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**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
OF
SCOTT AVENUE PARK**

**A Planned Unit Development
in
Salt Lake City, Salt Lake County, Utah**

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This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SCOTT AVENUE PARK ("Declaration") is adopted by the Scott Park Avenue HOA, Inc., ("Association") and is effective as of the date it is recorded in the office of the Salt Lake County Recorder.

RECITALS

- A. The *Declaration of Covenants, Conditions and Restrictions of Scott Avenue Park, a Planned Unit Development* was recorded in the Salt Lake County Recorder's Office on March 30, 2005 as Entry No. 9336430 (the "Original Declaration").
- B. The *First Supplemental Declaration of Covenants, Conditions and Restrictions of Scott Avenue Park, a Planned Unit Development* was recorded in the Salt Lake County Recorder's Office on March 3, 2006 as Entry No. 9652734 (the "First Supplemental Declaration").
- C. The *Second Supplemental Declaration of Covenants, Conditions and Restrictions of Scott Avenue Park, a Planned Unit Development* was recorded in the Salt Lake County Recorder's Office on August 15, 2007 as Entry No. 10194426 (the "Second Supplemental Declaration").
- D. The *Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions of Scott Avenue Park, a Planned Unit Development* was recorded in the Salt Lake County Recorder's Office on March 12, 2009 as Entry No. 10645866.
- E. A *Notice of Homeowners Association and Assessments Obligation, Scott Avenue Park, a Planned Unit Development* was recorded in the Salt Lake County Recorder's Office on April 12, 2010 as Entry No. 10931588.
- F. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration and amendments thereto, and all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
- G. This Declaration affects the real property situated in Salt Lake County, Utah, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof. Specifically, the Project does not include Lots 307, 308, 309, and 309a as shown on the Scott Avenue Park Phase 3 Plat and the Scott Avenue Park Phase 3 P.U.D. Amended Plat, as recorded in the official records of the Salt Lake County Recorder's Office.
- H. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previous bylaws of the Association and any amendments thereto, whether recorded or not.
- I. Pursuant to Sections 13.2 of the Original Declaration, the First Supplemental Declaration, and the Second Supplemental Declaration, at least sixty-seven percent (67%) of the total votes of the Association have approved this Declaration. The

signature hereinafter of the president of the Association certifies and attests that such vote was obtained.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein and subject to the covenants set forth below, the Association hereby adopts this Declaration. This Declaration, together with the Plat, Bylaws, and Rules adopted by the Association, as may be amended, shall define and govern the rights of the Owners and the Association related to the Project.

ARTICLE I. DEFINITIONS

1.1. **Act** shall mean the Utah Community Association Act, codified beginning at §57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. **Articles** shall mean the Articles of Incorporation for the Association, as amended and restated from time to time.

1.3. **Assessments** shall mean any monetary charge imposed or levied by the Association against Owners as provided in the Declaration or other Governing Documents.

1.4. **Association** shall mean and refer to the Scott Park Avenue HOA, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association. The Association Board may renew or reinstate its corporate status without Owner approval.

1.5. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles and Bylaws. The Board is the governing body of the Association.

1.6. **Board Member** shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.7. **Bylaws** shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.8. **Common Areas** shall mean all land, and the improvements situated thereon, within the Project that are designated as open space or Common Areas on the Plat or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation: greenspace, picnic area/playground, perimeter fence, entrance gate, guest parking, basketball court, streets, and other improvements as detailed on the Plat, and any real property or improvements within the Project that the Board determines in its sole and exclusive discretion, including, without limitation, utility and service lines, systems and similar improvements, whether public or private-company owned, intended to serve more than one Lot, whether located on a Lot or within the Common Area.

1.9. **Common Expenses** shall mean all sums lawfully assessed against Owners including expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association, unless otherwise provided herein; expenses agreed upon as common expenses by the Association or its Board of Directors; expenses authorized by the Governing Documents or the Act as common expenses; and any other expenses necessary for the common benefit of the Owners.

1.10. **Declaration** shall mean and refer to this *Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Scott Avenue Park*, as may be amended from time to time.

1.11. **Design Guidelines** shall mean the requirements governing the location, color, materials, and architectural design of Residences, structures, landscaping, and improvements within the Project.

1.12. **Design Review Committee** or **DRC** shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.13. **Governing Documents** shall mean and refer to the Declaration, Plat, Articles, Bylaws, and any Rules adopted by the Board.

1.14. **Limited Common Area** shall mean any Common Area designated on the Plat or by the Board as reserved for the use by the Owner of a Lot to the exclusion of the other Owners in the Project.

1.15. **Lot** shall mean and refer to each of the individual lots within the Project, as shown on the Plat, with the exception of the Common Areas.

1.16. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.

1.17. **Member** shall mean and refer to a Lot Owner.

1.18. **Mortgage** shall mean and refer to a mortgage, deed of trust, or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.19. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.20. **Occupant** shall mean and refer to any Person, other than an Owner living or staying in a Residence. This includes, but is not limited to, all lessees, tenants, and the family members, guests, and representatives visiting, living, or staying in a Residence.

1.21. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.22. **Person** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.23. **Plat** shall mean all of the official subdivision plats of the Project, and any amendments thereto, filed and recorded in the official records of the Salt Lake County Recorder's Office.

1.24. **Project** shall mean the Scott Avenue Park, a Planned Unit Development and shall include the real property legally described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto. Specifically, the Project does not include Lots 307, 308, 309, and 309a as shown on the Scott Avenue Park Phase 3 Plat and the Scott Avenue Park Phase 3 P.U.D. Amended Plat, as recorded in the official records of the Salt Lake County Recorder's Office.

1.25. **Residence** shall mean a detached structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot which are used in connection with such Residence. The Residence shall include, without limitation, the garage, any mechanical equipment located outside said Residence but designed to serve only that Residence, and all utility lines or installations serving the Residence.

1.26. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.27. **Rules** shall mean the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

ARTICLE II. PROJECT DESCRIPTION

2.1. **Submission.** The Project and all real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, successors, and assigns.

2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Scott Avenue Park. The Project is not a cooperative.

2.3. **Description of Improvements.** The improvements contained in the Project will be located upon the real property described in Exhibit A. The major improvements contained in the Project include 20 Lots, Residences, and appurtenant structures on the Lots, greenspace, picnic area/playground, perimeter fence, entrance gate, guest parking, and a basketball court. Streets and other improvements are detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Common Areas.** The Common Areas of the Project shall be as identified on the Plats and as defined in Article 1, Section 1.8 above.

2.5. **Lot.** Each Lot consists of: the single family Residence constructed on the Lot and all components thereof; all garages, driveways, sheds, or other approved structures and improvements located within the boundaries of the Lot; and all pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures serving that Lot and the Residence.

2.6. **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has

the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to one (1) vote per Lot owned.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose other than to establish a quorum.

3.4. **Record of Ownership.** Every Owner shall promptly file the conveyance document (or in the case of contract buyer, a copy of the sales contract) for his Lot with a Board Member or the Manager of the Association who shall maintain a record of ownership of the Lots. In addition, every Owner shall register his/her contact information with a Board Member or the Manager, which includes phone numbers, email addresses, and other information so required by the Association for Association notice purposes. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Article V.

3.5. **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser of his Lot to vote on all matters coming before the Association for vote provided the same is in writing, including electronic form as allowed by the Utah Revised Nonprofit Corporation Act at §16-6a-712, as amended from time to time, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

ARTICLE IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot.

4.2. **Title to Common Areas.** The Association shall hold the title to the various Common Areas within the Project.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

1) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

2) The right of Salt Lake County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

3) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid;

4) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of all Lots.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to Occupants or contract purchasers who reside in the Project. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in above Section.

4.5. **Association Easement.** The Association, its Board, the Manager, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas and access Lots as needed to perform their duties as assigned by the Governing Documents.

4.6. **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of roads and utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.7. **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.8. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions.

ARTICLE V. BUDGET AND ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a

new annual budget is adopted. The budget shall be made available to Owners within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis based on the budget. Each Annual Assessment shall be due and payable in monthly installments on the first day of each month, unless a different payment arrangement is made by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.5. **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any reconstruction or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration, except for new capital improvements further described in Section 6.4(6) below. Special Assessments over five-hundred dollars (\$500) per Lot in a calendar year (which amount may be increased by the Board to account for inflation, with such increase being based on the annual federal cost-of-living adjustment) must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

5.6. **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Lot and its Owner into compliance with the Governing Documents; (d) nonpayment of a "Reinvestment Fee"; (e) costs of providing services to the Lot upon request of the Owner; and (f) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments

may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his/her Occupants' negligence.

5.7. **Allocation of Assessments.** Annual Assessments and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents. Individual Assessments shall be allocated separately to each Lot based on the costs incurred by the Association.

5.8. **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

5.9. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.10. **Certificate Regarding Payment.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.11. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.12. **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.13. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.14. **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts may be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest may also accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and late fees shall constitute part of the Assessment lien provided above until paid.

5.15. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- 1) The Association may suspend such Owner's voting rights.
- 2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Salt Lake County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner

without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

4) If a delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense, and the right to use the Common Areas.

6) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

7) Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

5.16. **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §57-1-20 and §57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.17. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance and replacement of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law.

5.18. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration that the Association will own the Common Areas, which may obligate it to pay property taxes or other fees to Salt Lake County. Each Owner shall be required to reimburse the Association for its pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Salt Lake County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.19. **Reinvestment Fee.** The Board, by resolution, shall have the right to establish from time to time (but shall not be required to establish) a "Reinvestment Fee" assessment in accordance with this Section and Utah Code §57-1-46. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

1) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the Salt Lake County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount established by the Board, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

2) Reinvestment Fees shall belong to the Association. The purpose of the Reinvestment Fee is to benefit the Project, including, but not limited to, payment for common planning, facilities and infrastructure; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; charitable purposes; or Association expenses.

3) The initial amount of the Reinvestment Fee shall be approved by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Any subsequent changes to the amount of the Reinvestment Fee shall also be approved by a majority of the Members present in person or by proxy at a meeting duly called for such purpose

4) The Association shall not levy or collect a Reinvestment Fee for any of the Transfer exempted by Utah Code § 57-1-46.

5) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

5.20. **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Lot as provided for in Utah Code §57-8a-106. The Board may set forth the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah law. If not otherwise set forth in the Rules, the account payoff fee shall be fifty dollars (\$50.00).

5.21. **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay Assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.22. **Homestead Waiver.** Pursuant to Utah Code §57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically

authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

6.2. **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise, and perform the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowner's association pursuant to the Utah Community Association Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to Lot Owners; and
- 5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

- 1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.
- 2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration, the Act, or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.
- 3) **Rulemaking.** The Association, through its Board, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code §57-8a-218(15), the requirements of Utah Code §57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.
- 4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.
- 5) **Enforcement.** The Association shall perform such acts, whether or not

expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. Owners, Occupants, guests, and family members shall be jointly and severally liable for any fines incurred for violations of the Governing Documents.

6) **New Capital Improvements.** New capital improvements to the Project that do not exceed fifteen thousand dollars (\$15,000) may be authorized by the Board of Directors alone. New capital improvements in excess of fifteen thousand dollars (\$15,000) require the approval of a majority of Owners in attendance, whether by person or by proxy, at a duly called Member meeting. The maintenance, repair, and replacement of existing Common Areas is not considered a new capital improvement. If the capital improvement is included or considered in an Association reserve analysis, it is not a new capital improvement.

7) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

8) **Employment of Agents, Advisers, and Contractors.** The Association may employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project.

9) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted.

10) **Shared Use of Open Space.** An easement for recreational use of the Association's open space shall be granted by the Association as a benefit and right appurtenant to Lot Owners and their successors, heirs, assigns, lessees, and tenants subject to provisions of this Declaration or other Governing Documents.

11) **Loans.** The Board, in its sole discretion, may obtain lender financing for Association improvements or obligations.

12) **Bulk Service Agreements.** The Association shall have the right, but not the obligation, to enter agreements, as the Board deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Lots or groups of Lots. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of Assessment.

13) **Financial Records.** The Association shall maintain corporate and financial records as required by the Act and the Bylaws.

14) **Joint Use/Maintenance Agreements.** The Association may enter joint use and maintenance agreements for usage of the Association's Common Areas and parks.

6.5. **Liability.** A Board Member or an officer of the Association shall not be liable to the Association or any Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for willful or intentional misconduct. If a Board Member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the

Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board Member or officer is found by a court of law to have acted with willful or intentional misconduct in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws which may set forth requirements for serving on the Board. Without limiting the generality of the foregoing, the Board may appoint one or more "Committees", and such Committees (which may consist of one or more members, as determined by the Board) shall have such authority and duties as may be determined from time to time by the Board relating to the budgeting, operation, financial management and administration of the Project. While any Committee established by the Board shall report to the Board regularly regarding its activities, the Board may by express directive relinquish and transfer all authority and responsibility with respect to such prior delegated duties.

6.7. **Management.** The Project may be managed by a Manager selected by the Board to assist in the management and operation of the Project unless fifty-one percent (51%) of the voting interests of the Association disapprove. The Board may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

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

ARTICLE VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace all Common Areas together with all improvements thereon and all easements appurtenant to the Common Area including, but not limited to landscaping on the Common Area open space land and the park facilities. The Association shall maintain, replace, and repair Common Area parking areas and private streets in the Project. The Association shall maintain, replace, and repair the perimeter fences around the Project's Common Areas. The Common Areas and all facilities and structures thereon shall be maintained by the Association in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a Residence or Lot, except that the Association shall maintain (but not repair or replace) the front yard landscaping of each Lot.

7.2. **Services.** The Association may contract for such services as the Board of Directors may reasonably deem to be of benefit to the Project, including, without limitation, snow removal, and garbage/trash removal services for all Lots.

7.3. **Lot Maintenance.** Each Owner shall have the obligation to provide exterior and interior maintenance of their Lot and Residence, including but not limited to painting, repair, replacement, and care of all Residence components, driveways, and utility lines servicing the Lot or Residence. Owners shall be responsible to maintain, repair, and replace any fences located within or on the boundaries of their Lot. When such fences serve, benefit, or otherwise mark a boundary of two or more Lots, the responsibility and cost to maintain, repair, and

replace the shared portion of such fences shall be borne equally by all Lot Owners bounded thereby. Owners are responsible for the removal of snow from their driveways and sidewalks within or appurtenant to the Owner's Lot. These maintenance obligations shall be fulfilled so each Lot and Residence is clean, tidy, and in good repair as determined by the DRC, subject to any Design Guidelines and other Rules. Each Owner shall also be responsible for the maintenance, care, repair, and/or replacement of the backyard landscaping and for the repair and/or replacement, as needed, of the front yard landscaping of his or her Lot.

7.4. **Owner Maintenance Neglect.** An Owner who fails to maintain his/her Lot or Residence as required by the Governing Documents and Design Guidelines is subject to enforcement action by the Association as provided in this Declaration or applicable law.

7.5. **Common Area Maintenance Caused by Owner Negligence.** If the need for maintenance or repair of Common Areas is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth in Article V above) to which such Lot is subject.

ARTICLE VIII. INSURANCE

NOTICE: The Association's insurance policy does not cover the Residences, Owner or Occupants' real or personal property, and the contents of their Residence, nor the personal liability of Owners or their Occupants.

8.1. **Insurance.** The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of, or in addition to, embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.** Owners are responsible to provide property insurance covering their Residences and Lots. The Association shall maintain a blanket policy of property insurance covering the Common Areas, and any fixtures or equipment thereon that are the obligation of the Association to maintain. The Association may maintain broader coverage if afforded by the insurance contract.

(a) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in Common Areas or otherwise permanently part of or affixed to Common Areas.

(b) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(c) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the

insurance industry.

(d) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Project's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(e) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, and (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction.

(f) The Association shall set aside an amount equal to the amount of the Association's property insurance deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000.

(g) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal property, and each Owner shall be responsible for obtaining and maintaining such personal property insurance.

8.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall, so long as such is reasonably available: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.5. Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular Assessments in addition to the prior calendar year's highest monthly balance on all operating

and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board Members of the Association, (b) employees and volunteers of the Association, (c) any Manager, and (d) officers, directors, and employees of any Manager.

8.6. **Worker's Compensation Insurance.** The Board shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

8.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

8.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

8.9. **Right to Negotiate All Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Lots. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.10. **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least 50% of the entire voting interest of the Association, the Board shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.

8.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

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

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots. There is no supervision of the Common Areas, including the basketball court, playground area, and equipment. The Common Areas shall be used at the sole risk and responsibility of the Owners, Occupants, and their guests.

9.2. **Use of Lots.** All Lots shall have a single-family Residence and are restricted to such use unless approved by the Board to the contrary. No business, trade, or other nonresidential use shall be conducted on any Lot without the prior written consent of the Board and approval from all applicable government entities. The Board may approve commercial activities if the Board determines that: only normal residential activities would be observable outside of the Residence; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational, Commercial, and Motorized Vehicles.** No boats, trailers, recreational vehicles, trucks exceeding the 1-ton class, or vending or commercial vehicles shall be parked or stored in or upon any of the streets or in the Common Areas except in compliance with Rules as may be created by the Association. Except as otherwise provided by the Rules adopted by the Board, any boats, trailers, recreational vehicles, or vending or commercial vehicles belonging to Owners or other residents of the Property must be stored and kept within the Owner's garage. Only vehicles that are licensed may be operated on the streets within the Project and then only in strict compliance with speed and safety regulations. The Association reserves the right to prosecute complaints against those who create ongoing safety or environmental concerns.

9.5. **Pets and Animals.** Animals kept on any Lot shall be properly fenced, sheltered, and cared for. Each Owner shall clean facilities for their pets as needed to maintain them free from objectionable odors, pests, insects, etc. No animal or other pet of any kind other than common domesticated animals shall be allowed. A Residence may have up to two (2) cats and two (2) dogs. No animal shall, in the opinion of the Board, be dangerous to other residents or other residents' pets or make unreasonable amounts of noise or create odor nuisances. All dogs shall be kept on a hand-held leash except when on an Owner's Lot. Owners are solely responsible for the actions and behavior of the pets and animals staying or visiting at the Residence, and shall hold the Association harmless from any damage or injury caused by such pets and animals. All Owners shall be responsible for the pickup and disposal of any excrement deposited by his or her pets and animals. Owners shall follow all city

ordinances relating to animals. The Board may adopt additional Rules regarding pets and animals in the community.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Residence or appurtenant structures; or except any machinery or equipment allowed by the Board for durations permitted by the Board.

9.7. **Nuisances.** No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes, but is not limited to, the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, unregistered or abandoned vehicles, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- 6) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- 7) Too much noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m., or excessive use of outside speakers or amplifiers; or
- 8) Other sights, sounds, smells, activities, or behaviors deemed a nuisance by the Board.

9.8. **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law. Unless otherwise designated in the Rules, the following restrictions shall apply: Only "For Sale" signs no larger than 3 feet by 2 feet and that are placed in the window of a Residence are permitted. All other signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior approval of the Board. In no instance may signs be placed in the Common Area without the written consent of the Board.

9.9. **Garbage and Refuse Disposal.** All rubbish, trash, and garbage shall be regularly removed from the Property or Lots and shall not be allowed to accumulate thereon. All garbage, trash, or other waste shall be kept in sanitary receptacles, including recyclable

containers, which shall be stored in the garage or otherwise out of view, except on trash collection days. No equipment or storage piles may be kept outside of the Residence. The Board may adopt additional Rules for the storage and concealment of trash containers.

9.10. **Radio and Television Antennas.** No externally visible antenna systems (or internally located electronic or radio equipment which interferes with any other Owner's quiet enjoyment of his Lot) shall be permitted in the Project without the express written consent of the Board. "Mini-satellite" dishes shall be permitted to be placed on the back portion of Residences in an inconspicuous manner without approval of the Board.

9.11. **Clothes Line.** No exterior clothes lines shall be erected or maintained on the Property and there shall be no outside laundering or drying of clothes including front yards, and front and back porches of each Residence.

9.12. **Equipment and Automobile Maintenance.** Unless otherwise provided by the Board, no equipment or car maintenance or repairs of any nature shall be permitted on the Property except in a garage. Car washing or polishing may be done in the Residence's driveway or front yard, if done in accordance with Association Rules and applicable ordinances. Emergency repairs in the driveway of Lot that do not exceed 24-hours are permitted.

9.13. **Parking.** Owners and Occupants must park in their private driveways and garages. Parking in Common Areas, such as guest parking, shall be subject to and governed by Association Rules and may be assigned by the Board. The Association may charge a fee for the use of any assigned Common Area parking. Owners and Occupants may use Common Area parking but no overnight parking is permitted. Prior approval from the Board is required for guests using Common Area parking for more than three (3) days. At no time shall any vehicle be parked in a manner that would block an entrance to a Lot or at any other location within the Project, which would impair vehicular or pedestrian access, or snow removal. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the right to remove or cause to be removed any vehicles that are improperly parked; and the levying of fines to Owners and Occupants who violate, or whose invitees violate, such Rules. Parking shall also be subject to applicable Salt Lake City requirements.

9.14. **Unsightly Items and Storage.** No observable outdoor storage of any kind shall be permitted on front yards, porches, etc., which may be seen from the Association's roads or another Lot except for patio furniture in good repair and condition. Said patio furniture shall conform with standards set by the Design Review Committee. Barbecue grills may be maintained on the patios of a back-yard subject to any standards set by the DRC. Junk, unlicensed or inoperable cars, or other unsightly items shall not be maintained or stored on any Lot except within an enclosed garage but only if operating vehicles may also park within the garage.

9.15. **Leases.** Each Lot shall be occupied by at least one Owner of the Lot as his or her primary residence. Rental or leasing of the Lots is prohibited, except as otherwise specifically provided in this Section. Notwithstanding anything to the contrary in the Declaration or Bylaws, all leasing and Non-Owner Occupancy of a Lot shall be governed by this Section and any Rules and procedures adopted as allowed in this Section.

- 1) **Definitions.** For the purpose of this Section:

(a) "Non-Owner Occupied" means:
(i) For a Lot owned in whole or in part by a natural individual or individuals, the Lot is occupied by someone, but no individual Owner occupies the Lot as the individual Owner's primary residence; or

(ii) For a Lot owned entirely by one or more entities or trusts, the Lot is occupied by anyone.

(b) "Family Member" means:

(i) The spouse, parent, sibling, or child of an Owner; or

(ii) In the case of a Lot owned by a trust or other entity created for estate planning purposes, a Person occupying the Lot if the trust or other estate planning entity that owns the Lot was created for the estate of (i) a current Occupant of the Lot, or (ii) the spouse, parent, child, or sibling of the current Occupant of the Lot.

2) Exemptions. The following Lots may be Non-Owner Occupied:

(a) A Lot owned by a person in the military for the period of the Owner's deployment.

(b) A Lot occupied by a Family Member.

(c) A Lot whose Owner is relocated by the Owner's employer for a period of two (2) years or less.

(d) A Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of a current Occupant of the Lot; or (2) the parent, child, spouse, or sibling of the current Occupant of the Lot.

(e) An Owner of a Lot as of the date of the recording of this Declaration may lease his or her Lot at any time. However, when the ownership of the Lot changes (as evidenced by the records at the County Recorder), the Lot may only be leased pursuant to exemptions (a)–(d) and (f), herein.

(f) If less than twenty-five percent (25%) of Lots (5 Lots) are leased under Subsections (a) – (e) above, then additional Lots up to twenty-five percent (25%) of Lots (5 Lots) may be leased. Owners wishing to lease their Lots under this Subsection (f) shall submit an application to the Board for approval. The Board shall review the applications in chronological order based on the date of receipt of the application. If the application is denied because approval would result in exceeding the twenty-five percent (25%) leasing cap contained herein, the Owner shall be placed on a waiting list. Placement on the waiting list will be according to the date the application was received so that the Owner on the waiting list whose application was earliest received shall have first opportunity to lease his or her Lot when an opening becomes available (i.e. when leased Lots drop below twenty-five percent (25%)).

The Board shall adopt procedures pertaining to this Section 2 relating to tracking of rentals, the application and approval process, the waiting list, and any other issues necessary to implement consistent administration and enforcement of this Section 2. No Owner shall be permitted to lease his/her Residence for transient, hotel, or seasonal purposes. All leases shall

be for an initial term of no less than twelve (12) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his or her entire Residence.

3) Joint and Several Liability of Owner and Non-Owner Occupants. The Owner of a Lot shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Declaration, Bylaws and Association rules and the Owner and Occupant shall be jointly and severally liable for any fines for violations thereof.

4) Remedies for Violation. If an Owner fails to comply with this Section or rents or leases a Lot in violation of this Section, the Board may:

(a) Assess fines against the Owner and Owner's Lot pursuant to a schedule of fines adopted by the Board.

(b) Regardless of whether any fines have been imposed, proceed with any other available legal remedies, including, without limitation, an action to require the Owner to terminate the rental or lease agreement and remove the tenant.

(c) Pursuant to rules adopted under this Section, if the Board determines that a Non-Owner Occupant has violated a provision of the Declaration, the Bylaws, or rules and regulations, the Board may require an Owner to terminate a rental or lease agreement with that Non-Owner Occupant.

(d) In addition to any other remedy for non-compliance, after reasonable notice, the Association shall have the right to initiate an action and obtain a forcible entry and unlawful detainer order from the court, or similar action, with the purpose of removing the offending Non-Owner Occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subsection and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subsection.

5) Costs and Attorney Fees. Fines, charges, and expenses incurred in enforcing the Declaration, the Bylaws, and rules and regulations with respect to a Non-Owner Occupant, and for any costs incurred by the Association in connection with any action under this Section, including reasonable attorney fees (regardless of whether any lawsuit or other action is commenced), are Assessments against the Owner and Lot which may be collected and foreclosed on by the Association.

9.16. Window Covers. No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board may adopt Rules regulating the type, color, and design of the external surface of window covers. All window coverings shall be installed within (1) month of moving into a Lot.

9.17. Holiday Decorations. Holiday decorations may be displayed on the Lots within thirty (30) days before and thirty (30) days after the related holiday. The Board may adopt additional Rules to regulate holiday decorations in the Project, to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and

which are placed in, on, or outside of a Residence or Lot with the apparent purpose, in whole or in part, of making it visible to people outside of the Residence or Lot

9.18. **Flags.** Occupants may display one reasonably sized American flag on the exterior of a Residence consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.

9.19. **Energy Conservation Equipment.** Solar energy collector panels and attendant hardware or other energy conservation equipment (collectively referred within this Section as “Energy Equipment”) are only allowed as approved by the DRC subject to Design Guidelines and Rules. Such Design Guidelines and Rules must require that the installation be an integral and harmonious part of the architectural design of the Lot or Residence. The DRC shall have the sole discretion to determine compliance with the Design Guidelines. The following requirements shall apply to any Energy Equipment allowed by the DRC:

1) The Energy Equipment shall be installed in a manner that complies with all applicable, health, safety, and building requirements established by applicable law, regulation, building code, or ordinance;

2) If the Energy Equipment is used to heat water, it shall be certified by the “Solar Rating and Certification Corporation”, or a nationally recognized solar certification entity, as determined by the Board;

3) If the Energy Equipment is mounted on a roof, it shall not extend above the roof line and all panel frames, support brackets, and visible piping and wiring shall be similar in color and texture to the roof material;

4) If the Energy Equipment is mounted on the ground, it shall not be visible from the street that the Residence fronts;

5) Any and all costs incurred by the Association in reviewing any application to install Energy Equipment or in carrying out or enforcing the terms of this Section, including attorneys’ fees, shall be paid to the Association as an Individual Assessment as set forth in Article V above;

6) The Owner of the Residence or Lot whereupon the Energy Equipment is installed shall maintain the same in a clean, attractive, and workmanlike manner, as determined by the DRC;

7) As provided by the Act, the Owner installing the Energy Equipment shall be jointly and severally liable with any subsequent Lot Owner for a violation of any Rules or Design Guidelines duly adopted by the Association regarding the placement, care, maintenance, and so forth of any Energy Equipment, including those requirements set forth herein;

8) The Lot Owner shall be responsible for, and shall indemnify and hold the Association harmless from, any damage or injury to person or property that is caused by the Energy Equipment; and

9) As a condition of installing any Energy Equipment, a deed restriction or similar agreement covering the foregoing requirements, and any others imposed by the Association (as used herein “Energy Agreement”), may, in the discretion of the Board, be entered into by the Owner and the Association. The Energy Agreement shall be recorded

against the Lot, run with the Lot, and be binding upon the Lot's successors in interest and assigns.

9.20. **Variations.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if a majority of the Board determines in its discretion: (1) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the other Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by a duly authorized Board Member. No variance may be granted that is inconsistent with the Act.

ARTICLE X. ARCHITECTURAL CONTROLS

10.1. **Design Review Committee.** The Board may appoint a three (3) member Design Review Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures (herein the "DRC"). The DRC need not be composed of Owners. If such a committee is not appointed, the Board shall perform the duties required of the DRC. The DRC's responsibilities include but are not limited to: 1) Review and approve all structures and improvements within the Project; 2) Ensure Lot Owners maintain their Lot appearance and conditions in accordance with the terms of the Governing Documents; 3) Jurisdiction over any removal of living trees on Common Areas; 4) Planning and implementing improvements and maintenance of Common Areas.

10.2. **Architectural Controls.** To maintain a degree of protection to the investment which Owners have made, exterior alterations of structures, fences, or landscaping shall be limited to those approved by the DRC. In the event of any reconstruction of an improvement or Residence due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the DRC. No landscaping, grading, excavation, building, fence, wall, Residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the plans and specifications, have been approved in writing by the DRC. All subsequent additions to or changes or alterations in any building, fence, wall, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the DRC. Once approved by the DRC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the DRC. Subsequent to receiving approval of the DRC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the city when required. Plans and specifications submitted to the DRC shall give complete descriptions and color samples of materials to be used. The DRC will base its approval of plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, and any other guidelines adopted by the Association.

Interior alterations that do not affect the exterior appearance of a Lot or Residence shall not be required to be approved by the DRC. The Board or the DRC may adopt additional Rules that exempt minor alterations or certain types of décor from being subject to this section and DRC approval.

10.3. **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Project.

1) The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board and DRC. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

2) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.4. **Variances.** The DRC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be in writing and must be signed by all of the members of the DRC (or Board if acting as the DRC). If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.5. **Liability for Damages.** The DRC shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article.

10.6 **Landscaping Review Committee.** The Board may create and appoint a "Landscaping Review Committee", in addition to the DRC, to handle the landscaping aspects of the DRC's responsibilities as the Board deems appropriate.

ARTICLE XI. ENFORCEMENT

11.1 **Enforcement of Governing Documents.** The Association, through the Board, shall have the power and authority in its own name, on its own behalf, or in the name and behalf of any Owner(s) who consents thereto, to enforce, by fine or proceedings at law or in equity, each provision of the Governing Documents and Design Guidelines, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). Owners may also enforce the Governing Documents and Design Guidelines as allowed by law through proceedings at law or in equity. The prevailing party in any action for the enforcement of any provisions of the Governing Documents and Design Guidelines (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Occupants, guests, and invitees shall be jointly and severally liable with the Owner for any fine assessed as a result of their action in violation of the provisions of the Governing Documents.

ARTICLE XII. RIGHTS OF FIRST MORTGAGEE

12.1. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for

such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments levied while it holds title to the Lot.

12.2. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

12.3. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIII. RIGHT OF ENTRY

13.1 **Right to Enter Lots.** The Association acting through the Board or its duly authorized agent shall have the right at all times and upon reasonable notice of at least 48 hours to enter upon any Lot on the areas located outside the exterior boundaries of a Residence, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs, and to correct any violation of any of the Governing Documents. The notice set forth in this Section shall not be necessary in case of an emergency threatening other Residences, Occupants, or other parts of the Project. Nothing in this Section shall be construed to authorize the entry of the Association into the interior of a Residence without the consent of the Lot Owner unless there is an emergency threatening another Residence or the Occupants of another Residence. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have for notice purposes.

ARTICLE XIV. AMENDMENTS

14.1 **Amendments.** This Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature used for voting shall be required.

ARTICLE XV. MISCELLANEOUS

15.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the

records of the Association at the time notice is sent. If no email or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes. Notices may also be sent as allowed by the Act.

15.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act.

15.3. **Dissolution.** The Association may be dissolved by the affirmative assent in writing from 100% of the Lot Owners. Upon dissolution, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for purposes similar to those provided herein, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas and facilities on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V.

15.4. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.5. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.6. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.7. **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and is not comprised of and does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

15.8. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner(s) agree by purchasing a Lot in this Association that the Association and Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO THE SECURITY OF THE PROJECT.

15.9. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Salt Lake County Recorder.

CERTIFICATION

IN WITNESS WHEREOF, this Amended and Restated Declaration of Covenants, Conditions, and Restrictions of Scott Avenue Park was duly approved by at least 67% of the total voting power of the Association.

DATED as of the 4 day of December, 2019.

Scott Park Avenue HOA, Inc.
A Utah Nonprofit Corporation



By: Steve Risenmay
Its: President

State of Utah)
County of Salt Lake ss.

On the 4 day of December 2019, personally appeared before me Steve Risenmay who by me being duly sworn, did say that he is an authorized representative of the Scott Park Avenue HOA, Inc., and that the foregoing instrument is signed and executed by authority of the consent of its members.

Notary Public Yammy B. Rivera

State of Utah, County of Salt Lake

The foregoing instrument was acknowledged before me on this 4 day of December, 2019.

By Steve Risenmay
Yammy B. Rivera
Notary Public

EXHIBIT A
LEGAL DESCRIPTION AND PARCEL NUMBERS

Phase 1

Common Area and Lots 101, 102, 103, 104, 105, 106, 107, and 108, SCOTT AVENUE PARK, a Planned Unit Development, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Parcel Numbers:	16-32-105-055-0000	16-32-105-059-0000
	16-32-105-056-0000	16-32-105-060-0000 (Common Area)
	16-32-105-057-0000	16-32-105-061-0000
	16-32-105-058-0000	16-32-105-062-0000
		16-32-105-063-0000

Phase 2

Common Area and Lots 201, 202, 203, 204, 205, and 206, SCOTT AVENUE PARK, Phase 2, P.U.D., according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Parcel Numbers:	16-32-105-066-0000	16-32-105-069-0000
	16-32-105-067-0000 (Common Area)	16-32-105-070-0000
	16-32-105-068-0000	16-32-105-071-0000
		16-32-105-072-0000

Phase 3

Common Area and Lots 301, 302, 303, 304, 305, and 306, SCOTT AVENUE PARK, Phase 3, P.U.D., according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.

Parcel Numbers:	16-32-105-080-0000	16-32-105-084-0000
	16-32-105-082-0000	16-32-105-085-0000
	16-32-105-083-0000	16-32-105-086-0000
		16-32-105-087-0000 (Common Area)

EXHIBIT B
BYLAWS
OF
SCOTT PARK AVENUE HOA, INC.

These BYLAWS OF SCOTT PARK AVENUE HOA, INC. are effective upon recording in the Salt Lake County Recorder's Office pursuant to the Utah Community Association Act ("Act") and the Utah Revised Nonprofit Corporation Act ("Nonprofit Act") (referred collectively herein as the "Acts").

RECITALS

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and its Articles of Incorporation.

B. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as Scott Avenue Park, and to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

C. These Bylaws of the Association supersede and replace any previous bylaws of the Association and any amendments thereto, whether recorded or not.

ARTICLE I
DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Scott Avenue Park.

ARTICLE II
APPLICATION

2.1 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Residences or the mere act of occupancy or use of any said Residences or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III
OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year between July and September on a day and time established by the Board. The purposes of the

Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or at the next Annual Meeting. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting.

3.2 **Special Meetings.** Special Meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than thirty-five percent (35%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request.

3.3 **Place of Meetings.** The Board may designate any place in Salt Lake County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, the place of the meeting shall be held at the office of the Association or its Manager.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than thirty (30) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, regular mail, or as otherwise allowed by the Act. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 **Qualified Voters.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she is not delinquent in the payment of Assessments.

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than thirty (30) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of

record of Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.

3.7 **Quorum.** At any Owner meeting, the presence of at least thirty-three percent (33%) of the Owners, either in person or by proxy, shall constitute a quorum for the transaction of business.

3.8 **Proxies.** Owners shall be entitled to vote in person or by proxy at each meeting provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney when duly authorized in writing. A proxy given to a Person who represents an Owner at Association meetings shall be in writing, dated, and signed by such Owner. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Lot of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. The election of Board Members may be by secret ballot. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be exercised with respect to any Lot. Only those Owners who are not delinquent in the payment of Assessments to the Association shall be entitled to vote. Voting for any Association matter may be done electronically, including online voting, so long as the Board can reasonably determine the validity of the vote.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or §16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any

electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting.

ARTICLE IV BOARD OF DIRECTORS

4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed by a Board of Directors composed of either three (3) or five (5) individuals, as determined by the Board. Board Members must be in good standing (see Section 3.5 herein), must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. No more than one (1) Board Member may reside in the same household. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate.

4.3 **Nominations.** No more than sixty (60) or less than fifteen (15) days before an election to the Board of Directors is held, the Association shall notify the Owners of the election, of the number of upcoming vacancies that will filled at the election and shall issue a call for nominations. Nominations for candidates may be made in writing to a current Board Member at any time after the notice of the election is provided to the Owners and nominations may be made from the floor before the election takes place. Self-nominations are permitted. All nominees shall meet the qualifications for Board Members provided in these Bylaws. The Board of Directors may from time to time amend this nomination procedure by resolution.

4.4 **Election.** The election of Board Members shall be made by a vote of the Owners. At such election, the Owners or their proxies may cast, with 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 (i.e. an Owner casting all of his or her votes for the same candidate) or fractional voting is not permitted.

4.5 **Term of Office.** At each Annual Meeting, the Owners shall elect the number of Board Members whose terms are to expire for a term of two (2) years. The terms shall be staggered and overlap so that elections for Board Member positions are held each year. Board Members may serve consecutive terms if reelected.

4.6 **Regular Meetings.** The Board shall hold meetings at least quarterly at the discretion of the Board.

4.7 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.

4.8 **Meeting Notice.** Notices of Board meetings may be given to Board Members and Owners personally, by email, by telephone, including text message, or as otherwise allowed by the Acts. By unanimous consent of the Board, meetings may be held without call or notice to Board Members, but notice shall always be provided, as required by the Acts, to those Owners who have requested notice of Board meetings.

4.9 **Quorum and Manner of Action.** A majority of the then authorized Board Members shall constitute a quorum for the transaction of business at any Board meeting. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.10 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member or Manager and providing a valid email address and phone number capable of receiving text messages which may be used by the Association in sending notice. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.11 **Open Meetings.** Except as provided below in (a) through (f), Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- (a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- (b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- (c) Discuss a labor or personnel matter;
- (d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- (e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- (f) Discuss a delinquent assessment.

4.12 **Board Meetings Location.** The Board may designate any place in Salt Lake County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members or Owners to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners, who have requested notice, may call-in to access the meeting.

4.13 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the

challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.14 **Compensation.** No Board Member shall receive compensation for any services rendered to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.15 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at any time, with or without cause, by the Owners at a special meeting duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. A Board Member may also be removed with a majority vote of the Board if a Board Member misses three (3) or more consecutive Board meetings or misses more than 50% of the Board meetings in a calendar year.

4.16 **Vacancies.** If vacancies shall occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.17 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.18 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.19 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.20 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct or vote on Association business.

ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.

5.2 **Election, Tenure, and Qualifications**. Officers shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each such officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers**. The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 **Resignation and Removal**. An officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. An officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.

5.5 **Vacancies and Newly Created Offices**. If a vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

5.6 **President**. The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Vice President**. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 **Secretary**. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **Treasurer**. The Treasurer shall be responsible to maintain the financial accounting of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer is responsible for the implementation of procedures to minimize the risk of embezzlement or improper use of Association funds and financial accounts. The Treasurer shall perform such other duties as required by the Board.

5.10 **Compensation**. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for

expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

6.1 **Designation of Committees.** The Board may designate committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.

6.2 **Proceeding of Committees.** A committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Committees shall keep records of its proceedings and shall regularly report such records to the Board.

6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board.

6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member

6.5 **Vacancies.** If a vacancy shall occur in any committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been

heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The indemnification provided herein shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board shall direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.

7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**ARTICLE VIII
RECORDS AND AUDITS**

8.1 **General Records.** The Board of Directors or the Manager for the Association shall keep detailed records of the actions of the Board of Directors and Manager; minutes of the meetings of the Board of Directors; and minutes of the Owner meetings of the Association. The Board of Directors shall also maintain a book of resolutions containing the rules, regulations, and policies adopted by the Association and Board of Directors. The Board of Directors shall also maintain a list of Owners.

8.2 Records of Receipts and Expenditures. The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Project, itemizing the maintenance and repair expenses of the Common Areas or Association property and any other expenses incurred.

8.3 Financial Reports and Audits. 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 of Directors to all Owners and to any mortgagees of Units who request the same. The Board of Directors shall also annually, at the expense of the Association, obtain an "accounting review" or "agreed upon procedures" by a certified public accountant or other similar financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Eligible Mortgagees of Units who request this information. From time to time the Board may also, at the expense of the Association, obtain an audit by a certified public accountant of the books and records of the Association. At any time, any Owner or Eligible Mortgagee may, at such Owner's or Eligible Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

8.4 Inspection of Records by Owners. Except as provided in Section 8.5 below, all records of the Association shall be reasonably available for examination by an Owner and any Eligible Mortgagee of a Unit pursuant to Rules adopted by resolution of the Board of Directors. The Board of Directors 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 of the Association; (2) The most recent financial statement prepared pursuant to Section 8.3 above; and (3) The current operating budget of the Association. The Association shall, within a mutually agreeable time, after receipt of a written request by an Owner, furnish the requested information required to be maintained under this Section 8.4. The Board, by resolution, may adopt reasonable Rules governing the frequency, time, location, notice and manner of examination and duplication of Association 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, including any and all fees the Association may be charged by its designee that assists the Association in furnishing this information, which may include managerial, legal, or accounting fees.

8.5 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 subsections a. and b. of this Section, or current or pending litigation.
- (d) Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.
- (e) Disclosure of information in violation of law.

(f) Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or Rules;

(g) Documents, correspondence, or management or Board of Director 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.

(h) Documents, correspondence, or other matters considered by the Board of Directors in executive session.

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

ARTICLE IX RULES AND REGULATIONS

9.1 **Rules.** The Board shall have the authority to adopt and establish by resolution such Association Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

ARTICLE X AMENDMENTS

10.1 **Amendments.** The Bylaws may be amended, altered, or repealed upon the affirmative vote of at least fifty-one percent (51%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Salt Lake County Recorder. In such instrument, the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any Owner or Board Member signature shall be required.

ARTICLE XI MISCELLANEOUS PROVISIONS

11.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

11.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, 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 are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

11.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

IN WITNESS WHEREOF, the Board of Directors has executed these Bylaws of the Scott Park Avenue HOA, Inc. as of the day and year written below, after having receiving approval from at least 67% of the total voting power of the Association.

DATED as of the 4 day of December, 2019.

Scott Park Avenue HOA, Inc.
A Utah Nonprofit Corporation



By: Steve Risenmay
Its: President

State of Utah)
County of Salt Lake ss.

On the 4 day of December 2019, personally appeared before me Steve Risenmay who by me being duly sworn, did say that he is an authorized representative of the Scott Park Avenue HOA, Inc., and that the foregoing instrument is signed and executed by authority of the consent of its members.

State of Utah, County of Salt Lake

Notary Public Terri Berg Rivera

The foregoing instrument was acknowledged before me on this 4 day of December, 2019.

By Steve Risenmay
Terri Berg Rivera
Notary Public

