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

**OF**

**VILLAS AT THE POINTE APARTMENT LOT OWNERS SUB-ASSOCIATION**

**(an Apartment/PUD Community located in Ogden, Weber County, Utah)**

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS  
OF  
VILLAS AT THE POINTE APARTMENT LOT OWNERS SUB-ASSOCIATION**

This Declaration of Covenants, Conditions, Easements and Restrictions of Villas at the Pointe Apartment Lot Owners Sub-Association, hereinafter referred to as the “**Declaration**” is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2022, by FIG Jackson Crossing, LLC, a Utah limited liability company, hereinafter referred to as the “**Declarant**.”

1. RECITALS.

1.1 Declarant intends to create a master planned townhome and apartment community (the “**Project**”). The Project may be platted and developed in phases, in accordance with the approvals and ordinances of the city and county in which the Project is located. The Project is located within the boundaries of Ogden, Weber County, State of Utah.

1.2 The Project will have common areas and facilities to be owned, managed and maintained by and through the Villas at the Pointe Master Owners Association pursuant to that certain Master Declaration of Covenants, Conditions, Restrictions and Easements for the Villas at the Pointe Master Owners Association recorded in the Weber County Recorder’s Office (the “**Master Declaration**”).

1.3 Under Section 3.2 of the Master Declaration, the Master Association is permitted to record an additional declaration against a sub-association, which additional declaration (i) shall be subject to the terms and conditions of the Master Declaration, (ii) may create a subordinate owners association (sub-association) to administer and enforce the additional declaration, and (iii) may contain additional restrictions, covenants, easements or provisions with respect to such builder’s property subject to such additional declaration beyond what is set forth in the Master Declaration.

1.4 Declarant desires to form such a sub-association to govern the apartment units to be developed (the “**Apartment Community**”) and to record against the Apartment Community this Declaration of Covenants, Conditions, and Restrictions for Villas at the Pointe Apartment Lot Owners Association (the “**Apartment Declaration**”). The legal description of the property comprising the Apartment Community is attached as Exhibit A to this Declaration. The Apartment Declaration will be administered by the Villas at the Pointe Apartment Lot Owners Association (the “**Apartment Association**”). The Apartment Community is divided into Lots for stacked Apartment Units, parking areas and certain common areas and facilities.

1.5 The Apartment Association has been, or will be, incorporated as a Utah non-profit corporation to act as a homeowners association with the powers of managing and maintaining the Common Areas and the Apartment Building exteriors in the Apartment Community, administering and enforcing this Apartment Declaration, and assessing and collecting from Owners a share of the costs for maintaining and repairing any and all Common Areas and Apartment Building exteriors within the Apartment Community and performing such other acts as are provided for in this Apartment Declaration, the Apartment Association’s Bylaws, by statute, or which generally

benefit the Apartment Community. The Apartment Community is not a cooperative and no portion of the Apartment Community is subject to the Condominium Association Act, Utah Code § 57-8-1 *et seq.*

1.6 Declarant has adopted the covenants, conditions, restrictions, easements, servitudes, and limitations set forth in this Apartment Declaration (collectively, the “**Covenants**”) for the purpose of:

- i. Helping to ensure uniformity in the development of the Lots;
- ii. Protecting long-term property values and a desired quality of life in the Apartment Community;
- iii. Facilitating the initial sale of Lots by the Declarant, its successors and assigns, and subsequent sale by the individual Owners of Lots in the Apartment Community; and
- iv. Maintaining the Common Areas and Apartment Building exteriors located within the Apartment Community in accordance with the Apartment Declaration and with County standards.

1.7 The covenants, conditions and restrictions contained in this Apartment Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

- Exhibit A: Legal Description of Apartment Community  
Exhibit B: Bylaws of Apartment Association

NOW, THEREFORE, for the foregoing purposes, the Declarant adopts the following covenants, conditions, easements and restrictions to govern the development, use, maintenance and management of this Apartment Community:

## 2. DEFINITIONS.

Unless the context clearly indicates otherwise, certain terms as used in this Apartment Declaration and the foregoing Recitals shall have the meanings set forth in this Section 2.

2.1 Act shall mean the Community Association Act (Title 57, Chapter 8a, Utah Code, as amended).

2.2 Amendment shall mean any amendment to this Apartment Declaration made in accordance with the Apartment Governing Documents and the Act.

2.3 Apartment Assessments shall mean any monetary charge or fee imposed or levied by the Apartment Association against an Apartment Lot Owner as provided in this Declaration or other Governing Documents, including, without limitation, Regular Common Apartment

Assessments, Special Common Apartment Assessments and Specific Apartment Assessments as described in Section 19.

2.4 Apartment Association shall mean the homeowners association of the Apartment Community, named Villas at the Pointe Apartment Lot Owners Sub-Association, which association will be, or has been, organized as a Utah nonprofit corporation.

2.5 Apartment Board shall mean the Board of Directors of the Apartment Association, appointed or elected in accordance with this Apartment Declaration and the Apartment Bylaws.

2.6 Apartment Building shall mean the buildings constructed as part of the Apartment Community, with all Apartment Buildings containing four (4) Apartment Lots and sixteen (16) Apartment Units.

2.7 Apartment Bylaws shall mean the Bylaws of the Apartment Association, a copy of which is attached hereto as Exhibit D, as amended from time to time.

2.8 Apartment Common Areas and Facilities shall mean the portions of the Apartment Community described as Apartment Common Areas and Facilities in Section 6 hereof or on the Plat.

2.9 Apartment Governing Documents shall mean the Master Declaration, the Master Bylaws, and any rules and regulations adopted by the Master Association Board, this Apartment Declaration, the Apartment Bylaws and any rules and regulations promulgated by the Apartment Board.

2.10 Apartment Limited Common Areas and Facilities shall mean a portion of the Apartment Common Areas and Facilities, if any, allocated by this Apartment Declaration or the Act, as may be shown on the Plat or described in this Apartment Declaration, for the exclusive use of one or more, but fewer than all, of the Apartment Units as further described in Section 7.

2.11 Apartment Lot shall mean a Lot upon which four (4) vertically stacked Apartment Units will be constructed. Ownership of the Apartment Lot constructed thereon shall be inseparable, and any conveyance of an Apartment Lot shall operate to convey title to the Apartment Units constructed on the Apartment Lot. Likewise, any conveyance of the Apartment Units located upon the Apartment Lot shall operate to convey title to the Apartment Lot on which the Apartment Units are located.

2.12 Apartment Lot Owner shall mean any person or entity at any time owning in fee simple a Lot within the Apartment Community as such ownership is shown by the records of the County Recorder of the county in which the Apartment Community is located. The term "Apartment Lot Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.13 Apartment Unit shall mean each Apartment within a Building designed for separate residential use and occupancy as described in Section 5 hereof.

2.14 Assessable Apartment Lot shall mean each Apartment Lot, except for Exempt Apartment Lots.

2.15 Capital Improvement shall mean any new improvement with a useful life of more than three (3) years intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

2.16 City shall mean the City of Ogden, a political subdivision of Utah.

2.17 Common Apartment Assessments shall mean those assessments described in Section 19 to fund the Common Apartment Expenses, and which shall include Regular Common Apartment Assessments and Special Common Apartment Assessments.

2.18 Common Apartment Expense Account shall mean one or more deposit or investment accounts of the Apartment Association into which are deposited the Common Apartment Assessments.

2.19 Common Apartment Expenses shall mean all expenses of the administration, maintenance, repair, or replacement of the Apartment Common Areas and Facilities, Apartment Building exteriors, and all other expenses denominated as Common Apartment Expenses by this Apartment Declaration or by the Act.

2.20 Common Wall(s) means the walls in each Building that divide and are located between any two (2) adjoining Units in a Building. The Common Walls are used by the Owners of adjoining Units in a Building, and are subject to the provisions of Section 7.2 and the subsections thereof.

2.21 County means Weber County, Utah.

2.22 Declarant shall mean the entity identified in the opening paragraph of this Apartment Declaration.

2.23 Declarant Affiliate means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

2.24 Exempt Apartment Lot(s) shall mean (i) each Apartment Lot in the Apartment Community for which the Apartment Units thereon have not received a certificate of occupancy from the municipal authority having jurisdiction, regardless of who owns the Apartment Lot; and (ii) each Apartment Lot in the Apartment Community while owned by Declarant or a Declarant Affiliate until the one hundred eightieth (180<sup>th</sup>) day after the municipal authority having jurisdiction thereover issues a certificate of occupancy for all four (4) Apartment Units located upon such Apartment Lot. In addition, each Apartment Lot that does not contain fully-constructed Apartment Units shall be an "Exempt Apartment Lot," and each Apartment Lot containing a model unit owned by the Declarant shall be an "Exempt Apartment Lot" so long as the same contains a model unit used by the Declarant, a Declarant Affiliate, or their assign(s).

2.25 Master Association shall mean the home owners association of the Project, named Villas at the Pointe Master Owners Association, which association will be, or has been, organized as a Utah nonprofit corporation.

2.26 Master Association Board shall mean the Board of Directors of the Master Association, appointed or elected in accordance with the Master Declaration and the Master Bylaws.

2.27 Member shall mean any person or entity who is a member of the Apartment Association.

2.28 Mortgage shall mean any mortgage, deed of trust or other security instrument by which an Apartment Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering an Apartment Unit or any part thereof or interest therein.

2.29 Mortgagee shall mean (i) any persons or entities named as the Mortgagee or beneficiary under any Mortgage by which the interest of any Apartment Lot Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.

2.30 Period of Administrative Control means the period of time during which the Declarant shall have administrative control of the Apartment Association and the other rights and privileges as set forth in this Apartment Declaration. Following the recording of this Apartment Declaration, the Period of Administrative Control shall continue until such time as Declarant sees fit to, by written notice, transfer administrative control of the Apartment Association to the Apartment Lot Owners, but in no event shall the Period of Administrative Control extend beyond the date which is one hundred and eighty (180) days after a Certificate of Occupancy has been issued for one hundred percent (100%) of the Apartment Lots in the Apartment Community.

2.31 Plat shall mean the Villas at the Pointe Overall Plat, as filed of record in the county in which the Project is located, as the same may be amended, including the plats for subsequent phases of the Project and including plats for the Apartment Community.

2.32 Project shall mean the Property subject to the Master Declaration, Buildings, Units, Common Areas and Facilities and all improvements constructed in the master planned community, as approved by the applicable governmental authorities.

2.33 Regular Common Apartment Assessments shall mean the annual assessments levied by the Apartment Association to pay the budgeted Common Apartment Expenses.

2.34 Special Common Apartment Assessments shall mean assessments, which the Apartment Association may levy from time to time, in addition to the Regular Common Apartment Assessments, for unexpected Common Apartment Expenses or other purposes as provided herein.

2.35 Specific Apartment Assessments shall mean assessments which the Apartment Association may levy from time to time against an Apartment Lot Owner, in addition to Regular



Common Apartment Assessments and Special Common Apartment Assessments, for the purposes provided herein.

2.36 State shall mean the State of Utah, in which the Property is located.

2.37 Turnover Meeting shall mean the meeting described in Section 22.1.

### 3. DESCRIPTION OF APARTMENT COMMUNITY; EXPANDABLE APARTMENT COMMUNITY

3.1 The Apartment Community, identified in Exhibit A together with all additional phases of the Apartment Community, is, and henceforth shall be, held, occupied, transferred, sold, and conveyed subject to the Covenants set forth in this Apartment Declaration. The Apartment Community may be comprised of multiple phases, as shown on the portions of the Plat, both those now on record with the County Recorder's Office, and those to be recorded after the date of this Apartment Declaration. The Apartment Community is not a cooperative. As of the date of this Declaration, no portion of the Apartment Community is subject to the Condominium Association Act, Utah Code § 57-8-1 *et seq.* No portion of the Apartment Community may consist of condominiums subject to the Condominium Association Act without Declarant's express written consent.

3.2 The Buildings in the Apartment Community will be principally constructed of the following materials: Wooden frames with load bearing and non-load bearing walls studded with wood; hardiplank siding; glass openings; wooden joist floors and roofs; roof surfaces with asphalt shingles; interior walls surfaced with gypsum sheets. The exterior finishes may include some of the following: stucco, siding, and stone, hardiplank and/or masonry products.

3.3 Prior to the Turnover Meeting, the Apartment Community is expandable. Hence, following construction of the Buildings and improvements in the first phase of the Apartment Community, subsequent phases may also be constructed in accordance with the plat approvals and zoning requirements of the City. There is no guarantee that subsequent phases will be constructed or that the Apartment Community will be expanded. Declarant (or its assigns) shall have the sole discretion to determine if and when to apply for plat approval to develop and construct additional phases. If approved and constructed, the additional phases shall be annexed into, and made a part of, this Apartment Community by recording an instrument confirming the Declarant's intention to expand the Apartment Community to include the additional phase(s). Upon the recordation of such an instrument, the land and improvements against which the instrument is recorded shall automatically become part of the Apartment Community, subject to and governed by all of the terms and provisions of this Apartment Declaration.

### 4. CONFIRMATION OF SUBMISSION TO THE ACT.

Declarant hereby confirms and acknowledges that the Apartment Community is subject to the provisions of the Act. The Apartment Community is and shall be held, conveyed,

hypothecated, encumbered, leased, subleased, rented, used and improved as an Apartment community, subject to the Apartment Governing Documents. The Apartment Community is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations and obligations set forth herein, as well as the provisions of the Act, each and all of which are declared and agreed to be for the benefit of said Apartment Community. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Apartment Community and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Apartment Community, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

#### 5. DESCRIPTION OF UNITS, LOTS, AND BUILDINGS.

Within each Apartment Building, there shall be sixteen (16) or more Apartment Units, as shown on the Plat. Each Apartment Unit shall consist of the windows and doors of such dwelling, its perimeter walls (including the Apartment Building exterior surfaces that are appurtenant to such Unit), interior floors, interior walls, interior ceilings, and anything permanently affixed to such interior surfaces. In addition, each Apartment Lot shall consist of four (4) vertically stacked Apartment Units and all of the airspace above and the subsurface below the land and all of the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Apartment Lot lines shown on the Plat. By this provision, the Declarant intends each Apartment Building to be comprised of all of the physical improvements that pertain solely to the area in which the Apartment Building is located or pertain solely to the improvements within the Apartment Building, including, without limitation, all bearing walls, physical facilities, installations, lines, foundations, equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations that connect or provide service only to the applicable Apartment Building, subject to any Common Areas or Facilities as defined in the Master Declaration, or such Apartment Common Areas and Facilities or Apartment Limited Common Areas and Facilities as defined herein.

The roofs of the Apartment Buildings shall not be included in the definition of an Apartment Unit or Apartment Building and shall be considered Apartment Common Areas and Facilities to be maintained by the Apartment Association. Each Apartment Lot Owner shall own the Apartment Building exterior surfaces that are attached to his or her Units but the Apartment Association exclusively shall maintain all such exterior surfaces as the Apartment Association Board deems appropriate in its sole discretion. Utility meters or other Improvements may be attached to any portion of the exterior of an Apartment Building or Apartment Unit for the benefit of multiple Apartment Units within such Apartment Building or within adjoining or nearby Apartment Units. Such meters or common Improvements will be considered Apartment Common Areas and Facilities if they serve Apartment Units in more than one Apartment Lot and they shall be maintained by the Apartment Association, or, as applicable, the appropriate utility company.

#### 6. APARTMENT COMMON AREAS AND FACILITIES.

6.1 The Apartment Common Areas and Facilities shall mean and include the roofs of the Apartment Buildings and the common parking areas. This provision shall not be construed to require the construction or installation of any such common amenities or facilities.

6.2. No Apartment Lot Owner, directly or indirectly, shall make any alterations to any of the Apartment Common Areas and Facilities or other elements affecting the overall appearance of the Apartment Community without the prior written consent of the Apartment Board, including, without limitation, any changes to any of the exterior elements of the Apartment Units or Apartment Buildings, the paint color of the exterior of the Apartment Units or Apartment Buildings, the landscaping of the Apartment Community or any other Apartment Common Areas and Facilities.

7. APARTMENT LIMITED COMMON AREAS AND FACILITIES; COMMON WALLS.

7.1 Apartment Limited Common Areas and Facilities. Apartment Limited Common Areas and Facilities shall mean any portion of the Apartment Common Areas and Facilities reserved for the use of certain Apartment Units or Building to the exclusion of other Apartment Units or Apartment Buildings in the Apartment Community, including but not limited to any balconies, the fire riser room appurtenant to each Apartment Building, or other areas, if any, indicated by the Apartment Declaration or the Plat to be for the exclusive use of one or more but fewer than all of the Apartment Units or Apartment Buildings in the Apartment Community. Apartment Lot Owners may not reallocate Limited Apartment Common Areas and Facilities. Each Apartment Lot Owner shall be responsible for the Apartment Limited Common Area that is attached to and exclusively serves such Owner's Apartment Unit. When any Apartment Limited Common Area or Facility is attached to or serves multiple Units, the Owners of the Lots containing such Units shall be equally responsible for such Apartment Limited Common Area or Facility.

7.2 Common Walls. To the extent that any Apartment Units are connected by, or share, a common wall ("**Common Wall**"), the following provisions shall govern the use, maintenance, repair and restoration thereof:

7.2.1 Each Apartment Unit sharing a Common Wall with a different Apartment Unit shall provide such access as may be reasonably necessary to permit the Apartment Association and the Apartment Lot Owner of the other Apartment Unit sharing said Common Wall, and their respective agents and contractors, to maintain the integrity of the Common Wall, and to repair and restore it as necessary.

7.2.2 Should any Common Wall be damaged or destroyed by the negligence or other act or omission of an Apartment Lot Owner of one of the Apartment Units sharing the same, or said Apartment Lot Owner's agents, employees, invitees or guests, said Apartment Lot Owner shall be liable, at its sole cost and expense, for all necessary repairs or restoration of said Common Wall, and related damage to any Apartment Unit; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Owners of either Apartment Lot containing such Apartment Units sharing said Common Wall, or by the Apartment Association, shall first be applied toward the costs of repairing or restoring the Common Wall and related damages to the Apartment Units. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Apartment Lot Owners.

7.2.3 Should any Common Wall be damaged or destroyed by any cause other than the negligence, act or omission of the Apartment Lot Owner of either Apartment Unit sharing said Common Wall, or said Apartment Lot Owner's agents, employees, invitees or guests, the Owners of the Apartment Lots containing the Apartment Units sharing said Common Wall shall be equally liable for all necessary repairs or restoration of said Common Wall, and related damage to either Apartment Unit; provided, however, that any insurance proceeds received in connection with such damage or destruction from policies of insurance owned by the Owners of either Apartment Unit sharing said Common Wall, or by the Apartment Association, shall first be applied toward the costs of repairing or restoring the Apartment Common Wall and related damages to the affected Apartment Unit. All repairs or restorations to be completed pursuant to this subparagraph shall be completed to the reasonable satisfaction of the affected Apartment Lot Owners.

7.2.4 Should any party fail or refuse to complete the repairs or restorations imposed upon it by these provisions, the Apartment Association, after giving written notice to said party of its intention to do so, may undertake said repairs or restorations, and be entitled to reimbursement for all costs incurred in connection therewith from said party. Such reimbursement shall be made within thirty (30) days after the Apartment Association has completed the work and presented said party with a statement and demand for payment setting forth all costs incurred. The Apartment Association shall have a lien against the Apartment Lot of such Apartment Lot Owner to secure payment to the Apartment Association of all costs and expenses incurred in making the necessary repairs or restorations, and the Apartment Association shall be entitled to enforce said lien in the same manner as it is authorized to enforce assessment liens, including recovery of attorney fees, costs and interest.

7.2.5 In the event of a dispute or controversy between the Owners of Apartment Units sharing a Common Wall, as to any matter within or arising out of the provisions of this Article 7, or the respective use, maintenance, repair, or replacement of said Common Wall, such dispute or controversy shall be submitted to the Board of Directors of the Apartment Association for arbitration. The decision of the Board with respect to the issues presented shall be binding upon the parties involved. However, the Board of Directors may, in its discretion, decline to arbitrate any matter submitted to it in which case the parties to the dispute may pursue any legal option for resolution of their claims.

## 8. NATURE AND INCIDENTS OF LOT OWNERSHIP.

8.1. Each Apartment Lot is a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Apartment Declaration, subject to the Master Association's Governing Documents.

8.2. Subject to the limitations contained in this Apartment Declaration, each Apartment Lot Owner and the lawful residents of the Apartment Units thereon shall have the non-exclusive right to use and enjoy the Apartment Common Areas and Facilities, the exclusive right to occupy and use their Apartment Units and the exclusive (or semi-exclusive, as the case may be) right to

use any Apartment Limited Common Areas and Facilities designated for exclusive (or semi-exclusive) use by such Owner or resident, a limited group of Apartment Lot Owners, or all Apartment Lot Owners.

8.3. Except as otherwise provided herein, each Apartment Lot Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of their Apartment Units and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Apartment Lot Owner shall keep the interior of their Apartment Units, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In addition, each Apartment Lot Owner shall keep the balconies, patios and other Apartment Limited Common Area servicing the Apartment Units upon such Owner's Apartment Lot in a good state of repair. In the event that any such Apartment Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner should fail to correct such condition or state of disrepair promptly following written notice from the Apartment Board, the Apartment Board shall have the right, at the expense of the Apartment Lot Owner and without liability to the Apartment Lot Owner for trespass or otherwise, to enter said Apartment Unit (including any garages) and correct or eliminate said unsanitary condition or state of disrepair. The Apartment Association shall collect any costs or expenses incurred by the Apartment Association to correct or eliminate an unsanitary condition or state of disrepair by Specific Apartment Assessment against the applicable Apartment Lot. Owners of adjoining Apartment Lots may not reallocate or change the boundaries of such Apartment Lots unless they obtain the necessary approvals from the local city or county jurisdiction, which may include the requirement of formal plat amendment approval.

8.4. The Apartment Board shall have the right to enter into any Apartment Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity, and for the purpose of cleaning, maintaining or repairing any Apartment Common Areas and Facilities, Apartment Limited Common Areas and Facilities, or the exterior surfaces of the Apartment Buildings.

## 9. TITLE TO LOTS.

9.1 Title to an Apartment Lot may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State. Title to part of an Apartment Lot may not be separated from any other part thereof during the period of ownership, and each Lot shall always be conveyed, devised, encumbered and otherwise affected only as a complete Apartment Lot. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of an Apartment Lot, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Apartment Lot, together with all appurtenant rights created by law and by this Apartment Declaration, including appurtenant membership in the Apartment Association as herein set forth.

9.2 The Apartment Common Areas and Facilities shall be owned by the Apartment Association, and no Apartment Lot Owner may bring any action for partition thereof.

9.3 Each Apartment Lot Owner shall have the right to encumber such Owner's interest in an Apartment Lot with a Mortgage. However, no Apartment Lot Owner shall attempt to or shall have the right to encumber the Apartment Common Areas and Facilities or any part thereof. Any Mortgage of any Apartment Lot within the Apartment Community shall be subordinate to all of the provisions of this Apartment Declaration, and in the event of foreclosure the provisions of this Apartment Declaration shall be binding upon any Apartment Lot Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

9.4 Intentionally Left Blank.

9.5 Every contract for the sale of a Lot and every other instrument affecting title to an Apartment Lot within the Apartment Community shall incorporate all the rights incident to ownership of an Apartment Lot within the Apartment Community and all of the limitations on such ownership as described in this Apartment Declaration.

## 10. RESTRICTIONS ON USE.

The Apartment Lots, Apartment Buildings, Apartment Units, and Apartment Common Areas and Facilities, including but not limited to the Apartment Limited Common Areas and Facilities, except as otherwise permitted in writing by the Apartment Board, shall be used in accordance with the following restrictions, which restrictions shall also be applicable to any residents of an Apartment Unit:

10.1 Each Apartment Unit shall be used for residential purposes only. Notwithstanding the foregoing, home-based businesses which have no impact on the Apartment Community beyond the ordinary impact of residential use are permissible.

10.2 No noxious, destructive or offensive activity shall be carried on or placed in or upon any Apartment Unit or in the Apartment Common Areas, or Limited Apartment Common Areas, or any part thereof, which shall interfere with the legal rights of other Apartment Lot Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Apartment Lot Owner or to any person at any time lawfully residing in the Apartment Community. No activities shall be conducted, nor improvements constructed, in or upon any part of the Apartment Community which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, sheets, linen, bed sheets, newspapers, or any other similar materials may not be used to cover the windows in any Apartment Unit. The Apartment Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and the use restrictions applicable to the Apartment Units. Without limiting the breadth of the foregoing sentence: (i) no automobile or other vehicle shall be parked at any location within the Apartment Community which impairs or tends to impair vehicular or pedestrian access within the Apartment Community or to and from its various parts; (ii) no garments, rugs, or other household items, or wash lines of any kind may be hung, erected, or maintained outside of an Owner's Apartment Unit; (iii) no Apartment Lot Owner or occupant shall discard or permit any items to fall from the windows of such Owner's Unit; (iv) no dogs are permitted on common areas unless the dog is on a leash; and (v) each pet owner must immediately remove any animal droppings and dispose of them in a garbage container.

10.3 No signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices or campaign or political signs, shall be erected or maintained on any part of the Apartment Community, without the prior inspection and written approval of the Board, except as may be necessary temporarily to caution or warn of danger. If the Board consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Board.

10.4 No pets, animals, livestock or poultry of any kinds shall be bred in or kept on or about the Apartment Community, except as may be allowed by the Apartment Association in accordance with rules and regulations governing pets which may be promulgated by the Board. Pets shall not create a nuisance, and, without limitation, the following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unsanitary conditions; (c) defecating on any Apartment Common Areas and Facilities when the feces are not immediately cleaned up by the responsible party; (d) barking, howling, whining or making other disturbing noises in an excessive or continuous fashion; (e) harassing passersby by lunging at them or chasing vehicles; (f) attacking or threatening to attack people or other domestic pets; or (g) otherwise acting so as to unreasonably bother, annoy or disturb other residents or unreasonably interfering with their right of peaceful and quiet enjoyment of their Apartment Units. Pets in the Apartment Common Areas must be in a cage or on a leash at all times. Pets may not be tied or tethered in any Apartment Common Areas. The Board may establish and enforce rules and regulations governing pets within the Apartment Community and may charge a deposit for pets within the Apartment Community. No Apartment Lot Owner shall, without the prior written consent of the Apartment Board, make or permit to be made any alteration, improvement or addition in or to any portion of the Apartment Limited Common Areas and Facilities.

10.5 There shall be no obstruction of the Apartment Common Areas and Facilities by any Apartment Lot Owner. Apartment Lot Owners shall neither store nor leave any of their property in the Apartment Common Areas and Facilities, other than Apartment Limited Common Areas and Facilities appurtenant to such Owner's Apartment Unit, except with the prior consent of the Board.

10.6 Nothing shall be done or kept in any Apartment Unit or in the Apartment Common Areas and Facilities or any part thereof, which would result in cancellation of the insurance on the Apartment Community or any part thereof, nor shall anything be done or kept in any Apartment Unit which would increase the rate of insurance on the Apartment Community or any part thereof over what the Apartment Association, but for such activity, would pay, without the prior written consent of the Apartment Board. Nothing shall be done or kept in any Apartment Unit or in the Apartment Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Apartment Common Areas and Facilities or any part thereof shall be committed by any Apartment Lot Owner or guest, lessee, licensee or invitee of any Apartment Lot Owner, and each Apartment Lot Owner shall indemnify and hold the Apartment Association and the other Apartment Lot Owners harmless against all loss resulting from any such damage or waste caused by such Owner or such Owner's guests, lessees, licensees or invitees.

10.7 Each Apartment Lot Owner shall comply strictly with all reasonable rules and regulations adopted by the Apartment Association for the governance of the Apartment Units, the Apartment Common Areas, and the Apartment Community, as such rules and regulations may be modified, amended and construed by the Apartment Association in the sole discretion of its Board.

10.8 Any lease of an Apartment Unit shall be subject to the following:

10.8.1 Declarant shall appoint a Preferred Property Manager and enter into a written Property Management Agreement, which shall include the Preferred Property Manager's rights to manage the leasing of at least eighty percent (80%) of the Units (the "**80% Rule**"). The Property Management Agreement shall have an initial term of two (2) years after the expiration of the Period of Administrative Control, unless terminated earlier in Declarant's sole discretion. Thereafter, the Board shall select the Preferred Property Manager and enter into a written Property Management Agreement, which shall include a minimum initial term of two (2) years and maximum term of three (3) years, notwithstanding any automatic annual renewals as set forth in the Agreement. In the event the Board elects to not renew or enter into a new written agreement with the Declarant's Preferred Property Manager, the Declarant's Preferred Property Manager shall have the right to request a hearing and put the matter to a vote of the Apartment Owners of the Apartment Association. Any Property Management Agreement hereunder shall also include termination and default provisions.

10.8.2 Each Apartment Owner leasing such Owner's Apartment Unit shall be required to submit to the Apartment Board a Notice of Lease in which such Owner provides the names, phone numbers and email addresses of the lessee. The Notice of Lease shall also state whether such Apartment Owner will use the Preferred Property Manager to administer such Owner's lease or if the Apartment Owner is applying to the Apartment Board to utilize a third-party property manager. No Apartment Owner may utilize a third-party property manager without the written consent of the Apartment Board. The Apartment Board shall be bound by the 80% Rule in determining whether to grant such consent. Any such consent shall be automatically terminated upon a change in ownership of the Apartment Unit. If more than twenty percent (20%) of the Apartment Owners leasing such Owner's Apartment Unit desire to contract with a third-party property manager, the Apartment Board shall maintain a waiting list and consent shall be granted in chronological order. Each Apartment Owner shall be responsible for negotiating and entering into a property management agreement with the Preferred Property Manager of the third-party property manager, as applicable.

## 11. ASSOCIATION AND BOARD OF DIRECTORS.

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



the same proportionate interest and by the same type of tenancy in which title to the Apartment Lot is held. An Apartment Lot Owner shall be entitled to one membership for each Apartment Unit located on an Apartment Lot owned by such Owner. Each membership shall be appurtenant to the Apartment Lot to which it relates and shall be transferred automatically by conveyance of that Apartment Lot. Ownership of an Apartment Lot within the Apartment Community cannot be separated from the Apartment Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of an Apartment Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Apartment Association and the rights appurtenant thereto. No person or entity other than an Apartment Lot Owner may be a member of the Apartment Association, and membership in the Apartment Association may not be transferred except in connection with the transfer of an Apartment Lot.

11.2 The Apartment Association shall be governed by the following provisions:

11.1.1. The management and maintenance of the Apartment Community and the administration of the affairs of the Apartment Association shall be conducted by an Apartment Board of Directors consisting of at least three (3) natural persons as provided in the Apartment Bylaws. The Apartment Board shall be appointed or elected as provided in this Apartment Declaration and in the Apartment Bylaws. Notwithstanding the foregoing, the Declarant shall have the exclusive right to appoint, remove and replace all members of the Apartment Board during the Period of Administrative Control and, during such time, may authorize one or more persons to exercise some or all of the powers that would otherwise be exercised by the Apartment Board of Directors.

11.1.2. Except as otherwise provided herein, the Apartment Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Apartment Declaration and the Apartment Bylaws, including but not limited to the following:

11.1.2.1. To make and enforce all rules and regulations covering the operation and maintenance of the Apartment Community, the Apartment Buildings, and the Apartment Units.

11.1.2.2. To carry out through the Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Apartment Association or Apartment Board, shall be responsible for managing the Apartment Community for the benefit of the Apartment Association and the Apartment Lot Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Apartment Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Apartment Board itself. The cost of retaining or employing the Manager shall be a Common Apartment Expense.

11.1.2.3. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as determined by the Apartment Board.

11.1.2.4. To operate, maintain, repair, improve and replace the Apartment Common Areas and Facilities and the exterior surfaces of the Apartment Buildings.

11.1.2.5. To determine and pay the Common Apartment Expenses.

11.1.2.6. To assess and collect the proportionate share of Common Apartment Expenses from the Apartment Lot Owners, as provided in Section 19 hereinafter.

11.1.2.7. To levy Specific Apartment Assessments on Apartment Lot Owners, as provided in Section 19.

11.1.2.8. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

11.1.2.9. To open bank accounts on behalf of the Apartment Association and to designate the signatories therefor.

11.1.2.10. To purchase, hold, sell, convey, mortgage or lease any one or more Apartment Units in the name of the Apartment Association or its designee.

11.1.2.11. To bring, prosecute and settle any lawsuit, binding arbitration, mediation, or governmental proceeding for itself, the Apartment Association and the Apartment Community, provided that it shall make no settlement which results in a liability against the Apartment Board, the Apartment Association or the Apartment Community in excess of \$25,000.00, without the prior approval of a majority of the total votes of the Apartment Association at a meeting or by written ballot distributed to Apartment Lot Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Apartment Association's insurance carrier and which in either case results in no actual liability of funds of the Apartment Association in excess of \$20,000 shall not require Apartment Association approval.

11.1.2.12. To obtain insurance for the Apartment Association with respect to the Apartment Buildings and Apartment Units and the Apartment Common Areas and Facilities, as well as worker's compensation insurance, as needed.

11.1.2.13. To repair or restore the Apartment Community following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain, or by an action or deed in lieu of condemnation not resulting in the removal of the Apartment Community from the provisions of the Act.

11.1.2.14. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Apartment Lot Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Apartment Association and the Apartment Board and to the operation of the Apartment

Community, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

11.1.2.15. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Apartment Community by Apartment Lot Owners in accordance with the terms of the Apartment Bylaws. The Apartment Association or the Apartment Board shall make available to the Apartment Lot Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Apartment Unit current copies of the Apartment Governing Documents and other rules governing the Apartment Community and other books, records and financial statements of the Apartment Association to the extent and in the manner required by law.

11.1.2.16. To do all other acts necessary for the operation and maintenance of the Apartment Community, including the maintenance and repair of any Apartment Unit if the same is necessary to protect or preserve the Apartment Community.

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

11.1.2.18. To grant conveyances, easements and rights-of-way over the Apartment Common Areas and Facilities.

11.1.2.19. To comply with Section 19.4 of this Apartment Declaration.

11.1.3. Members of the Apartment Board, the officers and any assistant officers, agents and employees of the Apartment Association (i) shall not be liable to the Apartment Lot Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Apartment Lot Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Apartment Association in their capacity as such; (iii) shall have no personal liability in tort to any Apartment Lot Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Apartment Community, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

11.1.4. When a member of the Apartment Board is sued for liability for actions undertaken in his role as a member of the Apartment Board, the Apartment Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Apartment Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Apartment

Board who so acted. Notwithstanding the foregoing, in any lawsuit initiated by the Apartment Board against a member of the Apartment Board, the Apartment Association is only obligated to indemnify or undertake any costs of defense of the Apartment Board member if a court of competent jurisdiction rules him to be the prevailing party. Members of the Apartment Board are not personally liable to the victims of crimes occurring at the Apartment Community. Punitive damages may not be recovered against the Apartment Association, but may be recovered from persons whose gross negligence gave rise to the damages.

11.1.5. Neither the Apartment Board nor the Manager, if any, shall sell any portion of the Apartment Community except as permitted by the Act and this Apartment Declaration.

## 12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

12.1 The Apartment Board, acting on behalf of the Apartment Association and, subject to the rights and duties of the Apartment Lot Owners as set forth in this Apartment Declaration, shall be responsible for the exclusive management and control of the Apartment Common Areas and Facilities and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair. The Apartment Board shall be responsible for the maintenance and repair of the Apartment Common Areas and Facilities and the exterior surfaces of the Apartment Buildings, including the roofs of the Apartment Units, and other improvements and grounds designated as Apartment Common Areas and Facilities, the painting thereof, repair and replacement of exterior trim, siding, railings, roofs and fences. The costs associated with the maintenance, replacement and repair of the Apartment Common Areas and Facilities and the exterior surfaces of the Apartment Buildings shall be a Common Apartment Expense.

12.2 Some of the Apartment Common Areas and Facilities, Apartment Limited Common Areas, or exterior surfaces of the Apartment Buildings for which the Apartment Association is responsible are or may be located within the Apartment Buildings, attached to the exterior of the Apartment Buildings, or may be conveniently accessible only through the Apartment Units. The Apartment Association shall have the irrevocable right to have access to each Apartment Unit in order to access, maintain, repair and/or replace, as necessary, all Apartment Common Areas and Facilities and the exterior surfaces of the Apartment Buildings from time to time during such reasonable hours as may be necessary, or for making any emergency repairs at any time and when necessary to prevent damage to the Apartment Common Areas and Facilities or to any Apartment Unit. The Apartment Association shall also have the irrevocable right to have access to any Apartment Unit when deemed necessary by the Apartment Board in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Apartment Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Apartment Lot Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Apartment Association.

12.3 Subject to Declarant's rights during the Period of Administrative Control, additions or Capital Improvements to the Apartment Community which are the responsibility of the Apartment Association and which cost no more than \$25,000 may be authorized by the Apartment

Board alone. Such additions or Capital Improvements the cost of which exceed \$25,000 and which are not part of the Apartment Board-approved annual budget of the Apartment Association must, prior to being constructed, be authorized by at least a majority of the undivided ownership in the Apartment Community. Any additional or Capital Improvements which would materially alter the nature of the Apartment Community must, regardless of its cost and prior to being constructed, be authorized by at least sixty-seven percent (67%) of the Apartment Community's undivided ownership interest. For purposes of this Section 12.3, "materially alter the nature of the Apartment Community" shall mean any addition or Capital Improvement that changes the Apartment Community from residential to any other use, such as commercial or any form of timesharing. Notwithstanding anything to the contrary in this Apartment Declaration, any actions under this Section 12.3 shall be subject to the approval of the Master Association Board.

### 13. INSURANCE.

13.1 The Apartment Association shall at all times maintain in force insurance meeting the following requirements:

13.1.1. Subject to Utah Code § 57-8a-405, blanket property insurance or guaranteed replacement cost insurance on the physical structure of all Apartment Units (not including the interior thereof), Apartment Limited Common Areas appurtenant to Units on a Lot and Apartment Common Areas in the Apartment Community, insuring against all risk of direct physical loss commonly insured against, including fire and extended coverage perils. The master or blanket policy of property insurance shall include: Apartment fixtures, building service equipment, personal property and supplies comprising a part of the Apartment Common Areas or Facilities or owned by the Apartment Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or "blanket" type policy of property insurance are intended to denote single entity insurance coverage. As a minimum, such "master" or "blanket" policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Apartment Community in construction, location, and use, including (without limitation) all perils normally covered by the standard "all risk" endorsement, where such endorsement is available. Such "master" or "blanket" policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Apartment Community covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Board deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent of the property's insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Board otherwise determines, the maximum deductible amount for such a policy covering the Apartment Common Areas and Facilities shall be Ten

Thousand Dollars (\$10,000) and for losses related to individual Apartment Units that are covered by such a policy, the maximum deductible related to each individual Unit shall be Ten Thousand Dollars (\$10,000.00). Funds to cover these deductible amounts shall be included in the Apartment Association's operating reserve account.

13.1.2. Subject to Utah Code § 57-8a-406, liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Apartment Common Areas and Facilities, Apartment Building exteriors, public ways in the Apartment Community, all other areas of the Apartment Community that are under the Apartment Association's supervision, and any commercial spaces owned by the Apartment Association, if any, whether or not such spaces are leased to some third party. The coverage limits under such policy shall be in amounts generally required by private institutional mortgage investors for projects similar to the Apartment Community in construction, location, and use. Nevertheless, such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under such policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance, or use of the Apartment Common Areas and Facilities, Apartment Building exteriors, and legal liability arising out of lawsuits related to employment contracts of the Apartment Association. Additional coverages under such policy shall include protection against such other risks as are customarily covered with respect to projects similar to the Apartment Community in construction, location, and use, including but not limited to (where economically feasible and if available), host liquor liability, contractual and all-written contract insurance, employers liability insurance, and comprehensive automobile liability insurance. If such policy does not include "severability of interest" in its terms, the policy shall include a special endorsement to preclude an insurer's denial of any Apartment Lot Owner's claim because of negligent acts of the Apartment Association or any other Apartment Lot Owner. Such policy shall provide that it may not be canceled or substantially modified, by any party, without at least ten (10) days' prior written notice to the Apartment Association and to each First Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

13.1.3. The Apartment Association shall at all times maintain in force and pay the premiums for "blanket" fidelity bonds for all officers, members, and employees of the Apartment Association and for all other persons handling or responsible for funds of or administered by the Apartment Association whether or not that individual receives compensation for services. Furthermore, where the Apartment Association has delegated some or all of the responsibility for the handling of funds to the Manager, the Manager shall provide "blanket" fidelity bonds, with coverage identical to such bonds required of the Apartment Association, for the Manager's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Apartment Association. The total amount of fidelity bond coverage required shall be based upon the Apartment Association's best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Apartment Association, or the Manager, as the case may be, at any given time during the term of each bond. The bonds

required shall meet the following additional requirements: (1) the fidelity bonds shall name the Apartment Association as obligee; (2) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms or expressions; (3) the premiums on all bonds required herein for the Apartment Association (except for premiums on fidelity bonds maintained by the Manager for its officers, employees and agents) shall be paid by the Apartment Association as part of the Apartment Common Expenses; and (4) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days’ prior written notice to the Apartment Association.

13.1.4. Each policy required to be maintained by the foregoing Sections shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Apartment Community is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days’ prior written notice to the Apartment Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.1.5. Each policy required to be maintained by the foregoing Sections shall provide, if available, for the following: a waiver of the right of subrogation against Apartment Lot Owners individually; the insurance is not prejudiced by any act or neglect of individual Apartment Lot Owners which is not in the control of such Owners collectively or the Apartment Association; and the policy is primary in the event the Apartment Lot Owner has other insurance covering the same loss.

13.1.6. In contracting for the policies of insurance required to be maintained by the foregoing Section 13.1, the Board shall make reasonable efforts to secure, if the Board deems such advisable, coverage which provides the following endorsements: (1) “Inflation Guard Endorsement” (2) “Building Ordinance or Law Endorsement”, if the enforcement of any building, zoning, or land use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs. (The endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “Steam Boiler and Machinery Coverage Endorsement”, if the Apartment Community has central heating or cooling, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the Apartment Building containing the boiler or machinery. In lieu of obtaining this as an endorsement to the commercial package property, the Apartment Association may purchase separate stand-alone boiler and machinery coverage.

13.1.7. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Apartment Association, the Apartment Association’s authorized representative, including any trustee with whom the Apartment Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as

the “Insurance Trustee”), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Apartment Lot Owner hereby appoints the Apartment Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Apartment Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Apartment Lot Owners and their Mortgagees, as their interests may appear.

13.1.8. Each insurance policy maintained hereunder shall be written by an insurance carrier which is licensed to transact business in the State and which has a B general policyholder’s rating or a financial performance index of 6 or better in the Best’s Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd’s of London. No such policy shall be maintained where: (1) under the terms of the carrier’s charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Apartment Lot Owner, a Mortgagee, the Board, or the Apartment Association; (2) by the terms of the carrier’s charter, bylaws, or policy, loss payments are contingent upon action by the carrier’s board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Board, the Apartment Association, or Apartment Lot Owner) from collecting insurance proceeds. The provisions of this Section 13 shall not be construed to limit the power or authority of the Apartment Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Apartment Association may deem appropriate from time to time.

If the Apartment Board becomes aware that property insurance under Subsection 13.1.1 or liability insurance under Section 13.1.2 is not reasonably available, the Apartment Board shall, within seven calendar days after becoming aware, give all Apartment Lot Owners notice, as provided in Utah Code 57-8a-214, that the insurance is not reasonably available. The Apartment Board may adopt insurance rules and policies to maintain the insurance required under this Section and keep the premiums reasonable.

13.2 Insurance Company. The Apartment Association shall use an insurance company knowledgeable with community association insurance that is licensed in Utah.

13.3 Premium as Common Apartment Expense. The premiums for the Apartment Association’s insurance policies shall be a Common Apartment Expense.

13.4 Payment of Deductible. Payment of the Apartment Association’s property insurance deductible in connection with a loss shall be governed by Utah Code § 57-8a-405. The Apartment Association shall set aside an amount equal to the amount of the Apartment Association’s property insurance policy deductible or, if the policy deductible exceeds \$10,000, an amount not less than \$10,000. Each Apartment Lot Owner shall be required to maintain a H06



policy of insurance in the amount of the Apartment Association's property insurance deductible, which shall initially be \$10,000.00.

13.5 Insurance Proceeds. If an insurable loss to the Apartment Common Areas occurs, the Apartment Association shall use the insurance proceeds to restore the Apartment Common Areas to their original or better condition.

13.6 Obligation of Apartment Lot Owner to Repair and Restore.

13.6.1 In the event of any damage or destruction of the improvements on an Apartment Lot, the insurance proceeds, unless retained by a Mortgagee of such Lot, shall be applied first to the repair, restoration, or replacement of the insured Improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such Improvements originally constructed; unless the Apartment Lot Owner desires to construct Improvements differing from the original, in which event the Apartment Lot Owner shall submit plans and specifications for the improvements to the Master Board and obtain its approval prior to commencing the repair, restoration or replacement.

13.6.2 If any Owner of an improved Apartment Lot fails to maintain the insurance required by this Article, the Apartment Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance. Such Apartment Lot Owner shall be personally liable to the Apartment Association for any costs incurred by the Apartment Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Apartment Lot Owner to pay such costs within 10 days after such Owner's receipt of a written demand therefor from the Apartment Association, the Apartment Association may establish a lien therefor upon such Owner's Lot in accordance with and subject to the provisions of this Apartment Declaration applicable to an assessment lien.

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

14. DESTRUCTION OR DAMAGE.

14.1 All of the Apartment Lot Owners irrevocably constitute and appoint the Apartment Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Apartment Association's responsibilities under this Apartment Declaration upon damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Apartment Lot Owner shall constitute an appointment by said grantee of the Apartment Association as such Owner's attorney-in-fact as herein provided. As attorney-in-fact, the Apartment Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an

Apartment Lot Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Apartment Association except as otherwise provided in this Apartment Declaration.

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

14.3 To the extent the Apartment Association is responsible under this Apartment Declaration for any portion of the Apartment Community that has been damaged or destroyed, the Apartment Association shall proceed as follows:

14.3.1 The Apartment Association shall give timely written notice to any holder of any First Mortgage on an Apartment Unit who requests such notice in writing in the event of substantial damage to or destruction of any part of the Apartment Common Areas or Facilities or an Apartment Unit subject to such First Mortgage.

14.3.2 As soon as practicable after an event causing damage to or destruction of any part of the Apartment Community, the Apartment Association shall obtain complete and reliable estimates of the costs to repair and reconstruct the part of the Apartment Community damaged or destroyed.

14.3.3 If the proceeds of the insurance maintained by the Apartment Association equal or exceed the estimated costs to repair and reconstruct the damaged or destroyed part of the Apartment Community, such repair and reconstruction shall be carried out.

14.3.4 If the proceeds of the insurance maintained by the Apartment Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Apartment Community and if less than seventy-five percent (75%) of the Apartment Community is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Apartment Association shall levy a Special Common Apartment Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Apartment Assessment shall be allocated and collected as provided in Section 19.1.4 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

14.3.5 If the proceeds of the insurance maintained by the Apartment Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Apartment Community and if seventy-five percent (75%) or more of the Apartment Community is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Apartment Lot Owners entitled to vote at least seventy-five percent (75%) of the votes of the total votes of the Association vote to carry out such repair and

reconstruction. If, however, the Apartment Lot Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the total votes of the Association to carry out such repair and reconstruction, the Apartment Association shall record in the office of the County Recorder of Weber County, State, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

14.3.5.1 The Apartment Community shall be subject to an action for partition at the suit of any Apartment Lot Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Apartment Community, if any, shall be considered as one fund and shall be divided among all Apartment Lot Owners in an amount equal to the pro-rata interests of the Owners in the Apartment Community.

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

14.3.6 If the damage or destruction is to be repaired or reconstructed as provided above, the Apartment Association shall, as soon as practicable after receiving the said estimate of costs, commence and diligently pursue to completion the repair and reconstruction of that part of the Apartment Community damaged or destroyed. The Apartment Association may take all necessary or appropriate action to effect the repair and reconstruction, as attorney-in-fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith, except as otherwise expressly provided herein. The Apartment Community shall be restored or repaired to substantially the same condition in which it existed prior to the damage or destruction, with each Apartment Unit and the Apartment Common Areas and Facilities having the same vertical and horizontal boundaries as before. Any restoration or repair of the Apartment Community, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Apartment Declaration and the original architectural plans and specifications.

14.3.7 If repair or reconstruction is to occur, the insurance proceeds held by the Apartment Association and any amounts received from Common Apartment Assessments shall constitute a fund for the payment of costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair and reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Apartment Lot Owners equally.

14.3.8 If any Apartment Lot Owner (or the family members, guests, tenants or invitees of such Owner) causes any damages to or destruction of any Apartment Common Areas and Facilities, any Apartment Limited Common Areas, or any exterior surface of the Apartment Buildings, said Owner shall be fully responsible for all costs reasonably incurred to repair the damage or replace any items that need to be replaced as a result of the damage. All costs incurred by the Apartment Association in connection with such

repair and/or replacement shall be secured by a lien in favor of the Apartment Association, and the Apartment Association shall have the same rights with respect to collection of said amounts and/or enforcement of the lien as it does with respect to collection of assessments and enforcement of the lien securing payment of assessments as set forth in Section 19 below.

14.3.9 The Apartment Association's obligations under this Section 14 are limited by the authority granted to the Apartment Association under this Apartment Declaration.

## 15. TERMINATION.

This Apartment Association may only be terminated by an affirmative vote of the members of the Apartment Association entitled to vote at least sixty-seven percent (67%) of the total votes of the Apartment Association at a meeting of the Apartment Association duly called for such purpose at which a quorum is present and with any and all approvals necessary from the governing city or county with jurisdiction over the Project. In addition, the Apartment Association may only be terminated by an affirmative vote of the members of the Master Association entitled to vote at least sixty-seven percent (67%) of the total votes of the Master Association at a meeting of the Master Association duly called for such purpose at which a quorum is present and with any and all approvals necessary from the governing city or county with jurisdiction over the Project. Notwithstanding the foregoing, during the Period of Administrative Control, the Apartment Community may only be terminated if the Declarant approves termination of the Apartment Community.

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## 17. MORTGAGEE PROTECTION.

17.1 To the extent and in the manner required by the law, the Apartment Association shall maintain and have current copies of the Apartment Governing Documents and other rules concerning the Apartment Community as well as its own books, records, and financial statements available for inspection by Apartment Lot Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Apartment Lots in the Apartment Community. Generally, these documents shall be available during normal business hours.

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

17.3 In the event any taxes or other charges which may or have become a lien on the Apartment Common Areas and Facilities are not timely paid, or in the event the required hazard insurance described in 13.1.1 lapses, is not maintained, or the premiums therefore are not paid when due, any Mortgagee or any combination of Mortgagees may jointly or singly, pay such taxes or premiums or secure such insurance. Any Mortgagee which expends funds for any of such purposes shall be entitled to immediate reimbursement therefor from the Apartment Association.

17.4 No provision of this Declaration or the Apartment Articles gives or may give an Apartment Lot Owner or any other party priority over any rights of Mortgagees pursuant to their respective Mortgages in the case of a distribution to Apartment Lot Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Apartment Units or the Apartment Common Areas and Facilities.

## 18. AMENDMENT.

18.1 Except during the Period of Administrative Control, and except as provided elsewhere in this Declaration, this Declaration may be amended by affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of at least sixty-seven percent (67%) of the total votes of the Apartment Association and an affirmative vote of at least sixty-seven percent (67%) of the total votes of the Master Association. Notwithstanding the foregoing, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Weber County Recorder of an instrument executed by the Apartment Association and the Master Association. In such instrument an officer or a member of the Board of the Apartment Association and a member of the Master Association shall certify that the vote required by this Section for amendment has occurred.

18.2 Notwithstanding anything to the contrary in this Apartment Declaration, Declarant has the right to unilaterally amend, modify, extend or revoke this Declaration for any purpose during the Period of Administrative Control, so long as a copy of the written amendment is provided to all other Apartment Lot Owners. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary: (1) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (2) to enable any reputable title insurance company to issue title insurance coverage on any Apartment Lot or Apartment Unit; (3) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Apartment Lot; or (4) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment occurring after the Period of Administrative Control shall not adversely affect the title to any Apartment Lot unless the Owner of such Lot shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

19. ASSESSMENT OF APARTMENT LOTS BY THE APARTMENT ASSOCIATION.

19.1 The making and collection of Common Apartment Assessments by the Apartment Association from Owners of Apartment Lots for their share of Common Apartment Expenses shall be pursuant to the Apartment Bylaws and subject to the following provisions:

19.1.1. Declarant, for each Apartment Lot owned by Declarant which does not contain an Exempt Apartment Unit, and each Apartment Lot Owner, other than Declarant, by becoming an Owner of an Apartment Lot that does not contain an Exempt Apartment Unit, is deemed to covenant and agree to pay Assessments to the Apartment Association in accordance with this Declaration. Each Apartment Lot in the Apartment Community (except for those containing Exempt Apartment Units) shall be liable for an equal share of the Common Apartment Expenses of the Apartment Association; provided, however, that the portion of the Common Apartment Expenses which is attributable solely to certain categories of Apartment Lot Owners, if such Apartment Lot Owners receive services from the Apartment Association which are not provided to all Apartment Lot Owners, or attributable to Benefitted Apartment Areas, will be apportioned only to the affected category of Apartment Lot Owners. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Apartment Expenses, and the funds received from Common Apartment Assessments under this Article 19 shall be the Common Apartment Expense Account. Common Apartment Assessments shall include both Regular Common Apartment Assessments and Special Common Apartment Assessments. Regular Common Apartment Assessments must be made at least annually, based on a budget adopted at least annually by the Apartment Association in accordance with the provisions of this Declaration and the Apartment Bylaws. Regular Common Apartment Assessments shall be levied against each separate Apartment Lot annually.

19.1.2. At any time during the Period of Administrative Control, and without the consent of any Apartment Lot Owner being required, the Declarant may create, modify, or discontinue one or more benefitted service areas (each, a “**Benefitted Apartment Area**”) which receive certain services or benefits from the Apartment Association which the Apartment Association does not provide to all areas of the Apartment Community. Alternatively, a Benefitted Apartment Area may receive the same services or benefits which the Apartment Association provides to other areas within the Apartment Community but at a higher level or more frequent occurrence than is otherwise applicable to other areas within the Apartment Community. Lots within the Apartment Community may be located within more than one Benefitted Apartment Area. A Benefitted Apartment Area may contain Lots or other parcels within the Apartment Community which are not contiguous. After the Period of Administrative Control, such Benefitted Apartment Areas shall continue unless the Apartment Board discontinues the Benefitted Apartment Areas; provided, however, that any such action must have the approval of at least sixty-seven percent (67%) of the Owners of Lots within the affected Benefitted Apartment Area. In connection with the budget, the Apartment Board will identify with specificity the allocation of the portion of Common Apartment Expenses which is attributable to each Benefitted Apartment Area and the basis for that allocation.

19.1.3. The Apartment Association may not impose a Regular Common Apartment Assessment per Apartment Lot which is more than twenty percent (20%) greater than the previous year's Regular Common Apartment Assessment, without first obtaining the vote of Apartment Lot Owners, constituting a quorum, casting a majority of the total votes of the Association at a meeting of the Apartment Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Apartment Lots. The Apartment Association shall provide notice, by first class mail or by email transmission to all Apartment Lot Owners, of any increase in the Regular Common Apartment Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date the increased Regular Common Apartment Assessment is due.

19.1.4. In addition to the Regular Common Apartment Assessments, the Apartment Association may levy in any calendar year, Special Common Apartment Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Apartment Board shall not, without the vote or written assent of Apartment Lot Owners, casting a majority of the total votes of the Apartment Association at a meeting or by written ballot, levy Special Common Apartment Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Apartment Association for that fiscal year. All Apartment Lots within the Apartment Community, except for such Lots containing Exempt Apartment Units, shall pay an equal portion of any Special Common Apartment Assessment, except to the extent that Declarant has established a Benefitted Apartment Area in which case the expenses shall be allocated among the Apartment Lot Owners benefitting from such Benefitted Apartment Area. These provisions with respect to the imposition or allocation of Special Common Apartment Assessments shall not apply when the special assessment is to pay an increase in real property taxes. The Apartment Board shall provide notice by first class mail or by email transmission to all Apartment Lot Owners of any Special Common Apartment Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Apartment Assessment is due. Special Common Apartment Assessments shall be paid as determined by the Apartment Board and the Apartment Board may permit Special Common Apartment Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Apartment Assessment is imposed.

19.1.5. The Apartment Association may also levy a Specific Apartment Assessment against an Apartment Lot Owner: (1) to reimburse the Apartment Association for costs incurred in bringing such Owner and/or an Owner's Apartment Unit into compliance with the provisions of this Declaration, the Apartment Bylaws, rules and regulations of the Apartment Association or any other governing instrument of the Apartment Community; (2) to cover costs incurred as a consequence of the conduct of the Apartment Lot Owner or occupants of such Owner's Apartment Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Apartment Board shall give the Apartment Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Apartment Bylaws, before levying a Specific Apartment Assessment for this purpose; or (3) to pay the costs, including overhead and administrative costs, of providing services to the Apartment Lot Owner or the Owner's Unit in accordance with this Declaration, including the provisions of Section 20, or pursuant to any menu of special

services which may be offered by the Apartment Association or the Manager. Specific Apartment Assessments for special services may be levied in advance of the provision of the requested service.

19.1.6. All Apartment Assessments shall be due as determined pursuant to this Declaration and the Apartment Governing Documents. Apartment Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. In addition, Apartment Lot Owners who do not pay their Common Apartment Assessments when due shall be subject to a late fee of up to One Hundred dollars (\$100.00), adjustable from year to year at the discretion of the Board. All payments of Apartment Assessments shall be first applied to accrued interest and late fees, and then to the Apartment Assessment payment first due. All Apartment Assessments to pay a judgment against the Apartment Association may be made only against the Apartment Lots in the Apartment Community at the time the judgment was entered, in proportion to their liabilities for Common Apartment Expenses. If any Common Apartment Expense is caused by the misconduct of any Apartment Lot Owner or the occupant of such Owner's Apartment Unit, the Apartment Association may assess that expense exclusively against such Owner's Lot. If the Owners' percentage interests in the Apartment Common Areas and Facilities are reallocated, assessments for Common Apartment Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Apartment Lot Owners.

19.1.7. There shall be a lien upon the applicable Apartment Lot for all unpaid Apartment Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to this Declaration and the Act. The lien for unpaid Apartment Assessments and related charges shall be effective upon recordation in the Office of the Weber County Recorder of a written notice of lien by the Apartment Board or the Manager. The written notice of lien shall set forth the amount of the Apartment Assessment, the date(s) due, the amount remaining unpaid, the name of the Apartment Lot Owner, and a description of the Apartment Lot. No notice of lien shall be recorded until there is a delinquency in payment of the Apartment Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the State for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1a, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Apartment Lot Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Apartment Lot Owner shall also be required to pay to the Apartment Association any Apartment Assessments against the Apartment Lots which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Apartment Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Lots in the name of the Apartment Association. In furtherance of such foreclosure



rights, the Apartment Association may bring an action at law against the Apartment Lot Owner personally obligated to pay the same or the Apartment Association may foreclose the lien in accordance with the provisions of the Act. The Apartment Board hereby appoints B. Scott Welker, Esq., of Miller Harrison LLC, 5292 S. College Drive, Suite 304, Murray, UT 84123, as trustee for the purposes of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8a Utah Code Ann. Provided, however, the Apartment Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to B. Scott Welker, with power of sale, the Apartment Lots and all improvements to such Lots for the purpose of securing payment of Assessments under the terms of this Declaration. Each Apartment Lot Owner also hereby conveys all of its right, title and interest in its Apartment Lot to such trustee, in trust, with a power of sale, to secure each Owner's obligations under this Declaration, including but not limited to the obligation to pay all Apartment Assessments. The Apartment Association may, through its duly authorized agents, bid on the Apartment Lots at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Apartment Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on an Apartment Lot as provided for in Section 17.2 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Apartment Lots. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Apartment Association from taking a deed in lieu of foreclosure. The Apartment Board, upon written request, shall furnish to an Apartment Lot Owner a statement setting forth the amount of unpaid Assessments against the Apartment Lots. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Apartment Association, the Apartment Board, the Manager and every Apartment Lot Owner, in favor of all who rely on such statement in good faith.

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

19.1.9. The personal obligation of an Apartment Lot Owner to pay unpaid Assessments against such Owner's Apartment Lot as described in Section 19.1.7 shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid assessments shall not be impaired, nullified or otherwise affected by the sale or transfer of the Lot unless foreclosure by a First Mortgagee is involved in which case the

foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Apartment Assessments.

19.1.10. All Exempt Apartment Lots shall be exempt from the Apartment Assessments (including Regular Common Apartment Assessments and Special Common Apartment Assessments). On the date on which an Apartment Lot loses its status of being an Exempt Apartment Lot (as set forth in Section 2.22), then it shall automatically be subject to its share of Assessments from that date forward.

19.2 The Apartment Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Apartment Common Areas and Facilities or the exterior surfaces of the Apartment Buildings for which the Apartment Association is responsible and for which the reserve fund was established or for litigation or binding arbitration involving such matters. Nevertheless, the Apartment Board may authorize the temporary transfer of money from the reserve account to the Apartment Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Apartment Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Apartment Board may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Apartment Community and Apartment Association, delay such restoration until the time it reasonably determines to be necessary. The Apartment Board shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Apartment Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Apartment Assessment shall not be subject to the limitations set forth in Section 19.1.4 hereof. At least once every six (6) years the Apartment Board shall cause a study to be conducted of the reserve account of the Association and its adequacy to satisfy anticipated future expenditure requirements. The Apartment Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

- 19.2.1 Identification of the major components which the Apartment Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.
- 19.2.2 Identification of the probable remaining useful life of the components identified in Section 19.2.1 above, as of the date of the study.
- 19.2.3 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 19.2.1 above, during and at the end of its useful life.
- 19.2.4 An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

19.3 For the purposes of this Section, the term “reserve account requirements” means the estimated funds which the Apartment Board has determined are required to repair, replace or restore those major components which the Apartment Association is obligated to maintain. The Apartment Association shall comply with the requirements of the Act pertaining to a reserve analysis and reserve fund.

19.4 If an Apartment Lot Owner shall at any time lease such Owner’s Unit and shall default in the payment of Apartment Assessments, the Apartment Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such rent to the Apartment Board shall be sufficient payment and discharge of such tenant and the Apartment Lot Owner for such assessments to the extent of the amount so paid.

19.5 Payment of Master Association Assessment to Apartment Association. Each Owner of an Apartment Lot, by accepting a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to have covenanted and agreed to pay the Apartment Association all Assessments levied from time to time as provided in the Master Declaration, including costs of collection (including attorney's fees) whether or not a lawsuit is commenced. All costs and expenses incurred by the Apartment Board in collecting such Master Assessments, shall be paid by the applicable Apartment Lot Owner and shall be secured by a lien against the Apartment Lot owned by the applicable Owner. Said lien shall be enforced in the same manner as the lien securing payment of Apartment Assessments, as provided in this Declaration. The Apartment Association shall pay to the Master Association all Assessments as are levied in the Master Declaration notwithstanding any Apartment Lot Owner’s failure to pay such Master Association Assessments to the Apartment Association. Failure by the Apartment Association to pay such Master Assessments to the Master Association shall result in the immediate removal of all Directors presently elected to the Apartment Association with the Directors of the Master Association acting as the Board for the Apartment Association until new Directors for the Apartment Association can be elected to the Board for the Apartment Association. Any Apartment Association Director removed for reasons provided in this Section 19.4 shall not be eligible to serve as a Director in either the Master Association or the Apartment Association from the time of such removal.

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22. VOTING.

26.1 Administrative Control of Apartment Association. Declarant shall assume full administrative control of the Apartment Association through an interim Board appointed by the Declarant, or through one or more persons authorized by the Declarant to exercise some or all of the powers that would otherwise be exercised by the Apartment Board of Directors, which shall serve until the turnover meeting (“**Turnover Meeting**”).

22.1.1 The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than one hundred and eighty (180) days after the issuance of the Certificate of Occupancy for the last Apartment Lot or as further described below.

22.1.2 Declarant may elect to relinquish control of the Apartment Association at an earlier time by written notice, which may be via email transmission, to Apartment Lot Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

22.2 Voting Rights. After the Turnover Meeting, the Apartment Lot Owner or Owners of each Apartment Lot shall be entitled to one (1) vote for each Apartment Lot owned. The one (1) vote for such Apartment Lot shall be exercised as they, among themselves, determine. Where an Apartment Lot is owned by more than one Owner, the vote of any one of them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Apartment Lot(s) on any question or issue, the Owners of such Apartment Lot(s) will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Apartment Lot. With respect to any question or issue requiring a vote of the Apartment Association, vote of the Apartment Lot Owners, or vote of the Members of the Apartment Association, the total number of votes cast shall not exceed the number of Apartment Lot(s) in the Apartment Community. Unless otherwise required by this Declaration or the Apartment Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the votes cast with respect to such matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Apartment Bylaws.

## 23. EASEMENTS.

23.1 If any part of the Apartment Common Areas and Facilities encroaches or shall hereafter encroach upon an Apartment Lot, Apartment Building or Apartment Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of an Apartment Building or Apartment Unit encroaches or shall hereafter encroach upon the Apartment Common Areas and Facilities, or upon an adjoining Apartment Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Apartment Common Areas and Facilities or the Apartment Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Apartment Community, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Apartment Community or any part thereof.

23.2 If any utility line of any kind is constructed such that it crosses through, over, or under one or more Apartment Lots, Apartment Building or Apartment Units in order to provide service to another area within the Apartment Community, or if, after construction, it becomes necessary to install a utility line through, over or under one or more Apartment Lots, Apartment Buildings or Apartment Units in order to provide service

to another area within the Apartment Community, a perpetual easement for such utility line(s) is hereby granted for the installation, maintenance, repair (or replacement) and operation of all such utility line(s).

23.3 Each Apartment Lot Owner shall have the unrestricted right to ingress and egress over, upon and across the Apartment Common Areas and Facilities and Apartment Buildings (including the exterior surfaces thereof) as necessary for access to the Unit such Owner is occupying and to any Limited Apartment Common Areas and Facilities appurtenant to such Owner's Unit, and shall have the right to the horizontal, vertical and lateral support of such Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Apartment Lot.

23.4 The Apartment Association shall have an easement, including, without limitation, an easement through, over and across the Apartment Lots and the Apartment Units, to make such use of the Apartment Common Areas and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to this Declaration, including, without limitation, the right to construct and maintain the Apartment Common Areas and Facilities for use by the Apartment Lot Owners and the Apartment Association.

23.5 All conveyances of Apartment Lots within the Apartment Community shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

#### 24. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by email transmission. Notice to Apartment Lot Owners shall be addressed or e-mailed to each Apartment Lot Owner at the address or e-mail address given by such Owners to the Board for the purpose of service of such notice or to the Apartment Unit of such Owner if no such address has been given to the Board. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if e-mailed, when the e-mail is sent; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid. Such address and e-mail address may be changed from time to time by notice in writing to the Apartment Board.

#### 25. NO WAIVER.

The failure of the Apartment Board or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Apartment Declaration or the Apartment Bylaws, to exercise any right or option herein contained or to serve any notice or institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Apartment Board or its agents or designees of the payment of any assessment from an Apartment Lot Owner with knowledge of the breach of any covenant hereof shall not be deemed

a waiver of such breach, and no waiver by the Apartment Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Apartment Board.

## 26. ENFORCEMENT.

26.1 All Apartment Lot Owners, guests or lessees of an Apartment Lot Owner, and persons under such Owner's control, shall strictly comply with the provisions of the Apartment Governing Documents and the rules and regulations and decisions issued pursuant thereto. The Apartment Association and any aggrieved Apartment Lot Owner shall have a right of action against Apartment Lot Owners who fail to comply with provisions of the Declaration or the decisions of the Apartment Association. Apartment Lot Owners shall have a similar right or action against the Apartment Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Apartment Board, or its agent or designee on behalf of the Apartment Lot Owners, or in an appropriate case, by an aggrieved Apartment Lot Owner; and/or (ii) the Apartment Board to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Apartment Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. The Apartment Board shall determine whether the Apartment Lot Owner's defense shall be oral or written. After the hearing, but before any disciplinary action is taken, the Apartment Lot Owner shall be notified of the decision of the Apartment Board. The Apartment Board may delegate to the Manager the power and authority to carry out disciplinary actions duly imposed.

26.2 The Apartment Board may adopt and enforce reasonable rules and regulations that are not inconsistent with the provisions of this Declaration. The Apartment Board may also adopt and enforce reasonable fine schedules, and may impose and collect fines from Apartment Lot Owners who violate the provisions of this Declaration. All costs and expenses incurred by the Apartment Board in enforcing the rules and regulations, and enforcing or collecting fines, shall be paid by the applicable Owner and shall be secured by a lien against the Apartment Lot owned by the applicable Owner. Said lien shall be enforced in the same manner as the lien securing payment of assessments, as provided in this Declaration.

26.3 The Apartment Association shall not be empowered to cause the absolute forfeiture of an Apartment Lot Owner's right, title or interest in the Apartment Community on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Apartment Community except pursuant to:

26.3.1 The judgment of a court; or

26.3.2 A foreclosure for the failure of an Apartment Lot Owner to pay assessments or fines duly levied by the Apartment Association.

27. AGENT FOR SERVICE OF PROCESS.

The name and address of the person to receive service of process shall be the registered agent and address of the Apartment Association as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State.

28. APARTMENT ASSOCIATION LITIGATION.

28.1 In recognition of the expenses and disruption associated with litigation, except as otherwise provided by this Article, during the Period of Administrative Control, the Apartment Association shall not commence a judicial or administrative proceeding (including arbitration) without the approval of the Declarant and, after the Period of Administrative Control, only upon the approval of Owners representing at least 75% of the total vote of the Association.

28.2 Neither the Apartment Association nor any Apartment Lot Owner shall institute an action against any person which arises out of an alleged defect in the development of the Project unless and until each of the Pre-Arbitration Requirements of the Master Declaration have been satisfied.

28.3 No action affected by this Article shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys' fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Apartment Association in such action.

28.4 This Article shall not apply to: (i) actions brought by the Apartment Association to enforce the Apartment Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Apartment Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services, other than Declarant and Declarant Affiliates, arising out of an express contract with the Apartment Association or its manager for services or supplies.

28.5 The Declarant may provide certain warranties to the Apartment Lot Owners related to an Apartment Lot purchase. The first Apartment Lot Owner of an Apartment Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Apartment Lot 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 Apartment Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Apartment Lot Owner shall have no right to assign any rights of any kind to the Apartment Association related to pursuing litigation against the Declarant.

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

28.7 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.

28.8 The restrictions contained in this Article 28 shall not be amended, altered, or eliminated without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Administrative Control.

28.9 The requirements of this Article are intended to be in addition to those requirements set forth in Section 57-8a-229 of the Act and Article 28 of the Master Declaration. Neither the approval of this Apartment Declaration nor the creation of the Apartment Association shall be deemed to constitute any waiver, limitation or similar modification of Article 28 of the Master Declaration, which shall apply to all members of the Apartment Association.

29. **WAIVER OF SUBROGATION.** The Apartment Association and each Apartment Lot Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Apartment Community. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Apartment Lot Owner or of the Apartment Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the project engineer, and builder, contractors of the Declarant and any builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Apartment Association and Apartment Lot Owners hereby release Declarant, the project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Apartment Association and all Apartment Lot Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Apartment Association and each Apartment Lot Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Apartment Association or any Apartment Lot Owner to recover thereunder. The Apartment Association and all Apartment Lot Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

30. **RIGHTS RESERVED FOR DECLARANT.** During the Period of Administrative Control, the Declarant shall have the right to use all Apartment Common Areas and/or Limited Apartment Common Areas as the Declarant may desire. In addition, pursuant to Utah Code § 57-8a-217(6), Declarant is hereby exempt from the provisions of § 57-8a-217. Pursuant to Utah Code § 57-8a-211(5), the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund for the Apartment Association during the Period of Administrative Control.

31. **SEVERABILITY.** The provisions of this Apartment Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one



provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

32. ATTORNEYS' FEES. In addition to the recovery of costs and attorney fees as provided herein, the Apartment Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Apartment Lot Owner breach of the Apartment Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Apartment Lot Owner breach or violation of the Apartment Governing Documents. These fees may be collected by special or individual assessment against the subject Apartment Lot Owner(s) or Apartment Lot(s).

33. LAW CONTROLLING. This Declaration shall be construed and controlled by and under the laws of the State.

This Apartment Declaration shall take effect when recorded. In this Declaration, the singular shall include the plural and the masculine shall include the feminine and vice versa, if the context so requires.

*(Signature Page Follows)*



STATE of Utah )

: ss.

COUNTY OF Utah )

The foregoing instrument was acknowledged before me this 27 day of October, 2022, by Brian Schnell, as Manager of FIG Jackson Crossing, LLC, a Utah limited liability company as Declarant of the Villas at the Pointe Master Owners Association.

Karen Weeks

NOTARY PUBLIC

SEAL



**EXHIBIT A**

Legal Description of Apartment Community

Lots 301 through 324, Villas at the Pointe Apartments, as part of THE VILLAS AT THE POINT subdivision Recorded on the 18th of August 2022, Book 94 Page 3 in the Office of the Weber County Recorder, Utah.

Parcels 12-293-0041 through 12-293-0064

**EXHIBIT B**

Apartment Association Bylaws

**BYLAWS  
OF  
VILLAS AT THE POINTE APARTMENT OWNERS ASSOCIATION**

ARTICLE I

NAME AND LOCATION. The name of the corporation is Villas at the Pointe Apartment Owners Association (“**Association**”). The principal office of the Apartment Association shall be located at 3278 West 1150 South, Provo, UT 84601 (or at such other location as the Apartment Board hereafter may designate), but meetings of Owners and Apartment Board Members may be held at such places within the State of Utah as may be designated by the Apartment Board.

ARTICLE II  
DEFINITIONS

Section 1. “Articles of Incorporation” means and refers to the *Articles of Incorporation of Villas at the Pointe Apartment Owners Association* which have been or will be filed with the Utah Division of Corporations and Commercial Code.

Section 2. “Association Act” means and refers to the Community Association Act, Utah Code Ann. § 57-8a-101, *et seq.*, as amended.

Section 3. “Directors” means and refers to those individuals who are members of the Apartment Board. The singular Director shall refer to the singular of the Directors.

Section 4. “Nonprofit Act” means and refers to the Utah Revised Nonprofit Act, Utah Code Ann. § 16-6a-101, *et seq.*, as amended.

Section 5. “Period of Administrative Control” means the period of time during which the Declarant shall have administrative control of the Apartment Association and the other rights and privileges as set forth in the Apartment Declaration.

Section 6. “Apartment Association” means and refers to the Villas at the Pointe Apartment Owners Association, a Utah non-profit corporation, and its successors and assigns.

Section 7. “Apartment Board” means and refers to the Board of Directors of the Apartment Association, with all powers as stated in the Apartment Declaration, the Articles of Incorporation of the Association, and these Bylaws.

Section 8. “Apartment Bylaws” means and refers to these *Bylaws of Villas at the Pointe Apartment Owners Association*.

Section 9. “Apartment Declaration” means and refers to the *Declaration of Covenants, Conditions, and Restrictions for Villas at the Pointe Apartment Owners Association*, which has been or will be recorded in the Weber County Recorder’s Office, as the Declaration may be amended in accordance with its terms and provisions.

Section 10. “Apartment Lot” means each of the tracts of land designated a Lot on the approved Plat upon which four (4) vertically stacked Apartment Units will be constructed. Ownership of the Apartment Lot and the Apartment Units constructed thereon shall be inseparable, and any conveyance of an Apartment Lot shall operate to convey title to the Apartment Units constructed on the Lot.

Section 11. “Apartment Owner” means and refers to any person or entity owning an Apartment Lot within the Project, as such ownership is evidenced by the official records of the Weber County Recorder’s office, but shall not include a Mortgagee unless such Mortgagee acquires ownership other than for security purposes.

Section 12. “Apartment Unit” means each Apartment designed for separate residential use and occupancy.

Section 13. All other capitalized terms used herein shall have the same meaning as stated elsewhere in these Apartment Bylaws or in the Apartment Declaration.

ARTICLE III  
MEMBERSHIP IN APARTMENT ASSOCIATION; MEETING OF APARTMENT OWNERS;  
VOTING

Section 1. Membership in Apartment Association. Declarant, so long as Declarant owns an Apartment Lot, and every Owner of an Apartment Lot shall be a member of the Apartment Association. Membership shall be appurtenant to ownership of any Apartment Lot. Each Apartment Lot in the Project shall be entitled to one (1) vote for each Unit located upon such Apartment Lot. Membership will begin immediately and automatically upon becoming an Apartment Owner and shall terminate immediately and automatically upon ceasing to be an Apartment Owner. If an Apartment Lot is owned by more than one person, the membership appurtenant to that Apartment Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Apartment Lot is held. Ownership of an Apartment Lot within the Project cannot be separated from the Apartment Association membership appurtenant thereto, and any devise, conveyance, or other disposition of an Apartment Lot shall constitute a devise, conveyance, or other disposition, respectively, of such Owner’s membership in the Apartment Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

Section 2. Voting. Unless otherwise provided for herein, or required by the Apartment Declaration, all matters submitted to a vote shall be by a majority vote of all votes cast. Notwithstanding the foregoing, during the Period of Administrative Control, Declarant may act in all

Apartment Association matters with or without a vote of the Apartment Owners. To the extent any matters are submitted to a vote of the Apartment Owners during the Period of Administrative Control, such matters shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Turnover Meeting, all matters submitted to a vote of the Apartment Association shall be decided by the votes of the Apartment Owners. A change in the ownership of an Apartment Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Apartment Owner shall give the Apartment Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Apartment Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that an Apartment Lot is owned by more than one (1) Apartment Owner the vote(s) for the Apartment Lot shall be cast as such Apartment Owners decide among themselves. In the event such Apartment Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Apartment Owner casts a vote or votes representing a certain Apartment Lot, it will thereafter be conclusively presumed for all purposes that such Apartment Owner was acting with the authority and consent of all other Apartment Owners of the same Apartment Lot unless objection thereto is made at the time the vote is cast. In the event more than one Apartment Owner attempts to cast the vote or votes for a particular Apartment Lot, the vote for that Lot shall be deemed void and shall not be counted.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and for the elections of Directors, any decision requiring Apartment Owner consent shall be passed by majority vote of a quorum (defined below).

Section 3. Annual Meeting. The first annual meeting of the Apartment Association shall be held in June following the date of incorporation of the Apartment Association, and each subsequent regular, annual meeting of the Apartment Association shall be held in June of each year thereafter. The Apartment Board may change the date of the annual meeting provided it gives reasonable advance notice to all Apartment Owners. Notwithstanding any other provision of these Apartment Bylaws, during the Period of Administrative Control, Declarant may act on behalf of the Apartment Association without a meeting of the Apartment Association.

Section 4. Special Meetings. Special meetings of the Apartment Association may be called at any time by the Apartment Board, or upon written request of the Apartment Owners who are entitled to vote thirty percent (30%) of all of the total votes.

Section 5. Notice of Meetings. Written notice of each meeting of the Apartment Association shall be given by, or at the direction of, the Secretary or person authorized by the Apartment Board to call the meeting, by mailing a copy of such notice, postage prepaid, at least ten (10) days, and no more than sixty (60) days, before such meeting to each Apartment Owner entitled to vote, addressed to the Apartment Owner's address last appearing on the books of the Apartment Association, or supplied by such Apartment Owner to the Apartment Association for the purpose of notice. In lieu of mailing, such notice may also be given by email, in accordance with the provisions of the Association Act, to Apartment Owners who have consented to receive notices by email and have provided the Apartment Association with an email address for notice. Such notice shall specify the place, day and



hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those Apartment Owners present. The President of the Apartment Association will give notice of any meetings, and will chair meetings of the Apartment Owners.

Section 6. Quorum. The presence at the meeting of Apartment Owners entitled to cast, or of proxies entitled to cast, at least twenty percent (20%) of the total votes of the Apartment Association shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Apartment Declaration, or these Apartment Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Apartment Owners entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Unless otherwise stated in the Apartment Declaration, the Articles of Incorporation, or these Apartment Bylaws, an action supported by majority of the votes cast at any meeting where a quorum is present shall be the action of the Apartment Association.

Section 7. Proxies. At all meetings of the Apartment Association, each Apartment Owner entitled to cast a vote may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and automatically cease upon conveyance by the Apartment Owner of such Owner's Apartment Lot.

#### ARTICLE IV APARTMENT BOARD; SELECTION; TERM OF OFFICE

Section 1. Nomination, Tenure, and Removal. The Declarant shall appoint the initial Directors and decide who serves on the Apartment Board during the Period of Administrative Control. After the Turnover Meeting, the Apartment Owners shall at the next annual Apartment Association meeting, or at such earlier meeting as may be called for the purpose, elect three (3) Directors from among the Apartment Owners. Each of the three elected Directors shall draw lots to divide themselves into terms of one, two and three years. At each successive annual meeting, provided a quorum is present, the Apartment Owners shall elect a Director to replace the Director whose term has expired or is then expiring. Each newly elected Director shall serve for a three year term. If a quorum is not present at the annual meeting, the other Directors shall select a new Director. Nomination for election to the Apartment Board may be made by the Directors. Nominations may also be made from the floor at the annual meeting. During the Period of Administrative Control, Declarant may remove a Director with or without cause. After the Turnover Meeting, Directors may be removed with or without cause by a vote of the Apartment Owners owning a majority of the Apartment Lots. If any Director resigns, is removed, dies, or is otherwise unwilling or unable to serve during his or her term, the remaining Directors may appoint another Apartment Owner to fill the remainder of such term.

Section 2. Election. Election to the Apartment Board shall be by secret written ballot. At such election the Apartment Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Apartment Declaration. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting.

Section 3. Number of Directors. The Apartment Board shall consist of not less than three (3) Directors and not more than five (5) Directors. An odd number of Directors shall be required at all times. The initial number of Directors shall be three (3). After the Turnover Meeting, the Apartment Owners may, at an annual meeting or a special meeting, vote to change the number of Directors. In the event the number of Directors is increased, such additional Directors shall draw lots for terms. The term of one of the additional Directors shall expire at the next annual meeting of the Apartment Association to be held after the vote to increase the number of Directors; the term of the other additional Director shall expire at the successive annual meeting of the Apartment Association.

ARTICLE V  
MEETINGS OF THE APARTMENT BOARD OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Apartment Board shall be held as frequently as the Apartment Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Apartment Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Apartment Board shall be held when called by the President of the Apartment Association, or by any two Directors, after not less than three (3) days notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Apartment Board.

Section 4. Written Action. Nothing in these Apartment Bylaws shall prevent the Apartment Board from acting without a meeting by means of a writing describing the action to be taken and signed by the Directors.

ARTICLE VI  
POWERS AND DUTIES OF THE APARTMENT BOARD; APPLICABILITY OF THE ACTS

Section 1. Powers. The Apartment Board shall have power to:

A. Adopt and publish rules and regulations governing the use of the common areas within the Project as described in the Apartment Declaration or as shown on the Plat Map (“**Common Areas**”), and the personal conduct of the Apartment Owners and their guests thereon, and to establish penalties for the infraction thereof;

B. Exercise for the Apartment Association all powers, duties and authority vested in or delegated to the Apartment Association and not reserved to the Apartment Owners by other provisions of these Apartment Bylaws, the Articles of Incorporation, or the Apartment Declaration;

C. Declare the office of a member of the Apartment Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Apartment Board; and

D. Employ managers, independent contractors, or such other persons as the Apartment Board deems necessary to exercise the powers, duties and authority vested in the Apartment Association, and to delegate to such persons such powers as are necessary to accomplish the Apartment Association purposes for which such persons have been employed.

Section 2. Duties. It shall be the duty of the Apartment Board to:

A. Supervise all officers, agents and employees of this Apartment Association, and to see that their duties are properly performed;

B. To:

1. Fix the amount of the annual assessment applicable to each Apartment Unit at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period, and fix the amount of any special assessments against each Apartment Unit;

2. Send written notice of each annual assessment to every Apartment Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each special assessment; and

3. Foreclose the lien (at the option of the Apartment Board) against any Apartment Lot for which assessments are not paid within ninety (90) days after due date or to bring an action at law (at the option of the Apartment Board) against the Apartment Owner personally obligated to pay the same.

C. Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Apartment Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

D. Procure and maintain insurance in accordance with the provisions relating to insurance in the Association Act;

E. Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions relating to reserve funds in the Association Act;

F. Cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

G. Cause all Common Areas and Facilities, as identified in the Apartment Declaration, to be properly maintained and managed by the Apartment Association.

Section 3. Legal Action Involving Declarant. Neither the Apartment Board nor any other person or entity acting, or purporting to act, on behalf of the Apartment Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature against Declarant, the individual managers, owners, members, or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Apartment Units or Apartment Units thereon unless and until all of the conditions set forth in Article 28 of the Apartment Declaration have been satisfied.

Section 4. Applicability of the Association Act. The provisions of the Association Act shall apply and govern the Apartment Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

Section 5. Applicability of the Nonprofit Act. The provisions of the Nonprofit Act shall apply and govern the operations and dealings of the Apartment Association to the extent not otherwise provided in these Apartment Bylaws, the Apartment Declaration, or the Articles of Incorporation.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Apartment Association shall be a President, a Vice-President, a Secretary, a Treasurer, and such other officers as the Apartment Board may from time to time by resolution create. Following the expiration or termination of the Administrative Period of Control, all officers of the Apartment Association must be Owners of Apartment Lots in this Project.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Apartment Board following each annual meeting of the Apartment Association.

Section 3. Term. The officers of the Apartment Association shall be elected annually by the Apartment Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

Section 4. Special Appointments. The Apartment Board may elect such other officers as the affairs of the Apartment Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Apartment Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Apartment Board. Any officer may resign at any time by giving written notice to the Apartment Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Apartment

Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special officers created pursuant to Section 4 of this Article. Directors may also be officers of the Apartment Association.

Section 8. Duties. The duties of the officers are as follows:

President

A. The President shall preside at all meetings of the Apartment Owners and the Apartment Board; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments of the Apartment Association, and shall co-sign all checks and promissory notes.

Vice-President

B. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Apartment Board.

Secretary

C. The Secretary shall record the votes and keep minutes of all proceedings of the Apartment Board and of the Apartment Owners; at the direction of the President, serve notice of meetings of the Apartment Board and of the Apartment Owners; keep appropriate current records showing the Owners of the Apartment Association together with their addresses; and perform such other duties as required by the Apartment Board.

Treasurer

D. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Apartment Association and shall disburse such funds as directed by the Apartment Board; shall sign all checks and promissory notes of the Apartment Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the ownership at its regular annual meeting, and deliver a copy of each to the Apartment Owners.

ARTICLE VIII  
COMMITTEES

The Apartment Board may appoint Committees as it deems necessary or appropriate to carry out the purposes of the Apartment Association.

ARTICLE IX  
BOOKS AND RECORDS

The books, records and papers of the Apartment Association shall at all times, during reasonable business hours, be subject to inspection by any Apartment Owner. The Apartment Declaration, the Articles of Incorporation and the Apartment Bylaws of the Apartment Association shall be available for inspection by any Apartment Owner at the principal office of the Apartment Association, where copies may be purchased at reasonable cost. An Apartment Lot Owner's right to inspect or copy records shall be subject to any limitations or conditions provided in the Association Act.

ARTICLE X  
ASSESSMENTS

Section 1. Exempt Apartment Units/Apartment Lots. "Exempt Apartment Unit(s)" or "Exempt Apartment Lot(s)" shall have the meaning given in the Apartment Declaration describing the time in which such Units or Lots are exempt from the obligation to pay Assessments to the Apartment Association.

Section 2. Apartment Association May Impose Assessments. As set forth in the Apartment Declaration, Declarant, for each Apartment Lot owned by Declarant which is not exempt from the requirement to pay assessments, and each Apartment Owner, other than Declarant, by becoming an Apartment Owner of an Apartment Lot is obligated to pay assessments to the Apartment Association in the manner established in the Apartment Declaration. The Apartment Board shall fix the date by which assessments must be paid. Prompt and full payment of the assessments is secured by a continuing lien upon each Owner's Apartment Lot and Unit(s). Any assessment which is not paid when due shall be delinquent. The Apartment Board has the authority to establish late fees and interest applicable to delinquent assessments and collect the same from any Apartment Owner whose assessment is delinquent. The remedies available to the Apartment Association are set forth in the Apartment Declaration and the Association Act. The amount the Apartment Association is entitled to recover in connection with the remedies it pursues shall include, without limitation, interest, costs, late fees, fines, and reasonable attorney's fees. No Apartment Owner may waive or otherwise escape liability for the assessments, late fees, and interest provided for herein or provided in the Apartment Declaration by nonuse of the Common Areas or abandonment of his or her Unit.

ARTICLE XI  
AMENDMENTS

Section 1. After the Period of Administrative Control has terminated, these Apartment Bylaws may be amended at a regular or special meeting of the Apartment Association, by a vote, in person or by proxy, of the Apartment Owners entitled to cast sixty-seven percent (67%) of the total votes; provided, however, that no amendment to these Apartment Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Apartment Declaration unless and until the

Apartment Declaration is also amended, in accordance with the amendment requirements of the Apartment Declaration, to resolve such inconsistency or contradiction. The President may prepare amendments to these Apartment Bylaws and to the Apartment Declaration and submit the same to the Apartment Owners for approval. If such amendments are approved as provided herein, the President may execute, certify, and record such amendments as appropriate.

Section 2. Notwithstanding Section 1, above, nothing in these Apartment Bylaws shall prevent the Apartment Board from amending these Apartment Bylaws as permitted by the Nonprofit Act.

ARTICLE XII  
MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the Apartment Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Apartment Bylaws, the Articles shall control; and in the case of any conflict between the Apartment Declaration and these Apartment Bylaws, the Apartment Declaration shall control.

Section 3. Severability. In the event that any term, provision, or section of these Apartment Bylaws is determined by a court of competent jurisdiction to be invalid otherwise unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of these Apartment Bylaws, the Apartment Declaration, or the Articles of Incorporation.

In witness whereof, we, the undersigned initial three (3) Directors of the Apartment Association have hereunto set our hands as of the 27<sup>th</sup> day of October, 2022.

Signature: BRIAN SCHWELL

Signature: MADISON LUND

Signature: CHRISTIAN MILLER