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After recording, all notices to:  
CW The Iris, LLC  
610 N 800 W  
Centerville, Utah 84014

14423671 B: 11593 P: 7894 Total Pages: 68  
08/18/2025 09:29 AM By vanguyen Fees \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To CW THE IRIS LLC  
610 N 800 W CENTERVILLE UT 84014



Affecting Parcel No.: 08-36-178-005

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**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS, AND RESERVATION OF  
EASEMENTS FOR**

**theIRIS**

**IN SALT LAKE CITY, UTAH**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
theIRIS CONDOMINIUMS  
IN SALT LAKE CITY, UTAH**

This Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for theIRIS Condominiums (the “**Declaration**”) is effective when recorded with the Salt Lake County Recorder’s Office by CW The Iris, LLC, a Utah limited liability company (the “**Declarant**”), pursuant to the Utah Condominium Association Act.

**RECITALS**

A. The Declarant, with a principal office address of 610 North 800 West, Centerville, Utah, 84014, is the owner and developer of the that certain planned residential condominium development located on the real property in Salt Lake City in Salt Lake County, Utah, described in Exhibit A, and known as theIRIS (the “**Project**”).

B. An integral part of the Project is the formation of a homeowners association to administer and maintain common areas and common elements within the Project and to enforce the restrictive covenants, conditions, and restrictions for the Project. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between the Declarant and the Association or the Declarant and any Owner, or to inure to the benefit of any third party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between the Declarant and the Association.

C. The Declarant and/or the undersigned Persons are the owners of the real property subject to this Declaration. By signing this Declaration, the Declarant and the undersigned Owners consent to subjecting the Project to the terms, covenants, and restrictions contained herein.

D. The terms and conditions established herein are for the mutual benefit and burden of the Unit Owners, the Association, and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project. The Project and all of the Units therein shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the terms and conditions set forth in this Declaration which shall constitute equitable servitudes, covenants, and conditions running with the land. By acquiring any interest in a Unit, such Owner consents to, and agrees to be bound by, each and every term and condition herein.

E. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

**DECLARATION**

**NOW, THEREFORE**, the Declarant hereby declares that the Project is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Project;

they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the Recitals above.

## **1. DEFINITIONS**

As used herein, unless the context otherwise requires:

1.1. “**Act**” shall mean the Utah Condominium Ownership Act, beginning at Utah Code Ann. § 57-8-1 *et seq.*, as the same may be amended from time to time.

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

1.3. “**Assessments**” shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.4. “**Association**” shall refer to The Iris Owners Association, Inc., the membership of which shall include each Owner of a Unit in the Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this Declaration shall refer to that entity.

1.5. “**Board Member**” shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association.

1.6. “**Board of Directors**” or “**Board**” shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. The term Board of Directors, as used herein, shall have the same meaning as “Management Committee” under the Act.

1.7. “**Bylaws**” shall mean and refer to the Bylaws of the Association. The initial Bylaws of the Association are attached hereto as Exhibit B.

1.8. “**City**” shall mean and refer to Salt Lake City, located in Salt Lake County, Utah.

1.9. “**Claim**” (or collectively, “**Claims**”) means any and all claims, demands, suits, actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorneys’ fees and costs.

1.10. “**Common Area**” shall mean, refer to, and include:

(a) the land included within the Project designated as open space or parcels A, B, etc. on the Plat;

(b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces, gutters, downspouts, soffit, and fascia of the buildings in the Project;

(c) all halls, corridors, stairs, and stairways, entrances and exits which are designed for the use of more than one Unit;

(d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, and other installations or facilities existing for common use as set forth on the Plat;

(e) all installations of utility services within the Project such as power, light, gas, water, and sewer including all pipes, wires, conduits, or other utility lines that serve more than one Unit, including such facilities that may be located within buildings or Units;

(f) any mechanical, plumbing, or other equipment, apparatus, and installations serving more than one Unit and existing for common use; and

(g) everything included within the Project, excluding the individual Units, as identified on the Plat; all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

1.11. **“Common Expenses”** shall mean: (a) all sums lawfully assessed against all Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, and other providers of services for the Association; (d) insurance and bonds required or allowed by this Declaration; (e) the establishment of reserves; (f) expenses allocated by the Association among the Owners; (g) expenses agreed upon as Common Expenses by the Association or its Owners; (h) expenses declared Common Expenses by the Declaration; and (i) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.12. **“Community-Wide Standards”** shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Development, or, at a minimum, the standards initially established by the Declarant and/or described in this Declaration.

1.13. **“Declarant”** shall mean CW The Iris, LLC, a Utah limited liability company, and any successor or assign.

1.14. **“Declaration”** shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for the IRIS Condominiums and shall include any and all amendments and supplements thereto.

1.15. **“Governing Documents”** shall mean and refer to this Declaration, the Plat, the Bylaws, Rules, any Articles, and any other written instrument by which the Association may exercise power or manage, maintain, or otherwise affect the Units.

1.16. **“Improvements”** shall mean and refer to all improvements that have or will be constructed or installed within the Project not part of any Unit that are necessary to provide public

road access and/or utility service to the Units, and includes such other and further construction or installations required by local government.

1.17. “**Lender**” shall mean and refer to a holder of a mortgage or deed of trust on a Unit.

1.18. “**Limited Common Area**” shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area. If an Owner’s Limited Common Area is not depicted on the Plat, or there is a dispute over its boundaries, the Board shall have the authority and discretion to determine Limited Common Area boundaries and the Board’s decision shall be binding.

1.19. “**Lot**” shall mean and refer to any of the separately identified parcels labelled on the Plat, which may be independently owned and conveyed, and is intended for development, use, and occupancy. A Lot is included as part of a Unit, as defined below.

1.20. “**Manager**” shall mean and refer to any Person engaged by the Board, or by the Declarant during the Period of Declarant Control, to manage the affairs of the Association.

1.21. “**Occupant**” shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Unit within the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant.

1.22. “**Owner**” shall mean and refer to the Person or Persons, who are vested with record title to a Unit, and whose interest in the Unit is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Salt Lake County, Utah. The term “Owners” shall mean and refer to more than one Owner. The terms Owner and Owners shall not include a mortgagee or trustee for or beneficiary of a deed of trust. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

1.23. “**Period of Declarant Control**” shall mean the period of time during which the Declarant may appoint and remove Board Members as set forth in Utah Code Ann. § 57-8-16.5. The Period of Declarant Control shall commence on the recording date of the first deed transferring title of a Unit from the Declarant to a third-party purchaser, and shall terminate on the date that the Declarant executes and records a written waiver of its right to control the Association. The expiration of the Period of Declarant Control has no effect on the termination of all other Declarant Rights set forth in this Declaration.

1.24. “**Person**” shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, government, governmental subdivision or agency, or any other legal entity.

1.25. “**Plat**” shall mean and refer to the **IRIS PHASE 1** plat recorded with the Office of Recorder for Salt Lake County, Utah, on August 18, 2025, as Entry No. 14423670, and all recorded amendments and supplements thereto and shall include any additional recorded plats adding Units to the Project. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Plat shall control, except to the extent provided for on the Plat, or as otherwise provided by the application of controlling law.

1.26. “**Proceeding**” shall mean and refer to a lawsuit, arbitration, mediation, or an administrative or governmental proceeding.

1.27. “**Project**” shall include the real property described in Exhibit A, together with the buildings, Improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the theIRIS Condominium development

1.28. “**Released Persons**” shall mean the following Persons: (i) every director and officer of the Association; (ii) every member of committees of the Association; (iii) the Declarant and the Declarant Related Parties; and (iv) all employees of the Association.

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

1.30. “**Rules**” shall mean and refer to the rules and regulations adopted by the Association for the Units.

1.31. “**Supplemental Declaration**” shall mean and refer to any recorded supplement to the Declaration for additional Lots that may be added to the Project.

1.32. “**Transfer**” shall mean any of the following: (a) a conveyance, sale, or other transfer of a Lot or Unit as reflected by the recordation of a deed or other instrument in the records of the Salt Lake County Recorder, regardless of whether it is pursuant to the sale of the Unit or not, excluding the grant of an interest in a Unit through a mortgage or deed of trust; (b) the granting of a life estate in a Unit; or (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than seventy-five percent (75%) of the business entity’s share, stock, membership interests, or partnership interests in a twelve (12) month period.

1.33. “**Undivided Interest**” shall mean and refer to the undivided ownership interest of each Unit (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit.

1.34. “**Unit**” shall mean and refer to a separate physical part of the Project intended for independent use. Units are shown on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest in the Common Areas and Limited Common Area appurtenant to such Unit.

## **2. THE PROJECT**

2.1. Nature of the Project. The Project is a condominium development and is comprised of the Units, as set forth on the Plat. The Project is not a cooperative.

2.2. Project Name and Location. The Project is known as theIRIS. Notwithstanding, the name used for the Project on the Plat or by the Association may be different than the name identified in this Declaration. The Project is located in Salt Lake County, Utah.

2.3. Submission. The Declarant hereby submits the real property described with particularity on Exhibit A to the Act. The Declarant hereby declares that the Project and all of the Units 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, executors, administrators, personal representatives, successors, and assigns.

2.4. Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act.

2.5. Registered Agent. The registered agent of the Association, the person to receive service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, shall be as provided for in entity filings of the Association with the Utah Division of Corporations and Commercial Code, if any, and/or with the Utah Department of Commerce Homeowner Associations Registry. The Board of Directors may change the Registered Agent at any time and without the need for Owner consent.

## **3. DESCRIPTION OF UNITS AND UNDIVIDED INTERESTS**

### **3.1. The Units.**

(a) The Plat shows each Unit's building designation, location, and dimensions from which its area may be determined, those Limited Common Areas which are reserved for its use, and the Common Areas to which it has immediate access. The distinct Lot number or number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.

(b) Subject to further specification herein and/or on the Plat, the boundaries of each Unit shall be the interior surfaces of the structural members of the exterior walls, ceiling, and floor. Units shall include: (i) nonstructural walls, drywall, and decorated interiors if any; (ii) finished surfaces of interior structural walls, floors and ceilings; (iii) all interior paint and flooring; (iv) all pipes, wires, ducts, conduits, or other utility lines or installations located within the boundaries any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioners, heaters, and the like; (v) exterior windows, doors, garage



doors, and all appurtenant hardware and equipment; and (vi) and all fixtures, mechanical equipment, and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated. For all walls shared with or abutting another Unit, the Unit shall extend to the center of said wall, which shall form the boundary of the Units sharing that wall. Subject to dividing lines between Units, any above-ground structure that extends beyond the vertical plane of the ground-level boundary of the Unit is part of the Unit if it: (i) is an integral part of the Unit structure (such as a porch, landing, patio, balcony or deck); or (ii) was constructed as part of the original construction of the Unit.

(c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water or sewer lines, or any other similar fixtures lying inside the designated vertical boundaries of a Unit, shall be part of the Unit. Additionally, any mechanical equipment, systems or other appurtenances located outside of a Unit, but designated and designed to serve only that Unit, shall be considered part of the Unit.

(d) The original construction shall be the initial installation of boundaries, foundations, framing, wallboard, and the like (the "**Original Construction**") and shall be the controlling dimensions for any Unit, Common Area, or Improvement. If the Board of Directors determines that the present construction varies from the Original Construction, then the Association, at the expense of the Association or the Owner, may require that the present construction be made to comply with the Original Construction. Nothing herein will excuse an Owner from the need to obtain any variances from any municipality or governmental authority.

(e) Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate an Owner or Occupant with a disability (as defined by federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area and Facilities, or deviations from provisions of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.

(f) All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit and an appurtenant undivided interest in and to the Limited Common Areas it is assigned and Common Areas.

3.2. Modification of Units. Owners may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the exterior of the Units, but an Owner shall not make any structural alterations or alterations to any part of the exterior of a building (such as windows, light fixtures, exterior doors, and overhead doors), the Common Area, or the Limited Common Area without the prior written approval of the Board. The Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that

they comply with particular color schemes, material requirements, or other Community-Wide Standards or applicable laws.

3.2.1. Remodeling and Extensive Maintenance. An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area, or Limited Common Area. Without the prior written consent of the Board, no Unit shall be altered in any manner that would increase sound transmission, resonances, or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling, or wall that increases sound transmissions, resonances, or reverberations to any other Unit. Without prior written permission of the Board, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's common garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

3.2.2. No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Declarant or Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Declarant's or a Board Member's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Project. However, in no event shall the approval of the Board of any plat or covenant, condition, or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

3.3. Limited Common Area. The right to the exclusive use of the Limited Common Area shall be appurtenant to the respective Unit or Units where so identified and may not be severed from the ownership of the Unit.

3.4. Interest of Each Unit in the Total Voting Interest of the Association and Common Expenses. The voting interests in the Association and liability for the Common Expenses shall be allocated equally among the Units (the Undivided Interest). Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Undivided Interest. The Owner of each Unit shall be entitled to exercise their voting interest on all matters related to the Association that Owners are permitted or required to vote or approve, subject to any suspension of voting rights for unpaid Assessments as provided in this Declaration. The Undivided Interest of each Unit shall be calculated by dividing the number 1 by the total number of Units in the Project. If any Units are legally added to or withdrawn from the Project, the Undivided Interest shall be recalculated in accordance with the formula set forth above.

Otherwise, the Undivided Interest shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration.

#### **4. OWNER RIGHTS AND RESPONSIBILITIES**

4.1. Rights and Nonexclusive License to Use Common and Limited Common Areas. Subject to all other terms of the Governing Documents, each Owner shall have the right and a nonexclusive license for use and enjoyment of the Common Areas, and the right and nonexclusive license for the use and enjoyment of the Limited Common Area to which that Owner's Unit has been assigned, if any, subject to any restrictions related to such use. Such rights and nonexclusive license shall be appurtenant to, and shall pass with title to, each Unit, and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Areas as the Owner whose Unit the Occupant is occupying. All such rights shall be subject to any Rules established by the Board.

4.2. Responsibilities of Owners. Each Owner shall have the following responsibilities in addition to any others set forth in the Governing Documents or provided by law:

4.2.1. Maintenance of the Unit. In accordance with Exhibit C and except to the extent that maintenance, repair, and upkeep of Unit exteriors has been assumed by the Association, each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, undamaged, and tidy condition in accordance with Community-Wide Standards, all of the following:

(a) all windows, window frames, exterior doors, interior doors, overhead doors, and all hardware, openers, or controllers (if any);

(b) all paneling, tiles, paint, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;

(c) all power, water, gas, sewer, and other utility lines in an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; and

(d) any of the following whether inside or outside of the Unit, which serve an Owner's Unit exclusively: fans, light fixtures, heaters, air conditioning units, security systems, and such other appliances, fixtures, and decorations as an Owner may install.

4.2.2. Responsibility for Limited Common Area. Except to the extent that maintenance and upkeep is assumed by the Association, each Owner shall be responsible to maintain the Limited Common Area appurtenant to the Owner's Unit in neat and clean condition and free of all debris, grease, spills, leaks, trash, litter, and personal property.

4.2.3. Utilities. The charges for utilities that are metered separately to each Unit shall be the responsibility of the respective Unit Owners. Utility costs and charges that are metered collectively to the Association shall be a Common Expense. Shared trash collection services provided for the Project shall be a Common Expense.

4.3. Owner Liability and Indemnification. Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Areas and Limited Common Areas that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Unit, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by taking title to a Unit, agrees to indemnify each and every other Owner and Occupant in such other Owner's Unit, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Unit, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.

4.4. Hazardous Substances.

4.4.1. The Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance of a Unit or the Project.

4.4.2. Each Owner shall indemnify, defend, and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the hazardous substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of hazardous substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

4.4.3. As used in this Section, "**Hazardous Substances**" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section "**Environmental Law**" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

4.5. Declarant Exception. So long as the Declarant owns a Unit in the Project, the Declarant shall be exempt from the restrictions contained in this Article.

## 5. ASSOCIATION GOVERNANCE

5.1 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 Limited Common Areas, the Common Areas, and the expenses related to each, 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.

5.2. Legal Organization. The Association is 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.

5.3. Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat, and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to affect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

5.4. General Powers and Obligations. The Association shall have, exercise, and perform all of the following powers, duties, and obligations: (a) the powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles; (b) the powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah; (c) the powers, duties, and obligations of a condominium association pursuant to the Act; (d) the powers, duties, and obligations not reserved specifically to the Owners; and (e) any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

5.5. Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association for so long as such Owner has an ownership interest in a Unit, and such membership shall automatically terminate

when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.6. Voting. Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Undivided Interest pertaining to the Unit, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than establishing a quorum.

5.7. 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. The Bylaws may set forth qualifications and requirements for serving on the Board. Except as may be specifically provided in this Declaration, the Bylaws, Articles, or by applicable law, no Owner or group of Owners other than the Board may direct the actions of the Association.

Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Declaration and Bylaws.

5.8. Board Member Qualifications. To be eligible to serve on the Board, an individual must be: (a) at least 18 years old; (b) an Owner, or the spouse of an Owner, or an officer, principle, shareholder, partner, member, manager, trustee, or beneficiary of an Owner (i.e., an authorized representative) if such Owner is a corporation, estate, limited liability company, partnership, trust, or other legal entity, as the case may be; and (c) current on Assessments.

5.9. Registration with the State. In accordance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce Homeowner Associations Registry and shall update its registration to keep any required information current as required by law.

5.10. No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Board or anyone else) contrary to the terms of the Governing Documents, regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or taking title to a Unit, to verify that anything that the Association does,

does not do, or authorizes related to the Project or the Association, is in compliance with the terms of the Governing Documents.

5.11. Board Liability. To the fullest extent permitted by law, the Declarant and each past and present Board Member, and all Released Persons shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence performed in their relative duties

5.11.1. Each Owner, Occupant, and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant, or other Person entering upon or making use of any portion of the Project, including the transmission of any infectious disease or illness. Each Owner, Occupant, and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness, or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant, and other Person assumes all risks of personal injury, illness, or other loss or damage arising from the presence of malfunction of any utility line, equipment, or substation adjacent to, near, over, or on the Project.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety, or welfare of any Person, even if funds of the Association are used for such a purpose.

5.12. Board Indemnification. To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (Utah Code Ann. § 16-6a-101, *et seq.*), the Association shall indemnify the Released Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in Utah Code Ann. § 16-6a-102(37)), including but not limited to, attorneys' fees, witness fees (including expert witness fees), costs, and litigation related expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board), or any settlement of any such proceeding. The Board further may elect to indemnify any agent of the Association. Any Released Person shall be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association shall pay or reimburse reasonable expenses incurred by any such Person who was, is, or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by § 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set

forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Released Person in question to make the repayment referred to in such Section. This right of indemnification shall be in addition to, and not exclusive of, all other rights to which the Released Person to be indemnified may be entitled at law or otherwise.

## **6. ASSOCIATION RIGHTS AND RESPONSIBILITIES**

6.1. Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities in this Article in addition to any others set forth in the other Governing Documents or required by law.

6.2. Rules. The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board shall have the sole discretion to determine whether a use or activity being conducted or to be conducted violates or will violate the Rules, and the Board's determination shall be conclusive. The Board may adopt a schedule of fines for Governing Document violations as part of the Rules. Pursuant to Utah Code Ann. § 57-8-8.1(12), the requirements of Utah Code Ann. §§ 57-8-8.1(1) to and including (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

6.3. Variances. The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article if the Board determines in its discretion: (a) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, (b) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Association, the Owners, or the Occupants of the Project and is consistent with the high quality of life intended for Owners and Occupants of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this provision.

6.4. Enforcement. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's right to receive utility services paid as a Common Expense; (3) terminate an Owner's right to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; (5) instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted; and (6) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.



In addition to and not contrary to the Dispute Resolution process set forth in this Declaration, the Board shall have the authority (but shall not be required) to create a reasonable hearing process applicable in case the Board or Association takes adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

6.5. Discretion. The Association may not be required to take enforcement action if, after a fair review and acting in good faith and without conflict of interest, the Board of Directors determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interest to pursue and enforcement action, based upon reasonable criteria.

6.6. 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.

6.7. Records. Owners shall have the right to inspect Association Records within a reasonable time following an Owner's written request. "Association Records" are limited to the following documents and information: (a) Declaration; (b) Bylaws; (c) Articles of Incorporation; (d) minutes of Owner meetings and Board meetings, (e) most recent approved budget; (f) a record of all actions taken by Owners or the Board without a meeting; (g) a record of all actions taken by a committee of the Board in place of the Board; (h) a record of all waivers of notices for Owner meetings and Board meetings; (i) a list of all Owners showing their address and the number of votes each Owner is entitled; (j) all resolutions adopted by the Board currently in effect; (k) all written communications to Owners generally as Members for a period of the three prior years; (l) a list of Board member names and addresses; (m) a copy of the most recent annual report delivered to the State; (n) the annual financial statements (balance sheet and profit and loss statement) of the Association for the past three years; and (o) the most recent reserve analysis. Association Records shall specifically exclude emails, texts, phone calls, writings, and personal communications between Board Members or Owners and the Association shall have no obligation to keep such information as records. The Board shall have the power and discretion to determine what documents or information are considered Association Records if there is a dispute over the definitions or language provided in this Section. The Association shall have no duty to keep, maintain, produce, or permit inspection of any documents, draft documents, electronic files, or other information not explicitly identified in Utah Code Ann. §§ 57-8a-227(1)(a)(ii) and 16-6a-1601. The Board shall have the sole discretion to determine the format in which documents or records are kept. The Association may redact any private, privileged, or sensitive information from Association Records produced herein, at the Board's discretion. The Association may provide additional information or documents to Owners not identified as Association Records herein, at the Board's discretion. The Association may make Association Records available via a website or internet link, and if so provided, then the Association shall have met its record inspection obligations set forth in this Section or other applicable law for all such documents posted thereon.

6.8. Contracts and Agreements. The Association may enter into contract(s) to employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, 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. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of utilities or other services that benefit the Association, including any applicable joint use and easement agreement with neighboring associations or landowners.

6.9. Manager. The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project. Such Manager may charge fees to the Association and/or to Owners individually for its services. 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. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Declarant selected Manager or hire a different Manager.

6.10. Loans. The Association shall have the authority to obtain loans for the efficient operation of the Association and may pledge its assessment authority or other assets as collateral for financing. A unanimous vote of the Board shall be required prior to obtaining any loan.

6.11. Annual Meeting. The Association shall arrange for, and conduct, an annual meeting of the Owners and shall arrange for, and conduct, such other meetings of the Association, as shall be properly requested, pursuant to the Governing Documents or required by law.

6.12. Payoff Information and Fees. The Association is specifically authorized to establish a fee for providing payoff information related to the transfer, refinance, or closing of a Unit. Unless otherwise provided in the Rules and allowed by law, the fee amount shall be Fifty Dollars (\$50.00).

6.13. Written Statement of Payment and Fees. The Association, within ten (10) business days after proper written demand by an Owner or such other Person for whom an Owner has given written permission, shall furnish a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. Each written statement or certificate is conclusive in favor of a Person who relies on the written statement in good faith. The Association is authorized to charge a reasonable fee for issuance of a written statement or certificate of payment. Unless otherwise provided in the Rules and allowed by law, the amount of the fee shall be Ten Dollars (\$10.00).

6.14. Maintenance. The Association shall make provisions for completing all maintenance, repair, and replacement requirements and obligations of the Association, including landscape maintenance for landscaped Common Areas and Limited Common Areas, and

maintenance of Building roofs and/or exteriors, if assumed by the Association as provided in subsection (a) below.

(a) Maintenance Allocation Chart. A maintenance allocation chart has been attached hereto as Exhibit C, which further defines and clarifies Association and Owner maintenance, repair, and replacement responsibilities. If there is a conflict between Exhibit C and this Article, the allocations in Exhibit C shall control. The Board may alter the maintenance allocations set forth in Exhibit C by Rule, Board resolution, or similar document without the need for Owner vote or amendment of this Declaration.

(b) Equipment and Systems. All shared mechanical equipment and systems that serve or benefit more than one Owner, or an entire building such as HVAC, fire suppression systems, water heaters, or similar facilities shall be maintained by the Association. Owners are required to provide the Association with access to maintain such systems at all times.

(c) Standard of Maintenance. All maintenance shall be performed in accordance with Community-Wide Standards. In the absence of clarification of such Community-Wide Standards, the Board shall determine, in its sole discretion, the appropriate standards to be used for the maintenance, so long as the Association is maintained in the best interests of the Owners.

(d) Assessment for Maintenance Expenses to Specific Owner. If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

6.15. Right to Enter Units. The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least forty-eight (48) hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided for under this Declaration. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including the smell or sight of smoke in a Unit, abnormal or excessive noises, and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

6.16. Security. Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By taking title to a Unit and/or

residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association nor the Board of Directors are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.

6.17. Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

## **7. EASEMENTS AND USE RESTRICTIONS**

### **7.1. General Easements to Common Area and Units.**

(a) The Declarant reserves in favor of the Declarant and the Association, acting through the Board or its authorized agent, nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace, or effectuate the restoration of the Common Areas accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Declarant and the Association, acting through the Board or its authorized agent, shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Areas for purposes necessary for the proper operation of the Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

(b) The Declarant reserves in favor of the Declarant such easements and rights of ingress and egress over, across, through, and under the real property and any Improvements now or hereafter constructed thereon as may be reasonably necessary for the Declarant: (i) to construct and complete each Unit and all of the other Improvements described in this Declaration or in the Plat; and (ii) to improve portions of the real property with such other or additional Improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as the Declarant may reasonably determine to be appropriate. This reservation shall not expire until after the date on which the Declarant no longer owns a Unit in the Project.

7.2. Public Utility Easements. The Project is subject to blanket easements and rights-of-way in favor of the Association and the Declarant, during the Period of Declarant Control, over, across, above, and under the Common Areas and any other necessary portion of the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sewer lines, drainage facilities, and such other public utilities needed to serve the Project. Such easements and rights-of-way are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey to any municipality, special service district, or Person, in the name of all of the Owners as their attorney-in-fact, easements and rights-of-way in, on, over or under the Common Area or any other necessary area of the Project for the purpose of constructing, erecting, operating or maintaining pipelines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm

water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

7.3. Easements for Party Wall. If any party wall encroaches upon an adjacent Lot as a result of the manner in which it was constructed, or due to settling or shifting, a valid easement for encroachment, and for maintenance of such encroachment, shall exist for the life of the improvement or structure. For every party wall, each Owner grants to the adjoining Unit Owner who shares the party wall, an easement over and upon the Owner's Unit for the purpose of maintaining the party wall and for carrying out the other obligations set forth in this Declaration. By taking title to a Unit, each Owner hereby covenants and agrees not to do anything that will hinder, delay, or limit the maintenance of the party wall and the performance of the Association's obligations under this Declaration.

7.4. Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are 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 so long as the buildings or Improvements stand.

7.5. Limitation on Easement – Suspension of Owner Rights. Each Owner's right and easement of use and enjoyment concerning the Common Areas is subject to the following:

(a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Areas: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Areas;

(c) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Areas for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services; and

(d) Any easement, shared use, maintenance, or access agreement between the Association and the neighboring property owners or owners associations.

7.6. Joint Use and Cross Access Easements. The Declarant or the Board may, on behalf of the Association, grant easements over the Common Areas roadways and parking facilities to

neighboring landowners and may enter into joint use agreements with such landowners for the maintenance, repair, and replacement of Common Area roadways and parking facilities. Such joint use agreements and access easements may, but shall not be required to be, recorded with the Salt Lake County Recorder. Each Owner and Occupant shall comply with the restrictions imposed by any joint use agreement or access easement entered by the Association.

7.7. Use Types. All Units within the Project shall be used only for the construction and occupancy of one single-family dwelling. All Units shall be used, improved, and devoted exclusively for such single-family residential use. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any such Unit and no persons shall enter into any Unit for engaging in such uses or for the purpose of receiving products or services arising out of such usage without review and approval by the appropriate City department. Notwithstanding the foregoing, an individual Unit Owner, whose principal place of business is not said Owner's Unit or residence, may maintain a home office to conduct work related activities (which do not involve receiving or providing products and or services at such Owner's Unit or residence) outside of regular work hours, on weekends, during holidays, or as local, State, or Federal circumstances necessitate. No Unit shall be used, occupied, or altered in violation of law, zoning, or any other ordinance or resolution, to jeopardize the structural integrity of any other Unit, or for any purpose which would render the Project uninsurable.

7.8. Association Authority Over Rental. The Association is vested with the authority to regulate rental of Units in the Project and may require: (a) the rental of condominium units to be conducted through the Association or a designated management company; (b) all lease agreements be reviewed and approved by the Association or the management company; and (c) any tenants be screened and approved by the Association or the management company prior to renting the condominium. The Association or a designated management company's approval, if required, shall not be unreasonably withheld. The restrictions in this Section may only be changed by amendment to this Declaration.

7.8.1. Rental Restriction. No Unit shall be made available for lease or rent for any lease or rental period of less than six (6) months. Short-term or nightly Unit rental is expressly prohibited.

7.8.2. Lease Agreement. Prior to rental of a Unit, the Owner and the tenant shall execute a written lease agreement that must include the following provisions:

(a) The tenant shall agree to comply with all the terms and conditions of the Declaration and Bylaws;

(b) The tenant shall agree not to allow or commit any nuisance, waste, unlawful, or illegal act upon the premises; and

(c) Prior to a tenant's occupancy of a Unit, the Owner must provide to the Association the name, address, and telephone number of the tenant and a copy of the written lease agreement;

(d) The Owner and the tenant shall acknowledge that the Association is an intended third-party beneficiary of the lease agreement, that the Association shall have the right

to enforce compliance with the Declaration and Bylaws and to abate any nuisance, waste, unlawful, or illegal activity upon the premises, and that the Association shall be entitled to exercise all the Owner's rights and remedies under the lease agreement to do so; and

(e) The Association shall have the right and the obligation to enforce compliance with the condominium declaration and bylaws against any owner and/or occupant of any condominium unit and shall have all rights and remedies available under state or local law, in addition to its rights and remedies as a third-party beneficiary under any lease agreement, to enforce such compliance.

7.9. Signs. The Association may regulate and restrict signs in the Project to the extent permitted by law in the Rules. Signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior written approval of the Board. The Board may regulate signs in any manner it deems appropriate including, but not limited to, restrictions on size, placement, and lighting. The Association shall have the right to install and maintain such directional, directory, and monument signs as the Board deems reasonably necessary and appropriate for the Project. For purposes of this Declaration, "sign" will include any graphics or adornment added to a Unit that alters the Unit from the original external appearance.

7.10. Nuisance. No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. A nuisance includes but is not limited to the following: excessive noise between 10:00 p.m. and 7:00 a.m.; the use of outdoor speakers or amplifiers; excessive foot or vehicular traffic in, or, or about the Project beyond that expected for the designated use of the Unit, especially after 10:00 p.m. and before 7:00 a.m. The Board may adopt Rules that set forth activities or uses that are deemed to be nuisances within the Project. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

7.11. Sound Transmission. Without the prior written consent of the Board, no Unit shall be altered in any manner that would increase sound transmission, resonances, or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling, or wall that increases sound transmissions, resonances, or reverberations to any other Unit.

7.12. Temporary Structures. No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Board.

7.13. Parking. Owners must first park in garages before using Common Area parking stalls. Vehicles shall not be parked in a manner that blocks a Unit entrance, a Unit garage door, overhead doors, or at any other location within the Project, which would impair vehicular access or snow removal. Owners, Occupants, and their invitees may only park in marked spaces inside the Project and cannot parallel park on the curbs inside the Project. No vehicle may be parked in Common Area parking stalls for longer than seventy-two (72) hours. The Board may set forth

Rules for parking within the Project, including, without limitation: charging a fee for the use of Common Area parking stalls, restrictions on the size or types of vehicles permitted to be parked within the Project, the right to remove or cause to be removed any vehicles that are improperly parked, and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules. No bikes, scooters, or motorcycles may be parked or chained in a manner that impedes sidewalks.

7.14. Jacuzzi, Spa, or Hot Tub. No Owner or Occupant may place a jacuzzi, spa, or hot tub on a patio, Limited Common Area, or Common Area as such increases liability of the Association.

7.15. Smoking. Smoking is prohibited in all Units, Common Areas, and Limited Common Areas within the Project, whether indoors or outdoors. Without limited the foregoing, this prohibition applies to private spaces in Units, the walking paths, bike paths, gardens, landscaped common areas, hallways, parking lot, plaza, roofs, etc. Smoking is defined as including carrying, burning, or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars, pipes, hookahs, and electronic vaping devices. Each Owner is responsible to ensure that said Owners, hir or her residents, guests, and invitees comply with this restriction. Violations of this smoking restriction may result in a fine pursuant to the Association's Rules and the fine schedule as adopted and amended from time to time by the Board.

7.16. External Fixtures. No external items such as, but not limited to, antennas, satellite dishes, flag poles, wiring, air conditioning equipment, fences, awnings, exterior doors, lighting fixtures, windows, skylights, landscaping and planting, other than those approved by the Board, and any replacements thereof, shall be constructed, erected or maintained on the Project without the prior written approval of the Board. The Board may adopt Rules regulating the location, type, color, and design of external fixtures or components. Any damage caused by the installation of any external fixture to the Common Areas (including roofs and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Board.

7.17. Unsightly Items & Trash. All rubbish, debris, or unsightly materials or objects of any kind shall not be allowed to be placed or accumulate outside a Unit. Each Lot and its abutting street are to be kept free of trash, weeds, and other refuse by the Unit Owner. Trash and garbage shall be immediately disposed of outside the Unit. The Board may adopt additional Rules governing the use and availability of any Common Area dumpsters located in the Project.

7.18. No Personal Property on Common Area. Unless authorized by the Board in the Rules or otherwise in writing, no personal property of an Owner or Occupant may be left or stored anywhere on the Common Areas, excluding the Limited Common Area appurtenant.

7.19. Personal Property on Limited Common Area. No Owner may use the Limited Common Area appurtenant their Unit as storage, and the only furniture that may be kept in Limited Common Areas is furniture designed for patios or all weather conditions.



7.20. Views. Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

7.21. Pets. Domestic pets may be kept in Units in conformance with local government requirements. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including, but not limited to, restrictions on the number and types of pets, requirements for registration with the Association, and noise limitations. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area or Limited Common Area of another Owner and shall be leashed or restrained whenever outside a Unit. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet, including burn spots in the lawn from urine.

## **8. BUDGET AND ASSESSMENTS**

8.1. Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary for the operation of the Project and administration of the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made for a permitted purpose as set forth in this Declaration.

8.2. Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, third-party or Manager collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs, and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

(a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and

reasonable attorneys' fees against the latter for any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

(b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

8.3. Declarant Assessment Exemption. The Declarant shall not be obligated to pay Assessments on any Units owned by the Declarant, or a Declarant affiliated entity, until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. The Declarant shall have the sole discretion to determine whether a Unit is owned by one of its affiliates and whether such Unit is subject to assessment.

8.4. 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 the new annual budget is adopted. The budget shall be made available to requesting Owners within thirty (30) days after adoption.

8.5. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes: promoting the safety and protection of the Owners and stored contents; effecting the management, maintenance, care, preservation, and protection of the Project; and maintaining and enhancing the value of the Project including, without limitation, the improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

8.6. Annual Assessments. Annual Assessments shall be made on a calendar year basis by allocating the applicable portion of the budget based on each Owner's Undivided Interest. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments, on dates established 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.

8.7. Special Assessments. The Board may levy Special Assessments 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 construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred by the Association. 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 provided in the notice.

8.8. Individual Assessments. The Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against an Owner or its Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or its 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 Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorneys' fees (regardless of whether or not a lawsuit is filed), court or collection costs, fines, and other charges permitted in the Governing Documents or relating to any of the above, regardless of whether a lawsuit is filed.

8.9. Allocation of Assessments. Annual and Special Assessments shall be imposed according to each Unit's Undivided Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association for each Unit.

8.10. Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the 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 Unit if the Owner has leased their Unit.

8.11. Certificate of Payment. The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of Fifty Dollars (\$50.00) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

8.12. Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment for such Unit at the discretion of the Board.

8.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a 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 of each Unit, 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.

8.14. 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 is not properly exercising its duties and powers as provided in this Declaration.

8.15. How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

## 9. RESERVES

9.1. Requirement for Reserves. Subject to the provisions of this Declaration, the Association shall obtain a reserve analysis and shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Facilities, pursuant to the following provisions:

9.1.1. Collection. Reserve funds may be collected as part of regular or special Assessments.

9.1.2. Amount. In formulating the Association's annual budget, the Association shall include a reserve fund line item for Common Area and Facilities in an amount the Board of Directors determines, based on the reserve analysis, to be prudent. For purposes of this Section, a reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.

9.1.3. Surplus Monies Applied to Reserves. The Association may, in its sole discretion, retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.

9.1.4. Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts.

9.1.5. Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (i) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (ii) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (iii) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (iv) an estimate of the total annual

contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (v) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future. As further provided below, the Association is not required to obtain a reserve analysis during the Period of Declarant Control.

9.1.6. Qualifications for Person Preparing Reserve Analysis. The reserve analysis shall be prepared by a Person or Persons with (i) experience in current building technologies; (ii) a solid working knowledge of building-cost estimating and life-cycle costing for facilities; and (iii) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar professional associations establishing that the Person has some formal training related to preparing a reserve analysis.

9.1.7. Summary and Copies of Reserve Analysis. The Association shall annually post and/or provide Owners a summary of the most recent reserve analysis or update and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall provide a copy of the complete reserve analysis or update to an Owner who makes a written request for a copy.

9.1.8. Declarant Exemption. Pursuant to Utah Code Ann. § 57-8-7.5(10), Utah Code Ann. § 57-8-7.5(2) to and including (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a reserve analysis, or to fund any reserve fund during the Period of Declarant Control.

## **10. REINVESTMENT FEE**

10.1. Reinvestment Fee Covenant upon Sale or Transfer of Unit. The Board of Directors, or the Declarant during the Period of Declarant Control, may require the transferor/seller or transferee/buyer to pay a fee related to the Transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. § 57-1-46 in an amount to be determined by the Board of Directors, or the Declarant during the Period of Declarant Control, and to the extent allowed by law. For purposes of this Section:

(a) The Association shall have authority to record any notice required by law to effectuate this provision.

(b) Subject to the exclusions in Utah Code Ann. § 57-1-46, as may later be amended, a transfer shall mean and refer to any change in the ownership of a Unit as reflected in the Office of Recorder for Salt Lake County, Utah, regardless of whether it is pursuant to the sale of the Unit or not. Any transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant, shall not be considered a transfer for purposes of this Section and is exempt from any Reinvestment Fee.

(c) The amount shall be set forth by the Board in the Rules consistent with Utah Code Ann. § 57-1-46 or in the Notice of Reinvestment Fee Covenant. The value of the Unit shall include the building constructed thereon, if any, and all other Improvements, and shall be the purchase price of the Unit. If the purchase price is challenged as the value of the Unit, the value shall be the higher of: (a) the purchase price paid for the Unit; (b) the value of the Unit as determined by the property tax assessor on the date of the transfer of title; or (c) the value of the Unit on the date of the transfer of title, as determined in an appraisal that may be obtained (in the discretion of the Board of Directors) using an appraiser selected by the transferee of the property from a list of three (3) appraisers selected by the Association. In the event that an appraisal is needed to establish value of the Unit, the transferee shall be responsible for the cost of such appraisal.

(d) 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. The Reinvestment Fee is an Assessment, and the Association shall have all collection rights permitted in this Declaration, the Bylaws, and any Governing Documents with respect to a delinquent Reinvestment Fee.

(e) The Association shall have the authority to enact Rules that may include: (i) requirements for Owners to provide sales and transfer documents; (ii) requirements for the timing of responses to requests such as the selection of the appraiser; (iii) default provisions if no selection is made such as allowing the Association to select the appraiser; and (iv) other procedural requirements and rules as the Board deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

## **11. NONPAYMENT OF ASSESSMENTS AND REMEDIES**

11.1. Due Date and Delinquency. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. 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 by the Board. 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 or all of the sanctions granted in this Article.

11.2. Joint and Several Liability for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner, and any future Owners of a Unit, are jointly and severally liable for all Assessments accruing related to that Unit prior to, and during the time, that an Owner holds title to a Unit. An Owner is not liable for any Assessments accruing after they have lawfully transferred the Unit to another Owner. The recording of a deed to a Person that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this section is separate and distinct from any lien rights associated with the Unit.

11.3. Collection Charge. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a Twenty-Five Dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Payments shall be credited first to

collection costs (including attorneys' fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

11.4. Lien. The Association has a lien on each Unit for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs, and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration, and shall have priority over all encumbrances recorded after this Declaration is recorded, unless otherwise limited by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment.

11.5. Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

11.6. Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorneys' fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage, and convey such Unit.

11.7. Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Unit and its Limited Common Areas. By taking a security interest in any Unit 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 Unit if the Association takes title to a Unit related to a failure to pay Assessments.

11.8. Trust Deed Provisions. The Declarant and Association hereby convey and warrant pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-45 to the Association's attorney, with power of sale, each Unit and all improvements to each Unit in trust for the purpose of securing payment of assessments under the terms of the Declaration. Each Owner by accepting a deed to a Unit hereby acknowledges and accepts this trustee appointment. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the

Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

11.9. Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

11.10. Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.

11.11. Recovery of Rent from Tenant. If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code Ann. § 57-8-53, the Board may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from any tenant 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.

11.12. 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 Unit as provided for in Utah Code Ann. § 57-8-6.3. The Board may set the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed by Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be Fifty Dollars (\$50.00).

11.13. Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorneys' fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings, including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities; and (h) foreclose a lien, secure lien rights, or prepare any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

## 12. INSURANCE

**\*\*NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.**



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

12.2. Association 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 purchased by the Association shall be a Common Expense.

12.3. Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under the Association's insurance policies as required by law.

12.4. Property Insurance.

12.4.1. The Association may maintain a blanket policy of property insurance covering the Project, including the Common Area and all buildings. Pursuant to Utah Code Ann. § 57-8-43(2)(b), the Association may, but shall not be required to, insure fixtures, building service equipment, and other building components. The Association may maintain broader coverage if afforded by the insurance contract. If a property insurance policy is procured by the Association, then the policy shall exclude land and other items not normally and reasonably covered by such policies. The policy may exempt coverage for permanent fixtures, improvements, or betterments installed in Units or Limited Common Areas in the Board's discretion, if such coverage unreasonably increases premiums, or makes the desired policy unavailable.

12.4.2. The Association shall notify Owners if it elects to not maintain a blanket property insurance policy for all buildings.

12.4.3. Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(a) The Association's policy provides primary insurance coverage, and:

(a) the Owner is responsible for the Association's policy deductible; and

(ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

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

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

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

12.4.5. Deductible Notice. The Association shall provide notice to each Owner of the Owner's obligation under Subsection (2) above for the Association's policy deductible and of any change in the amount of the deductible.

12.5. 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 should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

12.6. Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves; (2) failure to maintain books and records; (3) failure to enforce the Governing Documents; (4) breach of contract; (5) volunteers and employees; (6) monetary and non-monetary claims; (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims; and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

12.7. Right to Negotiate Claims & Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to the Association and shall not be payable to the holder of a security interest. The Association shall hold 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. After any repair or restoration is complete, 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, may be distributed to the Owners or held as future credits according to each Owner's Undivided Interest. Each Owner hereby appoints the Association 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.

12.8. 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.

12.9. 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, the Declarant, and the Owners and their respective agents and employees.

12.10. 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.

### **13. DESTRUCTION OF IMPROVEMENTS**

13.1. Reconstruction. In the event of partial or total destruction of a building, Improvement, or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from reputable contractors, including performance and lien payment bonds where deemed necessary.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting a representative of the insurer for the policy covering the Project.

(c) Pursuant to Utah Code Ann. § 57-8-30, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

(d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders with liens encumbering Units within the Project setting forth such findings and informing the Owners and Lenders that the Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Undivided Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners under the following Section. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board

shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

(e) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

13.2. Reconstruction by Vote. If reconstruction is not to take place pursuant to the preceding Section, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Undivided Interests determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

13.3. Procedure for Reconstruction. If the Association elects to reconstruct, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such Improvements. The Board may employ a licensed architect to supervise the repair and rebuilding to ensure that all work, services, and supplies are in conformity with the requirements of the construction contract.

13.4. Determination not to Reconstruct without Termination. If Owners of seventy-five percent (75%) or more of the Undivided Interests vote not to rebuild, and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Undivided Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

13.5. Negotiations with Insurer. The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

13.6. Repair of Units. Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

13.7. Priority. Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

#### **14. EMINENT DOMAIN**

14.1. Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, then that Unit's Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute, and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area. If only part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used as a Unit under this Declaration, that Unit's Undivided Interest in the Common Area shall remain unchanged.

14.2. Taking of Limited Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

14.3. Taking of Common Area. If the portion of the Project taken by eminent domain, or sold under threat thereof, is Common Area, the Board shall cause the award to be utilized for the purpose of repairing or restoring the portion of the Project so taken, and the portion of the award not used for restoration shall be deposited into the Associations general fund.

14.4. Taking of Entire Project. In the event the entire Project is taken by eminent domain, or sold under threat thereof, the Project shall be terminated and the provisions of the Act apply.

14.5. Power of Attorney Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of an Owner.

#### **15. DECLARANT RIGHTS**

15.1. Declarant Control Rights. "**Declarant Rights**" are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control.

(a) The right, without obligation, to construct any improvements shown on the Plat or included in the Project; and any other buildings, structures, or Improvements that the

Declarant desires to construct in the Project, or any other real estate owned by the Declarant, regardless of whether the same ever become part of the Project.

(b) The right to maintain a sales office and signs advertising the Project or any Unit at any location in the Project until all of the Declarant's Units in the Project are sold to third parties.

(c) The right to use easements throughout the Common Areas and the Project as set forth in this Declaration, until all of the Declarant's Units in the Project are sold to third parties.

(d) The right to create or designate additional Common Area or assign Limited Common Area within the Project; and the right to cast the votes of all Owners Undivided Interest if necessary for the conveyance or transfer of Common Area pursuant to Utah law.

(e) The right to grant easements over and through the Common Area to neighboring landowners outside the Project boundaries, and the right to enter into joint use agreements governing the maintenance and use of the Common Areas with such neighboring landowners.

(f) The right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any building or Unit in the Project except as set forth in this Declaration, or as shown on the Plat, without the prior written approval of the Declarant.

(g) The right to amend, change, or modify the Plat, subject only to the requirement that the Declarant get approval from the City or any Owner of a Unit that has any boundary modified by the Plat.

(h) Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.

(i) Until such time as the earlier of the following events occur: (a) seven (7) years after the Declaration is recorded, or (b) such time as the Declarant chooses, neither the Association nor the Board shall, without the written consent of the Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by the Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by the Declarant.

(j) The right to appoint or remove members of the Board, or act as the Board.

(k) The right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

(l) The right to make and adopt Association Rules.

(m) The right to set all assessments for the Association including annual, special, and individual assessments.

(n) The right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules.

(o) So long as the Declarant owns one or more Units in the Project, any amendments to the Declaration and Bylaws shall require the consent of the Declarant.

(p) Unless expressly and specifically bound by a provision of the Governing Documents, the Declarant shall be exempt from the provisions of the Governing Documents.

15.2. Exercising Declarant Rights. The Declarant may exercise its Declarant Rights until the expiration of the earlier of the maximum period allowed by law, or the maximum period set forth in this Declaration. The Declarant may execute and record a written waiver of its Declarant Rights, which rights may be waived in whole or in part. The Declarant may exercise its Declarant Rights in any order, and no assurance is given as to the order in which the Declarant will exercise them. If the Declarant exercises any Declarant Right with respect to any portion of the Project, that the Declarant may, but is not obligated to, exercise that Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, the Declarant may exercise any Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

15.3. Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article shall not be construed to impose any obligation, legal or equitable, related to the issues to which they might apply. Each Owner, by taking title to a Unit, and the Association waive and disclaim any such duty, and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Declarant Rights.

15.4. Interference with Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any of the Declarant Rights contained in this Declaration without the Declarant's prior written consent. Any action taken in violation of this Article shall be null and void and have no force or effect.

15.5. Transfer of Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the County Recorder.

15.6. No Modification of Declarant Rights. The Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at

least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

## **16. RIGHTS OF LENDERS**

### **16.1. Relationship with Assessment Liens.**

16.1.1. Priority. The lien provided for in this Declaration for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.

16.1.2 Foreclosure. Any Lender of a first mortgage who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Project. Further, any party who takes title to a Unit by reason of any foreclosure will be subject to all Restrictions, including Assessments levied after the party takes title.

16.2. Rights to Books and Records. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled to inspect current copies of the Governing Documents and other books and records of the Association during normal business hours; and to receive the most recent annual financial statement of the Association.

16.3. Rights to Notice. A Lender who makes prior written request to the Association (such request to state the Lender's name and address and Owner's name and street address of the Lot) will be entitled to timely written notice from the Association of:

(a) any condemnation loss or any casualty loss that affects a material portion of the Project;

(b) any delinquency in the payment of Assessment by the Owner of the Lot in which the Lender has a security interest where such delinquency has continued for a period of more than ninety (90) days;

(c) any lapse or cancellation of any insurance policy maintained by the Association; and/or

(d) any proposed action which would require the consent of a specified percentage of Lenders.

## **17. AMENDMENT**

17.1. Amendment by Declarant. During the Period of Declarant Control or so long as the Declarant owns one or more Units in the Project, the Declaration and the Plat may be amended



solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as the Declarant owns one or more Units in the Project. The Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

17.2. Amendment by Owners. After all of the Declarant's Units have been sold to third parties, and the expiration of the Period of Declarant Control (whichever is later), this Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Undivided 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. The 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 Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit 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 Unit under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Owners' authority to amend the provisions of the Declarant Rights and Dispute Resolution Articles of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of the Declarant Rights and Dispute Resolution Articles shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

17.3. Necessary Amendments. The Declarant or the Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, State, or Federal governmental agency; or (c) to correct any scrivener's error. However, any such amendment occurring after the Period of Declarant Control shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

17.4. Validity of Amendments. Any procedural challenge to an amendment to this Declaration must be made within six (6) months of its recordation. Notwithstanding the foregoing, an Owner that takes title to a Unit subsequent to the recording of an amendment shall be deemed to have waived any procedural challenge to the validity of any amendments by acceptance of the deed and record notice of any amendment. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

## **18. DURATION AND TERMINATION OF DECLARATION**

18.1. Duration. This Declaration shall be effective, and the Declaration shall encumber the Property, from the date the Declaration is recorded in the office of the Salt Lake County Recorder and, as amended from time to time, this Declaration, and as later may amended, shall continue in full force and effect against the Project and the Restrictions shall run with the land in perpetuity, for as long as the law allows unless terminated in accordance with the provisions herein.

18.2. Termination by Vote. Except as otherwise provided in the Destruction of Improvements and Eminent Domain Articles of this Declaration, the Project may only be terminated by unanimous agreement of all Owners.

18.3. Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Salt Lake County Recorder and is effective only on recordation.

18.4. Sale of Project. A termination agreement may provide that the entire Project shall be sold following termination. If any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

18.5. Allocation Upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements, or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Undivided Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

## 19. DISPUTE RESOLUTION

**\*\*NOTICE: Notwithstanding anything in this Declaration to the contrary, this Section shall not limit, supersede or override the Association's legal remedies or cure period(s) set forth in this Declaration related to an Owner's nonpayment of Assessment(s) or other monetary obligations set forth in the Declaration. The Association may immediately exercise any rights under this Declaration and exercise its remedies related to non-payment of Assessments or to enforce the terms and conditions of this Declaration.**

19.1. Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Unit that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Unit, it therefore is acknowledged that it is unfair and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by taking title to a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively

impact the value, sale, and ability to obtain financing for the purchase of a Unit for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Units during any period when litigation is pending. For this reason, each Owner, by taking title to a Unit, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. The intent of this Section is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Project Improvements, the Common Area and Facilities, and the Units in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

19.2. Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from contractors or subcontractors to the Association related to the construction of the Project ("**Association Warranties**" or an "**Association Warranty**"). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the contractors or subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

19.3. Owner Warranties. The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased ("**Owner Warranties**" or an "**Owner Warranty**"). The first Owner of a Unit to whom any Owner Warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties granted to any Owner and the Owner shall have no right to assign any rights of any kind arising under a warranty to the Association.

19.4. Limitation on Claims. Any Claims by the Association, the Board, or any Owner against the Declarant or any building, contractor and/or subcontractor for judicial, arbitral, or administrative relief for acts, errors, omissions, or breach arising out of or related the design or construction of the Common Area and Facilities, the sale of or conveyance of any portion of the Project, or this Declaration or any other agreement, whether based in tort, contract, warranty, strict liability, indemnity, contribution, or other source of law shall be commenced within two (2) years of substantial completion of the Common Area and Facilities. The Association, the Board, and the Owners waive all Claims not asserted within this time. This Section is expressly intended to set forth a period of repose enforceable under Utah Code Ann. § 78B-2-225(9) and to reduce the periods of limitation and repose prescribed by Utah Code Ann. § 78B-2-225. Also, the Association, the Board, and the Owners waive all Claims for consequential damages, including but not limited to lost rents, rental expenses, loss of use, financing, stigma, and loss of reputation. To the extent the Association, the Board, and the Owners damages are covered by insurance or a third-party warranty, including but not limited to the Association Warranties or the Owner Warranties, the Association, the Board, and the Owners waive all rights against the Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees for damages. The Association, the Board, and the Owners agree that that they shall not participate in

any class action proceeding and that any Claims shall not be joined or consolidated with the Claims made by any other party, including any other Owner. In the event the Association, the Board, or an Owner does participate in any class action or joins or consolidates the Claims with the Claims of any other party, the Association, the Board, and the Owner understand that such action is a material default under this Declaration and the Association, the Board, or the Owner, as the case may be, shall thereby waive and generally and completely release any and all Claims whatsoever, known or unknown against the Declarant and the builders, contractors, subcontractors, designers, consultants, agents, and their employees.

19.5. Waiver of Subrogation and Release. The Association and each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, a builder, a contractor, or a subcontractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by law, the Association and Owners hereby release the Declarant and builder and contractors and subcontractors, their officers, employees, owners, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant, the builder, any contractor, or subcontractor, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, the contractor and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

19.6. Indemnification and Waivers by Association and Owners. The Association shall indemnify and defend the Declarant, the builder, and/or the contractor and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any Claims arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom, except to the extent covered by an Association Warranty. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant, the builder, and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by law. The Association and each Owner acknowledges and agrees that the Association Warranties and the Owner Warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association and Owners related to any alleged or actual construction defects. In case of any Claims, litigation or legal proceedings asserted or related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder, and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees related to any such Claim) from any such Claim and to indemnify the Declarant, the builder, the contractor, and/or the subcontractors from any liability arising therefrom.

19.7. Acceptance of Condition. Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Area and Facilities, “AS IS” and “WITH ALL FAULTS” with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims, and the Association and any Owner hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

19.8. Dispute Resolution. The Declarant, the Association, its officers and Directors, and all Owners (each a “**Bound Party**” as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and Claims against other Bound Parties regarding any part of the Project or any improvements thereon involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

19.8.1. If otherwise allowed by law, notwithstanding the terms of this Declaration or if allowed in this Declaration, prior to any Bound Party (a “**Claimant**”) initiating a Claim or making any demand or commencing any mediation, arbitration, or litigation (any “**Action**”) (other than Claims made solely upon an Association Warranty or an Owner Warranty against a contractor or subcontractor) against the Association (if applicable), the Declarant, or any builder, contractor, or subcontractor involved in the original construction of the Project (“**Respondent**”) (the Claimant and Respondent referred to herein being individually referred to as a “**Party**” or collectively referred to as the “**Parties**”) shall notify each Respondent in writing (“**Notice**”), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent’s role in the Claim;
- (b) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) A specific breakdown and calculation of any alleged damages;
- (d) A specific description of the Claims along with any supporting opinions, information, or other factual evidence upon which the Claims are based;
- (e) Photographs of any alleged condition, if applicable;
- (f) Samples of any alleged defective conditions or materials;
- (g) All efforts taken to avoid, mitigate, or minimize the Claims or any alleged damages arising therefrom;
- (h) The names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claims;
- (i) The proposed remedy;

(j) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and

(k) That the Person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

19.8.2. Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

19.8.3. In the event that the Claim is not resolved within sixty (60) days following the meeting or in a time period as agreed to by the Parties, or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with a Proceeding against the Respondent following one hundred eighty (180) days of the original Notice, except as may be limited in this Declaration.

19.8.4. Before initiating any Proceeding for any Claim against the Declarant or an affiliate of the Declarant, in addition to the requirements and limitations set forth in this Declaration, the Association shall:

19.8.4.1. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded, and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable. The notice will also contain the following information:

(a) the following disclosure/statement in bold and upper-case type and not less than 14-point font:

The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.

(b) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five (5) years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;

(c) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five (5) years;

(d) a written statement of each Board member indicating that Person's position on the litigation;

(e) a copy of a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney (not compensated on a contingency fee basis) not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;

(f) all terms of the agreement between the Association and the attorney or law firm proposed to prosecute the action including a copy of any engagement letter, contract, or agreement related to that representation; and

(g) a detailed description of the alleged Claims against the Declarant and of all efforts by the Association to resolve those Claims prior to commencing any action, and a statement describing any demands, notices, offers to settle, or responses to offers to settle made either by the Association or the Declarant or the builder, contractor, or subcontractor, if applicable.

19.8.4.2. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting; and

19.8.4.3. Receive approval from at least two-thirds (2/3) of the entire voting interests of the Association, who must be present in person or by proxy at the special meeting, to initiate any Proceeding of the Claim against the Declarant and/or its affiliate, if applicable.

19.8.5. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys' fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys' fees, costs incurred in connection with investigation of potential Claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to the Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

19.8.6. Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; and (2) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra

vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (3) this Section may not be amended or deleted at any time without the express prior written approval of: (a) members representing not less than sixty-seven percent (67%) of the total voting power of the Association; (b) not less than seventy-five percent (75%) of the total voting power of the Board; and (c) the Declarant during the Declarant Control Period. Any purported amendment or deletion of this Section or any portion hereof, without all of these express prior written approvals shall be void.

19.8.7. The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, Utah Code Ann. § 57-8a-228.

19.8.8. The Association, the Board, any officer of the Association, and the Owners agree that any Claims or Actions, the subject matter of any proceeding, and the results of any proceeding, including any settlement, shall be confidential and not disclosed to any other person or entity, including any other Owner, other than (a) in confidence with its own legal, financial, insurance, or tax professionals, (b) in necessary communication with appropriate federal, state, or local tax authorities, (c) to any person necessary to perform or satisfy the award, or (d) to any other person as may be required to comply with a subpoena, court order, or legal process; provided, however, that the Declarant shall be afforded a reasonable opportunity after written notice to object to the same. The Association, the Board, the officers of the Association, and the Owners, as the case may be, shall advise any legal, financial, insurance, or tax professional to whom such party discloses any confidential information or information about the Claims and/or Actions and any settlement or award that such information as permitted herein is to be held in confidence.

19.8.9. In addition to the requirements set forth in this Declaration, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the Declarant (if during the Declarant Control Period) and a vote of seventy-five percent (75%) of the Owners. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the exercise of the right of an Owner to request a hearing under Utah Code Ann. § 57-8a-208, (c) the exercise of the right of an Owner under Utah Code Ann. § 57-8a-227 related to Association records, (d) the exercise of the right of an Owner under Utah Code Ann. § 57-8a-211(8) regarding an Owner's right to compel production of a reserve analysis, (e) the imposition and collection of Assessments as provided herein, (f) proceedings involving challenges to ad valorem taxation, or (g) counterclaims brought by the Association in proceedings instituted against it.

19.8.10. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.



19.9. The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of ten (10) years after the expiration of the Period of Declarant Control.

## **20. ATTORNEYS' FEES AND COSTS**

### **20.1. Legal Costs Associated with Disputes with Owners.**

20.1.1. Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Restriction after notice to the Owner that the Association intends to enforce the Restriction or after the Owner communicates or demonstrates an intent not to comply with the Restriction, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.

20.1.2. Costs. The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.

20.1.3. Exception to Owner's Liability for Fees and Costs. If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Restriction, or (iii) a request of an Owner for direction on the application of a Restriction, the Association incurs legal fees or costs related to the interpretation and application of a Restriction that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## **21. INTERPRETATION, CONSTRUCTION, AND APPLICATION**

21.1. Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat, the Declaration, the Articles, the Bylaws, and then the Rules. If there is a conflict between the Governing Documents and any Additional Covenants (or rules or policies adopted pursuant to any such Additional Covenants), the Governing Documents shall control, except where the Additional Covenants are allowed to differ by the Governing Documents.

21.2. Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

21.3. Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options, and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.

21.4. Severability. Invalidation of any one or a portion of the Restrictions by judgment or court order shall in no way affect any other Restrictions, all of which shall remain in full force and effect.

21.5. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a planned unit development and for the maintenance of the Project. The section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to section numbers herein, unless otherwise expressly provided, are to the section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.

21.6. Applicable Law. Except as otherwise expressly provided in this Declaration related to Part 4 of the Act, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration. This Declaration and the Project shall be governed by the law of the State of Utah.

21.7. Gender and Number. Whenever the context of the Governing Documents requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

21.8. Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Restriction is determined to be unenforceable in whole or in part for any reason.

21.9. Notices. Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands, or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice

by electronic means, including email; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

The Association shall maintain a list of contact information for Owners of all Units within the Project. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Restrictions, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

In the event that any Owner desires to sell or otherwise Transfer title to the Owner's Unit, such Owner shall give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of Assessments, notwithstanding the Transfer.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative this 9<sup>th</sup> day of June, 2025.

**DECLARANT**

CW The Iris, LLC  
a Utah limited liability company

By: Cole West Entity Services, LLC  
a Utah limited liability company  
Its: Manager

By: Cole West, LLC  
a Utah limited liability company  
Its: Manager

By: Darlene Carter  
Name: Darlene Carter  
Its: 6.9.2025

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF DAVIS            )

On the 9<sup>th</sup> day of June, 2025, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he, through the above-referenced managing entities, is an authorized representative of CW The Iris, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public Stephanie Heiner



**EXHIBIT A**

**PROPERTY DESCRIPTION**

All of the theIRIS Condominium development, according to the official plat thereof, recorded in the office of Salt Lake County Recorder.

More particularly described as:

A PARCEL OF LAND BEING A PORTION OF LOT 6 AND LOT 7, BLOCK 116 SALT LAKE CITY SURVEY, SAID PARCEL BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 6, BLOCK 116, PLAT "A", SALT LAKE CITY SURVEY AND RUNNING THENCE NORTH 89°55'04" EAST 54.63 FEET ALONG THE NORTH SIDE OF LOT 7 OF SAID BLOCK 116; THENCE SOUTH 00°04'39" EAST 119.43 FEET; THENCE SOUTH 89°55'04" WEST 177.25 FEET TO POINT ON A EAST LINE OF ICEHOUSE SUBDIVISION, AS RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER IN BOOK 2022 OF PLATS AT PAGE 210; THENCE NORTH 00°04'36" WEST 119.43 FEET ALONG SAID EAST LINE TO A POINT ON THE NORTH LINE OF SAID LOT 6; THENCE NORTH 89°55'04" EAST 122.62 FEET ALONG SAID NORTH LINE TO THE POINT OF BEGINNING.

CONTAINS: 21,169 SQUARE FEET OR 0.486 ACRES  
CURRENT SALT LAKE COUNTY PARCEL NO. 08-36-178-005

**EXHIBIT B**  
**BYLAWS OF**  
**THE IRIS OWNERS ASSOCIATION, INC.**

These Bylaws of The Iris Owners Association, Inc., (the “**Association**”) are effective upon recording in the Salt Lake County Recorder’s Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (collectively the “**Acts**”).

**RECITALS**

A. The Association is organized for 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 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 commercial Project known as theIRIS.

**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 Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for theIRIS Condominiums (the “**Declaration**”).

**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 and the Governing Documents. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws and the Governing Documents 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 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, a review of any revisions to the Rules, 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, change the date, and time of

the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.2 Special Meetings. Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than fifty percent (50%) 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 forty-five (45) days of receipt of the Owner request. Notwithstanding the foregoing, during the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 Place of Meetings. The Board may designate any place in Salt Lake County, Utah, that is reasonably convenient for the Owners as the place of any Owner meeting. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owners to communicate orally in real time including telephone and video conferencing.

3.4 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and location (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 sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, hand-delivery, or regular mail. If sent by email, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address. 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 Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by posting the meeting notice on the Unit door. An Owner may opt out of receiving notices from the Association via email by giving written notice to the Board stating that the Owner will not accept notices by way of email.

3.5 Qualified Voters. An Owner shall be deemed to be in good standing and entitled to vote at any meeting if he or she has fully paid their Assessment account (together with any interest and/or late fees) at least forty-eight (48) hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.6 Record Date. The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to meeting notice and allowed to vote. 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 appearing in the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the Owners of record entitled to notice and to vote at the Owner meeting.

3.7 Quorum. Any number of Owners present in person or by proxy at a meeting duly called and held in compliance with the requirements of these Bylaws, shall constitute a quorum for the transaction of business and adoption of decisions.

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, 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 Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings or may set forth the specific matters or issues upon which the proxy is authorized to act. 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 make a record of all proxies in the meeting minutes.

3.9 Votes. Owners shall be entitled to vote on each matter submitted to an Owner vote in person, by proxy, or by any type of written or electronic ballot. Owners shall have the number of votes appertaining to the Undivided Interest of such Unit Owner, as set forth 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. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of a Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not delinquent and are paid in full at least 48 hours prior to the start of the meeting shall be entitled to 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 or date of the action taken outside of a meeting. The presence of an Owner in person at any Owner meeting shall be deemed a waiver of all notice requirements.

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 through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code Ann. § 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, or paper document.

3.12 Minutes of Meetings. The Secretary, or their designee, 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. Draft meeting minutes for each meeting of the Owners shall be available to requesting Owners within sixty (60) days of the meeting.

## **ARTICLE IV BOARD OF DIRECTORS**

4.1 Powers. The Project and the business and affairs of the Association shall be governed and 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. Following the Period of Declarant Control, the Board of Directors shall be composed of three (3) individuals. Board Members must be at least 18 years old and must be an Owner of a Unit in the Project. Only one (1) Board Member is permitted per Unit owned. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. 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. During the Period of Declarant Control, the qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.3 Election. During the Period of Declarant Control, Board Members (if any) shall be appointed by the Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by 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 Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted. Ties in Owner voting shall be resolved by a vote of the current Board Members.

4.4 Term of Office. During the Period of Declarant Control, Board Member terms shall be determined exclusively by the Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.

4.5 Regular Meetings. The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year, and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 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 and to those Owners who have requested notice.

4.7 Meeting Notice. Notice of a Board meeting date, time, and location shall be delivered personally, by email, or by mail to all Board Members and any Owners who have requested notice of Board meetings at least forty-eight (48) hours in advance of the meeting. Board Members may waive their rights to notice of a meeting and attendance at a Board meeting shall be deemed a waiver of any alleged deficiencies of notice. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to Owners who have requested notice of Board meetings.

4.8 Quorum. A majority of the Board Members shall constitute a quorum for the transaction of business at Board meetings. 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.

4.9 Owner Attendance. Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. 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.

4.10 Open Meetings. Except as provided below, following the Period of Declarant Control, 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, or 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.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.11 Board Meetings Generally. The Board may designate any place in Salt Lake County, Utah, 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, video conference, or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone or video conference, the Association shall provide the call-in or internet link information such that Owners may call-in to access the meeting.

4.12 Board Action. Notwithstanding noncompliance with any provision within these Bylaws or other Governing Document, 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 these Bylaws, the Governing Documents, or any other irregularity, may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 Compensation. No Board Member shall receive compensation for any services that such member may render 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 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.

4.14 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by a majority vote of the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 Vacancies. If vacancies occur during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies 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. Vacancies 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. Board Members elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of their predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 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 Board meeting if a majority of the Board Members consent to the action in writing. The term "in writing" shall specifically include email. Additionally, the Board Members may also take action without a meeting if the Board complies with any applicable provisions of the Acts. Any action so approved shall have the same effect as though taken at a Board meeting.

4.17 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.

4.18 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.

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

## **ARTICLE V OFFICERS**

5.1 Officers. The officers of the Association shall be a President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall not be required during the Period of Declarant Control.

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 officer shall hold such office 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. Officers may resign at any time by delivering a written resignation to any Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any 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. If a vacancy occurs in an office for any reason, or if a new office is 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. 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 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. The Secretary shall also act in the place of the President in the event of the President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager.

5.8 Treasurer. The Treasurer shall have the custody and control of the funds and financial accounts 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 shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

5.9 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 deems appropriate in carrying out its duties, responsibilities, functions, and powers. No committee members shall receive compensation for services rendered to the Association as a member of a committee; provided, however, that a 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 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. Each 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 determine. Each such committee shall keep a record 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 committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.

6.4 Resignation and Removal. A committee member may resign at any time by delivering a written resignation to a Board Member 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 occurs in a committee for any reason, 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. 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 defend, 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 defend, 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 defense and indemnification provided herein shall not be deemed exclusive of any other right to defense and indemnification to which any person seeking defense and indemnification may be entitled 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 that all Board Members, officers, and committee members be and hereby are defended and indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The defense and 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 may 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, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, 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 defend and indemnify such person against liability under the provisions of this Article.

7.4 Settlement by Association. The right of any person to be defended and indemnified shall be subject always to the right of the Association through the Board, in lieu of such defense and 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 RULES AND REGULATIONS**

8.1 Rules. The Board shall have the authority to adopt Rules and a schedule of fines for violations as it deems necessary for the maintenance, operation, management, and control of the Project by resolution or similar document. 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 Occupants. 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 fifteen (15) days prior to the effective date thereof.

## **ARTICLE IX AMENDMENTS**

9.1 Amendments by Declarant. During the Period of Declarant Control, or so long as the Declarant owns one or more Units in the Project, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. The Declarant's unilateral amendment right as designated herein may continue past the expiration of the Period of Declarant Control. No other amendment shall be valid or enforceable during the period the Declarant owns at least one Unit

unless the Declarant has given written consent to such amendment. Any amendment during the period the Declarant owns at least one Unit shall be executed by the Declarant on behalf of the Association and shall become effective upon recordation in the office of the Salt Lake County Recorder.

9.2 Amendments by Association. After the Declarant has sold all of the Units to third parties, and the Period of Declarant Control has expired, the Bylaws may be amended by the Owners upon the affirmative vote of more than sixty-seven percent (67%) of the Undivided Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the County Recorder. In such instrument a Board Member shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit 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 Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

## **ARTICLE X MISCELLANEOUS PROVISIONS**

10.1 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.

10.2 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 shall include 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

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

**[SIGNATURE PAGE FOLLOWS]**



IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative this 9<sup>th</sup> day of June, 2025.

**DECLARANT**

CW The Iris, LLC  
a Utah limited liability company

By: Cole West Entity Services, LLC  
a Utah limited liability company  
Its: Manager

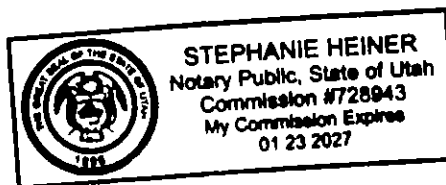
By: Cole West, LLC  
a Utah limited liability company  
Its: Manager

By: [Signature]  
Name: [Signature]  
Its: Manager

STATE OF UTAH            )  
                                  ) ss.  
COUNTY OF DAVIS        )

On the 9<sup>th</sup> day of June, 2025, personally appeared before me Darlene Carter who by me being duly sworn, did say that she/he, through the above-referenced managing entities, is an authorized representative of CW The Iris, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature]



## EXHIBIT C

### MAINTENANCE ALLOCATION CHART

Improvement	Unit Owner	Association	Notes
A/C Unit	X		
Address Numbers	X		Subject to Board approval upon replacement
Cable/Satellite TV	X		Subject to Board approval.
Ceiling	X		
Circuit Breakers for Unit	X		
Common Area Amenities (Repair and Maintenance)		X	
Detention Basin (Underground)		X	Detention Basin is actually an easement owned by the Association which, by Agreement must be maintained by the Association.
Door and Door Frames (Exterior)	X		Subject to Board approval upon replacement
Door and Door Frames (Interior)	X		
Door Hardware/Doorbell	X		Subject to Board approval upon replacement.
Drains – Unit and Limited Common Area (Patio/Porch)	X		
Dryer Vent	X		
Electrical Wiring/Panels	X		
Exterior Wall Finishes		X	
Fencing – Project Perimeter		X	
Fire Suppression System (Repair and Maintenance)		X	Association will coordinate annual inspections; Owners must provide access to the systems, if necessary
Floor Covering	X		
Foundation – Cosmetic	X		
Foundation – Structural		X	
Furnace	X		
Garage Doors (Repair and Maintenance)	X		Subject to Board approval.
Gas Pipes	X	X	<u>Owner</u> point of connection/meter to Unit <u>Association</u> before point of connection/meter.
Hose Bib/Faucet/Spigot	X		
Hot Water Heater	X		
Insurance – Association Plan Maintenance		X	

Insurance – Association Plan Deductible	X		Assessed to Owners pro-rata according to losses.
Insurance – Association Plan Loss Assessment	X		Assessed to Owners pro-rata according to losses.
Insurance – HO6 (Walls In and personal property) Plan Deductible and Maintenance	X		
Irrigation Lines/Heads – Common Area		X	
Landscaping – Common Areas		X	
Lights – Exterior (Porch, Driveway, Garage, Wall Pack (Fixtures & Bulbs))	X	X	Subject to Board approval. Association responsible for fixture repair, Owner responsible for maintenance.
Limited Common Area – Patios, including Rooftop Patios, Porches, and Decks	X	X	<u>Owner</u> , Maintenance Association: Repair
Mailbox and Stand/Structure		X	
Mailbox Lock and Key	X		
Paint – Exterior Walls and Trim		X	Subject to Board approval.
Paint – Exterior Doors	X		Subject to Board approval.
Paint – Interior	X		
Porch/Patio Slab		X	
Pest Control – Interior	X		
Phone Lines	X		
Plumbing Valves and Pressure Regulators	X	X	<u>Owner</u> : point of connection/meter to Unit. <u>Association</u> : before point of connection/meter.
Plumbing Main Line	X	X	<u>Owner</u> : point of connection/meter to Unit <u>Association</u> : before point of connection/meter.
Plumbing Leak	X	X	<u>Owner</u> : point of connection/meter to Unit. <u>Association</u> : before point of connection/meter
Plumbing Clogage	X	X	<u>Owner</u> : point of connection/meter to Unit <u>Association</u> : before point of connection/meter.
Plumbing Interior Pipes	X	X	<u>Owner</u> : point of connection/meter to Unit. <u>Association</u> : before point of connection/meter.
Rain Gutters (Drain Path, Cleaning, Repair, and Replacement)		X	
Roof (Repair and Maintenance)		X	
Screen Doors	X		Subject to Board approval.

			<u>Owner</u> , point of connection/meter to Unit. <u>Association</u> before point of connection/meter
Sewer Pipes	X	X	
Sewer Service Cost		X	
Sidewalks and Paths on Common Areas		X	
Signage – Entry Monument for Project		X	
Sliding Glass Doors	X		
Snow Removal – Back Porches	X		
Snow Removal – Roads, Sidewalks, Driveways, and Front Porches		X	
Storm Drains		X	
Streets – Private (Repair and Maintenance)		X	
Trash – From Unit to Dumpster	X		
Trash – Dumpster Maintenance and Service		X	
Vent Covers – Exterior		X	
Wall – Load Bearing Interior Wall	X		
Wall – Partition Interior Wall	X		
Water – All Unit and Common Area on HOA Meter		X	
Weather Stripping	X		
Windows – Glass, Screens, Frames	X		Subject to Board approval upon replacement.