebuilding, then the Board may cause such repairs or rebuilding to be performed in the manner as provided in this Section and the cost thereof shall be charged to such Owner as his

personal obligation and shall be a continuing lien on the Owner's Unit.

(d) Change in Shared Lot Common Area: Any Owner of a Unit who proposes to modify, rebuild, repair or make additions to any structure upon his Unit in any manner which requires the extension, alteration or modification of any Shared Lot Common Area shall first obtain the written consent thereto, as to said Shared Lot Common Area, of the Owner(s) of the other adjacent Unit(s) and the Community Association Board, in addition to meeting any other requirements which may apply. In the event that a Shared Lot Common Area is altered, regardless of whether all required consents have been obtained, any express or implied warranties made by the Declarant concerning the structural integrity of the Shared Lot Common Area or any of the Units adjacent to the Shared Lot Common Area shall be null and void and the Owner who alters the Shared Lot Common Area shall be responsible for any and all damage caused to any of the adjacent Units or improvements thereto.

(e) Arbitration: In the event of a disagreement between Owners of Units adjoining a Shared Lot Common Area with respect to their respective rights or obligations as to such Shared Lot Common Area, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding absent clear error.

**5.6 Clarification and Alteration of Certain Maintenance Duties by Rule**. To the extent not clarified herein and not inconsistent with the provisions of this Declaration or the Bylaws, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities.

**5.7 Owners Insurance**. Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall be responsible to procure and maintain in force hazard (property) insurance and liability insurance with respect to the Owner's Lot and Unit as is customary in projects such as the Project and which may be consistent with such Owner's personal circumstances.

**5.8 Assessments and Rules Observance**. Each Owner shall be responsible for the prompt payment of any Common, Special, Specific, or Supplemental Assessments or any other assessments provided for in this Declaration and for the observance of the Rules and Regulations promulgated by the Board from time to time.

**5.9 Transfer of Interests**. Except for obligations already accrued, an Owner who, for other than purposes of securing a financial interest, transfers all of his interest in his Lot or Unit to another, either voluntarily or by operation of law, shall be relieved of all future obligations under this Declaration following such transfer.

## ARTICLE VI – DESIGN REVIEW

**6.1 Design Guidelines.** Subject to the City’s ordinances and building code provisions, the Improvements developed and constructed (or re-modeled or re-constructed) shall comply with the procedures and criteria set forth in this Declaration and any design, landscaping and building guidelines established by the Association (collectively the “*Design Guidelines*”) as approved by the Design Review Committee. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction.

**6.2 Modifications.** No building, fence (except backyard boundary fencing consistent with the existing fencing established by the original developer), wall, Improvement or other structure, extension or expansion of the foregoing, shall be commenced, erected or maintained upon the Property, including any Unit, nor shall any exterior addition to a Lot or any Unit, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Design Review Committee.

**6.3 Unit Quality and Size.** The size and quality material restrictions for the Units constructed within the Project shall be set forth in the Design Guidelines approved by the Design Review Committee. The Design Review Committee, however, does not warrant or guarantee the performance of any product or materials.

**6.4 Design Review Committee.** The Design Review Committee (the “*Committee*”) shall consist of an uneven number of persons of not less than three nor more than five members, who need not be Owners. The members of the Committee shall be appointed by Declarant during the Declarant Control Period and thereafter by the Board, and the members of the Committee may be members of the Board. The Committee may utilize professional consultants including an architect, a landscape architect, and a civil engineer. The Committee shall have and exercise all of the powers, duties and responsibilities set out in this Declaration and shall meet on such schedules as may be established by its chairman. A majority of its members shall constitute a quorum and the majority of its members present at the meeting shall be sufficient to approve action. Actions may also be approved by unanimous written consent of all Committee members.

**6.5 Approval by Design Review Committee.** Except for original construction by Declarant, no Improvements of any kind, including, without limitation, residence dwellings, ponds, parking areas, mail boxes, fences, walls, garages, driveways, antennae, satellite dishes, flag poles, curbs, and covered walks shall ever be erected, altered, refinished or repainted (unless of the same finish or color as the original), or removed from any lands within the Property, nor shall any excavating, clearing, removal of trees or shrubs, landscaping or other alteration of existing site conditions be done on any lands comprising the Property, unless the complete plans and

specifications therefor (“*Plans and Specifications*”) complying with the Design Guidelines requirements are approved by the Committee prior to the commencement of work. The Committee shall consider the materials to be used on the external features of said buildings or structures, including exterior colors, harmony of external design and existing structures within the Project; the building bulk or mass of any buildings or structures within the Project, their location with respect to topography, existing trees, finished grade elevations, and harmony of landscaping with the natural setting and surroundings; and shall ascertain whether the Improvements conform to the Design Guidelines then in effect, under this Declaration.

**6.6 Approval Procedure.** Two copies of the complete Plans and Specifications must be submitted to the Committee for approval or disapproval by it in writing within 30 days after submission, *provided* that Plans and Specifications for any replacement structure to be constructed in substantially the same configuration, location, architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within 10 days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Article 6, as to which respects it shall be deemed disapproved. The Committee shall disapprove Plans and Specifications submitted to it which are not sufficient for it to exercise the judgment required of it by this Article 6. In the event of a conflict between the Design Guidelines and the applicable regulations or ordinances of the City or any other governmental entity having jurisdiction, the latter shall prevail.

**6.7 Construction.** Once begun, any construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. If reasonably necessary to enable such construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the common areas in the vicinity of the activity, *provided* that they shall promptly restore such areas to their prior condition when the use thereof is no longer required. The Committee shall have the authority and right at any time and from time to time at any reasonable hour to inspect construction or other activities authorized for the purpose of determining whether the same comply in all respects with the applicable Plans and Specifications as approved by it, but it shall have no duty to make such inspections.

**6.8 Fee.** The Committee may charge such a reasonable fee or fees for its review of Plans and Specifications as shall be determined from time to time by the Board. Such fee or fees shall be reasonable in relation to the work performed and shall be applied uniformly and consistent with the amount that may be charged by Utah law.

**6.9 Variances.** The Committee has the authority to deviate from the requirements contained in the Design Guidelines in extenuating circumstances, when to do otherwise would create an unreasonable hardship or burden for an Owner. The Committee does not, however, have authority to allow deviation from the requirements of the City.



**6.10 General Standards.** The Committee shall exercise its best judgment to see that all improvements, construction, landscaping, and alterations on the lands within the Project conform and harmonize with the natural surroundings and with existing structures as to external design, materials, color, siting, height, topography, grade and finished grade elevation in keeping with the Design Guidelines and this Declaration.

**6.11 Ultimate Responsibility.** Each Owner shall at all times conform and comply with all approved Plans and Specifications for the Improvements on such Owner's Lot or Unit and otherwise conform and comply in all respects with the Design Guidelines and this Declaration, as well as with all applicable laws, ordinances, building codes, rules, regulations, orders and the like of any governmental agency having jurisdiction.

**6.12 Written Records.** The Committee shall keep and safeguard complete written records of all applications for approval submitted to it (including one set of all Plans and Specifications so submitted) and of all actions of approval or disapproval and all other actions taken by it under the provisions of this instrument, which records shall be maintained for a minimum of five years after the approval or disapproval.

**6.13 Procedure for Appeal.** In the event Plans and Specifications submitted to the Committee are disapproved or deemed disapproved, the Owner may appeal such disapproval or deemed disapproval in writing to the Board; *provided, however*, a written notice of appeal specifying the grounds for appeal consisting of any alleged failure by the Committee to properly apply the Design Guidelines or provisions of this Article VI shall be received by the Board not more than 30 days following such disapproval or deemed disapproval. Within 30 days following receipt of such notice of appeal, the Board shall render a written decision determining whether the Committee properly applied the Design Guidelines, or the provisions of this Article 6. In the event the Board fails to render such decision within said 30-day period, such disapproval or deemed disapproval of the Committee shall be deemed to have been affirmed by the Board.

**6.14 Non-Liability of Design Review Committee Members.** Neither the Committee, any member thereof, nor any duly authorized representative thereof shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee. The Committee shall review and approve or disapprove all Plans and Specifications submitted to it solely on the basis of compliance with the Design Guidelines, any applicable provision of this Article 6, aesthetic considerations, and the overall benefit or detriment that would result to the immediate vicinity of the proposed construction or alteration and the Project generally. The Committee shall take into consideration the aesthetic aspects of the designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval from the standpoint of structural safety or conformance with building or other codes.

**6.15 Variance in Event of Reconstruction.** Any Owner whose Lot or Unit has suffered damage may apply for approval to the Committee for reconstruction, rebuilding, repainting or repair of the Owner's Lot or Unit in a manner which will provide for an exterior appearance and design different from that which existed prior to the date of the casualty. Application for such approval shall be made in writing together with full and complete Plans and Specifications showing the proposed reconstruction and the end result thereof. The Committee shall grant such approval only if the design proposed by the Owner would result in a finished structure in compliance with the then applicable Design Guidelines.

## ARTICLE VII – USE RESTRICTIONS

**7.1 General Use Restrictions.** All of the properties which are subject to this Declaration are hereby restricted to residential dwellings, and buildings in connection therewith, including but not limited to community buildings on the common property.

**7.2 Draper City Zoning Regulations.** No lands within the Property shall ever be occupied or used by or for any building or purpose or in any manner which is contrary to this Declaration or any applicable Development Agreement or City Ordinance. Without limiting the generality of the foregoing, except as may be altered by the Development Agreement recorded in the Public Records for the Property, the Development Standards set forth in section 9-10-040 of the City Municipal Code and the Supplementary Development Standards of the City as set forth in Chapter 9-27 of the City Municipal Code are hereby incorporated in to this Declaration and are made a part hereof.

**7.3 Oil and Mining Operations.** No Owner shall conduct mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including oil, gas, minerals, gravel, sand, rock, and earth, or on the surface of the Property.

**7.4 Residential Use.** The Lots and Units within the Project shall be used exclusively for residential living purposes. Units shall be used for single-family, residential purposes in accordance with, and subject to, the other provisions of this Declaration, the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities that cause additional pedestrian or vehicular traffic, creates a sight or noise nuisance, shall be conducted on any Unit or in any other portion of the Project. Any home business use shall be approved, in writing, by the Association first and authorized and licensed by Draper City pursuant to the City's home occupation ordinance. Basement rentals, individual room rentals, or similar rental arrangements are not permitted. As set forth below, only an entire Unit maybe rented; not portions thereof. No owner may lease or rent any unit for a period of less than twelve (12) consecutive months. Short-term, nightly or weekly rentals are not permitted. See Section 7.5 below.

## 7.5 Lease Restrictions.

(a) Rental Cap. It is hereby amended and agreed that no more than **twenty-five percent (25%)** of the Dwelling Units in the Project, may be rented at any given time, except as provided within this document or as may be required by law.

(b) Leasing and Renting of Dwelling Units. Consistent with the provisions of the Declaration and the Utah Condominium Act, the leasing and renting of Units by Owners shall be in accordance with the terms herein.

The terms “leasing,” “lease,” “renting,” “rent,” or “rental” used in reference to any Unit within the Association shall mean and refer to the granting of a right to use or occupy a Unit to any person or entity for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean nor include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

A. The following Unit Owners and their respective Units, upon proof sufficient to the Board of Directors, are **exempt** from the rental restrictions outlined herein below unless otherwise stated:

- (i) A Unit Owner in the military for the period of the Unit Owner’s deployment;
- (ii) A Unit occupied by a Unit Owner’s parent, child, or sibling;
- (iii) A Unit Owner whose employer has relocated the Unit Owner for two (2) years or less; **or**,
- (iv) A Unit Owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:
  - (a) A current resident of the Unit; or,
  - (b) The parent, child, or sibling of the current resident of the Unit.

B. Subject to “Section A” above, all Owners and Units shall be bound by the following restrictions:

- (i) No Owner may lease or rent less than their entire Unit and no Owner may lease or rent any Unit for a period of less than twelve (12) consecutive months.
- (ii) No short term, daily, weekly or monthly rentals are permitted including, but not limited to, nightly or other short term rentals through programs such as VRBO,

Airbnb, or similar arrangements. Individual room rentals are not permitted.

(iii) Unless exempt as stated above, no Unit may be rented or leased if the rental or lease results in more than four (4) of the Units (“Rental-Lease Limit”) being rented or leased.

C. Owners desiring to rent or lease their units shall submit a written application to the Board (and/or its agent). Additionally, the Owner shall submit to the Board within ten (10) days of occupancy by the tenants, the names of those occupying the Unit. The Board of Directors shall monitor and make a determination of whether the rental or lease will exceed the Rental-Lease Limit.

The Board of Directors shall:

(i) Approve the application if it determines that the rental or lease will not exceed the Rental-Lease Limit; or

(ii) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental-Lease Limit.

D. Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Board of Directors as set forth in this subsection.

(i) The Board shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application and application fee. Within ten (10) business days of receipt, the Board shall approve or deny an application as provided herein and shall notify the Owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.

(ii) If an Owner’s application is denied, the applicant may be placed on a waiting list according to the date the application was received so that the Owner whose application was earliest received will have the first opportunity to rent or lease, subject to subsection D of this Section.

(iii) The Board is authorized to adopt, by Board rule, procedures and policies that govern the creation, organization and process to implement the above-mentioned waiting list. Said procedures may be modified from time-to-time by the Board of Directors to fairly implement the waiting list program described herein.

E. An application form, the application approval process, a waiting list, and any other rules deemed necessary by the Board of Directors to implement this section shall be established by rules or resolution adopted by the Board consistent with this Declaration and to ensure the consistent administration and enforcement of the rental restrictions contained herein.

F. All Owners provide the Board with a copy the executed lease, which shall be kept on file with the books and records of the Association so that the Association may determine the number of Units rented or leased. The Approved Lease Agreement, or its equivalent, shall be

on a form prescribed by resolution of the Board.

G. If an Owner fails to submit the required application, fails to use and submit a copy of the Approved Lease Agreement and rents or leases any Unit, and/or rents or leases any Unit after the Board has denied the Owner's application, the Board may assess fines against the Owner or Tenant (as may be consistent with Utah law, Utah Code §57-8-8.1) and the Owner's Unit in an amount to be determined by the Board pursuant to a schedule of fines adopted by resolution.

In addition, regardless of whether any fines have been imposed, the Board may proceed with any other available legal remedies, including but not limited to an action to, terminate the rental or lease agreement and removal of any tenant or lessee.

H. The Association shall be entitled to recover from the offending Owner its costs and attorney's fees incurred for enforcement of this Section regardless of whether any lawsuit or other action is commenced. The Association may assess such costs and attorney's fees against the Owner and the Lot as an assessment pursuant to the Declaration.

I. Grandfathering Clause. All Owners of record prior to the recordation of this amendment currently renting or leasing their Unit, or continue to rent or lease their Unit, for as long as they own the Unit, until such time as title to the Unit changes, for whatever reason, unless an exemption (above) is required. At such time title changes, the "grandfathered status" is lost.

J. Rental and lease agreements shall comply with this subsection.

(i) The Owner shall provide the tenant or lessee with a copy of the Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations then in effect and shall take a receipt for delivery of the documents. In the event any such documents are amended, revised, changed, or supplemented by the Association, the Owner shall provide the tenant or lessee with a copy of the amendments, revisions, changes, or supplements within ten (10) calendar days of adoption by the Association, its Board of Directors, or its membership.

(ii) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a signed copy of the Approved Lease Agreement.

K. In addition to any other remedies available to the Association, the Board may require the Owner to terminate a lease or rental agreement if the Board determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the rules and regulations adopted thereto. If an Owner fails to correct any such violations related to their tenants, or fails to terminate the lease pursuant to the above, the Owner hereby grants the Board of Directors standing to initiate eviction proceedings against their tenant and considers the Association a third-party beneficiary to its rental/lease agreement.

L. Additional Rules. The Board is authorized to promulgate additional rules, procedures and requirements regarding rentals and the rental process as it deems necessary from time to time to give effect to, or further clarify, this amendment.

(i) Fines, Sanctions and Attorney's Fees. The Board shall have the power to enforce the Association's governing documents, including by obtaining injunctive relief from the courts, by issuing fines, by terminating any common service paid for as a common expense, and by utilizing any other remedy authorized by law or the governing documents in order to maintain and operate the project and to enforce these rental restrictions. The Association shall be entitled to its attorney's fees and costs in any action to enforce the terms of this Amendment or its rules.

(ii) Lease Payments by Tenant to Association. If an Owner who is renting his or her Unit fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board may demand that the tenant, and the tenant thereafter shall, pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until the amount due to the Association is paid in accordance with the procedures established by law, and such amounts shall be the personal obligation and debt of the tenant to the Association, jointly and severally with the Owner.

(iii) Hardship Exemptions to Rental Prohibition. The Board shall have the sole discretion to allow rentals that would otherwise exceed the rental cap stated herein upon the showing of an undue hardship by the requesting owner. The Board shall state the terms and duration of the hardship exemption granted and cause the owner to sign an agreement to such terms. No hardship exemptions are guaranteed, nor may this Section be relied on by any owner that such an exemption will be granted.

**7.6 Signs.** Unless written approval is first obtained from the Board of Directors, no advertisement or poster of any kind may be posted in or upon the Properties except: a sign no larger than three square feet for the Owner to advertise the Owner's Lot or Unit for sale, no signs or advertising devices shall be permitted on any Lot or Unit, including, without limitation, commercial, political, informational or directional signs or devices, except signs approved in writing by the Design Review Committee in accordance with its Design Guidelines as to size, materials, color and location: (a) as necessary to identify ownership of the Lot or Unit and its address; (b) as necessary to give directions; (c) to advise of rules and regulations; (d) to caution or warn of danger; and (e) as may be required by law. Any approved signs shall be located as approved by the Design Review Committee. The Design Review Committee may develop comprehensive sign regulations. The Declarant may erect such signs in a size and color as it deems appropriate for the advertising and sale of Lots and Units within the Project.

**7.7 Animals.**

(a) The Board of Directors shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets.

(b) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within or on any Unit, except dogs, cats, or other ordinary household pets, two or less in total number, may be kept provided that they are not kept, bred, or maintained for any commercial purpose. Such ordinary household pets may not be kept or allowed to remain outside of the pet owner's Unit unless and until written authorization is obtained from the Board. The Board, in its sole discretion, shall have the right to revoke such authorization at any time in its sole discretion and shall have the power to require any Owner or Guest to remove any animal or other pet belonging to them which is not disciplined, or which constitutes an undue annoyance or a danger to other Owners, their Guests, or others.

(c) The Owner of any animal permitted hereunder must keep such animal on a leash when outside of the Unit or keep it confined within the Unit. Owners and their guests must clean up after their pets and any animal waste must be immediately removed and disposed of by the Owner.

(d) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of their animal's waste from the Common Areas and Limited Common Areas.

(e) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution relating to Rules and Regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board of Directors levy fines and may apply for appropriate judicial relief in the event that Owners violate this Article.

**7.8 Offensive Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Unit or other portion of the Common Areas, nor shall anything be done in or placed upon any Common Area which interferes with or jeopardizes the enjoyment of other Units or which is a source of annoyance to residents.

**7.9 Underground Utility Lines.** All water, gas, electrical, telephone, and other permanent utility lines within the limits of the Property must be buried underground and may not be exposed above the surface of the ground.

**7.10 Smoking - No Smoking in Common Elements.** Smoking is restricted to areas within an Owner's Unit or Lot that will prevent any and all smoke from being transmitted to a neighboring Lot or Unit. Under no circumstances is smoking allowed in the Common Elements. Smoking is defined to include carrying, burning or otherwise handling or controlling any lighted or

smoldering product containing tobacco, including, but not limited to, cigarettes, e-cigarettes, cigars, hookahs, or pipes. Each Owner is responsible for the compliance with this rule by the owner and all residents within the Owner's unit, and for all guests and invitees of such Owner. Violations of this rule may result in a fine pursuant to the Association's fine schedule as adopted and amended from time to time by the Board.

**7.11 Maintenance of Property.** All Lots and Units and all Improvements on any Lot or Unit shall be kept and maintained by the Owner thereof in clean, safe, attractive and attractive condition and in good repair.

**7.12 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Lot or Unit nor shall anything be done or placed on any Lot or Unit which is or may become a nuisance or cause significant embarrassment, disturbance or annoyance to others.

**7.13 Hazardous Activities.** No activities shall be conducted on any Lot or Unit and no improvements shall be constructed on any Lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

**7.14 No Unsightliness.** No unsightliness shall be permitted upon any of the Property. Without limiting the generality of the foregoing: (a) any unsightly structures, facilities, equipment, tools, boats and vehicles other than operating automobiles shall be enclosed within an approved building or appropriately screened from view, except equipment and tools when in actual use for construction, maintenance or repairs; (b) no trailers, mobile homes, tractors, truck campers or trucks other than pickup trucks shall be kept or permitted to remain upon the Property; (c) no vehicle, boat or equipment shall be constructed, reconstructed, repaired or abandoned upon the Property; (d) no lumber, grass, shrub or tree clippings, plant waste, metals, bulk materials or scrap shall be kept, stored or allowed to accumulate on the Property, except in approved service yards meeting this Declaration or the Design Guidelines and the Design Review Committee; (e) refuse, garbage and trash shall be placed and kept at all times in a covered container and such container shall be kept within an enclosed structure or appropriately screened from view; (f) hanging, drying or airing of clothing or household fabrics shall not be permitted on Lots or Units if visible from buildings, Lots, Units, Or areas surrounding the Property.

**7.15 No Annoying Lights, Sounds or Odors.** No light shall be emitted from any Lot or Unit which is unreasonably bright or causes unreasonable glare or does not comply with the Rules and Regulations or Design Guidelines; no sound shall be emitted from any Lot or Unit which is unreasonably loud or annoying, including without limitation, speakers, horns, whistles, bells or other sounds devices, except security and fire alarm devices used exclusively to protect the Property or improvements thereon; and no odors shall be emitted from any Lot or Unit which are noxious or offensive to others.



**7.16 Restrictions on Fences and Enclosures.** In order to maintain, as nearly as possible, a “park-like” feeling in the Project, the following shall apply:

- (a) There shall be no front yard fencing under any circumstance.
- (b) The type and location of all fencing must be approved in writing by the Design Review Committee prior to installation.
- (c) Except as specifically provided for in this Declaration, there shall be no chain link fencing.
- (d) Patio walls, fences, and enclosures not located upon a Lot’s property lines shall not be erected. Enclosures for pets may be erected only upon the written approval of the Design Review Committee.
- (e) The Association may adopt and revise separate Rules and Regulations regarding fencing within the Association.

**7.17 Septic Tanks.** No septic tank shall be installed upon the Property.

**7.18 Fireplaces; Evaporative Coolers.** No Unit within the Project shall (a) contain any coal or wood-burning fireplace, stove, or other similar device unless the same is EPA approved or unless such fireplace, stove or other device is fueled by natural gas only; or (b) contain a swamp cooler.

**7.19 Drainage Preservation.** No Owner may alter or obstruct the established drainage pattern of runoff water or storm drainage into, from or across the Owner’s Lot or any other Lots in the absence of specific approval by the Design Review Committee and the City. For purposes of this Declaration, “established drainage” on any Lot is defined as the drainage pattern and facility in existence at the time that such Lot is conveyed to a purchaser by Declarant whether or not any Improvements are constructed thereon.

**7.20 Trails.** No Owner shall have the right to alter or obstruct the maintenance, use or enjoyment of any trail adjacent to any Lot or Unit.

**7.21 Parking. Residents and their guests are encouraged to park on their own property not on the Association’s Common Area.** Street parking is not permitted at any hour in the “Fire Lane” which includes the west side of Wheadon Court, both sides of the emergency vehicle turn-around (hammerhead) and both sides of Porter View Court (access alley). To ensure that parking on streets does not unduly or negatively affect the ability of the City or the Association to remove snow from the streets, parking on the streets at all hours is prohibited during the period of November 1<sup>st</sup> through March 31<sup>st</sup> of each year. Nine common guest parking spaces are provided for short-term, overnight guests who are not able to park on the resident’s driveway. The Board of Directors may adopt and amend rules to govern the parking of vehicles in the Common Areas, which rules may include fines and assessing an Owner for the costs of towing

any automobile, vehicle or equipment parked in violation of any rule or part of this subsection and the cost of any storage thereof.

**7.22 Protection of Vegetation; Landscaping.** No tree or other vegetation with a four-inch diameter or greater trunk measured at least 3” above the natural soil line shall be removed without the prior approval of the Design Review Committee pursuant to the Design Guidelines. Vegetation shall be placed and maintained on all Lots and in the common areas of the Project as provided in the Design Guidelines or in landscaping plans approved by the Design Review Committee. Landscaping of street-facing yards (which shall include yards that face collective drives) on a Lot must be completed within twelve (12) months after a Certificate of Occupancy is issued with respect to the Unit on such Lot, and landscaping of all portions of a Lot outside of a Unit must be completed within three (3) years after the date such Lot is sold by the original developer. The species of any trees planted on a Lot shall be first approved by the Design Review Committee.

The Association may adopt and revise separate Rules and Regulations regarding landscaping within the Association.

**7.23 Excavation.** No excavation shall be made on lands subject to any Plat without the approval of the Design Review Committee and any governmental entity with jurisdiction over such activity.

**7.24 Occupancy.** No Lots or Units shall be used for human occupancy, either temporarily or permanently, until a Certificate of Occupancy is issued by the City. No Unit shall be occupied by more than two unrelated individuals.

**7.25 External Apparatus.** No Unit owner shall cause or permit anything (including, without limitation, awnings, canopies, or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Board of Directors. No sheds or outbuildings are permitted.

**7.26 Use of Common Area.** Except for the rights of ingress and egress, Owners are hereby prohibited and restricted from using any of the Common Areas, other than as permitted in this Declaration or as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Unit Owners in the Property and is necessary for the protection of interests of all said Owners in and to the Common Area.

**7.27 Antenna and Dish Policy.** Owners are encouraged to use cable service for television and internet when available. Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite (“DBS”) antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; 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. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. The terms “dish” and “antenna” are to be used interchangeably in the interpretation of the above policy.

**7.28 Association Rules and Regulations.** In addition to the restrictions and requirements above, the Board of Directors from time to time may, by resolution, adopt, modify, or revoke such Rules and Regulations governing the conduct of persons and the operation and use of the Units and Common Elements as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines shall be adopted by the Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## **ARTICLE VII - INSURANCE**

**8.1. Hazard/Property Insurance.** The Association shall procure and maintain a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the structural Common Elements, if any, owned by the Association with an Agreed Amount Endorsement or its equivalent, if available, or an Inflation Guard Endorsement and such other endorsements as the Board may deem to be reasonable. Such insurance policy or policies shall name the Association as insured for the benefit of the Owners and shall afford protection, to the extent applicable, against at least the following:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage; and
- (b) Such other risks as shall customarily be covered with respect to facilities similar in construction, location and use.

**8.2. Fidelity Coverage.** The Association shall maintain fidelity coverage against dishonest acts on the part of managers, Directors, employees or volunteers responsible for handling funds collected and held for the benefit of the Association and the Members. The fidelity bond or insurance must name the Association as the named insured and shall be written in an amount

sufficient to provide protection which is in no event less than one and one-half (1 1/2) times the Association's estimated annual operating expenses and total reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

**8.3. Waiver of Subrogation.** The Association hereby waives and releases all claims against the Board, the Owners, the Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or of a breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

**8.4. Liability Insurance.** The Association shall maintain a comprehensive policy of public liability insurance covering the Common Elements. Such insurance policy shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Coverage shall have limits of liability of not less than \$1,000,000 per occurrence for personal injury and/or property damage. Other Insurance and General. The Association shall also maintain Worker's Compensation Insurance as required by law and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Elements. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

**8.5. Other Insurance and General.** The Association shall also maintain Worker's Compensation Insurance as required by law; shall maintain a Directors and Officers Policy in amount deemed prudent by the Board and may maintain other liability insurance as it may deem desirable, insuring each Owner and the Association, Board and any manager, from liability in connection with the Common Elements. Such insurance policies shall have severability of interest clauses or endorsements, which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners. Premiums for all insurance carried by the Association are Common Expenses.

**8.6. Unit Owners Policies.** Each Unit Owner shall be responsible to purchase and maintain in force appropriate hazard, content and liability insurance as such Owner shall determine to be appropriate to the Owner's needs and circumstances. The Association will not be required to file claims on any of its policies for any damage or liability claim that either should or would have been covered under any Owner's policy.

**8.7. Other Insurance Provisions.** All insurance required pursuant to this Article 8 shall be written by insurers licensed in the State of Utah. Notwithstanding anything in this Article 8 to the contrary, any insurance required to be obtained by the Association pursuant to this Article 8 shall be required only to the extent that such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvements or facilities having the same or similar characteristics of the Common Elements or risks being insured.

## ARTICLE IX – ASSESSMENTS

**9.1 Assessments.** The Association shall have the right and duty to levy and collect Common Assessments, Special Assessments, Specific Assessments, Capital Improvement Assessments and Supplemental Assessments as provided in this Declaration and Article. The Board may require that payment of any of such Assessments, except Specific Assessments, be made to, and collected by the Association in monthly or periodic bulk payments as directed by the Board in its discretion.

**9.2 Common Assessments.** The Common Assessments levied by the Association shall be used to promote the common benefit, recreation and welfare of the Owners; to meet obligations imposed on, incurred or assumed by the Association; to cover costs, including overhead and administrative costs, for the operation of the Association; and the operation, management, maintenance, repair, and replacement of the Common Elements; *provided, however*, that Common Assessments shall not be used to meet the obligations imposed on the Association related to the maintenance of the exteriors of the Units or the maintenance or repair of the Shared Lot Common Areas which shall be funded by Supplemental Assessments.

The Common Assessments shall also be used to establish adequate Reserves for maintenance, repair, and replacement of the Common Elements. Common Assessments shall be levied against each Lot and Unit and the Owner thereof and shall be payable in 12 equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates.

(a) **Basis of Common Assessments.** The total Common Assessments shall be based on advance estimates of cash requirements by the Association to provide for payment of all estimated Common Expenses growing out of or connected with the operation of the Association and the operation, management, maintenance, and repair of the Common Elements, which estimates may include, among other things, expenses of snow removal, taxes, premiums for all insurance which the Association is required or permitted to maintain pursuant hereto, construction of improvements, repairs and maintenance, wages for Association employees, compensation of a manager, legal and accounting fees, the creation of reasonable Reserves, surplus and/or sinking funds for the replacement of capital items and other purposes, repayment of any loans used for the other purposes herein, and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners. Common Assessments shall be made on the basis of the Association's fiscal year (which may be a calendar year). Notice of the proposed assessment for any such year shall be mailed to each Owner not later than 30 days after the beginning of the fiscal year, together with an operating budget for the upcoming fiscal year. Common Assessments shall be assessed at a uniform rate for all Lots.

(i) The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Common Assessments for the upcoming fiscal year and as the major guideline under which the Project shall be operated during

such fiscal year.

(ii) The failure of the Association to give timely notice of any Common Assessment as provided herein shall not be deemed a waiver of or modification in any respect of the provisions of the Declaration, or a release of any Owner from the obligation to pay such Assessment or any other Assessment; but the date when the payment shall become due in such case shall be deferred to a date twenty (20) days after notice of such Assessment shall have been given to the Owner in the manner provided in this Declaration and Bylaws

(b) Reserves. Common Assessments shall include prudent amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Common Elements (that have a remaining useful life between three (3) and thirty (30) years), or for any other purpose as determined by the Board. All amounts collected as Reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected. Said amounts shall be segregated from and not commingled with any other funds of the Association. Such Reserves shall be deemed contributions to the capital account of the Association by the Members.

(c) Reinvestment Fee. Each time legal title to a Lot or Unit passes from one person to another, within thirty days after the effective date of such title transaction, the new Unit Owner shall pay to the Association, in addition to any other required amounts, a fee in the amount determined by the Board from time to time not to exceed \$500. The following are not subject to the fee: (1) an involuntary transfer; (2) a transfer that results from a court order; (3) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent for estate planning purposes; (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (5) the transfer of a Unit owned by a financial institution, except to the extent required for the payment of the Association's costs directly related to the transfer of the property, not to exceed two hundred fifty dollars.

(d) Loans. The Association, by majority vote of the Board, may take out loans upon commercially reasonable terms to meet the obligations of the Association, including preventative maintenance for so long as the Common Assessments is sufficient to service and pay off such loans according to their terms.

**9.3 Supplemental Assessment**. In addition to the Common Assessments, Supplemental Assessments shall be levied by the Association against the certain Lots in the same manner as, and according to the same terms and conditions applicable to, the Common Assessments, provided that Supplemental Assessments shall be used to meet the obligations imposed on Owners individually, rather than on the Association, related to the maintenance of the Shared Lot Common Areas and the exteriors of the Units. Supplemental Assessments shall be assessed at a

uniform rate for all Lots benefited by such an assessment. The intent of this Section is to allow the Association to allocate and assess the expenses incurred (or expected to be incurred) by the Association related to Unit exteriors or Shared Lot Common Areas to the extent the Board determines that the interest of the Association would be best served by having the Association to undertake such obligations rather than having each individual Owner perform such work separately, and this Section shall be interpreted and applied in a manner consistent with such intent. Any Supplemental Assessment must be approved by a majority of those specific Owners who shall be required to pay such supplemental assessment.

**9.4 Special Assessments.** If and when required, Special Assessments shall be levied to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise provided in the Articles, Bylaws, or in this Declaration, a Special Assessment shall require the affirmative vote or written consent of a majority of Members. Special Assessments shall be payable in such manner and at such times, including installments over time, as the Board may determine.

**9.5 Capital Improvement Assessments.** If and when required, a Capital Improvement Assessment may be levied for the purpose of defraying, in whole or in part, the cost of construction, reconstruction, repair or replacement of a capital improvement of or upon the Common Elements, including fixtures and personal property related thereto; provided however, that any such assessment in excess of One Hundred Thousand Dollars (\$100,000) in any one year shall require the affirmative vote or written consent of a majority of all outstanding Member votes. Capital Improvement Assessments shall be levied against each Lot and Unit and the Owner thereof shall be payable in such manner and at such times, including installments over time, as the Board may determine.

**9.6 Specific Assessment.** In addition to the Common Assessment and Supplemental Assessment and any Special Assessment or Capital Improvement Assessment authorized pursuant this Article, the Board may levy at any time Specific Assessments (a) on every Lot especially benefited (i.e., benefited to a substantially greater degree than any other Lot or Unit) by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Elements made on the written request of the Owner of the Lot or Unit to be charged; (b) on every Lot wherein the Owner, occupant or guest of an Owner of which shall violate this Declaration or the Rule and Regulations or otherwise cause any damage to the Common Elements necessitating repairs; and (c) on every Lot or Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to any of the provisions of the Declaration or upon the written request of the Owner of the Lot or Unit to be charged.

The aggregate amount of any such Specific Assessment shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and all attorney's fees and costs, and shall be allocated among the affected Lots according to the magnitude of special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any improvement, which is part of

the general maintenance or operation obligations of the Association, it shall not give rise to a Specific Assessment against the Lots or Units benefited.

**9.7 Creation of Lien and Personal Obligation of Assessment.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Common Assessments, Special Assessments, Capital Improvement Assessments, Specific Assessments, or other assessments levied as provided herein. Each such assessment, together with interest, costs and reasonable attorney's fees for the collection thereof, shall be a charge on the Lot or Unit and shall be a continuing lien upon the Lot or Unit against which the assessment is made. It shall have priority over any declaration of homestead recorded after the date on which this Declaration is recorded in the Public Records and shall continue until paid in full or otherwise satisfied. In a voluntary conveyance of a Lot or Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Lot or Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor, and each such assessment, together with interest, late charges, collection costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Unit at the time when the assessment fell due.

**9.8 No Offsets or Abatement.** All assessments shall be payable in the amount specified by the assessment, and no offsets or abatements against such amount shall be permitted for any reason, including, without limitation, a claim that (a) the Association is not properly exercising its duties and powers as provided in this Declaration, or (b) an Owner has made or elects to make no use of the Common Elements.

**9.9 Uniform Rate of Assessment.** All Common Assessments, Special Assessments and Capital Improvement Assessments authorized by this Article shall be assessed and allocated among the owners of the Lots or Units at a uniform rate for all Lots and Units. Furthermore, all Supplemental Assessments authorized by this Article shall be assessed and allocated among the Owners of the affected Lots at a uniform rate for all such affected Lots.

**9.10 Homestead Waiver.** Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect or from time to time hereafter.

**9.11 Limitations on Certain Increases in Common and Special Assessments.** The Board shall not in any fiscal year of the Association, without the affirmative vote or written consent of a majority of all outstanding Member votes, levy a Common Assessment per Lot or Unit which is more than fifty percent (50%) greater than the Common Assessment per Lot or Unit for the immediately preceding fiscal year. Nor shall the Board for any fiscal year of the Association, without the affirmative vote or the written consent of a majority of all outstanding Member votes, levy a Special Assessment against each Lot or Unit which, when aggregated as to all Lots



and Units, exceeds fifty percent (50%) of the Common Expenses of the Association for such fiscal year. Notwithstanding the foregoing, the Board may make or increase Common Assessments and Special Assessments without regard to the foregoing limitations in an “emergency situation” which is defined as one of the following: (a) an extraordinary expenditure necessary to operate, repair or maintain the Common Elements where there exists a threat to personal safety, (b) an extraordinary expenditure necessary to repair or maintain the Common Elements that could not have been reasonably foreseen by the Board in preparing its budget, or (c) written demand by the City to maintain or repair any of the Common Elements. However, prior to the imposition and collection of an assessment under clause (b) of the preceding sentence, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the assessment.

**9.12 Date of Commencement of Assessment.** Common Assessments and other assessments shall commence on the first day of the month following the conveyance of the Common Elements and associated Improvements to the Association.

**9.13 Reports to Members.** The Board shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year and shall cause to be distributed a copy of each such statement at the annual meeting. The Board shall also prepare and distribute at the annual meeting, or included with the notice thereof, notice of each new proposed Common Assessment as required pursuant to this Article, a written, itemized estimate of the Common Expenses to be incurred by the Association during such new year in performing its functions under this Declaration as well as expected income and any surplus from the prior year’s assessments. Similar reports shall be delivered to the Owners of Lots with respect to each new proposed Supplemental Assessment affecting such Lots.

**9.14 Excess Funds.** At the end of any fiscal year of the Association, the Board may determine that all excess funds of the Association, over and above the amounts used for any purpose, may be retained by the Association and used for Reserves, or to reduce the following year’s Common Assessments.

**9.15 Reserve Analysis.**

(a) **Reserve Analysis Required.** The Board shall cause a reserve analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. However, the Board may decrease the frequency of conducting and updating a reserve analysis in a formal resolution of the Board delivered to all Owners. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

(b) Reserve Analysis Defined. “Reserve analysis” means an analysis to determine the need for a reserve fund to accumulate reserve funds, and the appropriate amount of any reserve fund. A reserve analysis shall include:

(1) a list of the components identified in the reserve analysis that will reasonably require reserve funds;

(2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;

(3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;

(4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and,

(5) a reserve funding plan that recommends how the Association may fund the annual contribution described in subsection (d) above.

(b) Reserve Analysis Summary Provided to Owners. The Association shall: (a) annually provide Owners a summary of the most recent reserve analysis or update; and (b) provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

#### **9.16 Reserve Funds.**

(a) Unless vetoed by the Owners pursuant to applicable law, the Association shall establish and maintain a reserve fund for the purpose of funding repair, replacement and restoration of the Common Areas and other items for which it is responsible to repair or replace, any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board, by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America. The reserve funds shall be maintained separately from other Association funds.

(b) The Association may establish such other reserves for such other purposes as the Board may from time to time consider necessary or appropriate.

(c) The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged under funding of the reserve account.

(d) Unless approved by a majority of Association members for daily maintenance purposes, reserve funds may not be used for any purpose other than the purpose for which the reserve funds was established.

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

**9.18 Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with late charges and interest at a rate to be established by the Board, not to exceed the maximum permitted by law, 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 at the time when the assessment became due.

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

**9.20 Enforcement of Lien.** The lien for nonpayment of assessments may be foreclosed by the Board judicially or non-judicially consistent with the laws of the state of Utah for the non-

judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**9.21 Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Unit subject to assessment, except as follows: the sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Unit from liability or lien for any Assessments thereafter becoming due.

**9.22 Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**9.23 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot up the maximum amount allowed by law.

## **ARTICLE X – RULES, ENFORCEMENT, APPEAL**

### **10.1 Rules and Regulations.**

10.1.1. The Board may adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations, subject to limitation and requirements of the law, including the right of the Owners to disapprove a rule pursuant to law, and subject to the Board's duty to exercise business judgment on behalf of the Association and the Owners.

10.1.2. Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules and Regulations, the Board shall:

(a) at least 15 days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a change to the Rules and Regulations;

(b) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes action under Section 8.1.1; and,

(c) deliver to the Owners a copy of the change in the Rules and Regulations approved by the Board within fifteen (15) days after the date of the Board meeting.

10.1.3. The Board may adopt a rule without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, an Owner, an occupant of a Unit, a Unit, or a Townhome. The Board shall provide notice to the Owners of such a rule within fifteen (15) days of adoption by the Board.

**10.2 Compliance.** Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**10.3 Remedies.** Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board, 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:

10.3.1 Subject to the provisions of this Declaration, to enter a Lot or 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 of Directors 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;

10.3.2 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

10.3.3 To levy fines, and a violation of any specific and express rule, regulation, covenant, restriction, or term of any Governing Document of the Association (a "violation"), and any subsequent occurrence of such violation, shall be subject to a fine in the amount determined by the Board from time to time pursuant to a schedule of fines. Repeat and continuous violations shall be set forth in a Resolution or be enforced consistent with Utah law;

10.3.4 To suspend the right to receive access or use any services or facilities provided by or through the Association until the violation is corrected;

10.3.5 To suspend the voting rights of an Owner; or

10.3.6 Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action.

**10.4 Fines.** The Board may assess a fine against an Owner for a violation of the Governing Documents. Fines shall be established pursuant to a schedule of fines adopted by the Board. Enforcement of fines shall be consistent with policies established by the Board and with Utah law regarding the levying and collections of fines which requires a written warning and chance to cure the violation.

**10.5 Appeal by Owner.** Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Board to dispute the fine, penalty or suspension within 33 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures 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.

**10.6 Action by Owners.** Subject to any limitation imposed under the Governing Documents 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 such thing or condition by appropriate legal proceedings.

**10.7 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**10.8 Purchase Subject to Violations.** Buyers shall take ownership of Units subject to any violations of the Governing Documents which may exist concerning the Unit, whether or not such violations were disclosed by the seller of the Unit and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Association.

## **ARTICLE XI – RIGHTS OF MORTGAGEES**

**11.1 Title and Mortgagee Protection.** A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property, except for the foreclosure of a lien for failure to pay an assessment after at least thirty (30) days written notice to the record holder of any Mortgage. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee interested under any Mortgage affecting a Lot or any other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give the same is wrongful). No amendment to this Declaration shall materially alter or affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment, provided that such protection of Mortgagees shall not be construed to prevent the Association from amendments providing for increased maintenance of the Common Elements, construction of new Improvements on the Common Elements, or making new assessments for the same.

**11.2 Preservation of Common Elements.** The Common Elements shall remain substantially of the same character, type and configuration as when such Common Elements became part of the Project. Unless the Association shall receive the prior unanimous written approval of (a) all First Mortgagees of Lots, (b) the Owners of all Lots, *and* (c) the City, the Association shall not be entitled by act or omission to abandon, partition, subdivide, encumber, sell, transfer or materially modify the Common Elements in a way that is likely to reduce the value and utility of the Common Elements to the Owners, except no such consent shall be required to grant reasonable easements for utilities and similar or related purposes or as otherwise contemplated in this Declaration.

**11.3 Notice of Certain Matters Potentially Affecting Security.** Notice of Certain Matters Potentially Affecting Security. The Association shall give written notice to any Mortgagee of a Lot specifically requesting from the Association such notice whenever:

- (a) There is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within thirty (30) days after default occurs; or
- (b) Damage to the Common Elements from any one occurrence exceeds One

Hundred Thousand Dollars (\$100,000.00); or

- (c) There is any condemnation or taking by eminent domain of any material portion of the Common Elements.

**11.4 Notice of Meetings.** The Board shall give to any Mortgagee of a Lot specifically requesting the same from the Association, notice of all meetings of the Association; and such Mortgagee shall have the right to designate in writing a representative to attend any or all such meetings.

**11.5 Right to Examine Association Records.** Any Mortgagee shall, upon reasonable request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

**11.6 Right to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Elements and may pay overdue premiums on insurance policies pertaining to the Common Elements, or secure new insurance coverage pertaining to the Common Elements on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

**11.7 No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Elements.

**11.8 Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article 10, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority, as the case may be, applicable to the Association with respect to the subject concerned.

## **ARTICLE XII - AMENDMENT AND DURATION**

### **12.1 Amendments.**

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment



(b) Approval Required. This Declaration may be amended if such amendment is approved by Owners holding sixty-seven percent (67%) of the voting rights of the Association.

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

## **12.2 Duration.**

(a) Period. All provisions, covenants, conditions and restrictions contained in this Declaration shall continue and remain in full force and effect until there is recorded an instrument directing the termination of this Declaration after the vote and approval of seventy-five percent (75%) of all of the Owners of the Units.

(b) Execution and Recording of Termination Certificate. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

## **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

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

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

**13.3 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees,

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

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

**13.5 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration 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.

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

**13.7 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, rental, or lease of any Unit, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

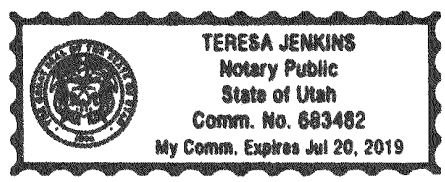
IN WITNESS WHEREOF, Wheadon Preserve Homeowners Association, Inc. has executed this Declaration this 24 day of May, 2019.

**WHEADON PRESERVE  
HOMEOWNERS ASSOCIATION, INC.**

Larry S Jensen  
By: \_\_\_\_\_  
Its: Larry S Jensen  
President

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

The foregoing instrument was acknowledged before me on this 24 day of May, 2019 by Larry Jensen.



Teresa Jenkins  
Notary Public for Utah

## **EXHIBIT A**

### **LEGAL DESCRIPTION**

All Lots and Common Area WHEADON PRESERVE, all as according to the official plat(s) thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

First Parcel Number: 34063290010000

## **EXHIBIT B**

THE FOLLOWING BYLAWS REPLACE AND SUPERCEDE YOUR EXISTING BYLAWS IN THEIR ENTIRETY.

THE BYLAWS HAVE BEEN UPDATED TO COMPLY WITH UTAH LAW AND BEST PRACTICES FOR WHEADON PRESERVE

# **BYLAWS OF WHEADON PRESERVE**

## **ARTICLE 1 - DEFINITIONS**

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

## **ARTICLE 2 - MEETINGS OF ASSOCIATION**

2.1 Place of Meeting. The Association shall hold meetings at such suitable place as may be designated by the Board from time to time.

2.2 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah selected by the Board.

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

shall be confined to the purposes stated in the notice of the meeting.

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

2.5 Voting. Each Unit shall be allocated the voting rights set forth in Section 8.3 of the Declaration.

2.6 Proxies and Absentee Ballots. A vote may be cast in person, by proxy or by absentee ballot. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by resolution of the Board. No proxy shall be valid after the meeting for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than eleven (11) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting of the Association, or to the Board if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

2.7 Fiduciaries and Joint Owners.

(a) Fiduciaries. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity.

(b) Joint Owners. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

2.8 Quorum of Owners.

(a) At any regular annual meeting of the Association, the members that are represented for any purpose at the annual meeting shall constitute a quorum, except for matters

requiring a higher quorum as provided in the Declaration or these Bylaws. For any other meeting of the Association or action taken without a meeting, and except as otherwise provided in the Declaration or these Bylaws, members holding more than thirty percent (30%) of the voting rights, represented in person, by proxy, or by written ballot, shall constitute a quorum.

(b) The subsequent ratification of an Owner of the action taken at a meeting shall constitute the presence of the person for the purpose of determining a quorum. When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

(c) If any meeting or vote of members cannot be organized because of a lack of quorum, the members who are present may adjourn the meeting to a time at least 48 hours and not more than sixty (60) days from the time of the meeting at which a quorum was not present and such members that are represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting or vote.

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

2.10 Order of Business. The order of business at annual meetings of the Association shall be according to the order established by the President, and by way of example, may include the following: (a) Calling of the roll and certifying of proxies; (b) Proof of notice of meeting or waiver of notice; (c) Reading of minutes of the preceding meeting; (d) Reports of officers; (e) Reports of committees, if any; (f) Election of Board members; (g) Unfinished business; (h) New business; and (i) Adjournment.

2.11 Meeting Procedure. Rules of order may be adopted by resolution of the Board, otherwise, the President shall conduct meetings according to the procedure he or she deems fit. A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

2.12 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association causes to be delivered a written ballot to every member entitled to vote on the matter not less than fifteen (15) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of directors; specify the time by which a ballot must be received by the

Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document. The Board may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

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

### **ARTICLE 3 – BOARD OF DIRECTORS – SELECTION, TERM OF OFFICE**

#### 3.1 Number, Term and Qualifications.

(a) The affairs of the Association shall be governed by a Board of Directors composed of at least three (3) but not more than five (5) Board members.

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

(c) All Board members must be an Owner or the spouse of an Owner of a Unit, except that a husband and wife may not serve on the Board at the same time. A representative of an entity which owns a Unit, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Unit.

3.2 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a Board member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Board members even though they may constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term for which the person was elected by the other Board members to serve.



### 3.3 Removal of Board members.

(a) At any annual or special meeting, any one or more of the Board members, other than interim Board members, may be removed, with or without cause, by a majority of the voting interests of the members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Trustee whose removal has been proposed by the owners may be given an opportunity to be heard at the meeting.

(b) The Board may declare the office of a member of the Board to be vacant in the event such member is absent from three (3) consecutive regular meetings of the Board or from more than 25% of the regular meetings held in any 12 month period, or, within 24 hours of a request to take action without a meeting, more than twice in any 6 month period fails to respond in writing by (1) voting for the action, (2) voting against the action, or (3) abstaining from voting and waiving the right to demand that action not be taken without a meeting. The vacancy shall be filled as provided in Section 3.2 above.

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

3.5 Action Taken Without a Meeting. Notwithstanding open meeting requirements stated herein, as permitted by Utah Code §16-6a-813, the Board shall have the right to take any action in the absence of a meeting which they could take at a regular or special meeting if all the Board members agree in writing to take a vote or an action without a meeting. The action being taken shall not require unanimous consent of the Board. Any action so taken shall have the same effect as though taken at a meeting of the Board members. Further without removing the right to take action without a meeting as stated above, the Board may engage in 'work sessions' during which no formal decisions will be made, which shall including electronic mail discussions. and such work sessions shall not constitute a Board meeting.

## **ARTICLE 4 - NOMINATION AND ELECTION OF BOARD MEMBERS**

### 4.1 Nomination.

(a) Method of Nomination. Nomination for election to the Board shall be made in the manner determined by the Board, which may include a Nominating Committee and/or nominations from the floor at a meeting. If one is established, the Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies.

(b) Nominating Committee. The Nominating Committee, if any, shall consist of a chairman, who shall be a member of the Board; and one or more members of the Association.

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

permitted.

## ARTICLE 5 - MEETINGS OF THE BOARD OF DIRECTORS

### 5.1 Organizational Meeting.

(a) **Location, Date and Time.** The first meeting of a newly-elected Board shall be held within fourteen (14) days of election at such place, date and time as shall be fixed by the Board members at the meeting at which the Board members were elected and no notice shall be necessary to owners or to the newly elected Board members in order to legally hold the meeting providing a majority of the elected Board members are present.

(b) **Procedure and Business.** Until the election of new officers, the meeting shall be chaired by the outgoing president, or in the absence of such person, the outgoing secretary, regardless of whether the outgoing president or secretary is as member of the newly constituted Board. At the organizational meeting, the Board shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

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

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

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

### 5.5 Open Meetings; Executive Sessions.

5.5.1 **Open Meetings.** Except as provided in subsection 5.5.2, all meetings of the Board shall be open to Unit Owners. However, 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.

5.5.2 **Executive Sessions.** In the discretion of the Board, the following matters may be considered in executive session:

(a) Consultation with legal counsel concerning the rights and duties of the Association regarding existing or potential litigation or criminal matters;

- (b) Personnel matters, including salary negotiations and employee discipline;
- (c) The negotiation of contracts with third parties;
- (d) Collection of unpaid assessments; and
- (e) Other matters of a sensitive, private, or privileged nature at the discretion of the Board.

5.5.3 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.

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

5.7 Waiver of Notice. Any Board member may, at any time, waive notice of any meeting of the Board in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at any meeting of the Board shall constitute a waiver of notice by the Board member, except where the Board member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Board members are present at any meeting of the Board, no notice to Board members shall be required and any business may be transacted at the meeting.

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

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

## ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE BOARD

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

6.2 Specific Powers. In addition to powers granted by the Declaration, these Bylaws or by resolutions of the Association, the Utah Revised Nonprofit Corporation Act or other applicable law, the Board shall have the power to: (a) declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board; (b) in the Board's discretion, appoint such committees as deemed appropriate in carrying out its purpose.

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

In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Board member, a sub-committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the sub-committee merits confidence.

## ARTICLE 7 - OFFICERS AND THEIR DUTIES

7.1 Designation and Qualification.

(a) Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary and the Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

(b) Qualifications. The president and vice-president shall be a member of the Board, but the other officers need not be Board members or Owners. Any Board member may be an officer of the Association.

(c) Multiple Offices. A person may simultaneously hold more than one office.

(d) Special Appointments. The Board may elect such other officers as the affairs of

the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

7.2 Election and Vacancies. The officers of the Association may be elected by the Board at the organizational meeting of each new Board or any Board meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Board shall elect a successor to fill the unexpired term.

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

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

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

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

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

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary. The secretary shall prepare and maintain the minutes of all meetings of the Board and the minutes of all meetings of the Association, have charge of such books, papers and records as the Board may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act

and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary,

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

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

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

## **ARTICLE 9 - RECORDS AND AUDITS**

The Association shall maintain within the state of Utah, all documents, information and other records of the Association in accordance with the Declaration, these Bylaws and the Utah Revised Nonprofit Corporation Act.

### **9.1 General Records.**

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

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

(c) The Board shall maintain a list of Owners. The list of Owners may specify whether the Owner is an Owner in Good Standing or a Suspended Owner.

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

9.2 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners,

the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

### 9.3 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to all Owners and to all mortgagees of Units who have requested the same in writing within ninety (90) days after the end of each fiscal year.

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

### 9.4 Inspection of Records by Owners.

(a) Except as otherwise provided in Section 9.5 below, all records of the Association shall be reasonably available for examination by an Owner and any mortgagee of a Unit pursuant to rules adopted by resolution of the Board or if no such resolution has been adopted, pursuant to the Utah Revised Nonprofit Corporation Act.

(b) The Board shall maintain a copy, suitable for the purposes of duplication, of the following: (1) The Declaration, Bylaws and any amendments in effect or supplements thereto, and rules and regulations of the Association; (2) The most recent financial statement prepared pursuant to Section 9.3 above; and (3) The current operating budget of the Association.

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

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

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

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

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

(c) Communications with legal counsel that relate to matters specified in this section,

and any other communications with legal counsel that are protected by any privilege, including the attorney client privilege.

(d) Disclosure of information in violation of law.

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

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

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

## ARTICLE 10 - AMENDMENTS

Approval of a majority of the voting rights of the members is required for approval of any amendment to these Bylaws, except that the approval of members representing at least 60% of the total voting rights of the Association shall be required for any material change to the Bylaws pertaining to voting rights. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office. No action to challenge the validity of an adopted amendment may be brought more than two (2) years after the amendment is recorded.

## ARTICLE 11 - MISCELLANEOUS

### 11.1 Notices.

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

### 11.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the members, the Association may provide notice by electronic means, including text message, email, or an Association website, if the 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, 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.

11.2 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.


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


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

11.5 Fiscal Year. The fiscal year of the Association shall be determined by the Board.

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

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officers on this 24 day of May, 2019.

(Sign):   
(Print Name): Larry Jensen, President

(Sign):   
(Print Name): Kay Ciet, Secretary