

**DECLARATION  
OF CONDOMINIUM**

**OF**

**PARKWAY CROSSROADS  
CONDOMINIUMS**

A Utah Condominium Project  
in  
Eagle Mountain, Utah County, Utah

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This **DECLARATION OF CONDOMINIUM OF PARKWAY CROSSROADS CONDOMINIUMS** ("Declaration") is executed by THE PLACE AT PARKWAY, LLC, a Utah limited liability company (the "Declarant").

### RECITALS

1. Declarant holds all necessary authority to subject the real property situated in the City of Eagle Mountain, Utah County, Utah and more particularly described on Exhibit A attached hereto (the "Property"), to the terms and conditions of this Declaration.
2. Declarant intends to construct a 2-story building upon the Property, which building will contain (3) Units.
3. By subjecting the Property to this Declaration, the Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration, and improvement of the Property and the Units and the interests therein.
4. The Property is also subject to the Declaration of Covenants, Conditions, and Restrictions for Parkway Crossroads, recorded in the Office of the Utah County Recorder on March 14, 2008 as Entry No. 30335:2008.
5. The Declarant may, and intends to, sell to various purchasers the fee title to the Units contained in the Project, together with the undivided percentage ownership interest in the Common Areas and Facilities appurtenant to such Units, subject to the covenants, conditions, restrictions, limitations and easements herein set forth.
6. The covenants, conditions, restrictions, limitations, and easements herein set forth shall run with and burden the Property and the Units and shall be binding upon all persons having or acquiring any right, title, or interest in the Units, or any part thereof, their heirs, successors, and assigns; shall inure to the benefit of every portion of the Property and any interest therein.
7. These Recitals shall be deemed covenants as well as recitals. The Association desires to establish, for its own benefit and for the mutual benefit of all current and future Owners and occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth in this Declaration.

### DECLARATION

NOW THEREFORE, Declarant hereby declares and certifies as follows:

## ARTICLE 1 DEFINITIONS

1.1 "Act" shall mean the Utah Condominium Ownership Act, codified beginning at U.C.A. §57-8-1, as the same may be amended from time to time.

1.2 "Alternate Delegate" shall mean a member of the Management Committee who is selected to act on behalf of a Delegate if the Delegate is absent and/or unable to act in his or her Delegate capacity.

1.3 "Apartment(s)" shall mean residential apartments constructed in Unit 103 in the Project.

1.4 "Articles" shall mean the Articles of Incorporation for the Association, as amended from time to time.

1.5 "Assessments" shall mean any monetary charge, fine, or fee imposed or levied against an Owner by the Association, as provided in this Declaration or the Bylaws, regardless of whether said assessment is identified as a regular assessment, special assessment, benefited assessment, individual assessment, fine, or other charge.

1.6 "Association" shall mean the PARKWAY CROSSROADS CONDOMINIUMS. Such Association may be incorporated under the laws of the State of Utah as a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association. The Association, through the Management Committee, may renew or reinstate the corporate status without Owner approval.

1.7 "Building" shall mean the structure on the Property which contains all of the Units.

1.8 "Bylaws" shall mean the Bylaws of the Association as the same may be amended from time to time.

1.9 "City" shall mean the City of Eagle Mountain, a municipal corporation of the State of Utah.

1.10 "Common Areas" or "Common Areas and Facilities" shall mean and refer to:

- (a) the real property, parts of real property, interests in real property, and improvements and fixtures thereto, which are not specifically included within the respective Units as herein defined, including, without limitation, any and all foundations, columns, girders, supports, open space above ceilings, exterior walls, bearing walls, exterior windows and glass surfaces, the roof, and the structural components of the roof and the roof membrane (not including any drywall, finishes, floor coverings, or drop in ceilings in the Units), landscaped areas, exterior walkways, streets, grounds, fences, parking areas, and other similar areas existing for common use;
- (b) all lobbies, entryways, corridors, and halls;

- (c) any and all parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management;
- (d) All installations and facilities for central services such as power, light, and gas, including any mechanical structures and facilities on the roof, or in the basement, HVAC system, common meters and all apparatus and installations existing for common use, but not including any parts or components of the electrical, plumbing, sewer, or HVAC systems, meters, fixtures, or facilities (including duct work) which is within a Unit or which serves only one Unit;
- (e) any and all Common Areas and Facilities specifically set forth and designated as such on the Plat of the Property;
- (f) personal property owned by the Association; and
- (g) any and all Common Areas and Facilities as defined in the Act, unless otherwise provided herein or on the Plat.

1.11 "Common Expenses" shall mean the actual and estimated costs of:

- (a) maintenance, management, operation, repair, and replacement of the Common Areas and Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, etc., as provided in this Declaration or pursuant to an agreement with the City or other governmental agency or authority;
- (b) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys, and employees;
- (c) the costs of utilities, trash pickup and disposal, and other services benefiting the Owners and their Units to the extent such services are paid for by the Association;
- (d) the costs of insurance covering the Common Areas and Facilities;
- (e) reasonable reserves as deemed appropriate by the Management Committee, to the extent required herein;
- (f) taxes paid by the Association; and
- (g) the costs of any other item or items approved by the Management Committee and incurred in connection with the Common Areas and Facilities, the Act, this Declaration, the Articles, or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

1.12 "Declarant" shall mean The Place at Parkway, LLC a Utah limited liability company, and any successor in interest.

1.13 "Declaration" shall mean and refer to this Declaration of Condominium of Parkway Crossroads Condominiums, as may be amended from time to time.

1.14 "Delegate" shall mean a member of the Management Committee who is chosen to represent the Association in PCPOA matters and to cast votes in PCPOA matters on behalf of the Unit Owners.

1.15 "Design Guidelines" shall mean the design and development guidelines adopted from time to time by the Management Committee at its sole discretion, setting forth certain architectural standards and specifications regarding the location and design of improvements, Units, materials, and other matters relating to improvements and construction within the Project.

1.16 "Governing Documents" shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Management Committee.

1.17 "Limited Common Areas" shall mean and refer to those portions of the Common Areas reserved for the exclusive use of certain Units, as specified herein or on the Plat. The use and occupancy of the Limited Common Areas shall be reserved to the applicable Units, and each applicable Unit Owner is hereby granted an irrevocable license to use and occupy the same so long as such Owner owns the Unit associated with such Limited Common Area. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit. Limited Common Areas appurtenant to Unit 103 shall include the second floor hallways in the Building, the stairways and/or elevator providing access to the second floor in the Building, the food truck pads located in the parking lot, the carport parking spaces reserved for the Apartments, the pavilion, the rooftop deck on the second floor and any other improvements intended to serve only Unit 103 whether or not so identified on the Plat.

1.18 "Management Committee" shall mean the Management Committee of the Association.

1.19 "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/or Project.

1.20 "Member" shall mean every individual or entity who qualifies for membership in the Association as provided herein.

1.21 "Mortgage" shall mean any duly recorded first mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered.

1.22 "Mortgagee" shall mean the mortgagee or beneficiary under any Mortgage.

1.23 "Occupant" shall mean and include the Owners, their respective heirs, successors and assigns (including Mortgagees), and any person who shall be from time to time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.24 "Owner" shall mean one or more persons or entities owning the fee simple interest in a Unit, and the purchaser (unless the purchaser and seller have otherwise agreed and have informed the Association in writing of such agreement) under an

executory sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.25 "Parkway Crossroads Declaration" shall mean the Declaration of Covenants, Conditions, and Restrictions for Parkway Crossroads, recorded in the Office of the Utah County Recorder on March 14, 2008 as Entry No. 30335:2008.

1.26 "Period of Declarant Control" shall mean the period of time during which the Declarant may act as the Management Committee or appoint Management Committee members. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Units have been conveyed to Persons other than Declarant or its successors, assigns, and affiliates; or (ii) the Declarant executes and records a written waiver of its right to control the Association; or (iii) the maximum period permitted by law. The Special Declarant Rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum period permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then the Special Declarant Rights not waived shall remain in full force and effect.

1.27 "Permittees" shall mean all Owner invitees, Occupants, and all other invitees of Occupants.

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

1.29 "Plat" shall mean and refer to the official condominium plat filed with the Utah County Recorder for the Project, as the same may be modified, supplemented, or amended in accordance with law and the provisions thereof.

1.30 "Parkway Crossroads Property Owners Association" or "PCPOA" shall mean the owners association created by the Parkway Crossroads Declaration.

1.31 "Project" shall mean all of the Property, together with the Building and other Improvements constructed thereon.

1.32 "Property" shall mean the real property described on Exhibit "A" attached hereto and incorporated in this Declaration by this reference and, subsequent to the annexation thereof pursuant to this Declaration, any real property which shall become subject to this Declaration.

1.33 "Rules" shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Management Committee.

1.34 "Undivided Interest" shall mean the undivided ownership interest of each Unit in the Common Areas, the Common Expense liability, and the votes in the Association as set forth on Exhibit "B".

1.35 "Unit" shall mean each or any individual Unit as more particularly described in this Declaration, and any other Unit or parcel shown on any Plat to the extent such Units or parcels are part of the Property, together with the Undivided Interest in and to the Common Areas and Facilities appertaining to that Unit. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated

and designed to serve only that Unit, such as appliances, electrical receptacles, switches and outlets, air conditioning compressors and other heating, ventilation and air conditioning apparatus, electrical and plumbing fixtures and the like, shall be considered part of the Unit, as shall all individual restrooms (as opposed to the common restrooms), decorated interiors, all surfaces of interior structural walls, floors, and ceilings, interior windows and window frames and doors and doorframes and trim, consisting of inter alia and as appropriate, drywall, nonstructural framing, wallpaper, paint, flooring, and ceiling tiles. All pipes, wires, conduits, ducts, or other individual meters, utility lines or installations constituting a part of a Unit or serving only the Unit, and any structural members of any other property or any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which the Unit is situated shall be considered part of the Unit. It is acknowledged that the HVAC system for the Building is an integrated system which allows the free flow of air from Unit to Unit. References in the Declaration to a specific Unit shall refer to the particular Unit as set forth in this Declaration and, as applicable, on the recorded final Plat for such Unit.

## **ARTICLE 2 PROJECT DESCRIPTION**

2.1 Submission. The Property described with particularity on Exhibit "A" attached hereto and incorporated herein by this reference is hereby submitted to the Utah Condominium Ownership Act (the "Act"). The Property is made subject to, and shall be governed by the Act, this Declaration, and the covenants, conditions and restrictions set forth herein.

2.2 Name. The Project, as submitted to the provisions of this Declaration, shall be known as Parkway Crossroads Condominiums.

2.3 Description of Improvements. The improvements included in the Project consist of a two-story building divided into three (3) Units as set forth on the Plat, together with parking facilities, landscaping, and other related improvements as described herein or on the Plat. Each Unit shall consist of the Unit and appurtenant Undivided Interest in the Common Areas as set forth in Exhibit "B" attached hereto and by reference incorporated herein. The Plat shows the Unit number of each Unit, its location and dimensions, from which its square footage may be determined, and the Common Areas of the Project. The Common Areas contained in the Project are described and identified in Article 1 hereof and in the Plat.

2.4 The Property is subject to described easements and rights of way. Easements and rights-of-way in favor of Eagle Mountain City include any dedicated roadways and public utility easements that are depicted on the Plat, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.

2.5 Registered Agent. The registered agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce. The



Management Committee may change the registered agent without Owner vote or approval.

### **ARTICLE 3 MEMBERSHIP IN THE ASSOCIATION**

3.1 Membership. Every Owner shall be a Member of the Association subject to the terms of this Declaration, the Articles, Bylaws and Rules. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall also be subject to the terms and provisions of the Articles, Bylaws, and the Rules to the extent the provisions thereof are not in conflict with the Declaration. Membership in the Association shall be appurtenant to each Unit and may not be separated from the interest of an Owner in any Unit. Ownership of a Unit shall be the sole qualification for membership in the Association; provided, however, that a Member's voting rights and privileges in the Common Areas and Facilities may be regulated or suspended as provided in this Declaration, the Bylaws, or the Rules.

3.2 Transfer. The membership held by any Owner shall not be transferred, pledged, or alienated in any way, except upon the conveyance or encumbrance of such Unit and then only to the transferee or Mortgagee of such Unit. Any attempt to separate the membership in the Association from the Unit to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. No part of a Unit nor any part of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership so that each Unit, the Undivided Interest in and to the Common Areas and Facilities appurtenant to such Unit, and the exclusive right to use and occupy the same, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another.

3.3 Legal Description of a Unit. Each conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Plat with the appropriate reference to the Plat and to this Declaration, as each shall appear on the Records of the County Recorder of Utah County, Utah and in substantially the following form:

Unit \_\_\_\_\_, shown in the Plat for the Parkway Crossroads Condominiums appearing in the Records of the County of Utah, in Book \_\_\_\_\_ Page \_\_\_\_\_ of Plats, and as defined and described in the Declaration of Condominium, appearing in such Records in Book \_\_\_\_\_ Page \_\_\_\_\_ of Records.

Such description will be construed to describe the Unit together with the Undivided Interest in and to the Common Areas as the same is established and identified in the Declaration and Plat referred to herein above, and to incorporate all the rights incident to ownership of a Unit and all the limitations of such ownership as described in this Declaration.

3.4 Voting Rights. Except as otherwise disallowed in this Declaration or the Bylaws, or limited by the Special Declarant Rights, Members shall be entitled to a vote

equivalent to the Undivided Interest of the Unit such Member owns as set forth on Exhibit "B" attached hereto.

3.5 Approval of Members. Unless a different percentage is otherwise provided for in this Declaration, the Articles, or the Bylaws, the vote of a majority of the Undivided Interest shall be required to approve any matter before the Members. Votes may be taken at a meeting held pursuant to the requirements set forth in the Bylaws, by an action by written consent, or as otherwise allowed by applicable laws. Quorum requirements for meetings of the Members shall be set forth in the Bylaws.

#### **ARTICLE 4 COVENANT FOR ASSESSMENTS**

4.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Unit by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association all Assessments to be fixed, established and collected from time to time as hereinafter provided. The Assessments, together with interest thereon provided, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such Assessment is made. Each such Assessment, together with such interest, late charges and costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Unit at the time when the Assessment fell due, and of each subsequent Owner other than a Mortgagee. Any subsequent Owner of a Unit shall be deemed to have notice of the Assessments, whether or not a lien has been recorded. No Owner may waive or otherwise escape liability for an Assessment by abandonment of the Unit.

4.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the comfort, health, safety, security and welfare of the Owners and to perform the duties and exercise the powers of the Association enumerated in its Governing Documents

4.3 Declarant's Exemption from Assessments. Anything contained in the Governing Documents to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Unit owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. In addition, the Declarant may exempt Units owned by Declarant affiliates from the payment of Assessments During the Period of Declarant Control, in the Declarant's sole discretion.

4.4 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Management Committee based on the annual budget pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Prior to the beginning of each fiscal year of the Association, the Management Committee shall estimate the total Common Expenses to be incurred for the upcoming fiscal year. The Management Committee shall then determine the amount of the Regular Assessment to be paid by each Owner. Written notice of the annual Regular Assessments shall be sent to every Owner; provided that failure to provide adequate notice does not relieve the Owner's obligation to pay the Regular Assessment in installments as established by the

Management Committee. In the event the Management Committee shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Owner, and the date or dates when due

4.5 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy a "Special Assessment" from time to time to cover any unexpected expenses, operating shortfalls, major repairs, additions, or capital improvements. Any Special Assessments totaling less than or equal to \$20,000 (to be allocated among the Units pursuant to the Undivided Ownership Interests) in a calendar year may be assessed by the Management Committee without Owner approval. Any Special Assessments exceeding \$20,000 in a calendar year must be approved by Owners holding at least eighty-seven percent (87%) of the Undivided Interest. Special Assessments shall be payable in such manner and at such times as determined by the Management Committee, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Management Committee so determines. Notice in writing of the amount of such Special Assessment and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall be given. A Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date it become due and payable if not paid within thirty (30) days after such date. Notwithstanding the foregoing, the Declarant may levy Special Assessments in any amount deemed necessary during the Period of Declarant Control without Owner approval.

4.6 Benefited Assessments. In addition to Annual Assessments and Special Assessments authorized above, the Management Committee may levy Benefited Assessments against particular Units to cover the costs of the Association in providing special benefits, items, or services to the particular Units. Benefited Assessments may be levied in advance of the Association providing such special benefits, items, or services to particular Units.

4.7 PCPOA Assessments. The Association shall be liable to the Parkway Crossroads Property Owners Association for the Property's share of annual and special Assessments levied by the PCPOA ("PCPOA Assessments"). The Association may levy the PCPOA Assessments against each Unit Owner at a rate equal to the Undivided Interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit Owner as set forth in Exhibit "B".

4.8 Individual Assessments. In addition to any other Assessments authorized herein, the Association also may levy an Individual Assessment against any Owner individually and against such Owner's Unit to reimburse the Association for : (a) costs incurred by the Association in bringing an Owner and his Unit into compliance with the provisions of the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas and Facilities caused by the neglect or actions of an Owner or its Occupant; (c) any other charge, fine, fee, expense, or cost designated

as an Individual Assessment in the Governing Documents or by the Management Committee; (d) nonpayment of any reinvestment fee; and (e) attorney's fees, court or collection costs, interest, and other charges related thereto as provided in the Governing Documents.

4.9 Rate of Assessment. All Regular, Special, and PCPOA Assessments shall be fixed by the Management Committee at a rate equal to the Undivided Interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit Owner as set forth in Exhibit "B". Benefited Assessments shall be assessed equally to all benefited Units, or pursuant to Exhibit B, as the appropriate case may be. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association.

4.10 Certificate of Payment. The Association shall, upon demand, furnish to any Owner liable for Assessments, a certificate in writing signed by an officer or authorized agent of the Association, setting forth whether the Assessments on a specified Unit have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Management Committee for the issuance of these certificates, such certificates shall be conclusive evidence of payment of any Assessments therein stated to have been paid.

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

4.12 Power of Sale. A power of sale and all rights of foreclosure are hereby conferred upon the Association which it may exercise both judicially and non-judicially. Under the power of sale, the Unit of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if the Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale and foreclosure. The Declarant hereby conveys and warrants pursuant to Utah Code §§ 57-1-20 and 57-8-45 to Miller Harrison, LLC or other qualified trustee, as may be appointed by recording a substitution of trustee form, with power of sale, the Unit(s) and all improvements to the Unit(s) for the purpose of securing payment of Assessments under the terms of the Declaration.

4.13 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Management Committee collected as reserves for the future periodic maintenance, repair, or replacement of all or a portion of the Common Areas and Facilities. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Management Committee in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Management Committee during the Period of Declarant Control.

4.14 Reinvestment Fee. The Management Committee shall have the right to establish from time to time a "Reinvestment Fee" assessment in accordance with this Section and Utah Code §57-1-46. If established by the Management Committee, the

following terms and conditions shall govern Reinvestment Fees: (i) Upon the occurrence of any sale, transfer, or conveyance of any Unit as reflected in the office of the Utah County Recorder, regardless of whether it is pursuant to the sale of the Unit or not (as applicable, a "Transfer"), but excluding the initial sale of Transfer from Declarant or an affiliate successor of Declarant, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount established by the Management Committee, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law; (ii) notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code §57-1-46; and (iii) the Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an individual Assessment for collection purposes. All transfers of Units from Declarant to a Declarant related entity shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related entity and if a Reinvestment Fee applies.

## **ARTICLE 5 NONPAYMENT OF ASSESSMENTS**

5.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). If any such Assessment is not paid within fifteen (15) days after the delinquency date, a late charge in an amount determined by the Management Committee (not to exceed 10% of the Assessment payment owing) shall be levied and the Assessment shall earn interest from the delinquency date at the rate of eighteen percent (18%) per annum.

5.2 Enforcement Rights. The Association shall have the right to take any of the following actions against one or more Owners(s) after the delinquency date:

- (a) The Association may bring an action to recover a money judgment against the Owner for unpaid Assessments, interest, late fees, costs, and attorney's fees.
- (b) The Association may foreclose the Association's lien against the Unit for the unpaid Assessments, interest, late fees, costs, and attorney's fees pursuant to the Act.
- (c) The Association may, after giving notice and an opportunity to be heard in accordance with the Act, terminate an Owner's right to receive utility services for which the Owner pays for as a Common Expense and access to and use of Common Areas and Facilities.
- (d) Subject to Utah Code the Act, the Association may require tenants of a Unit to make future lease payments directly to the Association so long as Assessments remain unpaid for such Unit.

5.3 Other Remedies. The Association shall have all other rights and remedies available by applicable law, including the right to assess fines and suspend voting rights for any period during which any Assessment against an Owner's Unit remains unpaid.

5.4 Intent. No provision of this Article shall be interpreted so as to limit in any way the rights of the Association for the collection of Assessments.

5.5 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's breach of the Governing Documents, including responding to an Owner breach or violation of the Governing Documents. These fees may be collected by an individual Assessment against the subject Owner(s) or Unit(s).

## ARTICLE 6 USE RESTRICTIONS

6.1 Permitted Use. Each Unit may be rented or leased by the Owner for the use and occupancy as stated in this Section 6.1 of this Declaration. All Units and improvements must comply with the Design Guidelines. Unless consented to in writing by the Management Committee, in its sole and absolute discretion, and except for subsection (j) below, at least a majority of the Undivided Interests, the Units shall not be used for:

- (a) the storage, sales, or repair of motor vehicles;
- (b) a movie theater or restaurant;
- (c) a bowling alley, miniature golf course, video arcade, video, or music rental or sale (retail);
- (d) the sale, distribution, rental, or viewing of sexually explicit materials or sexually explicit performance;
- (e) the sale of paraphernalia related to illegal drugs;
- (f) escort services;
- (g) any business establishment utilizing an indoor or outdoor speaker system or other equipment that produces in excess of 40 decibels or which can be heard by an Occupant of another Unit at uncomfortable or non-customary noise levels;
- (h) the storage or sale of petroleum products or other hazardous materials;
- (i) any business establishment creating noxious or harmful odors;
- (j) for rental for periods of less than thirty (30) days per rental period.

6.2 Emissions/Discharge, Etc. To maintain a degree of protection of the investment which Owners in the Project make, the following are prohibited within the Project:

- (a) Emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside of the Unit where created and/or which may be detrimental to the health, safety, welfare or comfort of any

Owner or any other person, to the condition of any other portion of the Property, or to any vegetation within the Property.

(b) Discharge of fluids, gases, solid wastes or other harmful materials into any drainage canal or other waterway which may adversely affect the health, safety, welfare or comfort of any Owner or other person or the condition of any portion of the Property.

(c) Discharge of glare or heat, subsonic or ultrasonic sounds, or atomic, electromagnetic, microwave, ultra-violet, laser or other radiation which is detectable from any point exterior to the Unit upon which the operation is being conducted.

(d) Recurrent or continuous emission of sound or noise from any Unit which may be heard without instruments outside of the Unit of orientation.

(e) Recurrent or continuous ground vibrations perceptible without instruments at any point exterior to the Unit of origination.

(f) Physical hazard by reason of fire, radiation, explosion, or other similar cause to either the Property or the surrounding area.

(g) Persisting unsightly condition (as determined by the Management Committee in its sole discretion) on any Unit which is visible from any street, hallway, or any other portion of the Property.

(h) Excessive risk of fire or explosion that increases the casualty insurance premiums for improvements on adjacent Units.

(i) Violation of any applicable statute, ordinance, rule, regulation, permit, or other validly imposed requirement of any governmental body

6.3 Waste Disposal. No trash, garbage, or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals, and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin or contained within an enclosed structure appropriately screened from view. All trash, garbage, and other waste materials shall be regularly removed from each Unit and the Property.

6.4 Signs. The following regulations shall apply regarding signs in the Project:

(a) The Association shall have the right to install and maintain such directional, directory, and monument signs as the Management Committee deems reasonably necessary and appropriate for the Project.

(b) Each Unit Owner (or lessee) shall have the right to install and maintain (at its sole expense) in the place(s) designated by the Management Committee, letters, or insignias which identify the business being conducted from such Unit; provided that such lettering and insignias are pre-approved in writing by the Management Committee, in its sole discretion. If the Declarant or Association installs a monument sign for the Project that allows for the inclusion of business names being conducted in the Project on the monument, each Unit Owner (or lessee) shall have the

right to have their business included on the monument, provided the Unit Owner (or lessee) pays to the Association an ongoing fee (or other arrangement) for inclusion of the business name on the monument.

(c) Except as set forth in this Declaration, signs, flags, or advertising devices of any kind are prohibited from being placed or maintained anywhere in the Property without the prior written consent of the Management Committee, which consent may be withheld in its absolute discretion.

6.5 Animals. No animals of any kind are allowed in a Unit or in the Common Areas except for service or assistance animals of Owners or their Occupants or Permittees. In no event shall any animal be permitted in any portions of the Common Area unless carried or on a leash. Owners must promptly remove all animal waste from the Common Areas that may be left from their Permittees. Owners shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of animals brought onto the Project by their Occupants or Permittees.

6.6 No Alterations. No Owner shall, without the prior written consent of the Management Committee in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Common Areas or other improvements thereon or thereto, or jeopardize the safety or persons or property or impair any easement or hereditament appurtenant to the Project.

6.7 Satellite Dishes. The Association shall have authority to create and enforce Rules regulating the placement of satellite dishes, outdoor antennas, and other similar appliances.

6.8 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or cause to be stored in the Common Areas any property whatsoever, unless the Association shall consent thereto in writing.

6.9 Prohibition of Damage and Certain Activities. Except with the prior written consent of the Management Committee, nothing shall be done or kept in any Unit, in the Common Areas, or in any other part of the Project that would result in cancellation of the insurance on the Project or any part thereof, nor shall anything be done or kept in any Unit that would increase the rate of insurance on the Project or any part thereof over that which the Association, but for such activity, would pay. Nothing shall be done or kept in any Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by an Owner or guest of any Owner, and each Owner shall indemnify and hold harmless the Association and the other Owners from and against all loss resulting from any such damage or waste caused by such Owner or by the guests, tenants, licensee, or invitees of such Owner.



6.10 Restrictions on Leases. With the exception of a lender in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease a Unit for transient or hotel purposes or for an initial term of less than thirty (30) days. Any violation of local ordinances, statutes, or laws with regards to leasing of property shall also constitute a violation of this Declaration. Any lease agreement shall be required to provide that the terms of such lease shall be subject in all respects to the provisions of the Governing Documents and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. Any Owner who shall lease his Unit shall be responsible for assuring compliance by such Owner's lessee(s) with the Governing Documents. All leases shall be in writing.

6.11 Parking. Parking spaces may be used and occupied for parking purposes only. Parking spaces shall further be subject to and governed by Rules, which may govern, without limitation, the size, dimensions, and types of vehicles allowed to be parked within the Project; the admission and temporary parking of vehicles within the Project; the right to remove or cause to be removed any vehicles that are parked in violation of Rules; the levying of fines against Owners and Occupants who violate, or whose invitees violate, such Rules; and any other parking rules the Management Committee deems necessary.

6.12 Rules and Regulations. Each Owner shall comply strictly with all Rules and other regulations adopted by the Management Committee for the governance of the Units, the Common Areas, and the Project, as such rules and regulation may be modified, amended, and construed by the Association. Each Owner shall be held responsible for the noncompliance of the same by its Permittees, guests, tenants, licensee, or invitees.

6.13 Construction Period Exemption. During the course of actual construction of any permitted structures or improvements within the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which will result in a violation of any said provision, covenants, conditions or restrictions upon completion of the construction.

6.14 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out in any Unit or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body.

6.15 No Hazardous Activity. No activity may be conducted in any Unit that is or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

6.16 Firearms, Incendiary Devices and Graffiti. The use of firearms and incendiary devices or the painting or graffiti, within the Project is prohibited. The terms firearms, including but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

6.17 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures without the prior written consent of the Management Committee.

6.18 Solar Panels. Solar panels may be installed on the roof of the Building by the Owner of Unit 103, in the Owner's sole discretion. The Owner of Unit 103 may, in Owner's sole discretion, also install solar panels on the carport parking spaces reserved for the Apartments and on the pavilion. All other solar panels may only be installed upon prior written approval of the Management Committee. Each Unit Owner who installs solar panels in the Project shall be responsible for the repair, maintenance, and replacement of the respective solar panels and all associated equipment and shall keep the same in good repair. Should damage occur to the Common Areas or another Unit due to the malfunction or other condition of a solar panel, the Unit Owner who owns the solar panel shall be responsible for the costs.

6.19 Smoking. Smoking is prohibited in the Common Areas, Limited Common Areas, Units, and Apartments. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, electronic cigarette, vaping device, other product containing any amount of tobacco, or other similar heated, smoldering, or lit product. The Board may adopt additional Rules to address smoking within the Project.

## **ARTICLE 7 GENERAL CONSTRUCTION REQUIREMENTS**

7.1 Construction of Improvements in Each Unit. After approval for such work is obtained from the Association, all work performed in the construction, maintenance, repair, replacement, alteration, or expansion of any improvement in or on a Unit shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Unit, or part thereof, to or from any of the Common Areas and Facilities, (b) construction work being performed in any other Unit; or (c) the use, enjoyment or occupancy of any other Unit. Any replacement, alteration, or expansion of any improvement in a Unit shall be in compliance with all applicable laws, rules, regulations, orders, and ordinances of the City, county, state and federal government, or any department or agency thereof and no such work shall cause any improvement located in any other Unit to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any improvement in or on a Unit shall be done in a good and workmanlike manner and in accordance with engineering standards and applicable building codes.

7.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any improvement in or on a Unit, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Unit. The Management Committee may permit the staging of materials and use of designated Common Areas for construction purposes, in the Management Committee's discretion.

## **ARTICLE 8 DUTIES AND POWERS OF THE ASSOCIATION**

8.1 General Duties and Powers of the Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

- (a) enforce the provisions of the Governing Documents by appropriate means and carry out the obligations of the Association hereunder;
- (b) acquire, maintain and otherwise manage all of the Common Areas, and all improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain;
- (c) pay any real and personal property taxes and other charges assessed against the Common Areas and Facilities unless the same are separately assessed to the Owners;
- (d) obtain, for the benefit of the Common Areas and Facilities, all water, gas and electric, refuse collections, and other services;
- (e) grant easements where necessary for utilities and sewer facilities over the Common Areas and Facilities to serve the Property;
- (f) contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Management Committee deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members;
- (g) establish and maintain a reserve fund in an amount to be determined by the Management Committee;
- (h) have the power of entry upon any Unit where necessary in connection with construction, maintenance, or repair for the benefit of the Common Areas and Facilities, or the Owners;
- (i) at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Units; and
- (j) at its sole discretion, contract for communication services (e.g., cable television, Internet, telephone, etc.) for the benefit of the Owners who have subscribed for the service, the charges for such to be an Individual Assessment to those Owners benefitting therefrom.

8.2 Management Committee. The governing body of the Association shall be the Management Committee. Except where a matter or vote is specifically reserved to the Owners, the Management Committee shall act in all instances on behalf of the Association. Members of the Management Committee shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth qualifications and requirements for serving on the Management Committee. Notwithstanding the foregoing, for as long as the Declarant owns any Unit, the Declarant shall have the sole authority to act as the Management Committee or to appoint Members of the Management Committee. Declarant appointed Members of the Management Committee shall not be bound by any qualifications or requirements contained in the Bylaws.

8.3 Rules. The Management Committee shall also have the power pursuant to the procedures set forth in the Bylaws to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Rules"). The Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas and Facilities; provided, however, that the Rules shall not be inconsistent with this Declaration, the Articles, or Bylaws. In the event of any conflict between any such Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles, or the Bylaws to the extent of any such inconsistency.

8.4 Management. The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, selected by the Management Committee to assist in the management and operation of the Project. The Management Committee may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Management Committee at any time, with or without cause. Following the Period of Declarant Control, the Management Committee shall have the option to either renew the contract with the Manager selected by the Declarant, or hire a different Manager.

## **ARTICLE 9 REPAIR AND MAINTENANCE**

9.1 Repair and Maintenance by Association. The Association shall:

- (a) maintain the Common Areas and Facilities in a clean, safe, and attractive condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, and attractive condition at all times, including, without limitation, the exterior of the Building, the landscaped areas, the roadways, the sidewalks, and the parking areas;
- (b) repair, restore, replace, and make necessary improvements to the Common Areas and Facilities;
- (c) cause the appropriate public utility to maintain any utility easements located within the Common Areas and Facilities;
- (d) maintain the public rights-of-way within the Project.

9.2 Repair and Maintenance by Owner. Every Owner shall at such Owner's own cost and expense:

- (a) Install all sheetrock or drywall, flooring, and ceiling tiles within the Unit and maintain the same;
- (b) Maintain, repair, paint, re-paint, tile, wax, paper, or otherwise refinish and decorate the interior walls, trim, and interior surfaces of the walls, ceilings, floors, and doors forming the boundaries of the Owner's Unit and all walls, ceilings, floors, windows, and doors within such boundaries (except exterior windows shall be maintained, repaired, and replaced by the Association, including glass surfaces, but Owners shall keep the interior surfaces of the exterior windows clean and tidy);
- (c) Maintain those portions of such Owner's Unit that are not considered to be Common Areas and all improvements located therein including, without limitation, any plumbing fixtures, electrical fixtures, switches, receptacles and outlets, appliances, lines, wires, ducts, individual electrical meters, heating, air conditioning, and any other fixtures and equipment that may be in or connected with a Unit or service only the Units;
- (d) Maintain, repair, and replace all Limited Common Areas appurtenant to the Owner's Unit;
- (e) Keep the interior of the Unit, including the interior side of the exterior windows and glass surfaces on the boundaries of the Units and any individual restrooms located in the Unit, clean, and tidy in good repair, including replacement of broken glass, and in a clean and sanitary condition;
- (f) Repair any structural or visible defects or damages to improvements that are not considered to be Common Areas, keep any exteriors and other structures on such Owner's Unit that are not considered to be Common Areas and Facilities in good, clean, safe, and attractive condition and painted as required, keep such Owner's Unit free from trash and debris, and keep all lighting clean and functional.

9.3 Owner Maintenance Neglect. The Association shall have the power and authority without liability to any Owner for trespass, damage, or otherwise, to enter upon any Unit for the purpose of maintaining and repairing such Unit or any improvement thereon; but only if the Owner fails to maintain and repair such Unit or improvement. The Management Committee shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Unit.

9.4 Maintenance Caused by Owner Negligence. If the need for maintenance or repair of Common Areas and Facilities is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the Occupants, guests, or Permittees

of an Owner, the Management Committee may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment to which such Unit is subject.

## ARTICLE 10

### ARCHITECTURAL CONTROL AND DESIGN GUIDELINES

10.1 Design Guidelines. The Management Committee may prepare or adopt and promulgate design and development guidelines (the "Design Guidelines") and application and review procedures applicable to the Project or any portion thereof. The Design Guidelines shall be for the purpose of maintaining a consistent character and quality of appearance of the Units and improvements within the Project. The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used. Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.3 Approval by the Management Committee. Any construction, alteration, modification, removal, or destruction within the Project, including the location of all improvements, must be approved in writing by the Management Committee prior to the commencement of the same. No person commencing such construction, alteration, modification, removal, or destruction prior to receipt of such written approval shall acquire any vested rights in any such improvement. All decisions rendered by the Management Committee must be by written instrument setting forth the action taken by the members consenting thereto. The Management Committee may, at its sole discretion, withhold approval of any proposal if the Management Committee finds the proposal would be inappropriate for the particular Unit or incompatible with the Design Guidelines. Considerations such as sitting, shape, size, color, design, height, solar access, or other effects on the enjoyment of other Units or Common Areas, and any other factors which the Management Committee reasonably believes to be relevant, may be taken into consideration by the Management Committee in determining whether or not to approve any proposal.

10.4 Construction. Throughout any period of construction upon a Unit, the Owner of such Unit shall keep the Unit and the Common Areas in a clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary or appropriate to control dust, and shall so conduct all such construction so as not to interfere with free and ready access to the Building and neighboring Units.

10.5 No Liability. The Management Committee shall not be liable to any Owner, Occupant, builder, or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Management Committee under this Article or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The Management Committee is not responsible for determining compliance with structural and building codes, solar

ordinances, zoning codes, or other governmental regulations, all of which are the responsibility of the Owner.

10.6 Variances. The Management Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines. Such variances must be in writing and must be signed by all of the members of the Management Committee. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations. The granting of a variance in one instance shall not in any way obligate to the Management Committee to grant a variance in another instance.

## **ARTICLE 11 INSURANCE**

11.1 Insurance Obtained by the Association. The Association shall purchase and maintain all insurance required to be obtained by the Association under the Act, Declaration, and Bylaws, and any additional insurance the Management Committee deems necessary.

11.2 Property Insurance for Common Areas. The Association shall maintain a blanket policy of property insurance covering the Common Areas against loss or damage.

11.3 Liability Insurance. The Association shall obtain comprehensive general liability (CGL) insurance insuring the Association, the agents and employees of the Association and the Owners, against liability incident to the use, ownership, or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

11.4 Directors and Officers Insurance. The Association shall obtain Directors' and Officers' (D&O) liability insurance protecting the Management Committee, other committees, the officers, and the Association against claims of, including without limitation, wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, etc.

11.5 Adjustments. Any loss covered by insurance maintained by the Association shall be adjusted with the Association in accordance with the terms and conditions of the Act. The insurance proceeds payable for any such loss shall be paid in accordance with the terms and conditions of the Act.

11.6 Insurance by Unit Owners. Each Owner is responsible for obtaining, at such Owner's expense, insurance against his or her liability and property insurance covering his/her Unit, Limited Common Areas, other related improvements, and personal property.

11.7 Waiver by Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Management Committee, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

11.8 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

## **ARTICLE 12 DESTRUCTION OF IMPROVEMENTS**

In the event of partial or total destruction of the Common Areas and Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Special Assessment may be levied by the Association to provide the necessary funds of such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Management Committee shall distribute pro rata based on the Undivided Interests such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of his Unit as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Unit. All amounts collected as a Special Assessment shall only be used for the purposes set forth in this Article and shall be deposited by the Management Committee in a separate bank account to be held in trust for such purposes.

## **ARTICLE 13 EMINENT DOMAIN**

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas and Facilities, the Members hereby appoint the Management Committee and such persons as the Management Committee may delegate to represent all of the Members in connection with the taking. The Management Committee shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Areas and Facilities, the rules as to restoration and replacement of



the Common Areas and Facilities and the improvements thereon shall apply as in the case of destruction of the improvements upon the Common Areas and Facilities. In the event of a total taking, the Management Committee shall distribute pro rata based on the Undivided Interests any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Unit as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Unit.

#### **ARTICLE 14 RIGHTS TO THE COMMON AREAS AND FACILITIES**

14.1 Members' Right of Enjoyment. There is hereby reserved and established for the benefit of each Owner and such Owner's Occupants and Permittees a nonexclusive easement for use and enjoyment in and to the Common Areas and Facilities and such right shall be appurtenant to and shall pass with the interest required to be an Owner to every Unit, subject reasonable Rules established by the Association pertaining to the use of the Common Areas and Facilities.

14.2 Waiver of Use. No Member may exempt such Member from personal liability for Assessments duly levied by the Association, nor release the Unit owned by such Member from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas and Facilities or the abandonment of his Unit.

#### **ARTICLE 15 EASEMENTS**

15.1 Owners' Rights and Duties: Utilities and Communication Lines. The rights and duties of the Owners with respect to water, sewer, electricity, gas, telephone, cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer, water, electricity, gas, telephone and communication lines or drainage facilities are installed within the Property, there is hereby reserved and established for the benefit of the Owners of any Unit served by said lines or facilities a nonexclusive easement for the full extent necessary therefore, to enter upon the Units owned by others, in or upon said lines of facilities, or any portion thereof, to repair, replace and generally maintain said lines and facilities as and when the same may be necessary as set forth below, provided that such Owner or utility company shall promptly repair any damage to a Unit caused by such entry as promptly as possible after completion of work thereon.

(b) Wherever sanitary sewer, water, electricity, gas, telephone or communication lines or drainage facilities are installed within the Property, which lines or facilities serve more than one (1) Unit, the Owner of each Unit served by said lines or facilities shall be entitled to the full use and enjoyment of such portions of said lines or facilities which service such Owner's Unit.

(c) The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the

service in question, including without limitation, the payment of all required connection fees and related charges.

15.2 Utilities. Easements over the Property for the installation and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities as shown on the recorded subdivision maps of the Property are hereby reserved and established for the benefit of each Owner and their respective successors and assigns. Owners shall pay for all utility services furnished to each Unit except utility services which are not separately billed or metered to individuals Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses. In the event any Owner is found to use any service disproportionately, the Association may alter the share so charged. In the event that submeters are installed or used for common utilities which are billed collectively, each Owner agrees to pay for the actual utility usage attributable to his or her Unit.

15.3 Common Area Easements. The following nonexclusive easements are hereby reserved and established for the benefit of each Owner and the Occupants and Permittees of each Owner:

- (a) Nonexclusive easements for pedestrian traffic over, upon, across and between (1) the streets now or hereafter abutting or located on any portion of the Property; (2) the Common Areas and Facilities; and (3) the parking areas.
- (b) Nonexclusive easements for the purpose of vehicular traffic over, upon, across and between (1) the streets now and hereafter abutting any portion of the Property; and (2) the Common Areas and Facilities.

15.4 Nature and Effect of Easements. Each and all of the easements, covenants, restrictions and provisions contained in this Declaration:

- (a) are made for the direct, mutual, and reciprocal benefit of the Owners, Occupants, and Permittees of the respective Units;
- (b) create mutual equitable servitudes upon each Unit in favor of the other Units;
- (c) constitute covenants running with the land; and
- (d) shall bind every person or entity having any fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision is to be performed on such portion.

15.5 Recorded Easements. The Property or any portion thereof may be subject to easements recorded in the office of the Utah County Recorder and the parties thereto shall abide by the agreements contained therein.

## ARTICLE 16

## SPECIAL DECLARANT RIGHTS

16.1 Improvements. Declarant hereby reserves the right, without obligation, to construct:

- (a) Any improvement shown on the Plat or included in the Project; and
- (b) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

16.2 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights, which shall remain in effect during the entire Period of Declarant Control, or for the maximum period allowed by law:

- (a) the right to maintain sales offices and signs advertising the Project or any Unit at any location in the Project;
- (b) the right to use easements through the Common Areas and Units as set forth in this Declaration;
- (c) the right to convert any part of the Project to a different regime of ownership;
- (d) the right to create or designate additional Common Area or Limited Common Area within the Project;
- (e) the right to freely market the Project as determined exclusively by Declarant, including, without limitation, the right to place signs and other advertising materials at any location within the Project or upon any Unit, Common Area, and so forth;
- (f) the exclusive right to act as the Management Committee, or appoint or remove Management Committee members in Declarant's sole discretion, during the Period of Declarant Control;
- (g) the right to waive all formalities and corporate requirements of the Association, including holding meetings and assessing Assessments, for as long as the Declarant owns any Unit in the Project;
- (h) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (i) the right to set all Assessments for the Association including Annual, Special, Benefited, and Individual Assessments;
- (j) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;

(k) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;

(l) the right to exert any right allowed to the Management Committee or the Association pursuant to the Act and this Declaration; and

(m) pursuant to Utah Code § 57-8-7.5(10), Utah Code § 57-8-7.5(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

16.3 Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

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

16.5 Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Management Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

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

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

16.8 Voting. During the Period of Declarant Control, any matter voted upon by the Owners shall not become effective unless the matter is approved in writing by the Declarant.

16.9 Easements Reserved to Declarant.

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," "shared access area," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Unit lines of each Unit shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Units therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Unit, or in the area or on the area in which the same is located.

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the storage of building supplies and materials, parking of construction vehicles, erection of temporary structures, trailers, improvements or signs necessary or convenient to the development of the Project, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(e) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Unit and grade a portion of such Unit adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Unit, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

16.10 No Modification of Declarant Rights. The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

## ARTICLE 17 AMENDMENTS

17.1 Amendments by Declarant. So long as the Declarant owns one or more Units in the Project, the Declaration and the Plat may be amended or supplemented solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Units in the Project. Any amendment shall become effective upon recordation in the office of the Utah County Recorder. The Declarant may waive any rights contained in this Section at any time, provided such waiver is in writing and signed by the Declarant.

17.2 Amendments by Association. After all of Declarant's Units have been sold to third parties and the Period of Declarant Control has expired, this Declaration may be amended upon the affirmative vote of at least sixty percent (60%) of the of the total Undivided Interests of the Members. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. Notwithstanding, the foregoing, the Members' authority to amend Articles 16 and 19 of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles 16 and 19 shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

## ARTICLE 18 PARKWAY CROSSROADS PROPERTY OWNERS ASSOCIATION

18.1 The Property is subject to the Parkway Crossroads Declaration. Every Owner shall also be a member of the PCPOA. Such membership shall be subject to the terms and provisions of Parkway Crossroads Declaration and other governing documents of the PCPOA. Membership in the PCPOA shall be appurtenant to and may not be separated from the ownership of any Unit. Ownership of such Unit shall be the sold qualification for membership in the PCPOA.

- (a) Voting Rights in the PCPOA. Owner's voting rights in the PCPOA shall be exercised through Delegate voting and shall be controlled by the Association as determined by the Management Committee. The Delegate shall have the right to cast as many votes as the total of all Owners have under the Parkway Crossroads Declaration.
- (b) Easement of Enjoyment of PCPOA Property. Subject to the provisions of the Parkway Crossroads Declaration and other governing documents of the

PCPOA, every Owner shall have a right and easement of enjoyment in and to any PCPOA Common Areas.

## ARTICLE 19 DISPUTE RESOLUTION

### 19.1 Alternative Dispute Resolution Without Litigation.

(a) Bound Parties. The Declarant; the Association; the Owners; the officers, Directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Units that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements on the Project, including Units, other than matters of aesthetic judgment to be determined by the Association under the Design Guidelines and other provisions hereof, which shall not be subject to review and shall not be subject to this Article.

(c) Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X of this Declaration (relating to the Design Guidelines);

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

(vii) any suit or dispute involving a governmental entity as a party.

#### 19.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Management Committee, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

(v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 19.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the



Management Committee may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(d) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(e) Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

19.3 Initiation of Litigation by Association. The requirements of this Section are intended to be in addition to those requirements set forth in Section 57-8-58 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Management Committee of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Management Committee of Directors related to the Period of Declarant Control unless:

(a) The Right to Cure period set forth in Section 19.2(b) above has expired;

(b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total Undivided Interests of the Members.

(c)

(i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 19.4(a) and (b) below.

(d) the Association provides each Owner with the items described in Section 19.4(a) and (b), below;

(e) the Association establishes a trust account, described in Section 19.4(c) below; and

(f) the Association first goes through the procedures described in Section 19.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.

(g) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:

(i) initiated by Declarant during the Period of Declarant Control on behalf of the Association;

(ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);

(iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 67% of the total Undivided Interests of the Members.

19.4 Informed Vote. Before the Owners, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide each Owner with:

(a) A written notice stating:

(i) that the Association is contemplating legal action;

(ii) the percentage vote required for approval of the litigation;

(iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;

- (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and
- (b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:
  - (i) The likelihood that the legal action will succeed;
  - (ii) The likely amount in controversy in the legal action;
  - (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
  - (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Unit buyer's ability to obtain financing for a Unit due to a pending legal action.
  - (v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.
- (c) Before the Association commences any legal action as authorized above, the Association shall:
  - (i) allocate an amount equal to 25% of the cost estimated to resolve the Claim not including attorney fees; and
  - (ii) place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 19.3 and 19.4 do not apply if the Association brings a legal action that has an amount in controversy of less than \$25,000.00.

19.5 Strict Compliance Required. Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

19.6 Owner Warranties. The Declarant may provide certain warranties to the Owners related to a Unit purchased. The first Owner of a Unit to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek

the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

19.7 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Management Committee of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action against the Declarant relating to the Common Areas and facilities.

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

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

## **ARTICLE 20 GENERAL PROVISIONS**

20.1 Enforcement. The Association, Declarant, or any Owner shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment hereto, including the right to prevent the violation of any such restrictions, conditions, covenants, or reservations, and the right to recover damages for such violation; provided, however, that the Association shall have the exclusive right to enforce assessment liens. The Association, Declarant, or any Member shall also have the right to enforce by proceedings at law or in equity the provisions of the Articles, Bylaws, or Rules, and any amendments thereto. Failure by the Association, Declarant, or by any Member to enforce any covenant, condition, or restriction herein contained, or the Articles and the Bylaws, in any certain instance or on any particular occasion, shall not be deemed a waiver of such right on any such future breach of the same covenant, condition or restriction.

20.2 Severability. Notwithstanding invalidation of any one of these covenants, conditions or restrictions by judgment or court order, all other provisions hereof shall remain in full force and effect.

20.3 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, or any Owner, their respective legal representatives, Occupants, heirs, successors and assigns in perpetuity unless amended or terminated pursuant to the provisions contained herein.

20.4 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the administration of commercial units on the Property and for the maintenance of the Property and the Common Areas and Facilities. The Article and Section headings have been inserted for convenience only

and shall not be considered or referred to in resolving questions of interpretation or construction.

20.5 Singular Includes Plural. Whenever the context of this Declaration requires, the singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter.

20.6 Attorneys' Fees. In the event action is instituted to enforce any of the provisions contained in this Declaration or other Governing Document, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be an Individual Assessment with respect to the Unit involved in the action.

20.7 Notices. Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the Association at the time notice is sent. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes.

Unless an Owner notifies the Association in writing that he or she desires to receive notices via USPS mail, each Owner shall provide to the Association an email address that the Association may use to affect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder.

20.8 Effect of Declaration. This Declaration is made with the intent to establish a general scheme for the use, occupancy, and enjoyment of the Property and each and every Unit and portion thereof. The Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances and regulations applicable thereto.

20.9 Non-liability of Officials. To the fullest extent permitted by law, neither the Management Committee, nor any other committee of the Association or any member of

such Management Committee or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Management Committee, committees or persons reasonably believed to be the scope of their duties.

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

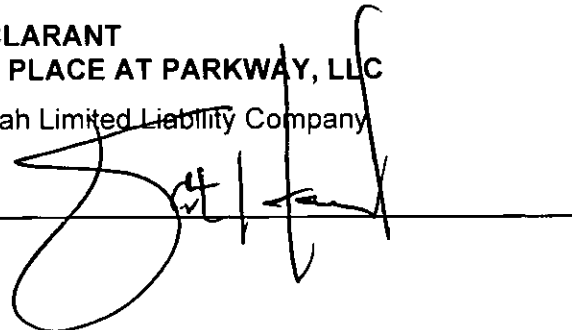
20.21 Effective Date. The Declaration and any amendment hereof shall take effect upon its filing in the office of the Utah County Recorder.

IN WITNESS WHEREOF, the Declarant, as authorized by the owners of real property to which this Declaration is being subjected, has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 18 day of November, 2020.

**DECLARANT**  
**THE PLACE AT PARKWAY, LLC**  
 A Utah Limited Liability Company

By: \_\_\_\_\_

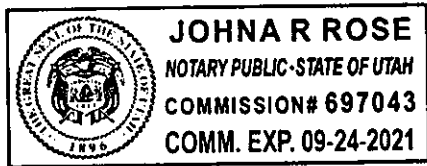


Its: Manager

State of Utah )  
                  ) ss:  
County of Utah )

On the 18 day of November, 2020, personally appeared before me Scot Hazard who by me being duly sworn, did say that she/he is an authorized representative of The Place at Parkway, LLC and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature]



**EXHIBIT "A"**  
**Legal Description**  
**Parkway Crossroads Condominiums**

All of Parkway Crossroads Condominium Plat, as shown by the Office of the Utah County Recorder, including Units 101, 102, and 103, and Common Areas.

More particularly described as:

All of Lot 1, PARKWAY CROSSROADS PLAT A FIRST AMENDMENT, according to the Official Plat thereof on file in the Office of the Utah County Recorder, located in the NW1/4 of Section 29, Township 5 South, Range 1 West, Salt Lake Base and Meridian, Eagle Mountain City, more particularly described as follows:

Beginning at a point located N89°02'40"W along the Section line 102.38 feet and South 106.50 feet from the North 1/4 Corner of Section 29, T5S, R1W, SLB&M; thence S34°00'01"W 62.50 feet; thence N56°52'00"W 33.05 feet; thence S34°00'01"W 374.70 feet; thence N56°29'03"W 16.89 feet; thence N55°56'54"W 155.19 feet; thence N56°00'06"W 13.37 feet; thence N13°53'30"W 24.80 feet; thence Northeasterly along the arc of a non-tangent curve to the left having a radius of 100.00 feet (radius bears: N13°52'22"W) a distance of 73.53 feet through a central angle of 42°07'43" Chord: N55°03'47"E 71.88 feet; thence N33°59'54"E 117.84 feet; thence along the arc of a curve to the left having a radius of 102.13 feet a distance of 59.10 feet through a central angle of 33°09'23" Chord: N17°25'15"E 58.28 feet; thence N00°50'36"E 50.15 feet; thence S89°09'24"E 252.88 feet; thence S55°59'59"E 43.42 feet to the point of beginning.

Contains: 1.69 acres +/-



**EXHIBIT "B"**  
**Undivided Ownership Interests of Each Unit**  
**for Voting, Common Expense Liability, and Common Area Ownership Purposes**

<u>UNIT</u>	<u>SQUARE FOOTAGE</u>	<u>UNDIVIDED OWNERSHIP INTERESTS</u>
101	3,114	13.77%
102	1,440	6.37%
103	18,054	79.86%
<b>TOTAL</b>	<b>22,608</b>	<b>100.00%</b>

**EXHIBIT "C"**

**BYLAWS  
OF  
PARKWAY CROSSROADS CONDOMINIUMS**

These BYLAWS OF PARKWAY CROSSROADS CONDOMINIUMS are effective upon recording in the Utah County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

**RECITALS**

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

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

**ARTICLE I  
DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration shall have the same meanings when used in these Bylaws.

**ARTICLE II  
APPLICATION**

All present and future Owners, Occupants, Permittees, tenants, or any other persons who may use the facilities at the Project in any manner are subject to these Bylaws. The mere acquisition or rental of any of the Units or parts thereof, or the mere act of occupancy or use of any said Units or part thereof or the Common Areas will signify that these Bylaws are accepted, ratified, and will be complied with by said persons. These Bylaws govern the management of the business and the conduct of the affairs of the Association except as otherwise provided by statute, the Declaration, or the Articles.

**ARTICLES III  
MEMBERS**

3.1 Annual Meetings. The annual meeting of the Members shall be held each year on a day and time established by the Management Committee. The purpose of the annual meeting may to elect Management Committee members and transact such other business as may come before the meeting. The Management Committee may from time to time by resolution change the date and time for the annual meeting of the Members.

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

3.2 Special Meetings. Special meetings of the Members may be called by a majority of the Management Committee, the Declarant, the President, or upon the written request of Members holding not less than 20% of the Undivided Interests of the Association. Any written request for a special meeting presented by the Members shall be delivered to the President and shall include the original signature of each Member affirmatively supporting such request. The President shall then call, provide notice of, and conduct a special meeting within 20 days of receipt of the request. In case of failure to call such meeting within twenty (20) days after such request, such Members may call the same. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 Notice of Meetings of the Members. The Management Committee shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Members. Such written or printed notice shall be delivered to each Member of record entitled to vote at such meeting not more than thirty (30) nor less than ten (10) days prior to the meeting. Such notice may be emailed, hand-delivered, or mailed.

3.4 Qualified Voters. A Member shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if the Member shall have fully paid its share of any Assessments (together with any interest and/or late fees) prior to the commencement of the meeting.

3.5 Quorum. The presence, in person or by proxy, of a representative of Unit 103 and a representative from either Unit 101 or Unit 102 at any duly called meeting of the Members that is called and held in compliance with the requirements of this Article shall constitute a quorum for the adoption of decisions.

3.6 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 or by the Member's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) owner of such Unit or the Members' attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall be dated, set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered at least three (3) days prior to 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.

3.7 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, a vote equivalent to the Undivided Interest of the Unit such Member owns as set forth on Exhibit "B" attached to 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, these Bylaws, the Declaration, or the Act. When more than one person owns a portion of the interest in a Unit, each such person shall be a Member, but the vote(s) for such Unit shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any single Unit. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by co-Owners of a Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. The Association shall not be required to recognize the vote or written consent of any co-Owner that is not authorized to vote based upon a written designation of all such co-Owners delivered to the Association. Voting for any Association matter, including elections, may be done electronically, including online voting, so long as the Management Committee can reasonably determine the validity of the vote. The Management Committee may adopt additional Rules regarding such electronic voting, including timeframes for voting and other issues.

3.8 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Members present, and in the decision and votes of the Management Committee or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Management Committee. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed a waiver on any notice requirements.

3.9 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 enough Members such that the vote would have passed if all of Association Members had been in attendance at a regularly called meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

#### **ARTICLE IV MANAGEMENT COMMITTEE**

4.1 General Powers. The property, affairs and business of the Association shall be managed by the Management Committee. The Management Committee may exercise all of the powers of the Association, whether derived from the Act, the Declaration or these Bylaws, except such powers that the Articles, these Bylaws, the Declaration, or the Act vest solely in the Members. The Management Committee shall, among other things, prepare or cause to be prepared, plan and adopt an estimated annual budget for the estimated annual common expenses, provide the manner of assessing and collecting assessments, and keep or cause to be kept sufficient books and records with a detailed account of the receipts and expenditures affecting the Project and its administration, and specifying the maintenance and repair expenses of the Common Areas. The books and records shall be available for examination by all members at convenient hours on working days that shall be set and announced for general knowledge. The Management Committee may by written contract delegate, in whole or in part, to a Manager such of its duties, responsibilities, functions, and powers as are properly delegable.

4.2 Number and Qualifications. The Management Committee shall be composed of three (3) persons, each of whom shall be an owner of a Unit or a representative of a Unit. A single Unit may have up to two (2) Management Committee members represent the Unit. If a Management Committee member ceases to meet any required qualifications during the Management Committee member's term, such person's membership on the Management Committee shall automatically terminate. During the Period of Declarant Control, the Management Committee member qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Management Committee as permitted by law.

4.3 Election. During the Period of Declarant Control, Management Committee members shall be appointed by Declarant. Following the Period of Declarant Control, the election of Management Committee members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Management Committee member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Management Committee members may be by secret ballot. Cumulative voting is not permitted.

4.4 Term of Office. During the Period of Declarant Control, Management Committee member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Management Committee members for one (1) year terms. Management Committee members may serve consecutive terms if elected.

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

4.6 Special Meetings. Special meetings of the Management Committee may be called by the President or a majority of Management Committee members on at least two (2) business days' prior notice to each Management Committee member.

4.7 Meeting Notice. Notice shall be given to Management Committee members and Owners who have requested notice personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Management Committee, Management Committee meetings may be held without call or notice to the Management Committee members, but notice shall always be provided to those Owners who have requested notice of Management Committee meetings.

4.8 Quorum and Manner of Action. A majority of the then authorized Management Committee members shall constitute a quorum for the transaction of business at any Management Committee meeting. The act of a majority of the Management Committee members present at any meeting at which a quorum is present

and for which proper notice was provided shall be the act of the Management Committee. Management Committee members shall act only as the Management Committee of Directors, and individual Management Committee members shall have no powers as such.

4.9 Owner Attendance. Any Owner may request notice of Management Committee meetings. Owners who have requested notice of Management Committee meetings shall be given notice along with the Management Committee members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Management Committee members.

4.10 Open Meetings. Except as provided below in (a) through (f), following the Period of Declarant Control, Management Committee meetings shall be open to Owners. The Management Committee may hold a closed executive session during a meeting of the Management Committee if the purpose of the closed executive session is to:

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

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

4.11 Management Committee Action. Notwithstanding noncompliance with any provision within these Bylaws, Management Committee action is binding and valid unless set aside by a court of law. A person challenging the validity of a Management Committee action for failure to comply with these Bylaws may not bring the challenge more than sixty (60) days after the Management Committee has taken the action in dispute.

4.12 Compensation. No Management Committee member shall receive compensation for any services that such member may render to the Association as a Management Committee member; provided, however, that a Management Committee member may be reimbursed for expenses incurred in performance of such duties as a Management Committee member to the extent such expenses are approved by a majority of the other Management Committee members.

4.13 Resignation and Removal. A Management Committee member may resign at any time by delivering a written resignation to another Management Committee member. Unless otherwise specified therein, such resignation shall take effect upon

delivery. Any Management Committee member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Management Committee member it appoints at any time. A Management Committee member elected by the Owners may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such meeting, the Owners shall vote for a new Management Committee member to fill the remaining term of the removed Management Committee member. Management Committee members may also be removed by unanimous vote of the other active Management Committee members upon the occurrence of any of the following: failure to attend three (3) consecutive Management Committee meetings, failure to remain current on Assessments, or violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Management Committee members may appoint a replacement to serve the remaining term of the removed Management Committee member.

4.14 Vacancies. If vacancies occur in the Management Committee during the Period of Declarant Control, the Declarant shall appoint a Management Committee member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Management Committee for any reason (including death, resignation, or disqualification) except removal by the Owners, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Management Committee members then in office, though less than a quorum. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election of the Owners at the meeting at which such Management Committee member is removed. Any Management Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Management Committee members shall continue to serve until their successors are elected.

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

4.16 Waiver of Notice. Before or at any meeting of the Management Committee, any Management Committee member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Management Committee member or Owner at any meeting thereof shall be a waiver of notice by that Management Committee member or Owner of the time, place, and purpose thereof.

4.17 Meeting. A Management Committee meeting does not include a gathering of Management Committee members at which the Management Committee does not conduct and vote on Association business.

## ARTICLE V OFFICERS

5.1 Officers. The officers of the Association shall be a President, a Secretary, and a Treasurer, and such other officers as may from time to time be appointed by the Management Committee. Officers shall be Management Committee members. During the Period of Declarant Control, officers shall not be required and officers need not be Management Committee members.

5.2 Election Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first regular meeting of the Management Committee following the annual meeting of the Members. In the event of failure to choose officers at such regular meeting of the Management Committee, officers may be chosen at any regular or special meeting of the Management Committee. Each such officer (whether chosen at a regular meeting of the Management Committee or otherwise) shall hold such office at least until the next ensuing regular meeting of the Management Committee and until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.3 Subordinate Officers. The Management Committee 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 Management Committee may from time to time determine. Subordinate officers need not be Management Committee members of the Association.

5.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee member or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Management Committee at any time, with 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 Management Committee at any regular or special meeting.

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



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, Rules, or any resolution the Management Committee may require such person to keep. The Secretary shall also act in the place of the President in the event of the President's absence or inability or refusal to act.

5.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Members and at any meeting of the Management Committee. The Treasurer shall perform such other duties as required by the Management Committee. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant these Bylaws.

5.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

## ARTICLE VI

### DELEGATE VOTING FOR PARKWAY CROSSROADS PROPERTY OWNERS ASSOCIATION

6.1 Delegate Voting for the PCPOA. The Delegate for the PCPOA and the Alternate Delegate for the PCPOA shall be members of the Management Committee. Unless the Management Committee determines otherwise, the President shall be the Delegate and the Secretary shall be the Alternate Delegate. The Delegate shall vote on PCPOA matters using business judgment and as would be in the best interests of the Association as a whole.

## ARTICLE VII COMMITTEES

7.1 Designation of Committees. The Management Committee may from time to time by resolution designate committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers.

## ARTICLE VIII INDEMNIFICATION

8.1 Indemnification. No Management Committee member or officer shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Management Committee member or officer

performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee member or officer of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that Management Committee member having heretofore or hereafter been a Management Committee member or officer of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Management Committee member or officer, and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Management Committee members, officers, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

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

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

## **ARTICLE IX RECORDS, AUDITS, AND FISCAL YEAR**

The Association shall maintain within the State of Utah all documents, information, and other records of the Association in accordance with the Declaration, these Bylaws, and the Utah Revised Nonprofit Corporation Act. The Management Committee may establish provisions related to the maintenance of Association records by resolution.

9.1 General Records. The Management Committee or Manager shall keep records of the actions of the Management Committee and Manager; minutes of the meetings of the Management Committee; minutes of the Member meetings of the Association, and financial records of the receipts and expenditures affecting the Property. At each meeting of the Management Committee, the minutes of the previous meeting of the Management Committee shall be presented to the Management Committee for approval by a majority vote; the minutes of any meeting of the Members shall be presented to the Management Committee at the next meeting of the Management Committee for approval by a majority vote; after the minutes of a meeting of the Members have been approved by the Management Committee by a majority vote, such minutes shall be presented to the Members at the next meeting of the Members for approval by a majority vote.

9.2 Financial Reports and Audits.

(a) An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Management Committee to all Owners.

(b) From time to time the Management Committee, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners. At any time, any Owner or Mortgagee may, at such Owner's or Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

9.3 Inspection of Records by Owners. Except as provided in Section 8.4 below, all records of the Association shall be reasonably available for examination by an Owner and any Mortgagee of a Unit pursuant to rules adopted by resolution of the Management Committee. The Management Committee, by resolution, may adopt reasonable rules governing the frequency, time, location, notice and manner of examination and duplication of Association records and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Section. The fee may include reasonable personnel costs incurred to furnish the information, including any and all fees the Association may be charged by its designee that assists the Association in furnishing this information.

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

- a. Personnel matters relating to a specific identified person or a person's medical records.
- b. Contracts, leases, and other business transactions that are currently under negotiation to purchase or provide goods or services.
- c. Communications with legal counsel that relate to matters specified in subsections a. and b. of this Section, or current or pending litigation.
- d. Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.
- e. Disclosure of information in violation of law.

- f. Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or Rules;
- g. Documents, correspondence, or management or Management Committee reports compiled for or on behalf of the Association or the Management Committee by its agents or committees for consideration by the Management Committee in executive session.
- h. Documents, correspondence, or other matters considered by the Management Committee in executive session.
- i. Files of individual Owners, other than those of a requesting Owner, including any individual Owner's file kept by or on behalf of the Association.

## **ARTICLE X RULES**

10.1 Establishment of Rules. The Management Committee shall have the authority to adopt and establish by resolution such management and operational Rules as it may deem necessary for the maintenance, operation, management, and control of the Project.

10.2 Amendment of Rules. The Management Committee may from time to time, by resolution, alter, amend, and repeal such Rules subject to the provisions of the Declaration and these Bylaws.

10.3 Enforcement. Owners shall use their best efforts to see that the Rules are strictly observed by their Occupants and Permittees and the persons over whom they have or may exercise control or supervision, it being clearly understood that such Rules shall apply and be binding upon all Owners and Occupants of the Project.

10.4 Copies of Rules. Copies of all Rules and resolutions adopted by the Management Committee shall be sent to all Owners.

## **ARTICLE XI AMENDMENTS**

11.1 Amendments by Declarant. During the Period of Declarant Control, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. In addition, during the Period of Declarant Control, no other amendment shall be valid or enforceable unless the Declarant has given written consent to such amendment.

11.2 Amendments by Association. After the amendment rights of the Declarant contained in Section 10.1 have expired, the Bylaws may be amended by the Owners upon the affirmative vote of more than fifty-one percent (51%) of the total Undivided Interests of the Members. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute

approval for that Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

**ARTICLE XII  
MISCELLANEOUS PROVISIONS**

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

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

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

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IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association and with the authority of the owner(s) of real property.

DATED this 18 day of November, 2020.

**DECLARANT  
THE PLACE AT PARKWAY, LLC**

A Utah Limited Liability Company

By: [Signature]

Its: Manager

State of Utah )  
 ) ss.  
County of Utah )

On the 18 day of November, 2020, personally appeared before me Scot Hazard who by me being duly sworn, did say that she/he is an authorized representative of The Place at Parkway, LLC and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature] of Utah

