

WHEN RECORDED, RETURN TO:

Coco Development Lindon, LLC  
118 East 12675 South  
Draper, UT 84020

ENT 164207:2020 PG 1 of 48  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2020 Oct 20 4:49 pm FEE 60.00 BY MA  
RECORDED FOR LINDON CITY CORPORATION

## DECLARATION OF CONDOMINIUM OF BRIXTON HEIGHTS

This Declaration of Condominium, hereinafter referred to as the "Declaration" is made and executed this 05 day of October, 2020, by **Coco Development Lindon, LLC**, a Utah limited liability company, hereinafter referred to as the "Declarant."

### RECITALS:

A. Declarant is the owner of the parcel of land, hereinafter referred to as the "Land," which is located in Lindon City ("City"), Utah County, State of Utah, and is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant is planning to convert a Building located on the Land into a commercial condominium development constituting a condominium project (the "Project").

C. Declarant shall organize and cause the Brixton Heights Owners Association Inc. ("Association") to be incorporated as a Utah non-profit corporation, which Association will maintain the Common Areas within the Project as hereinafter described, provide for the management and operation of the Common Areas, levy assessments, and administer and enforce the terms of this Declaration.

D. The Declarant intends, by recording this Declaration and the Map, to submit the Land, the Building and all other improvements situated from time to time in or upon the Land to the provisions of the Condominium Act, as a fee simple condominium project and to impose upon said property mutually beneficial covenants, conditions and restrictions under a general plan of improvement for the benefit of all Condominiums within said Project and the Owners thereof.

E. All capitalized terms used in this Declaration and not defined in connection with their initial use shall be defined as set forth in Article I, below.

NOW, THEREFORE, the Declarant does hereby make the following declaration:

## ARTICLE I

### DEFINITIONS

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

1.2 “Association” shall mean Brixton Heights Owners Association Inc., a Utah nonprofit corporation, organized for the purposes set forth in this Declaration.

1.3 “Board of Trustees” or “Board” shall mean the governing board of the Association which constitutes the management committee under the Condominium Act and which shall be appointed or elected in accordance with the Declaration and the Bylaws.

1.4 “Building(s)” shall mean the building(s) to be remodeled on the Land as part of the Project, and any modifications and replacements thereof.

1.5 “Bylaws” mean the Bylaws of the Association, a copy of which are attached hereto and incorporated herein as Exhibit “C”.

1.6 “City” shall me Lindon City, a municipal corporation of the State of Utah.

1.7 “Common Areas” means all real property in the Project owned in common by the Owners including but not limited to the real property and interests in real property submitted hereby, including the entirety of the Land and all Improvements constructed thereon, excluding the individual Units and Limited Common Areas designated as such in the Map. The Common Areas specifically include, without limitation: (a) the Land; (b) the Building, including, but not limited to: the footings, foundation, demising and bearing walls, columns, girders, beams, supports, roofs, the dock, rain gutters and downspouts, overhangs, gables and eves, stairs, stairways, fire escapes, eves, conference rooms and common meeting areas intended for the common use of the Building (excluding any Units); (b) paved surfaces, including, without limitation, driveways, private roads, sidewalks, walkways, common parking areas located on the Land; (c) all utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of the Building, such as telecommunications, electricity, natural gas, culinary water, storm water drainage, and sanitary sewer; (d) tanks, pumps, motors, fans, compressors, ducts and in general all apparatus, equipment, and installations existing for common use; (e) all landscaping and other flora, including, but not limited to yards, gardens, lawns, shrubs, trees, irrigation systems, etc.; (f) fences or walls; (g) garbage dumpsters and enclosures; (h) maintenance sheds and facilities; (i) exterior lighting; and (j) all other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management by the Association for the common benefit of its Members. Notwithstanding the above, utility installations, such as telephone, electricity, gas, water, and sewer, may be dedicated to the City or the utility provider and, if so, this definition shall not be construed to allow the Association to exclude the City and the utility provider from the ownership and control of the utility systems so dedicated.

1.8 “Common Expenses” shall mean all sums which are expended on behalf of the Owners and all sums which are expended by the Association to perform or exercise its functions, duties, or rights under the Condominium Act, this Declaration, the Articles of Incorporation, the Bylaws, any

management agreement which may be entered into for the operation of the Project, and such rules and regulations as the Association may from time to time make and adopt.

1.9 "Common Expense Fund" shall mean one or more deposit or investment accounts to be created pursuant to the provisions of Article IX of this Declaration and into which all monies of the Association shall be deposited.

1.10 "Common Facilities" shall mean all furniture, furnishings, equipment, facilities and other property (real, personal or mixed) and interests therein at any time leased, acquired, owned or held by the Association for the use and benefit of the Owners and all other property (real, personal or mixed) hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. Common Facilities shall be deemed to be part of the Common Areas, except to the extent otherwise expressly provided in this Declaration.

1.11 "Condominium" shall mean a Unit and the undivided interest (expressed as a percentage of the entire ownership interest) in the Common Areas appurtenant to such Unit, as set forth in Exhibit "B" which is attached hereto and incorporated herein by this reference.

1.12 "Condominium Act" or "Act" shall mean the Utah Condominium Ownership Act, Utah Code Annotated, as amended, Section 57-8-1 *et seq.*

1.13 "Declarant" shall mean Coco Development Lindon, LLC, a Utah limited liability company, and its successors and assigns.

1.14 "Declaration" means this Declaration of Condominium of the Brixton Heights, and all amendments, modifications and supplements hereto.

1.15 "Declarant Control Period" means the period of Declarant control of the Association described in Section 7.3 below.

1.16 OMITED

1.17 "First Mortgagee" shall mean a Mortgagee which has a first mortgage lien on any Condominium in the Project. "Eligible First Mortgagee" shall mean any First Mortgagee who has requested notice of those certain matters referred to in Section 14.1.

1.18 "Limited Common Area" shall mean any physical portion of the Project outside a Unit, the exclusive use of which is appurtenant to and reserved to one or more, but fewer than all, Units, to the exclusion of the other Units, as set forth on the Map. Limited Common Area include: shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, and exterior windows.

1.19 "Land" shall mean the certain real property upon which the Units, Building(s) and other improvements are situated, as more particularly described in Paragraph A of the Recitals above.

1.20 "Manager" shall mean the person, firm or company, if any, designated, from time to time, by the Association to manage, in whole or in part, the affairs of the Association and the Common Areas.

1.21 "Map" shall mean that certain Brixton Heights recorded by Declarant in the office of the Utah County Recorder depicting the Project, as may be amended from time to time, pursuant to this Declaration and the Condominium Act. The Map may be amended by Declarant in the event there are material changes in the Unit boundaries or elevations as constructed, or as otherwise provided herein. Such amendments to the Map are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. All other amendments to the Plat are governed by Section 16.3.

1.22 "Mortgage" shall mean any mortgage or deed of trust by which a Condominium or any part thereof is encumbered. "First Mortgage" shall mean any first mortgage or deed of trust by which a Condominium or any part thereof is encumbered.

1.23 "Mortgagee" shall mean (a) any persons or entities named as the mortgagee or beneficiary under any Mortgage or Deed of Trust by which the interest of any Owner is encumbered, or (b) any successor to the interest of such person or entity under such Mortgage or Deed of Trust.

1.24 "Occupant" shall mean any person other than an Owner, including any guest, invitee, tenant, lessee, or employee of an Owner, occupying or otherwise utilizing a Unit.

1.25 "Owner" shall mean the person or persons, including the Declarant, owning, in fee simple, a Condominium in the Project, as such ownership is shown by the records of the County Recorder of Salt Lake County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Condominium pursuant to a judicial or nonjudicial action, including, without limitation, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Condominium under contract (until such contract is fully performed and legal title conveyed of record).

1.26 "Prohibited Use" shall mean each of the following uses:

(a) Any use in violation of applicable governmental laws, ordinances, codes, and regulations;

(b) Any use which constitutes a public or private nuisance;

(c) Any use which produces noise or sound which may be heard outside of any building on the Property and is objectionable due to intermittence, beat, frequency, shrillness or loudness;

(d) Any use which produces any noxious odor or which may be smelled outside any building on the Property;

(e) Any use which produces any excessive quantity of dust, dirt or ash;

(f) Any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);

(g) Any distillation, refining, smelting, agriculture or mining operation;

(h) A cocktail lounge, bar (except in connection with a restaurant), disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade,

(i) Any operation for drilling for and/or removal of subsurface substances, including but not limited to oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind;

(j) Any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;

(k) Any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions, and strip clubs and the like, and marijuana dispensers;

(l) Any use involving automobile or automobile parts sales, service or repair, specifically including automotive repair or body shops;

(m) Any second hand store or auction house, flea market, fire sale, bankruptcy or going out of business sale business, or marijuana dispensers; or

(n) Any use involving outdoor storage.

1.27 "Project" shall mean the Land, the Building and all improvements submitted by this Declaration to the provisions of the Condominium Act.

1.28 "Restrictions" shall mean the covenants, conditions and restrictions, and reciprocal easements contained herein and recorded concurrently with this Declaration, which encumbers the Land.

1.29 "Total Votes of the Association" shall mean the total number of votes appertaining to all Condominiums in the Project. The initial Total Votes of the Association, as of the effective date of this Declaration, are shown on Exhibit "B."

1.30 "Unit" shall mean an individual air space unit, consisting of enclosed rooms occupying part of the Building and bounded by the unfinished interior surfaces of the walls, floors, ceilings, windows and doors along the perimeter boundaries of the air space, as said boundaries are shown on the Map, together with all the fixtures and improvements therein contained. Paint and other wall, ceiling or floor coverings on interior surfaces shall be deemed to be part of the Unit. Notwithstanding the fact that they may be within the boundaries of such air space, the following are not part of a Unit insofar as they are necessary for the support or for the use and enjoyment of another Unit: bearing walls, floors, ceilings and roofs (except the interior surfaces thereof and the separate HVAC systems for each Unit which may be connected thereto), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. The interior surfaces of a window or door mean the points at which such surfaces are located when the window or door is closed.

## ARTICLE II

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

2.1 Submission to Condominium Act; Covenants Running with the Land. Declarant hereby submits and subjects the Land, the Building and all other improvements now or hereafter made in or upon the Land to the provisions of the Condominium Act. All of said property is and shall be held,

conveyed, hypothecated, encumbered, leased, rented, used and improved as a commercial condominium project knowns as Brixton Heights Owners Association Inc. All of said property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project and in furtherance of a plan for improvement of said property and division thereof into Condominiums. Further, each and all of the provisions of this Declaration shall be deemed to be covenants running with the Land and shall be a burden and a benefit on the Land and shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and to any person acquiring, managing, leasing or owning any interest in the Land, the Building, or any of the improvements comprising the Project and to their respective personal representatives, heirs, successors, assigns, business invitees, licensees, tenants, mortgagees, customers, and clients.

2.2 Division into Condominiums. The Project is hereby divided into Condominiums, each such Condominium consisting of a Unit and an appurtenant undivided interest in the Common Areas. The initial Units are shown on Exhibit "B" and on the Map, and the initial appurtenant undivided interest in the Common Areas are calculated in accordance with Section 4.5.

## ARTICLE III

### **BUILDING AND IMPROVEMENTS**

3.1 Building and Improvements. The improvements consist of one (1) commercial Building constructed on the Land having one (1) above ground story and no basements. The Building constructed on the Land consists of cinderblock, wood and metal exteriors, and other customary construction materials. The number of Units in the initial Building is expected to be twenty (20). Sidewalks located on the Common Areas will be available for use in connection with the Units on a non-exclusive basis pursuant to the terms and conditions of this Declaration, and Rules and Regulations implemented from time to time.

3.2 Description of Units. The Map contains the Unit number, location and dimensions of each initial Unit in the Project and all other information necessary to identify each such Unit.

3.3 Description of Common Areas. The Common Areas of the Project are as further described herein.

3.4 Utilities and Services. The Building will be supplied with electricity, gas, water, and sewerage service. In addition, each Unit will be supplied with a separate HVAC system, maintenance, repair and replacement of which will be the separate responsibility of each respective Owner.

3.5 As Constructed. Notwithstanding the description of Units described in Section 3.2 above, for the purposes of interpreting this Declaration and the Map, the boundaries of all Units constructed in substantial accordance with the Map and this Declaration shall be conclusively presumed to be the actual boundaries rather than the description and depiction of the Units set forth on the Map, regardless of the settling or lateral movement of the Units and regardless of minor variances between boundaries shown on the Map and the constructed boundaries of the Units. It is acknowledged that the Map is prepared from the architectural drawings of the Project, prior to construction, and that there will be variances between the boundaries and other features shown on the Map and the actual construction of the Project.

## ARTICLE IV

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

4.1 Interior of Units. Each Owner shall have the exclusive right to paint, repaint, tile, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors of its Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries, construct and remove partition walls, fixtures and other improvements within the boundaries of its Unit; provided, however, that such improvements (a) shall not impair the structural soundness or integrity of the Building; (b) shall not interfere with facilities necessary for the support, use or enjoyment of any other part of the Project; (c) shall be built to construction standards comparable or better than the original construction of the Project; and (d) shall not encroach upon the Common Areas or any part thereof, unless the Board shall consent in writing to such encroachment.

4.2 Maintenance of Units. Each Owner shall keep the interior of its Unit including, without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a clean and sanitary condition and in a state of good repair. In the event that any such Unit shall develop an unsanitary or unclean or unsafe condition or fall into a state of disrepair, and in the event that the Owner of such Unit shall fail to correct such condition or state of disrepair promptly following written notice from the Board, the Board on behalf of the Association shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary or unclean condition or state of disrepair; provided, however, that the Association shall in no event have the obligation to correct or eliminate any such condition or state of disrepair.

4.3 Right to Combine Units. Two or more Units may be utilized by the Owner or Owners thereto as if they were one Unit. At any time, upon the request of the Owner of one of such adjoining units, any opening between the two Units which, but for joint utilization of the two Units, would have been occupied by structural separation, shall be closed, at the equal expense of the Owner or Owners of each of the two Units, and the structural separations between the two Units shall thereupon become Common Areas.

4.4 Title. Subject to the provisions of Article VI, title to a Condominium may be held or owned by any person or entity, or any combination thereof, and in any manner in which title to any other real property may be held or owned in the State of Utah, including, without limitation, joint tenancy or tenancy in common.

4.5 Computation of Undivided Interest in Common Areas; Votes. The percentage of undivided interest in the Common Areas which is appurtenant to each Unit initially contained in the Project is equal to the ratio between the size of such Unit and the aggregate size of all Units initially included in the Project, but with the minor adjustments described at the end of this Section. The Total Votes of the Association shall number one hundred (100). The number of votes in the Association, which is appurtenant to each Unit initially contained in the Project, is equal to one hundred (100) multiplied by the percentage of undivided interest in the Common Areas which is appurtenant to the Unit concerned (e.g., if one Unit's size is 25% of the aggregate size of all Units, then that Unit would have twenty-five (25) votes calculated as  $100 \times .25$ ). The percentage of undivided ownership interest and the number of votes in the Association, which are appurtenant to each Unit initially contained in the Project, have been computed in the aforesaid manner and through use of the minor adjustments described at the end of this Section and are set forth on Exhibit "B." In utilizing the foregoing

formulas, minor adjustments may have been made in some or all of the percentage interests and the number of votes, which result from a strict application thereof for the purposes, but only for the purposes, of assuring that the total undivided ownership interest respecting the Project equals one hundred percent (100%), the Total Votes of the Association equals one hundred (100), and no vote in the Association is divided into fractional parts. Except as otherwise provided in this Declaration, the undivided interest appurtenant to each Unit shall have a permanent character and shall not be altered. The sum of the undivided interest in the Common Areas allocated to all Units shall at all times equal one hundred percent (100%). Declarant is authorized to round the undivided interest of one or more Units in order to cause the total to equal one hundred percent (100%).

**4.6 Use and Maintenance of Common Areas.** Except as otherwise provided in this Declaration, each Owner shall have the nonexclusive right to use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to the provisions of this Declaration and any Rules and Regulations promulgated by the Association. The Association shall have the right and obligation to maintain and repair all Common Areas. Notwithstanding the undivided interest in the Limited Common Area, Limited Common Area shall be reserved for the exclusive use of the Owner of the Unit to which they are appurtenant, as shown on the Map or as specified in this Declaration.

**4.7 Divider Walls.** The walls separating the Unit of one Owner from the Unit of an adjoining Owner shall be referred to as a "Divider Wall" and the location of the plane of its centerline shall be coincident with the vertical plane which serves as the common boundary between the Units of Owners whose Units adjoin one another. A Divider Wall shall not be removed by an Owner, except that in the event a Divider Wall is no longer intended to serve to separate the Unit of one Owner from the Unit of another Owner, the Divider Wall may be removed provided such removal shall be at the sole cost and expense of the Owner performing the same and the prior written approval of the Board has been obtained. A Divider Wall may not be constructed by an Owner without the prior written approval of the Board, which shall grant its approval only upon receipt of a building permit, if any is required, and evidence satisfactory to the Board that the Divider Wall will be constructed coincident with the vertical plane which serves as the common boundary between the Units of Owners whose Units adjoin one another. Any such construction shall be at the expense of the Owners performing the same. In no event may a Divider Wall be removed or constructed if the structural soundness of the Building may in any way be affected thereby. All Divider Walls, whether constructed by the Declarant or an Owner, shall be the property of the Association and ordinary maintenance, other than painting and decorating of said Divider Walls, shall be performed by the Association and the cost thereof shall be a Common Expense of the Project; provided, however, that an Owner shall be responsible for any damage caused to a Divider Wall by its negligent or intentional acts or those of its representatives, employees or agents, and the cost of said repair shall be specially assessed to that Owner, and said sum, together with interest thereon and all costs of collection, shall be immediately due and payable and shall be secured in the same manner as the Association's lien for payment of Common Expenses, as hereinafter described.

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

all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth. Any purported devise, conveyance, encumbrance or other disposition (voluntary or involuntary) of an individual interest in the Common Areas shall be void unless the Unit to which such interest is allocated is also transferred.

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

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

4.11 Separate Taxation. Each Condominium, including each appurtenant undivided interest in the Common Areas, shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments and other charges of the State of Utah or of any political subdivision or of any special improvement district or of any other taxing or assessing authority. For purposes of such assessment, the valuation of the Common Areas shall be apportioned among the Units in accordance with the Condominium Act. Notwithstanding anything contained herein to the contrary, all taxes, assessments and other charges of the State of Utah or of any political subdivision (e.g., the County) or of any special improvement district or of any other taxing or assessing authority relating to the Common Areas shall be prorated, allocated and assessed by such authority equally to the Units. All such taxes, assessments and other charges on each respective Condominium shall be separately levied against the Owner thereof. No forfeiture or sale of any Condominium for delinquent taxes, assessments or other charges shall divest or in any way affect the title to any other Condominium.

4.12 Mechanic's Liens. No labor performed or material furnished for use in connection with any Unit with consent or at the request of an Owner, its representative, employee, agent or subcontractor, shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same, or against any interest in the Common Areas, except the undivided interest therein appurtenant to the Unit of the Owner for whom such labor was performed or materials furnished.

4.13 Description of Condominium. Every contract for sale of a Condominium and every other instrument affecting title to a Condominium may describe a Unit by its identifying number or symbol as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with its appurtenant undivided interest in the Common Areas, and to incorporate all of the rights incident to ownership of a Condominium and all of the limitations of such ownership.

4.14 Division of Utility Costs. The cost of all utility or municipal services (including, without limitation, water, sewer, garbage collection, telephone, electrical, and gas) which are separately metered to a particular Unit (if metering is applicable to the service in question) and billed by the suppliers concerned shall be paid by the Owners of the respective Units. The cost of all such services which are separately metered (if metering is applicable to the service in question) and billed regarding less than all of the Units in the Project either shall be paid directly by the respective Owners

of the Units to which the service in question is provided (if and to the extent that separate metering and billing occurs as regards each of said Units) or shall be paid in the first instance by the Association from the Common Expense Fund (if and to the extent that more than one Unit is included in any particular separate metering and billing arrangement). If and to the extent that the Association as aforesaid pays such cost in the first instance from the Common Expense Fund, the Association shall be reimbursed for such cost by the respective Owners of the Units to which the service in question was provided, with the Owner of each such Unit being obligated to make reimbursement based upon its respective undivided interest in the Common Areas of the Project or its pro rata share of the cost if less than all the Units are involved. The cost of all such services which are not separately metered (if metering is applicable to the service in question), including, without limitation, gas, sewer and water, will be billed to the Building as a whole, shall be paid by the Association from the Common Expense Fund. The Association shall be reimbursed for such costs by the respective Owners of the Units to which the service in question was provided, with the Owner of each such Unit being obligated to make reimbursement based upon its respective undivided interest in the Common Areas of the Project or its pro rata share of the cost if less than all the Units are involved. Notwithstanding anything to the contrary contained in this Section 4.14, in the event that any utility or municipal service is separately metered (if metering is applicable to the service in question) and billed to one or more Units and a portion of such service benefits in whole or in part any other Units or the Common Areas, the Association shall reimburse or credit the Owner(s) of the Unit(s) so billed for the cost of such portion; the determination of such portion, and the cost related thereto which shall be borne by the Association as a Common Expense, shall be made by the Association in a fair and reasonable manner on the basis of the best information reasonably available at the time, and shall be final and binding upon all Owners.

4.15 Subdivision of Unit. Each Owner may subdivide its Unit; provided any such subdivision shall be done in accordance with applicable law and shall comply with this Declaration and the Development CC&Rs. The Owner desiring to subdivide its particular Unit shall pay all costs associated with the subdivision, including, but not limited to, payment of all costs incurred by the Association in amending the Declaration and the Map to include the additional Unit as part of the Project.

## ARTICLE V

### **EASEMENTS**

5.1 Easements for Encroachments. In the event the construction, reconstruction, repair or movement of any portion of the improvements causes any part of the Common Areas to encroach upon any Unit, or any part of a Unit built in substantial accord with the boundaries for such Unit encroaches or shall encroach upon the Common Areas or upon an adjoining Unit for any such reasons, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists.

5.2 Easements for Maintenance, Cleaning and Repair. Some of the Common Areas are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas, from time to time, during such reasonable hours as may be necessary for the maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas or to any Unit. In addition, agents of the Association, or utilities providers and/or contractors acting on behalf of other

Owners, may enter any Unit when necessary in connection with the installation, maintenance, repair and replacement of necessary utilities, and for any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made after regular business hours to the extent feasible, and with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Fund.

5.3 Access Easement; Right to Ingress, Egress and Support. Each Owner, for the benefit of its licensees, invitees, contractors, employees and agents, shall have a non-exclusive easement for and the unrestricted right of access, ingress and egress to, over, upon and across all sidewalks, passageways, driveways, as such may exist on the Land and as necessary for access to and from such Owner's Unit to the "Common Parking Areas," as such term is hereinafter defined, in the Project, and to the public streets, and each Owner shall have an easement and the right to horizontal, vertical and lateral support of such Unit, and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium. Each Owner shall have a non-exclusive easement for use of the portion of the Common Areas constituting the conference and break areas in the attic space of the Building subject to the Rules and Regulations of the Association.

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

5.5 Easement for Completion of Project. The Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and making improvements therein, and for the purpose of doing all things reasonably necessary or appropriate in connection therewith. To the extent that damage is inflicted on any part of the Project by any person utilizing said easement, the Declarant and the person causing the damage shall be liable to the Association for the prompt repair of such damage. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noise, dust, odors and vibrations which may temporarily disrupt their quiet enjoyment of their Units and the Common Areas appurtenant thereto, and such Owners do hereby waive any right to object to such construction activity. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Prohibited Uses.

5.6 Parking Easement. Each Owner shall have a non-exclusive easement and the right of use of all common parking areas ("Common Parking Areas") as may, from time to time exist on the Land and/or the Project including, access, ingress and egress to, over, upon and across, all such Common Parking Areas. The Board, in its reasonable discretion, shall have the right to designate the location of, and place a limitation on, the number of parking spaces each Owner is entitled to use pursuant to this Section 5.6. The Board initially designates two (2) unreserved spaces to each Unit, with additional spaces to be available in overflow parking areas.

5.7 Easements Deemed Created. All conveyances of Condominiums hereafter made, whether by the Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

## ARTICLE VI

### RESTRICTIONS ON USE

6.1 Use and Occupancy. Units shall be used and occupied only for commercial or industrial purposes and in accordance with all applicable laws, ordinances, and regulations including, without limitation, any and all covenants, conditions and restrictions that may apply to the Project as part of this Declaration. No Owner shall use or occupy, or cause or permit to be used or occupied, any Unit for a Prohibited Use, or otherwise in violation of this Declaration or any applicable laws, ordinances, rules or regulations including, without limitation, any applicable nuisance laws or ordinances. All Common Areas are designated solely for parking, loading, unloading, ingress and egress.

6.2 Rules and Regulations. In addition to the restrictions set forth in Section 6.1 hereof, the use of all Units shall also be subject to such Rules and Regulations of general application as may be adopted by the Board of the Association. Such Rules and Regulations shall be binding on all members of the Association unless duly amended by the Board or by a 67% majority of the Total Votes of the Association.

6.3 Compliance. The administration of the Project shall be in accordance with the provisions of this Declaration, the Restrictions, the Articles of Incorporation, the Bylaws, and the Rules and Regulations duly adopted by the Association. Each Owner and Occupant shall comply with such Declaration, Restrictions, Articles of Incorporation, Bylaws, and the Rules and Regulations, all as amended from time to time.

6.4 Partition. No Owner nor any other person shall bring any action for partition or division of the Project or any portion thereof, and every person acquiring any interest in the Project shall acquire the same subject to this Declaration and shall be deemed to have waived any right to seek any partition until the Land and Building have been removed from the provisions of the Condominium Act as provided therein.

6.5 Structural Changes and Prohibitions. No Owner shall make structural alterations or modifications to its Unit or to any of Common Areas including, but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other material in the windows of the Unit, or other exterior attachments, without the prior written approval of the Association. The Association shall not approve any alterations, decorations or modifications that would jeopardize or impair the soundness, safety or appearance of the Project. Excepting the construction or removal of Divider Walls between Units owned by the Declarant prior to the first conveyance of such Units to a person other than the Declarant, the erection, removal, or alteration of Divider Walls for the purpose of creating or subdividing Units shall require the prior written approval of the Board subject to such conditions as they may impose including, but not limited to, minimum Unit size requirements, architectural plans, maintenance of liability insurance during construction, performance and payment bonds, or otherwise, the expense of which must be borne by the affected Owners.

6.6 Leasing. An Owner may lease its Unit, in whole or in part, for the same purposes set forth in Section 6.1 provided that such lease transaction is in accordance with the provisions of this Declaration.

6.7 Improper Uses. No immoral, improper, unlawful or offensive activity shall be carried on in any Unit or upon the Common Areas nor shall anything be done which may be or become an annoyance or a nuisance, legal or otherwise, to the Unit Owners. No Owner shall do or permit anything to be done or keep or permit to be kept in its Unit or on the Common Areas anything that will increase the rate of insurance on the Project.

6.8 Signs. No signs or other advertising devices shall be displayed except in conformity with Rules and Regulations promulgated by the Board; provided, however, that the initial tenants may have signs on their windows and doors within such limitations on size and type as the Declarant may determine, but not on the exterior walls of the improvements, and provided, further that no Owner can be excluded from any building directory unless prohibited by law or ordinance.

6.9 Cleaning and Storage in Common Areas. The Common Areas are not to be used for storage of supplies, personal property or trash or refuse of any kind except common trash receptacles placed at the discretion of the Board. Stairs, entrances, sidewalks, yards, driveways, and parking areas shall not be obstructed in any way nor shall unauthorized persons use them for other than their intended purposes. In general, no activities shall be carried on nor condition maintained by any Owner either in its Unit or upon the Common Areas, which despoils or in any manner negatively affects the appearance of the Project.

6.10 Maintenance of Units. Each Owner shall maintain its Unit in a sanitary condition. Each Owner shall also use due care to avoid damaging any of the Common Areas or any other Unit, and each Owner shall be responsible for its negligence or misuse of any of the Common Areas or of its own facilities resulting in damage to the Common Areas or any other Unit.

6.11 Association Access to Unit. The Association or its agent shall have access to each Unit, from time to time, during reasonable working hours, upon notice to its Owner, as may be necessary for the maintenance, repair or replacement of any of the Common Areas or other Units. The Association or its agents shall also have access to each Unit at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or to another Unit. If requested by the Association, each Owner shall furnish to the Association a duplicate key to the entrance door to its Unit and shall furnish a new duplicate key upon any change of locks thereto. Said keys shall be kept by the Association in a safe and secure place, and are to be used only in case of emergency or upon written authorization of the Owners.

6.12 Declarant Activities. None of the restrictions contained in this Article VI shall apply to the commercial activities, signs or billboards, if any, of the Declarant during the sales period of the Project or to the activities of the Association in furtherance of its powers and purposes set forth herein and in its Articles of Incorporation as the same may be amended from time to time.

## ARTICLE VII

### **THE ASSOCIATION**

7.1 Membership. Each Owner shall be entitled and required to be a member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Condominium is held by more than one person, the membership appurtenant to that Condominium shall be shared by all such persons in the same proportionate interest and by the same type of tenancy

in which title to the Condominium is held. Each Condominium shall be entitled to one membership in the Association. Each membership shall be appurtenant to the Condominium to which it relates and shall be transferred automatically by conveyance of that Condominium. Ownership of a Condominium cannot be separated from membership in the Association appurtenant thereto, and, any devise, encumbrance, conveyance or other disposition, respectively, of a Condominium shall include the Owner's membership in the Association and rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Condominium.

7.2 Board of Trustees. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Board of Trustees consisting of not less than three (3) nor more than five (5) natural persons as provided in the Bylaws. The Board of Trustees shall be elected as provided in this Declaration and in the Bylaws.

7.3 Declarant Control Period. There is hereby established a Declarant Control Period, during which period Declarant or persons designated by it shall have the authority to appoint and remove the Association officers and members of the Board of Trustees. The Declarant Control Period shall terminate no later than the earlier of:

- (a) three (3) years after the first Condominium is conveyed by deed to an Owner; or
- (b) after Units to which three-fourths (3/4) of the undivided interest in the Common Areas appertain have been conveyed to Owners; or
- (c) Declarant provides the Association written notice of Declarant's waiver of such exclusive right.

7.4 Votes. The number of votes appurtenant to each respective Condominium shall be as set forth in Exhibit "B." The number of votes appurtenant to each Condominium shall have a permanent character and shall not be altered without the unanimous written consent of all Owners expressed in a duly recorded amendment to this Declaration. The Declarant shall have full voting rights with respect to each Condominium that it owns.

7.5 Professional Management. The Association may carry out, through the Manager, those of its functions, which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement executed on or before the termination of the Declarant Control Period may be terminated by the Association without cause at any time after transfer of such control. The above term and termination provisions shall not apply to any other types of service contracts.

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

## ARTICLE VIII

## CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION AND BOARD OF TRUSTEES

8.1 The Common Areas. The Board, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including the Common Facilities) and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Association shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, roofs (except for the HVAC systems, which are the responsibility of each respective Owner) and fences and maintenance of elevators, parking areas, landscaping, walkways and driveways. The Association shall also be responsible for maintenance, repair and replacement of Common Areas within the Building, including, without limitation, landings, stairways, utility lines, Common Facilities and all improvements and other items located within or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

8.2 Powers of The Board. Except as otherwise provided herein, the Board of Trustees shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Condominium Act, the Utah Revised Nonprofit Corporation Act, Utah Code Annotated §§ 16-6a-101 *et seq.*, this Declaration and the Bylaws, including but not limited to the following:

- (a) To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.
- (b) To engage the services of the Manager, accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.
- (c) To operate, maintain, repair, improve and replace the Common Areas, including the Limited Common Areas.
- (d) To determine and pay the Common Expenses.
- (e) To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article IX hereinafter.
- (f) To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.
- (g) To open bank accounts on behalf of the Association and to designate the signatories therefor.
- (h) To bring, prosecute and settle litigation for itself, the Association and the Project.
- (i) To obtain insurance for the Association with respect to the Units and the Common Areas, as well as worker's compensation insurance.

(j) To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

(k) To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. Such books and records shall include detailed, accurate records in chronological order, of the receipts and expenditures affecting the Common Areas, specifying and itemizing the maintenance and repair expenses of the Common Areas and any other expenses incurred.

(l) To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

(m) To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of the Bylaws.

(n) To grant easements and rights-of-way over the Common Areas and Facilities and to approve signage for the Project.

**8.3 Miscellaneous Goods and Services.** The Board may, on behalf of the Association, obtain and pay for the services of such personnel as the Board shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Board may, on behalf of the Association, obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project or the enforcement of this Declaration. In addition to the foregoing, the Board may, on behalf of the Association, acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, snow removal, electrical, gas and other necessary or desirable utility services for the Common Areas (and for the Units to the extent not separately metered or billed), insurance, bonds and other goods and services common to the Units.

**8.4 Easements Over Common Areas.** The Board may, on behalf of the Association, grant easements over the Common Areas from time to time for the benefit of the Building, the Common Areas and the larger commercial development of which the Building is a part.

**8.5 Development CC&Rs.** The Development CC&Rs grant certain rights to and impose certain obligations on the Owner of the Land. Each Owner acknowledges its Unit is subject to certain maintenance requirements and use restrictions as further set forth in the Development CC&Rs. The Association shall maintain the Common Areas Project as required by the Development CC&Rs. To the extent any costs are incurred by the Association in connection with the Development CC&Rs, such costs shall be passed to the owners as an assessment under Article IX.

**8.6 Providing Payoff Information; Written Statement.** The Board may charge a reasonable fee for providing Association payoff information needed in connection with the closing of an Owner's financing, refinancing or sale of a Condominium. Such fee shall not exceed the maximum amount (if any) set forth in the Condominium Act. The Board must provide payoff information within ten (10) business days after the closing agent for a transaction requests such information. Such request shall include all information required by the Condominium Act and be delivered in accordance with the requirements set forth in the Condominium Act. Even when not needed in connection with the closing

of an Owner's financing, refinancing or sale of a Condominium, an Owner may request in writing a written statement from the Board indicating any unpaid assessments with respect to the Owner's Condominium. The Association may charge the Owner requesting the statement a fee not to exceed the maximum amount (if any) set forth in the Act.

8.7 Registration with the Department of Commerce. The Association shall register with the Utah Department of Commerce within ninety (90) days of the recordation of this Declaration. Further, within ninety (90) days after a change of any information provided in the Association's registration with the Department of Commerce, the Board shall submit an updated registration in the manner established by the Department of Commerce and the Condominium Act.

8.8 No Liability for Latent Defects. NOTWITHSTANDING THE DUTY OF THE ASSOCIATION TO MAINTAIN AND REPAIR PORTIONS OF THE PROJECT, AND EXCEPT TO THE EXTENT COVERED BY ASSOCIATION INSURANCE AS DESCRIBED IN ARTICLE X, NEITHER THE ASSOCIATION NOR THE BOARD SHALL BE LIABLE TO OWNERS FOR INJURY OR DAMAGE, OTHER THAN FOR THE COST OF MAINTENANCE AND REPAIR, CAUSED BY ANY LATENT CONDITION OF THOSE PORTIONS OF THE PROJECT TO BE MAINTAINED AND REPAIRED BY THE ASSOCIATION, OR CAUSED BY WEATHER CONDITIONS OR OTHER OWNERS OR PERSONS.

## ARTICLE IX

### ASSESSMENTS

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

9.2 Annual Assessments. Annual assessments shall be computed and assessed against all Condominiums in the Project as follows:

(a) Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments (unless and until the Condominiums are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a Manager; utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other

expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expenses, and all funds received from assessments under this Section 9.2(a) shall be part of the Common Expense Fund. Two separate and distinct funds may be created and maintained hereunder, one for operating expenses and one for capital expenses which together shall constitute the Common Expense Fund.

(b) Apportionment. Common Expenses shall be apportioned among and assessed to all Condominiums and their Owners in proportion to their respective undivided interests in the Common Areas. The Declarant shall be liable for the amount of any assessments against Condominiums owned by it.

(c) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1<sup>st</sup> and ending the following December 31<sup>st</sup>, provided the first fiscal year shall begin on the date of this Declaration, and, on or before December 31<sup>st</sup> of each year thereafter, the Board shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated Common Expenses for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming, fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(d) Notice and Payment. Except with respect to the first fiscal year, the Board shall notify each Owner in writing as to the amount of the annual assessment against its Condominium on or before December 1 each year for the fiscal year beginning on January 1 next following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve equal monthly installments, one such installment due on the first day, of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. An Owner may prepay its annual assessment. The Association shall have the right to charge a late fee equal to five percent (5%) of any assessment not paid within fifteen (15) days of the due date thereof. In addition, all unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from fifteen (15) days after the date each such installment became due until paid. In the event that any installment of the annual assessment is not paid within fifteen (15) days of the date such installment becomes due, the Association may, at its option, and upon fifteen (15) days prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said fifteen (15) day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to a date fifteen (15) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

(e) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Board may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall be unnecessary.

9.3 Special Assessments. In addition to the annual assessments authorized by this Article IX, the Board may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51 %) of the Total Votes of the Association, held by Owners voting by either written ballot, or in person or by proxy at a meeting called for such purpose, one or more special assessments, payable over such periods as the Board may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section shall not be construed as an independent source of authority for the Association to incur expenses but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in proportion to their respective undivided interests in the Common Areas. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners; no payment shall be due less than fifteen (15) days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section shall be part of the Common Expense Fund.

9.4 Lien for Assessments. All sums assessed to Owners pursuant to the provisions of this Article IX, together with late charges and interest thereon as provided herein, shall be secured by a lien on such Condominium in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Board may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Condominium and a description of the Condominium. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of applicable law. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-45 to First American Title Insurance Company, Inc., with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of this Declaration. In any exercise of a power of sale remedy, the Association may appoint its attorney or any title insurance company to act as the trustee in connection with such sale and said trustee shall have all of the rights and powers necessary to convey title to the Condominium to the purchaser at any foreclosure sale. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Condominium, which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Condominium in the name of the Association.

9.5 Priority of Lien. The lien of the Association has priority over each lien and encumbrance on a Condominium except: (a) a lien or encumbrance recorded before recordation of this Declaration, (b) a First Mortgage on a Unit that is recorded before a recorded notice of lien by or on behalf of the Association, and (c) assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Condominium Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Board, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board, the Manager and every Owner, in favor of all who rely on such statement in good faith.

9.6 Personal Obligation of Owner. The amount of any annual or special assessment against any Condominium shall be the personal obligation of the Owner of such Condominium to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of its Condominium or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

9.7 Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against its Condominium as described in Section 9.6 shall not pass to successors in title unless assumed by them; provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Condominium unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

9.8 Reserves and Working Capital. The Association may establish the following funds:

(a) Reserve Fund. The Association may establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas as the Association may be obligated to maintain, repair or replace as required by the Act. The reserve fund shall be maintained out of regular assessments for Common Expenses.

(b) Working Capital Fund. The Associations may establish and maintain a working capital fund equal to at least two monthly installments of annual assessment for each Condominium. Each Condominium's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Condominium. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the Working Capital Fund are not to be considered advance payments of any regular assessment. Upon transfer of a Condominium, the Owner's interest in the Working Capital Fund shall automatically be transferred to the new Owner.

9.9 Leased Units. If an Owner fails to pay Assessments and other amounts due under this Declaration for a period of more than sixty (60) days after such amounts are due and payable, the Association may require a Tenant (defined below) under a Lease (defined below) with an Owner to pay the Association all future Lease payments due to the Owner beginning with the next monthly or periodic payment due from the Tenant and until the Association is paid the Amount Owing (defined below). Notices and collection of payments shall comply with the following provisions, provided, however, that if the requirements under the Act are less restrictive, the Association need only comply with the requirements thereunder. As used in this Section "Amount Owing" means the total of any assessment or obligation under this Declaration that is due and owing together with any applicable interest, late fee, and cost of collection, "Lease" means an arrangement under which a Tenant occupies a Unit in exchange for the Owner or Owner's agent receiving a consideration or benefit, including a fee, service, gratuity, or compensation, and "Tenant" means a person, other than the Owner, who has regular, exclusive occupancy of an Owner's Unit, provided, however, if an Owner has contracted with a rental agent or other property manager to rent the Unit, such agent or manager shall be considered the Tenant for purposes of this Section 9.9.

(a) Landlord Notice. Before requiring a Tenant to pay Lease payments to the Association, the applicable Manager or Board shall give the Owner notice ("Notice to Landlord"), in accordance with this Declaration. The Notice to Landlord shall state: (i) the amount of the assessment due, including any interest, late fee, collection cost, and attorney fees; (ii) that any costs of collection, including attorney fees, and other assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (iii) that the Association intends to demand payment of future Lease payments from the Owner's Tenant if the Owner does not pay the Amount Owing within fifteen (15) days.

(b) Tenant Notice. If an Owner fails to pay the Amount Owing within fifteen (15) days after the applicable Manager or the Board gives the Notice to Landlord, the applicable Manager or the Board may exercise the Association's rights to collect Lease payments by delivering written notice ("Notice to Tenant") to the Tenant. The Notice to Tenant shall state that: (i) due to the Owner's failure to pay an assessment within the required time, the applicable Manager or the Board has notified the Owner of the Association's intent to collect all Lease payments until the Amount Owing is paid; (ii) the law requires the Tenant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association, until the Amount Owing is paid; and (iii) the Tenant's payment of Lease payments to the Association does not constitute a default under the terms of the Lease with the Owner. The applicable Manager or the Board shall mail a copy of the Notice to Tenant to the Owner.

(c) Lease Payments. A Tenant to whom the Notice to Tenant has been given shall pay to the Association all future Lease payments as they become due and owing to the Owner: (i) beginning with the next monthly or other periodic payment after the Notice to Tenant is delivered to the Tenant; and (ii) until the Association notifies the Tenant that the Amount Owing is paid. An Owner shall credit each payment that the Tenant makes to the Association under this Section against any obligation that the Tenant owes to the Owner as though the Tenant made the payment to the Owner. An Owner may not initiate a suit or other action against a Tenant for failure to make a Lease payment that the Tenant pays to the Association as required under this Section. Within five (5) business days after the Amount Owing is paid, the applicable Common Area Manager or Management Committee shall notify the Tenant in

writing (and mail a copy thereof to the Owner) that the Tenant is no longer required to pay future Lease payments to the Association. For any Unit subject to a nightly rental contract, the amount paid to the Association shall be the amount that would otherwise be paid to the Owner.

(d) Separate Account. The Association shall deposit money paid to the Association under this Section 9.99 in a separate account and disburse that money to the Association until the Amount Owing is paid and any cost of administration, not to exceed the maximum amount set forth in the Act (if any) is paid. The Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance.

9.10 Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by an Owner or any other person, the Association within a reasonable period of time thereafter shall issue to such Owner or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 9.2 above) have been paid with respect to any specified Condominium as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or Mortgagee on, the Condominium in question.

## ARTICLE X

### **INSURANCE**

10.1 Insurance. The Association shall at all times maintain in force insurance meeting the following requirements:

(a) Hazard Insurance. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas, the Building, including all Units (other than the interior content thereof), fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or owned by the Association but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, when such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of full replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. In the event an Owner uses, or permits any use of, its Unit in a manner that increases the rates of insurance required by this Section 10.1(a), such Owner shall be responsible to reimburse the Association

for the costs of such increased rates in the same manner as if the increased costs were a part of the Association fees or assessments payable by such Owner.

(b) Fidelity Bonds. The Association may maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association whether or not that individual receives compensation for services. Furthermore, where the Association has delegated some or all of the responsibility for the handling of funds to a Manager, the Association may require such Manager to provide "blanket" fidelity bonds, with coverage as required by the Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The total amount of fidelity bond coverage required shall be based upon the Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association, or the Manager, as the case may be, at any given time during the term of each bond. The bonds required, if any, shall meet the following additional requirements: (1) the fidelity bonds shall name the Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (3) the premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Association as part of the Common Expenses; and (4) the bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days' prior written notice to the Association and to any Insurance Trustee.

(c) Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas, public ways in the Project, if any, other areas of the Project that are under the Association's supervision. The coverage limits under such policy shall be in a generally required by private institutional Mortgage investors for projects similar the Project in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Common Areas and legal liability arising from lawsuits related to employment contracts of the Association. Additional coverage under such policy shall include protection against such other risks as are custom covered with respect to projects similar to the Project in construction, location, and use. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Owner's claim because of negligent acts of the Association or any other Owner. Such policy shall provide that it may not be cancelled or substantially modified, by any party, without at least fifteen (15) days' prior written notice to the Association and to each First Mortgagee on an individual Unit in the Project. In the event an Owner uses, or permits any use of, its Unit in a manner that increases the rates of insurance required by this Section 10.1(c), such Owner shall be responsible to reimburse the Association for the costs of such increased rates in the same manner as if the increased costs were a part of the Association fees or assessments payable by such Owner.

(d) Insurance Trustees and General Requirements Concerning Insurance.

Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as its attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing subsections (a), (b) and (c) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has at least a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Board or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Association, or an Owner) from collecting insurance proceeds. The provisions of this subsection (d) and of the foregoing subsections (a), (b) and (c) shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

(e) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the Project, which may have been damaged or destroyed. In addition, such policies shall be reviewed to determine their compliance with the provisions of this Declaration.

**10.2 Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration, in such amounts and in such forms as the Association may deem appropriate from time to time.

**10.3 Owner's Insurance.** Each Owner, at its own expense, may procure and maintain at all times fire and extended coverage insurance covering personal property of such Owner and additional fixtures and improvements added by such Owner against loss by fire and other casualties, including, without limitation, vandalism and malicious mischief. All policies providing such casualty insurance shall provide that they do not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. Notwithstanding the provisions hereof, such Owner may obtain insurance at its own expense providing such other coverage upon its

Condominium, its personal property, for its personal liability and covering such other risks as it may deem appropriate, provided that each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies obtained by the Association pursuant to this article. If obtainable under industry practice without an unreasonable additional charge for such waiver, all such insurance shall contain a waiver of the insurance company's right of subrogation against the Association, the Declarant, the Manager, other Owners and their respective servants, agents and guests. An Owner may cause a tenant of Owner to obtain and pay for the insurance policy specified in this Section 10.3.

## ARTICLE XI

### **DAMAGE OR DESTRUCTION**

11.1 Association as Attorney-in-Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute an appointment by said grantee of the Association as its attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

11.2 Repair and Reconstruction. Repair and reconstruction of the improvements as used herein means restoring the Project to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having substantially the same vertical and horizontal boundaries as before.

11.3 Procedures. In the event all or any part of the Project is damaged or destroyed, and subject to the provisions of Article XIV below, the Association shall proceed as follows:

(a) Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Unit in the event of substantial damage to or destruction of any Unit or any part of the Common Areas.

(b) Estimate of Costs. As soon as practicable after an event causing damage to or destruction of any part of the Project, the Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Project damaged or destroyed.

(c) Sufficient Insurance. If the proceeds of the insurance maintained by the Association exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, such repair and reconstruction shall be carried out.

(d) Insufficient Insurance - Less than Seventy-Five Percent (75 %) Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75 %) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a special assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such

insurance proceeds are insufficient to pay such costs. Such special assessment shall be allocated and collected as provided in Section 9.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

(e) Insufficient Insurance - Seventy-Five Percent (75 %) or More Destruction. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if seventy-five percent (75 %) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if, within ninety (90) days following the damage or destruction, the Owners shall elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction. If, however, the Owners do not, within ninety (90) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the Total Votes of the Association to carry out such repair and reconstruction, but rather elect to terminate the Project and if Eligible Mortgagees who represent at least fifty-one percent (51 %) of the votes on Condominiums subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners;

(ii) The undivided interest in the Project owned in common which shall appertain to each Owner shall be the percentage of the undivided interest previously owned by such Owner in the Common Areas;

(iii) Any liens affecting any of the Condominiums shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

(iv) The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

(f) Priority. In no event shall an Owner or any other party have priority over the holder of any First Mortgage on a Unit with respect to the distribution to such Unit of any insurance proceeds.

11.4 Repair or Reconstruction. If the damage or destruction is to be repaired and reconstructed as provided above, the Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Project damaged or destroyed. The Association may take all necessary or appropriate action to effect repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other

action by any Owner shall be necessary in connection therewith, (except as otherwise expressly provided herein). The Project shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Unit and the Common Areas having the same vertical and horizontal boundaries as before. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original architectural plans and specifications.

11.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 11.3(d) hereof shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to their respective percentages of ownership of the Common Areas.

## ARTICLE XII

### **CONDEMNATION**

12.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article XII shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Board shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any Eligible First Mortgagee. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints the Association as such Owner's attorney-in-fact for the purposes of such representation.

12.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (hereinafter the "condemnation award") shall be made payable to the Association and shall be distributed by the Board, on behalf of the Association as herein provided.

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

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

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

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

(ii) The total amount apportioned to severance damages shall be allocated among and distributed to the Owners of those Condominiums that have not been taken in proportion to their respective undivided interests in the Common Areas;

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit;

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

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

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article XII or any other provisions in this Declaration, the Articles of Incorporation or the Bylaws shall entitle an Owner or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

(b) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, condominium ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interest in the Common Areas;

(ii) If any partial taking results in the taking of a portion of a Unit and if no determination is made by the Board, after duly considering any recommendations, proposals or other input from the Owners, that such taking does not make it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then, unless the interests of the Units in the Common Areas are equal, all voting rights and the undivided interest in the Common Areas appertaining to such Unit shall be reduced in proportion to the reduction in square footage of floor area of such Unit resulting from the taking. The voting rights and undivided interest in the Common Areas so divested from such Unit shall be reallocated to, and shall appertain to, such Unit and the other Units in the Project in proportion to their respective undivided

interests in the Common Areas; provided, however, that such Unit shall participate in such reallocation on the basis of the undivided interest reduced in accordance with the preceding sentence;

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit for any lawful purpose permitted by this Declaration, then all voting rights and the entire undivided interest in the Common Areas appertaining to such Unit shall be reallocated to, and shall appertain to, the remaining Units in proportion to their respective undivided interests in the Common Areas, and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 12.4(b); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board shall defer thereto and proceed in accordance therewith.

(c) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article XI hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency of insurance proceeds shall not be applicable.

## ARTICLE XIII

### **TERMINATION AND SALE**

13.1 Required Vote. Except as otherwise provided in Article XI and Article XII, in the event the Owners desire to sell the Project, the Association may be terminated only by mutual agreement of Owners entitled to vote one hundred percent (100%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose.

13.2 Termination Agreement. An agreement to terminate pursuant to Section 13.1 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 all Mortgagees who hold liens on Condominiums. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.

13.3 Sale of Project. A termination agreement must provide that the entire Project shall be sold following termination. If, pursuant to the agreement, the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

13.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 13.1 and 13.2. If any real estate in the Project is to be sold following termination, title to

that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the procedure set forth in Section 13.5 below. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Condominium in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

**13.5 Proceeds of Sale.** Following termination of the Project, the proceeds of any sale of the Project shall be held by the Association as trustee for Owners and divided among all Owners in a percentage equal to the percentage of undivided interest owned by each respective Owner in the Common Areas, as set forth in Exhibit "B," subject to the rights of Mortgagees with respect to such proceeds. Following termination, Mortgagees holding Mortgages on the Condominiums, which were recorded before termination may enforce those liens in the same manner as any lienholder.

## **ARTICLE XIV**

### **MORTGAGEE PROTECTION**

**14.1 Notice of Action.** Upon written request made to the Association by a First Mortgagee, which written request shall identify the name and address of such First Mortgagee, and the number and address of the Condominium, any such First Mortgagee, shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held by such First Mortgagee;
- (b) Any delinquency in the payment of assessments or charges owed by an Owner, whose Condominium is subject to a First Mortgage held by such First Mortgagee, which default remains uncured for a period of sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 14.2 below or elsewhere herein.

**14.2 Matters Requiring Prior Eligible Mortgagee Approval.** Except as provided elsewhere in this Declaration, the prior written consent of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association (unless pursuant to a specific provision of this Declaration the consent of Owners entitled to vote a greater percentage of the votes in the Association is required, in which case such specific provisions shall control), and Eligible First Mortgagees holding First Mortgages on Condominiums having at least fifty-one percent (51 %) of the Total Votes of the Association subject to First Mortgages held by Eligible First Mortgagees shall be required to:

(a) Abandon or terminate the legal status of the Project after substantial destruction or condemnation occurs.

(b) Add or amend any material provision of the Declaration, Articles of Incorporation, Bylaws or Map, which establishes, provides for, governs or regulates any of the following (an addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only):

- (i) voting rights;
- (ii) responsibility for maintenance and repairs;
- (iii) reallocation of interests in the Common Areas, or rights to their use;
- (iv) hazard or fidelity insurance requirements;
- (v) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (vi) any provisions that expressly benefit Mortgagees, insurers, or guarantors.

Any Mortgagee, who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within thirty (30) days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

**14.3 Availability of Project Documents and Financial Statements.** The Association shall maintain and have current copies of the Declaration, its Articles of Incorporation and Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders of First Mortgages that are secured by Condominiums in the Project. Generally, these documents shall be available for review during normal business hours.

**14.4 Subordination of Lien.** To the extent permitted by the Condominium Act, the lien or claim against a Condominium for unpaid assessments or charges levied by the Association pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Condominium if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Condominium shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien or claim, which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title, shall be collected or enforced by the Association from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Condominium affected or previously affected by the First Mortgage concerned.

**14.5 Payment of Taxes.** In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 10.1(a) lapses, is not maintained, or the premiums therefore are not paid when due, any

Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee who expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Association.

14.6 Priority of First Mortgagee in Event of Damage. In the event of substantial damage to or destruction of any Unit or any part of the Common Areas, no provision of the Declaration, Articles of Incorporation or Bylaws or any amendment thereto shall entitle the owner of a Unit or other party to priority over any First Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.7 Priority of First Mortgagee in Event of Condemnation. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, no provision of the Declaration, Articles of Incorporation or Bylaws or any amendment thereto shall entitle the Owner of a Unit, or any other party, to priority over any First Mortgagee with respect to the distribution to such Unit of the proceeds of any award or settlement.

## ARTICLE XV

### **COMPLIANCE WITH DECLARATION AND BYLAWS**

15.1 Compliance. Each Owner, Occupant and other persons under Owner's control shall comply strictly with the provisions of this Declaration, the Articles and Bylaws of the Association, rules and regulations promulgated by the Association and the decisions and resolutions of the Association adopted pursuant thereto, as the same may lawfully be modified and amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief or both, maintainable by the Association, and in a proper case, by an aggrieved Owner.

15.2 Enforcement and Remedies. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration, or in any supplemental or amended Declaration, with respect to the Association or the Project shall be enforceable by the Declarant or by any Owner, subject to this Declaration, by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amounts due or unpaid. The obligations, provisions, covenants, conditions and restrictions contained in this Declaration, or in any supplemental or amended Declaration, with respect to a person or entity or property of a person or entity other than the Association shall be enforceable by the Declarant or by the Association or, in a proper case, by an aggrieved Owner by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amounts due or unpaid. No summary abatement or similar procedure may be utilized through nonjudicial means to alter or demolish items of construction.

## ARTICLE XVI

### **AMENDMENT**

16.1 Amendment by Owners. Except as provided elsewhere in this Declaration, any amendment to this Declaration shall require the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association cast by written ballot, or in the alternative, in person or represented by proxy entitled to be cast at a meeting duly called for such purpose or otherwise

approved in writing by such Owners. Any amendment authorized pursuant to this Section 16.1 shall be accomplished through the recordation in the office of the Salt Lake County Recorded, Utah, of an instrument executed by the Association. In such instrument an officer or Trustee of the Association shall certify that the vote required by this Section for amendment has occurred. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of any Condominium.

16.2 Amendment by Declarant. The Declarant alone may amend or terminate this Declaration and Map prior to the closing of a sale of the first Condominium. Notwithstanding anything contained in this Declaration to the contrary, this Declaration and Map may be amended unilaterally at any time and from time to time by Declarant: (a) if such Amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such Amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Condominium. The Declarant may also unilaterally amend Exhibit B to this Declaration to reflect the total square footages of each Unit after the Units have been constructed. Further, prior to the expiration of the Declarant Control Period, Declarant may unilaterally amend this Declaration and the Map for any other purpose so long as any such Amendment does not materially adversely affect title to any property.

16.3 Plat Amendments. Notwithstanding anything contained in this Declaration to the contrary, because the Plat has been recorded prior to the construction of the Units, Declarant reserves the right to unilaterally amend the Plat at any time and from time to time by Declarant if such amendment is necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct mistakes, remove/clarify ambiguities or to accurately reflect the "as-built" Units on the Plat. Additionally, Declarant may unilaterally amend the initial Plat at such time as the Building is constructed in the event there are material changes in the Building or Unit boundaries or elevations as constructed. Such amendments to the Plat are expressly authorized and may be undertaken by Declarant without the joinder or consent of any other Owners. Additionally, no Owner shall unreasonably withhold his, her or its consent to any amendment requested by the Declarant to satisfy the purposes described above.

16.4 Expansion of Project. Declarant shall have the right in its sole discretion, without the consent of Owners, the Board, or the Manager, upon recording an Amendment to this Declaration signed by Declarant, to expand the Project to include additional parcels, phases and lots located within the real property encumbered by the Development CC&Rs, as expanded, all of which additional property shall, upon recording such Amendment to this Declaration, be subject to the same covenants, conditions and restrictions as set forth in this Declaration. Each Owner by the acceptance of a deed to a Condominium in the Project shall be deemed to have consented to all the provisions of this Section 16.4.

## ARTICLE XVII

### **GENERAL PROVISIONS**

17.1 Intent and Purpose. The Provisions of this Declaration, and any Amendment, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Project. Failure to enforce any provision, covenant, condition or restriction contained

herein, or in any Amendment, shall not operate as a waiver of any such provision, covenant, condition or restriction, or of any other provision of this Declaration.

17.2 Construction. The provisions of this Declaration shall be in addition and supplement to the provisions of the Condominium Act and all other provisions of law. Whenever used herein, unless the context shall otherwise require, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders. The article and section headings are for convenience and reference only and are not intended to expand, limit or otherwise effect the meaning or interpretation of the provisions of this Declaration. The provisions hereof shall be deemed independent and several, and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof, shall not effect the validity or enforceability of any other provisions of this Declaration.

17.3 Lists of Owners and Eligible Mortgagees. The Board shall maintain up-to-date records showing: (a) the name of each person or entity who is an Owner, the address(es) of such Owner, and the Unit that is owned by such Owner, and (b) the name of each person or entity who is an Eligible First Mortgagee, the address of such person or entity and the Unit that is encumbered by the Mortgage held by such Eligible First Mortgagee. In the event of any transfer of a fee or undivided fee interest in a Condominium, either the transferor or transferee shall furnish the board with evidence establishing that the transfer has occurred and that the deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Condominium ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Condominium or Condominiums which is obtained from the office of the County Recorder of Utah County, Utah. The address(es) of an Owner shall be deemed to be the address of the Condominium owned by such person unless the Board is otherwise advised.

17.4 Assignment of Declarant Rights. Any right or any interest reserved or contained in this Declaration for the benefit of Declarant may be transferred or assigned by Declarant, either separately or with one or more other such rights or interests, to any person, corporation, partnership, association, or other entity, only by written instrument executed by both Declarant and the transferee or assignee and recorded in the Office of the Utah County Recorder, State of Utah. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such instrument.

17.5 Effective Date. This Declaration shall take effect upon recording.

17.6 Agent for Service. The name and address of the person to receive service of process in all cases provided by the Condominium Act shall be the registered agent and address of the Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah. On the date of this Declaration, the registered agent of the Association is Matthew J. Kelly, whose address is 118 East 12675 South, Draper City, Utah 84020.

17.7 Limitation on Association's Liability. The Association shall not be liable for any failure of water service or other utility service (if any) to be obtained and paid for by the Association hereunder, or for injury or damage to any person in or upon the Project, or resulting from electricity, water, rain, snow or ice which may leak or flow from outside or from any parts of the Building or their drains, pipes, conduits, appliances or equipment, or from any other place, unless caused by the grossly

negligent or willful misconduct of the Association. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of any repairs or improvements to or maintaining the Project or any part thereof, or from any action taken to comply with the provisions of this Declaration or with the laws, ordinances, regulations, rules or order of any governmental authority.

17.8 Rights of Action. The Association and any aggrieved Owner shall have a right of action against Owners who fail to comply with the provisions of the Declaration or the decisions of the Association. Owners shall have a similar right of action against the Association.

17.9 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

17.10 Governing Law. This Declaration and the Plat and all issues and disputes arising out of either, shall be construed and controlled by and under the procedural and substantive laws of the State of Utah.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the day and year first above written.

**DECLARANT:**

Coco Development Lindon, LLC, a Utah limited liability company

By: Seem Shah  
Name: Seem Shah  
Its: manager

STATE OF UTAH )  
: ss  
COUNTY OF *Salt Lake* )

The foregoing instrument was acknowledged before me this 5 day of October, 2020, by Shivam Shah, the manager of Coco Development Lindon, LLC, a Utah limited liability company, on behalf of said limited liability company for its stated purpose.

A Notary Public seal from the State of Utah, Comm. No. 713793, dated Aug 28, 2024. The seal is circular with the text "NOTARY PUBLIC" at the top and "STATE OF UTAH" at the bottom. The date "AUG 28 2024" is in the center. To the left of the seal is a handwritten signature "Dustin Fenn" and the printed text "Notary Public". To the right of the seal is the printed text "DUSTIN FENN", "Notary Public - State of Utah", "Comm. No. 713793", "My Commission Expires on", and "Aug 28, 2024".

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF LAND**

A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, LOCATED IN LINDON CITY, COUNTY OF UTAH, STATE OF UTAH, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS SOUTH 89°21'39" WEST A DISTANCE OF 577.39 FEET ALONG THE SECTION LINE THENCE NORTH A DISTANCE OF 69.18 FEET; THENCE SOUTH 89°09'49" WEST A DISTANCE OF 139.98 FEET FROM THE SOUTH 1/4 CORNER OF SAID SECTION 32, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF LOT 1 OF THE JACOBSON SUBDIVISION, PLAT "D":

THENCE SOUTH 89°09'50" WEST A DISTANCE OF 89.64 FEET; THENCE SOUTH 01°24'21" WEST A DISTANCE OF 35.41 FEET; THENCE SOUTH 89°21'39" WEST A DISTANCE OF 104.65 FEET; THENCE NORTH 00°55'13" WEST A DISTANCE OF 401.99 FEET; THENCE NORTH 89°04'48" EAST A DISTANCE OF 152.64 FEET; THENCE SOUTH 46°56'06" EAST A DISTANCE OF 115.18 FEET; THENCE SOUTH 43°03'54" WEST A DISTANCE OF 57.30 FEET; THENCE SOUTH 00°55'12" EAST A DISTANCE OF 246.03 FEET TO THE POINT OF BEGINNING.

CONTAINING 76,250.1301 SQUARE FEET (1.7505 ACRES) MORE OR LESS, AND 20 BUILDING UNITS.

**EXHIBIT "B"****SCHEDULE OF UNITS, SQUARE FOOTAGE,  
UNDIVIDED OWNERSHIP INTERESTS AND VOTES**

<b>UNIT #</b>	<b>Square Footage</b>	<b>Undivided Ownership Interests (Percentage)</b>	<b>Votes</b>
1	2,378.85	6.480%	6.480
2	1,810.76	4.932%	4.932
2A	674.17	1.836%	1.836
3	1,574.35	4.288%	4.288
4	1,877.39	5.114%	5.114
5	1,576.33	4.294%	4.294
6	1,888.62	5.145%	5.145
7	1,578.31	4.299%	4.299
8	1,888.17	5.143%	5.143
9	1,580.29	4.305%	4.305
10	1,887.70	5.142%	5.142
11	3,825.61	10.421%	10.421
12	1,884.85	5.134%	5.134
13	1,884.39	5.133%	5.133
14	1,586.25	4.321%	4.321
15	1,886.33	5.138%	5.138
16	2,313.53	6.302%	6.302
17	1,160.58	3.161%	3.161
18	2,304.94	6.279%	6.279
19	1,149.63	3.132%	3.132
<b>TOTAL:</b>	<b>36,711.05</b>	<b>100.000%</b>	<b>100.000</b>

**EXHIBIT "C"**

**ASSOCIATION BYLAWS**

**(Attached)**

**BYLAWS**  
**OF**  
**Brixton Heights Owners Association Inc.**

A Utah Nonprofit Corporation

Pursuant to the provisions of the Utah Nonprofit Corporation and Cooperative Association Act, the Board of Trustees of Brixton Heights Owners Association Inc., a Utah nonprofit corporation, hereby adopts the following Bylaws for such nonprofit corporation.

**ARTICLE I**

**NAME AND PRINCIPAL OFFICE**

1.1 **Name**. The name of the nonprofit corporation is Brixton Heights Owners Association Inc. (hereinafter referred to as the “Association”).

1.2 **Offices**. The initial principal office of the Association shall be at 118 East 12675 South, Draper City, Utah 84020.

**ARTICLE II**

**DEFINITIONS**

2.1 **Definitions**. Except as otherwise provided herein or as may be required by the context, all terms defined in Article I of the Declaration of Condominium of Brixton Heights (hereinafter referred to as the “Declaration”), relating to the Brixton Heights Owners Association Inc, a Utah condominium project (hereinafter referred to as the “Condominium Project”), shall have such defined meanings when used in these Bylaws.

**ARTICLE III**

**MEMBERS**

3.1 **Annual Meetings**. Unless otherwise agreed by the members or the Board of Trustees, the annual meeting of members shall be held on the FIRST TUESDAY in MARCH of each year at the hour of 7:00 P.M., beginning with the year following the year in which the Articles of Incorporation are filed, for the purpose of electing Trustees and transacting such other business as may come before the meeting. If the election of Trustees shall not be held on the day designated herein for the annual meeting of the members, or at any adjournment thereof, the Board of Trustees shall cause the election to be held at a special meeting of the members to be convened as soon thereafter as may be convenient. The Board of Trustees may from time to time by resolution change the date and time for the annual meeting of the members.

3.2 Special Meetings. Special meetings of the members may be called by the Board of Trustees, the President or upon the written request of members holding not less than TWENTY PERCENT (20%) of the Total Votes of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Trustees or the President.

3.3 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable location in Utah Lake County, Utah, as may be designated by the Board of Trustees and stated in the notice of the meeting.

3.4 Notice of Meetings. The Board of Trustees shall cause written or printed notice of the time, place and purposes of all meetings of the members (whether annual or special) to be delivered, not more than SIXTY (60) nor less than SEVEN (7) days prior to the meeting, to each member of record entitled to vote at such meeting. Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally, by mail, or by electronic means (i.e. e-mail, text messaging or another similar manner) to each Owner entitled to vote at such meeting not less than seven (7) nor more than sixty (60) days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at such Owner's address as it appears in the office of the Association, with postage thereon prepaid. If sent by electronic means, such notice shall be deemed to be delivered when sent. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Board may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

3.5 Members of Record. Upon purchasing a Condominium in the Project, each Owner shall promptly furnish to the Association a certified copy of the recorded instrument by which ownership of such Condominium has been vested in such Owner, which copy shall be maintained in the records of the Association. For the purpose of determining members entitled to notice of or to vote at any meeting of the members, or any adjournment thereof, the Board of Trustees may designate a record date, which shall not be more than SIXTY (60) nor less than SEVEN (7) days prior to the meeting, for determining members entitled to notice of or to vote at any meeting of the members. If no record date is designated, the date on which notice of the meeting is mailed shall be deemed to be the record date for determining members entitled to notice of or to vote at the meeting. The persons or entities appearing in the records of the Association on such record date as the owners of record of Condominiums in the Project shall be deemed to be the members of record entitled to notice of and to vote at the meeting of the members.

3.6 Quorum. At any meeting of the members, the presence of members holding, or holders of proxies entitled to cast, more than fifty percent (50%) of the Total Votes of the Association shall constitute a quorum for the transaction of business. In the event a quorum is not present at a meeting, the members present (whether represented in person or by proxy), though less than a quorum, may adjourn the meeting to a date no later than thirty (30) days from the date of the originally scheduled meeting. If the time and place for an adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be delivered to the members in the manner prescribed for regular meetings of the Association. At the reconvened meeting, the members and proxy holders present shall constitute a quorum for the transaction of business.

3.7 Proxies. At each meeting of the members, each member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the member himself or by his attorney thereunto duly authorized in writing. If a membership is jointly held, the instrument authorizing a proxy to act must have been executed by all holders of such membership or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

3.8 Votes. With respect to each matter submitted to a vote of the members, each member entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Condominium of such member, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration or Utah law. The election of Trustees shall be by secret ballot. If a membership is jointly held, all or any holders thereof may attend each meeting of the members. Where membership is jointly held by two persons, such holders must act unanimously to cast the votes relating to such membership. Where three or more persons jointly hold the membership, such holders shall cast the votes relating to such membership as the majority of said holders shall agree among themselves.

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

3.10 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

## ARTICLE IV

### BOARD OF TRUSTEES

4.1 General Powers. The property, affairs and business of the Association shall be managed by its Board of Trustees. The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws or by the Declaration vested solely in the members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, functions and powers as are properly delegable.

4.2 Number, Tenure and Qualifications. The number of Trustees of the Association shall be no less than three (3) and no more than five (5). The initial Board of Trustees specified in the Articles of Incorporation shall serve until either Declarant elects substitute Trustees for such initial

Board or the Declarant turns over to the members, as provided in Section 7.3 of the Declaration, the responsibility for electing Trustees, whichever first occurs. At the first annual meeting of the members held after the Declarant turns over to the members responsibility for electing Trustees, the members shall elect three (3) Trustees to replace all of the then serving Trustees and to serve for the following respective terms: two (2) Trustees to serve for a term of two (2) years each and one (1) Trustee to serve for a term of one (1) year. At each annual meeting thereafter, the members shall elect for terms of two (2) years each the appropriate number of Trustees to fill all vacancies created by expiring terms of Trustees. All Trustees, except Trustees appointed by the Declarant, shall be members of the Association.

**4.3 Regular Meetings.** The regular annual meeting of the Board of Trustees shall be held without other notice than these Bylaws immediately after, and at the same place as, the annual meeting of the members. The Board of Trustees may provide by resolution the time and place, at a suitable and convenient location, for the holding of additional regular meetings without other notice than such resolution.

**4.4 Special Meetings.** Special meetings of the Board of Trustees may be called by or at the request of any Trustee. The person or persons authorized to call special meetings of the Board of Trustees may fix any suitable and convenient location in Salt Lake County, Utah, as the place for holding any special meeting of the Board of Trustees called by such person or persons. Notice of any special meeting shall be given at least fifteen (15) days prior thereto by written notice delivered personally or mailed to each Trustee at his registered address. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first class postage thereon prepaid. Any Trustee may waive notice of a meeting.

**4.5 Quorum and Manner of Acting.** A majority of the then authorized number of Trustees shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees. The act of a majority of the Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. The Trustees shall act only as a Board, and individual Trustees shall have no powers as such.

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

**4.7 Resignation and Removal.** A Trustee may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Trustee, except a Trustee appointed by the Declarant, may be removed at any time, for or without cause, by the affirmative vote of sixty-seven percent (67%) of the Total Votes of the Association at a special meeting of the members duly called for that purpose.

**4.8 Vacancies and Newly Created Trusteeships.** If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Trustee (other than a Trustee appointed by Declarant), the Trustees then in office shall continue to act, and such vacancies shall be filled by a vote of the Trustees then in office, though less than a quorum, in any way approved by such Trustees at the meeting. Any vacancy in the Board of Trustees occurring by reason of removal of a

Trustee by the members may be filled by election at the meeting at which such Trustee is removed. If the authorized number of Trustees shall be increased, such newly created Trusteeships shall be filled by election of the members at a special meeting or annual meeting of the members. If vacancies shall occur in the Board of Trustees by reason of death, resignation or removal of a Trustee appointed by the Declarant, such vacancies shall be filled by appointments to be made by the Declarant. Any Trustee elected or appointed hereunder to fill a vacancy shall serve the unexpired term of his predecessor or for the term of the newly created Trusteeship, as the case may be.

4.9 Informal Action by Trustees. Any action that is required or permitted to be taken at a meeting of the Board of Trustees may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees.

## ARTICLE V

### OFFICERS

5.1 Officers. The officers of the Association shall be a President, a Secretary and a Treasurer. The Association may also have such other officers as may from time to time be appointed by the Board of Trustees.

5.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President shall be and remain a Trustee of the Association during the entire term of his or her respective office. No other officer need be a Trustee.

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

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

5.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be

created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

5.6 The President. The President shall preside at meetings of the Board of Trustees and at meetings of the members. The Secretary shall sign on behalf of the Association all conveyances, mortgages documents and contracts and shall do and perform all other acts and things that the Board of Trustees may require of him or her.

5.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Board of Trustees may require to keep. The Secretary shall also act in the place and stead of the President in the event of the absence of the President or the President's inability or refusal to act. The Secretary shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. The Secretary shall perform such other duties as the Board of Trustees may require of him or her.

5.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Board of Trustees. The Treasurer shall perform such other duties as the Board of Trustees may require of him or her.

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

## ARTICLE VI

### COMMITTEES

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

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

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

6.4 Resignation and Removal. Any member of any committee designated hereunder by the Board of Trustees may resign at any time by delivering a written resignation to the President, the Board of Trustees or the presiding officer of the committee of which he is a member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Trustees may at any time, for or without cause, remove any member of any committee designated by it hereunder.

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

## ARTICLE VII

### INDEMNIFICATION

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

7.2 Indemnification of Association Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Trustee or officer of the Association, or is or was serving at the request of the Association as a director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the

Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

7.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 7.1 or 7.2 hereof, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith. Any other indemnification under Section 7.1 or 7.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in Sections 7.1 or 7.2 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of disinterested Trustees, or (ii) by independent legal counsel in a written opinion, or (iii) by the members or the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association at any meeting duly called for such purpose.

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

7.5 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, agreements, vote disinterested members or Trustees or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future Trustees, officers, employees and agents of the Association and shall continue as to such persons who cease to be Trustees, officers, employees or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

7.6 Insurance. The Association may purchase and maintain insurance on behalf of any person who was or is a Trustee, officer, employee or agent of the Association, or who was or is serving at the request of the Association as a Trustee, director, officer, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit), as may be required by Article X of the Declaration.

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

## ARTICLE VIII

FISCAL YEAR AND SEAL

8.1 Fiscal Year. The fiscal year of the Association shall begin on the first day of January each year and end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

8.2 Seal. The Board of Trustees may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation and the words "Corporate Seal".

ARTICLE IXRULES AND REGULATIONS

9.1 Rules and Regulations. The Board of Trustees may from time to time adopt, amend, repeal and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration or these Bylaws. The members shall be provided with copies of all rules and regulations adopted by the Board of Trustees and with copies of all amendments and revisions thereof.

ARTICLE XAMENDMENTS

10.1 Amendments. Except as otherwise provided by law, by the Articles of Incorporation, by the Declaration or by these Bylaws, these Bylaws may be amended, altered or repealed and new bylaws may be made and adopted by the members upon the affirmative vote of at least sixty-seven percent (67%) of the Total Votes of the Association; provided, however, that such action shall not be effective unless and until a written instrument setting forth (i) the amended, altered, repealed or new bylaw, (ii) the number of votes cast in favor of such action, and (iii) the Total Votes of the Association shall have been executed and verified by the current President of the Association and recorded in the office of the County Recorder of Salt Lake County, State of Utah.

IN WITNESS WHEREOF, the undersigned, being a Trustee of Brixton Heights Owners Association Inc., has executed these Bylaws effective as of the 05 day of ~~June~~ 2020. *sc*

By:



Matthew J. Kelly, Initial Trustee