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BK 7593 PG 391

E 3291880 B 7593 P 391-441  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
9/11/2020 11:20:00 AM  
FEE \$292.00 Pgs: 51  
DEP eCASH REC'D FOR MILLER HARRISON LL

**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
SUNDOWNER CONDOMINIUMS**  
(with attached Bylaws)

**A Utah Condominium Project**

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
SUNDOWNER CONDOMINIUMS**

A Utah Condominium Project

This AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR SUNDOWNER CONDOMINIUMS ("Declaration") is effective when recorded with the Davis County Recorder's Office by Sundowner Homeowners Association, Inc., a Utah nonprofit corporation ("Association"), pursuant to the Utah Condominium Ownership Act.

**RECITALS**

- A. The *Declaration of Covenants, Conditions, and Restrictions The Sundowner Condominium Phase I* was recorded on January 22, 1974, in the office of the Davis County Recorder as Entry No. 390625, in Book 532, and beginning at Page 190 ("Enabling Declaration").
- B. The *Amendment to Declaration Sundowner Condominium* was recorded on December 11, 2009, in the office of the Davis County Recorder as Entry No. 2499059, in Book 4919, and beginning at Page 687.
- C. The *Amended Declaration of Sundowner Condominium* was recorded on June 29, 2012, in the office of the Davis County Recorder as Entry No. 2670475, in Book 5554, and beginning at Page 689.
- D. The *Amendment to the Covenants, Conditions & Restrictions of Sundowner Condominium* was recorded on October 9, 2012, in the office of the Davis County Recorder as Entry No. 2692383, in Book 5623, and beginning at Page 1751.
- E. This *Amended and Restated Declaration of Condominium of Sundowner Condominiums* is adopted to: (1) clarify and define the rights of the Association and the Owners, in and to the Project, (2) conform to changes to the Utah Condominium Ownership Act and other Utah law, (3) provide for a general plan for managing the Project, and (4) in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project.
- F. This Declaration, which (along with and subject to any future amendments) shall be the sole declaration for the Project and shall completely replace and supersede in all respects the Enabling Declaration and all prior declarations, rules, bylaws, and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
- G. This Declaration affects the real property situated in Davis County, described with particularity on Exhibit A, which exhibit is attached hereto and incorporated in this Declaration by reference (the "Project") and shall be binding on all parties having or acquiring any right, title, or interest to the Project or any part thereof.
- H. The Bylaws of the Association attached hereto as Exhibit B supersede and replace any previous bylaws of the Association and any amendments thereto.

- I. Pursuant the amendment requirements contained in Section 15 of the Enabling Declaration, the undersigned hereby certifies that this Declaration and accompanying Bylaws were approved by a vote of more than two-thirds (2/3) of Owners in attendance at a duly called and constituted meeting of Unit Owners.

**NOW, THEREFORE**, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, the Association hereby amends and replaces the Enabling Declaration for the Project and states and declares as follows:

## **ARTICLE 1 DEFINITIONS**

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meaning stated:

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

1.2 **“Allocated Interest”** shall mean and refer to the undivided ownership interest of each Unit in the Common Areas, the Common Expense liability, and the votes in the Association allocated to each Unit. Each Unit shall have an equal Allocated Interest equivalent to a 1/135 fractional amount. Accordingly, Owners shall have one equal vote per Unit.

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

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

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

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

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

1.8 **“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The Bylaws are attached as Exhibit B. No amendment to the Bylaws shall be effective until it is recorded.

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

- (a) the land included within the Project;



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

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

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

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

(f) all mechanical, plumbing, or other equipment, apparatus, and installations existing for common use;

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

1.10 “**Common Expenses**” shall mean: (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as Common Expenses by the Association; (e) expenses declared Common Expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.11 “**Declaration**” shall mean this Declaration of Condominium of Sundowner Condominiums and shall include any and all amendments and supplements thereto.

1.10 “**Governing Documents**” shall mean collectively, the Declaration, Articles, Bylaws, Plat, and Rules adopted by the Board.

1.11 “**Lender**” shall mean a holder of a mortgage or deed of trust on a Unit.

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

1.13 “**Manager**” shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Project.

1.14 “**Occupant**” shall mean any Person, other than an Owner, living, dwelling, visiting, or staying in a Unit. This includes, but is not limited to an Owner's lessees, tenants, family members, guests, agents, invitees, and representatives.

1.15 “**Owner**” or “**Unit Owner**” shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Davis County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

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

1.17 “**Plat**” shall mean all of The Sundowner Condominium Plats recorded with the Davis County Recorder. “Plat” shall also refer to any additional or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.18 “**Project**” shall include the real property legally described in Exhibit A, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean the entire Sundowner Condominiums development.

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

1.20 “**Rules**” shall mean the rules, resolutions, and/or regulations adopted by the Board including architectural guidelines for building exteriors and landscaping.

1.21 “**Unit**” shall mean and refer to a separate physical part of the Project intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. Units are bounded by the interior surfaces of the structural members of the walls, floors, and ceilings along the perimeter boundaries of the Units. A Unit includes all wallboard, surfaces of interior structural walls, floors, ceilings, interior doors, and trim, consisting of *inter alia*, and as appropriate, drywall, wallpaper, paint, flooring, carpeting, and tile. Windows, exterior doors, garage doors and their frames and associated hardware are all part of the Unit. Mechanical equipment, ducts, pipes, and appurtenances located within or outside Unit boundaries, but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. All pipes, wires, conduits, or other public utility lines or installations serving only the Unit, or any other property of any kind, including fixtures and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit. All pipes, wires, conduits and utility lines serving more than one Unit are Common Area, regardless of whether such facilities are located within the boundaries of a Unit. The interior areas of the garage appurtenant to each Unit as defined above, shall also be part

of the Unit. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest appurtenant to such Unit.

## **ARTICLE 2 THE CONDOMINIUM PROJECT**

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

2.2 **Name and Location.** The Project is known as Sundowner Condominiums. The Project is located in Davis County, Utah. The legal description of the real property included in the Project is set forth in Exhibit "A".

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

2.4 **Registered Agent.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, unless such time as the Board duly appoints a new agent. The Board may change the Registered Agent at any time and without the need for Owner consent.

## **ARTICLE 3 DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST**

3.1 **Description of Improvements.** The improvements contained in the Project include 33 condominium buildings containing 135 residential Units. Other improvements include a clubhouse, pool, asphalt roadways, open parking spaces, concrete patios, and outdoor lighting and landscaping. The buildings have concrete and wood foundations and are wood framed with asphalt shingle roofs. The Plat shall supplement the information and descriptions in this section.

3.2 **Description and Legal Status of Units.** The Plat shows each Unit and its location and dimensions from which its area may be determined, those Limited Common Areas which are reserved for each Unit, and the Common Areas to which the Units have access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit along with an appurtenant undivided interest in and to the Common Area.

3.3 **Allocated Interests.** Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Allocated Interests.

(a) The Allocated Interest appurtenant to each Unit shall be a 1/135 fractional amount. Such fractional interest is equivalent to 0.74%.

(b) Owners shall have one equal vote per Unit.

(c) If any Units are legally added to or withdrawn from the Project, the Allocated Interest shall be recalculated by dividing each Unit by the total number of Units in the project and documentation of this change shall be recorded via an amendment to this Declaration. Otherwise, the Allocated Interest shall have a permanent character and shall not be altered without an amendment to this Declaration.

#### **ARTICLE 4 MAINTENANCE AND UTILITIES**

**4.1 Maintenance of Units.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, and undamaged condition, the following:

(a) all windows, window frames, interior doors, exterior doors, garage doors, including trim;

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

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

(d) any of the following whether inside or outside of the Unit, which serve an Owner's Unit exclusively: fans, plumbing fixtures, stoves, dishwashers, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, and forced air units), light bulbs in exterior lighting fixtures, intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install. If any of the aforementioned fixtures or appliances serve more than one Unit, then the Owners of the Units benefitted by such equipment shall be responsible to jointly maintain the equipment or the Association may elect to maintain the equipment in the Board's sole discretion.

**4.2 Modifications to Units.** Owners may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units, but an Owner shall not make any structural alterations or alterations to any part of the Common Area, the Limited Common Area, or any portion of a Unit that may be visible from the exterior of a building without the prior written approval of the Board. The Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular color schemes, material requirements, or other standards.

(a) Owners shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, any Common Area, or Limited Common Area. Without prior written permission of the Board, none of the following shall occur in any remodeling or maintenance of a Unit: (1)

any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

**4.3 Maintenance of Common Area & Limited Common Area.** Except as otherwise provided specifically herein, the Association, through its Board or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

(a) The Association shall repair, maintain, and replace the Limited Common Areas including window wells, driveways, decks, etc. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is kept in a clean, sanitary, and uncluttered condition.

(b) The Board shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area, so long as the Association is maintained in the best interests of the Owners.

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

**4.4 Default in Maintenance.** If an Owner or Occupant fails to maintain a Unit or its Limited Common Area for which the Owner is responsible, as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board deems necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment, as outlined in Article 6. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in this Declaration.

**4.5 Utilities.** Charges for utilities metered separately to each Unit shall be the responsibility of the respective Unit Owner. Utility charges that are metered collectively to the Association shall be a Common Expense.

## **ARTICLE 5 ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT**

**5.1 Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters



as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

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

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

- (a) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
- (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- (c) The powers, duties, and obligations of a condominium association pursuant to the Act;
- (d) The powers, duties, and obligations not reserved specifically to the Owners; and
- (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

**5.4 Membership.** Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

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

**5.6 Board of Directors.** The governing body of the Association shall be the Board. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions of the Bylaws. The Bylaws may set forth qualifications for serving on the Board.

**5.7 Right to Enter Units.** The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, to carry out pest and plumbing inspections, and in connection therewith shall have the further right to assess all costs incurred against the Owner as an Individual Assessment. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including the sound or sight of running water in a Unit, the smell or sight of smoke or gas in a Unit, abnormal or excessive noises; and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

**5.8 Rules.** The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive. The Association shall provide notice of all Rules in accordance with the requirements of the Act.

**5.9 Remedies Available to the Board.** In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's rights to receive utility services paid as a Common Expense; (3) terminate an Owner's rights to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

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

**5.10 Contracts and Agreements.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of utilities or other services that benefit the Association, including any applicable joint use and cross easement agreement with neighboring associations or landowners.

**5.11 Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area, as determined by the Board.

Reserve funds may be collected as part of Annual Assessments or any other method. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

**5.12 Availability of Governing Documents.** The Association shall maintain current copies of the Governing Documents and the Association's own books, records, meeting minutes, and financial statements (as required by law) available for inspection, upon written request by any Owner or Lender (or any insurer or guarantor of a Lender). The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Board Member and at a location convenient to the Board within the Project or at such other location as may be agreed by the Board and the party requesting. The Association may make the Governing Documents and other Association records available via a website, and if so provided, then the Association shall have met its obligations set forth in this Section for providing any such documents posted thereon.

**5.13 Managing Agent.** The Board may contract with a professional Manager to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

**5.14 Board Indemnification.** Each past and present Board Member shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

**5.15 Board Liability.** To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act, each past and present Board Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

## **ARTICLE 6 BUDGET AND ASSESSMENTS**

**6.1 Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted. The budget shall be made available to requesting Owners within thirty (30) days after adoption. Owner vote or consent is not necessary to adopt a budget.

**6.2 Covenant to Pay Assessments.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien



upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

(a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorney fees against the latter for any Assessments authorized by this Declaration up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

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

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

**6.4 Annual Assessments.** Annual Assessments shall be made on a calendar year basis based on each Unit Owner's Allocated Interest. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

**6.5 Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to two-thousand dollars (\$2,000) per Unit, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over two-thousand dollars (\$2,000) in a calendar year may be levied if approved by a majority of the total Allocated Interest of the Association. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

**6.6 Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her

Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration or other Governing Document.

6.7 **Allocation of Assessments.** Annual and Special Assessments shall be imposed upon each Unit according to its Allocated Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association.

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

6.9 **Certificate of Payment.** The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

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

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

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

6.13 **Reinvestment Fee.** The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment in accordance with this Section and Utah Code § 57-1-46. If established, the Board is authorized to record a Notice of this Reinvestment Fee covenant against all Units, consistent with the following terms and conditions:

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

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

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

## **ARTICLE 7 EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES**

7.1 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than fifteen (15) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more or all of the sanctions granted in this Article.

7.2 **Collection Charge.** The Board may set collection policies, including fines, fees, interest charges, and late fees, in the Rules. Unless otherwise set by the Board in the Association's Rules, the following shall apply. Interest shall accrue at the rate of twelve percent (12%) per annum on all delinquent account balances and a twenty dollar (\$20.00) late fee shall be charged on any delinquent payment. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article 6. Late fees may be assessed each month until the delinquent Assessment is paid in full, including all its accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

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

7.4 **Foreclosure Sale.** Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable

provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.

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

**7.6 Trust Deed Provisions.** Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Governing Documents. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

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

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

**7.9 Recovery of Rent From Tenant.** If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code § 57-8-53, the Board may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from any tenant the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount paid.

**7.10 Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit as provided in Utah Code § 57-8-6.3. The Board may set the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed pursuant to Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be fifty dollars (\$50.00).



## ARTICLE 8 PROPERTY RIGHTS IN COMMON AREA

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

(a) Subject to this Declaration and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant.

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

8.2 **Public Utilities.** Easements and rights-of-way over the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

8.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration,

replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.

**8.4 Limitation on Easement - Suspension of Owner's Rights.** An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

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

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

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

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

## **ARTICLE 9 USE RESTRICTIONS**

**9.1 Rules and Regulations.** The Association has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and the Bylaws.

**9.2 Use.** Units shall be occupied and used only as a private single-family residence. Common Areas are to be used in a manner consistent with their community nature and use restriction.

**9.3 Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law in the Rules. Unless otherwise set forth by the Board in the Rules, the following restrictions shall apply. Owners are prohibited from placing signs in the Common Areas of the Project including on lawns and building exteriors. Owners may place one reasonably sized "For Sale" or "For Rent" sign in the window of their Unit. All other signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior written approval of the Board. Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1.

**9.4 Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other

Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. A nuisance includes but is not limited to the following: excessive noise between 10:00 p.m. and 7:00 a.m.; the use of outdoor speakers or amplifiers; excessive foot or vehicular traffic in, on, or about the Project beyond that expected for a typical personal residence, especially after 10:00 p.m. and before 7:00 a.m.; and any violation of the Governing Documents. The Board may adopt Rules that further describe the activities that are deemed to be nuisances within the Project. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

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

**9.6 Parking.** Parking is prohibited on the streets within the Project unless designated otherwise via street signage or markings. At no time shall any vehicle be parked at an entrance to or in front of a garage or walkway or at any other location within the Project, which would impair vehicular access or snow removal. Common Area parking stalls shall be subject to and governed by Association Rules, and may be assigned by the Board. The Association may charge a fee for the use of the assigned parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

**9.7 Recreational Vehicles.** The parking in the Project is limited. Therefore, no boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like belonging to Owners or Occupants of the Project shall be parked within the Project other than for temporary loading and unloading (less than 24 hours) unless parked in designated RV parking areas. Recreational vehicles shall not be parked in an Owner's enclosed garage, as such parking is intended for parking of the Occupant's automobile. The Board may adopt additional Rules relating to the parking of recreational vehicles within the Project that may expand or limit the restrictions set forth in this Section.

**9.8 External Fixtures.** No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those approved by the Board, and any replacements thereof, shall not be constructed, erected or maintained on the Project without the prior written approval of the Board. The Board may adopt Rules regulating the location, type, color, and design of these external fixtures. Any damage caused by the installation of any external fixture to the Common Areas (including roofs, siding, and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual

Assessment against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Board.

9.9 **Window Covers.** No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board may adopt Rules regulating the type, color, and design of the external surface of window covers. All window coverings shall be installed within 30 days of occupancy of a Unit.

9.10 **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, decks, balconies, front yard areas, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on ground level patios and decks. Said patio furniture and outdoor storage items shall conform with standards set by the Board, which may include the regulation of colors, materials, and product types. The Association may vary or expand upon the provisions of this Section by Rule.

9.11 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made upon the Project unless such work is done within the Owner's enclosed garage. Inoperable vehicles are prohibited in the Project.

9.12 **Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and Limited Common Areas and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit and Limited Common Area unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board.

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

9.14 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved the plat or the



proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Board's review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Project. However, in no event shall the approval of the Board of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

**9.15 Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, windows, doors, fences, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Project. The Board may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable in the Rules. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board, or any committee established by the Board. Any structural change may be denied by the Board, or the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the building or other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like. The Board shall have the authority to establish an application and approval process in the Rules for the changes contemplated in this Section.

**9.16 Lighting.** Exterior lighting fixtures shall be allowed only to the extent approved by the Board.

**9.17 Outside Speakers.** Except as permitted in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.

**9.18 Landscape Maintenance.** The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area. The Association shall have the right of access to all Common Area and Limited Common Area of the Project as necessary for such landscape maintenance. If the Association is unable to enter into a Limited Common Area for landscape maintenance, then the Owner shall be responsible for such maintenance.

**9.19 Hazardous Substances.**

(a) The Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any environmental

law. The preceding two sentences shall not apply to the presence, use or storage on the Project of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance of a Unit or the Project.

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

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

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

9.21 **Smoke and Carbon Monoxide Detectors.** Each Unit shall have operable smoke and carbon monoxide detectors as required by applicable building codes. The Board may, but is not required to, upon advanced notice of at least seventy-two (72) hours, enter a Unit to ensure that the Unit is in compliance with this Section.

9.22 **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.

9.23 **Residential Occupancy and Commercial Activity Limits.** No business use and trade may be conducted in or from any Unit unless:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
- (b) the business activity conforms to all zoning requirements for the Project;
- (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project;
- (d) such business is legal within the meaning of all applicable statutes of the State of Utah and all ordinances of municipal authorities; and

(e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Board.

(f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.

**9.24 Solar Energy Systems.** Solar energy systems and equipment are prohibited from being constructed or installed on any part of the Common Area in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, then the Board may adopt Rules and regulations for the installation and ongoing maintenance of solar panels or other energy conservation equipment. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the buildings. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. The Board shall assess the costs incurred by the Association related to the installation, operation, and maintenance of an energy conservation system to the requesting Owner(s) or benefitted Owner(s) in the Board's sole discretion. The costs to the Association arising under this Section shall be assessed and collected as an Individual Assessment.

**9.25 Smoking.** Smoking is prohibited within all Units and on all Common Areas or Limited Common Areas that are within 25 feet of doors or windows of Units. This prohibition applies to patios, balconies and other Limited Common Areas located within the 25' restricted areas. Smoking is defined as and includes the carrying, burning or otherwise handling or controlling any lighted or smoldering product containing tobacco or other like substance, including, but not limited to, cigarettes, cigars or pipes, hookahs and electronic vaping devices. Each Owner is responsible to ensure that said Owner, his / her residents, guests, and invitees comply with this restriction. Violations of this smoking restriction may result in a fine pursuant to the Association's Rules and the fine schedule as adopted and amended from time to time by the Board.

**9.26 Holiday Decorations.** The Association may adopt Rules to regulate holiday decorations in the Project, to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Holiday decorations may not damage building exteriors or Common Areas. Owners may not dispose of Christmas trees in the Association dumpster/Totes.

**9.27 Leasing and Non-Owner Occupancy.** The leasing and Non-Owner Occupancy of all Units shall be governed by this Section and any Rules and procedures adopted as allowed in this Section.

(a) Definitions. For the purpose of this Section:

(1) "Non-Owner Occupied" means: (1) for a Unit owned in whole or in part by a natural individual or individuals, the Unit is occupied by someone, but no individual Owner occupies the Unit as the individual Owner's primary residence; or (2) for a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

(2) "Family Member" means: (1) the spouse, parent, sibling, or child of an Owner; or (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (i) the current Occupant of the Unit, or (ii) the spouse, parent, child, or sibling of the current Occupant of the Unit.

(3) "Lease" means any agreement, whether written or not, providing for the Non-Owner Occupancy of a Unit.

(b) Maximum Number of Non-Owner Occupied Units. The number of Units permitted to be Non-Owner Occupied shall not exceed twenty percent (20%) of the total Units within the Association. The twenty percent (20%) Unit maximum shall be calculated by including any exempted Units under subsection (d) below. The Board may adopt reasonable rules and reporting procedures to track the number of Non-Owner Occupied Units to ensure consistent administration and enforcement of the leasing restrictions.

(c) Requirements for Leasing and Non-Owner Occupancy. The Owners of all Leased or Non-Owner Occupied Units must comply with the following provisions:

(1) Any Lease for allowable Non-Owner Occupancy must be in writing and shall provide as a term of the Lease that the Occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease agreement. If a Lease (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the Lease agreement and binding on the Owner and the Occupant.

(2) The Board is authorized to adopt further rules related to Non-Owner Occupied Units and the Occupants of those Units. Such rules may include, but are not limited to: requiring copies of lease or other agreements for Non-Owner Occupancy to be delivered to the Association, requiring informational forms to be filled out by Owners and/or Occupants' identifying Non-Owner Occupants, vehicles, phone numbers, etc., or any other reasonable administrative provisions the Board deems appropriate to enforce the requirements of this Section and the Governing Documents.

(d) Exemptions. The following Units may be Non-Owner Occupied and are not subject to the cap on Non-Owner Occupied Units set forth in subsection (b) above:

(1) A Unit owned by a Person in the military for the period of the Owner's deployment.

(2) A Unit occupied by a Family Member of the Owner.

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

(4) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a 25% or greater share of ownership, control, and right to profits and losses of the entity.

(5) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for: (1) the estate of the current Occupant; or (2) a Family Member of the current Occupant.

(6) A Unit being Leased at the time this Declaration is recorded in the Davis County Recorder's office shall be grandfathered and permitted to Lease or allow a Non-Owner Occupant to reside in the Unit until: (i) the Unit Owner occupies the Unit, or (ii) the ownership of the Unit, as evidenced by the records at the County recorder, changes in any way. Upon a change of ownership or occupation by an Owner, the Unit's qualification for this exception irrevocably terminates.

(e) Joint and Several Liability of Owner and Non-Owner Occupants. The Owner of a Unit shall be responsible for the Non-Owner Occupants' and any guests' compliance with the Governing Documents and shall be jointly and severally liable for any violations thereof.

(f) Violations.

(1) If a Unit is leased in violation of this Section, the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board.

(2) If a Unit is leased in violation of any provision of this Section, (regardless of whether any fines have been imposed) the Board may proceed with any available legal remedies, including, without limitation, an action to require the Owner to terminate the lease agreement and remove the tenant.

(3) If the Board determines that a Non-Owner Occupant has violated a provision of the Governing Documents, the Board may require an Owner to terminate a lease agreement with such Occupant.

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

(5) Fines, charges, and expenses incurred in enforcing the Association's Governing Documents with respect to a Non-Owner Occupant, and for any costs incurred by the Association in connection with any action under this Section, including reasonable attorney fees (regardless of whether any lawsuit or other action is commenced), shall be an individual assessment against the Owner and Unit which may be collected and foreclosed on by the Association.

**9.28 Variances.** The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article if the Board determines in its discretion: (a) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, (b) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Association, the Owners, or the Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless



reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this provision.

## ARTICLE 10 INSURANCE

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

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

### 10.2 **Property Insurance.**

(a) The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including the Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

(1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

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

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

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

(5) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

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

- (1) The Association's policy provides primary insurance coverage, and:
  - (i) the Owner is responsible for the Association's policy deductible; and
  - (ii) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

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

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

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

(d) **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

(e) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for

obtaining and maintaining such personal and real property insurance.

10.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

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

10.5. **Theft and Embezzlement Insurance.** The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

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

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

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

10.9. **Right to Negotiate Claims & Losses & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to the Association, and shall not be payable to a holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents



and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

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

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

10.12. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements and provisions in section 57-8-43 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to condominium associations shall apply to this Association.

## ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

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

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

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

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

(d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders' encumbering Units within the Project setting forth such findings and informing the Owners and Lenders that the Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount

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

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

**11.2 Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

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

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

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

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

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

## ARTICLE 12 EMINENT DOMAIN

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

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

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

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

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

## ARTICLE 13 RIGHTS OF LENDERS

13.1 **Lender Notice.** Prior to being entitled to receive any notice that this Declaration requires the Association to provide Lenders, each Lender must deliver to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Project along with all necessary contact information for notice delivery. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association shall not be affected by the failure to deliver a notice or request to the Association.

13.2 **Title in Mortgagee.** Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's Assessments or charges which accrue prior to the acquisition of title of such Unit by the Lender. However, such first mortgagee shall be responsible for Assessments levied while it holds title to the Unit.

13.3 **Priority.** The lien provided for in Article VI for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due. No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise. No provision herein is intended, nor shall it be construed, to give any Unit Owner, or any other party, priority over any rights of the first mortgagee of a Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas or a Unit.

13.4 **Required Lender Approval.** Except upon the prior written approval of fifty-one percent (51%) of all Lenders that have provided notice to the Association as described in Section 13.1, based on one (1) vote for each Unit encumbered by a loan, the Association shall not take action or inaction to do any of the following:

- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
- (b) Except as specifically provided by this Declaration, amend any provisions of the Declaration governing the following:
  - (i) voting rights;
  - (ii) the priority of Assessment liens;
  - (iii) the allocation of interests in the Common Area;
  - (iv) Unit boundary definitions;
  - (vi) expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project; or
  - (vii) restoration or repair of the Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles, or the Bylaws.
- (c) In addition to the amendment limitations set forth in subsection (b) above, any other amendment to the Declaration that is of a material adverse nature to Lenders shall require approval of at least fifty-one percent (51%) of Lenders who have provided notice to the Association.
- (d) The Association may presume the consent of a Lender for approval of amendments or actions if: (i) written notice of the proposed amendment or action is sent by certified or registered mail with a return receipt requested to the Lender's address listed for receiving notice in the recorded trust deed or other recorded document evidencing the security interest, (ii) at least 60 days have passed after the day on which the notice was mailed, and (iii) the person designated for receipt of the response in the notice has not received a written response from the Lender.

13.5 **Notices and Other Rights.** Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled to:

- (a) To inspect current copies of the books and records of the Association during normal business hours;
- (b) To receive the most recent annual financial statement of the Association;
- (c) Notice of any failure of an Owner for a period of sixty (60) days or more to cure any default on his part in performance of his obligations under this Declaration or other Governing Documents;
- (d) Notice of any condemnation or casualty loss that affects a material portion of the Project or any Unit on which there is a first mortgage held by such Lender
- (e) Notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) Notice of any action that requires a specified percentage of Lenders to approve.
- (g) Notice of any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which a Lender holds a mortgage; and
- (h) Notice of any proposed action by the Owners or the Association that would amount to a change in the Declaration necessitating Lender approval as identified in Section 13.4(b).

13.6 **Department of Veterans Affairs Loans.** To the extent that any provision in the Governing Documents is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs ("DVA Financing"), such provision shall not apply to any Unit that is (i) encumbered by DVA Financing, or (ii) owned by the Department of Veterans Affairs.

13.7 **Single-Entity Ownership Limitations.** The number of Units permitted to be owned by a Single-Entity shall not exceed ten percent (10%) of the total Units within the Association. The Board may adopt Rules and reporting procedures to track the number of Units owned by a Single-Entity to ensure consistent administration and enforcement of this ownership restriction. For the purpose of this Section, the term "Single-Entity" means the same natural individual, investor group, partnership, entity, or corporation. If an individual or entity has a 25% or greater share of ownership, control, and right to profits and losses of another entity, then such entity and its owner(s) shall be considered a Single-Entity. If title to a Unit is obtained in violation of this Section, then: (i) the Board may assess fines against the Owner pursuant to a schedule of fines adopted by the Board; and (ii) the Board may proceed with any available legal remedies, including, without limitation, an action to obtain a court order requiring the Owner to immediately sell or transfer ownership of the Unit

13.8 **Investor Ownership Limitation.** The Number of Units permitted to be owned by an Investor shall not exceed fifty percent (50%) of the total Units in the Project. For the purpose of this Section, the term "Investor" means: (1) a Person who owns a Unit, but does not occupy the Unit as the Investor's primary residence, or (2) in the case of a Unit owned by a trust or registered business entity, the natural individual(s) who own the entity or are beneficiaries of the trust who do not occupy the Unit as their primary residence.



## ARTICLE 14 TERMINATION

14.1 **Required Vote.** Except as otherwise provided in Articles 11 and 12, the Project may only be terminated by unanimous agreement of all Owners.

14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Davis County Recorder and is effective only on recordation.

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

14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

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

## ARTICLE 15 AMENDMENTS

15.1 **General Amendment Requirements.** This Declaration may be amended upon the affirmative vote of at least fifty-one percent (51%) of the Allocated Interests of the

Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Davis County. In such instrument a Board Member shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph.

15.2 **Necessary Amendments.** The Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, State, or Federal governmental agency; or (c) to correct any scrivener's error.

## **ARTICLE 16 GENERAL PROVISIONS**

16.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.

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

16.3 **Cumulative Remedies.** All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

16.4 **Severability.** Invalidity of any one or a portion of the Restrictions or provisions set forth in this Declaration by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.

16.5 **Covenants to Run with the Land.** The Restrictions and other provisions of this Declaration shall run with and bind the Project as equitable servitudes and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

16.7 **Gender and Number.** Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

16.8 **Nuisance.** The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

16.9 **Attorney Fees.** If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration or other Governing Documents, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought as an Individual Assessment, regardless of whether a lawsuit is initiated. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Section to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

16.10 **Notices.** Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or mailed via USPS to the Person who appears as an Owner in the records of the Association at the time notice is sent. Email shall be the primary means for delivering notice, and it is the responsibility of each Owner to provide an accurate email address to the Association for notice purposes. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes. The use of the term "written notice" in this Declaration or other Governing Document shall include notices sent via email, text, facsimile, or other electronic communication; or notices printed on paper and sent by hand-delivery, regular mail, or otherwise physically received by an Owner.

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

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is



none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

**16.11 Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

**16.12 Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. Failure to do so shall make the Plat invalid and void.

**16.13 Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

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

**16.15 Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

**16.16 Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified

accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

**16.17 Fair Housing Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under State or Federal Fair Housing Acts to accommodate a Person with a disability (as defined by State or Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area facilities and buildings, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this Section shall not act as a waiver of the provisions of the Governing Documents with regard to any other Person or Owner.

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

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

**16.20 Effective Date.** This Declaration, and any amendment or supplement hereto, shall take effect upon its being filed for record in the office of the Davis County Recorder.

\* \* \* \*

**IN WITNESS WHEREOF**, the undersigned certify the adoption of this Declaration in accordance with the required amendment requirements.

DATED as of the 10 day of Sept, 2020.

**SUNDOWNER HOMEOWNERS  
ASSOCIATION, INC.**

a Utah nonprofit corporation,

By: Lugene Black

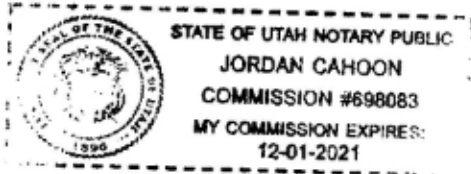
Name: Lugene Black

STATE OF UTAH )  
COUNTY OF Davis ) ss.

Its: Chairman

On the 10 day of Sept, 2020, personally appeared before me Lugene Black, who by me being duly sworn, did say that she/he is an authorized representative of Sundowner Homeowners Association, Inc., and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: Jordan Cahoon





**EXHIBIT A  
LEGAL DESCRIPTION**

All of **The Sundowner Condo Phase 1**, according to the official plat thereof, on file in the office of the Davis County Recorder.

Including all Units in Buildings 1 through 11

**Parcel Numbers: 09-029-0001 through 09-029-0045**

All of **The Sundowner Condo Phase 2**, according to the official plat thereof, on file in the office of the Davis County Recorder.

Including all Units in Buildings 12 and 13

**Parcel Numbers: 09-030-0046 through 09-030-0053**

All of **The Sundowner Condo Phase 3**, according to the official plat thereof, on file in the office of the Davis County Recorder.

Including all Units in Buildings 14 through 23

**Parcel Numbers: 09-030-0054 through 09-030-0093**

All of **The Sundowner Condo Phase 4, Amended**, according to the official plat thereof, on file in the office of the Davis County Recorder.

Including all Units in Buildings 24 through 28

**Parcel Numbers: 09-031-0094 through 09-031-0115**

All of **The Sundowner Condo Phase 5, Amended**, according to the official plat thereof, on file in the office of the Davis County Recorder.

Including all Units in Buildings 29 through 33

**Parcel Numbers: 09-183-0001 through 09-183-0021**



## EXHIBIT B

### BYLAWS OF SUNDOWNER HOMEOWNERS ASSOCIATION, INC.

These BYLAWS OF SUNDOWNER HOMEOWNERS ASSOCIATION, INC. are effective upon recording in the Davis County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

#### RECITALS

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

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

#### ARTICLE I DEFINITIONS

1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Amended and Restated Declaration of Condominium of Sundowner Condominiums.

#### ARTICLE II APPLICATION

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

#### ARTICLE III OWNERS

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year in November or December on a day and at a time established by the Board. The purpose of the Annual Meeting shall be electing Board Members, presenting the budget for the upcoming year, and transacting such other business as may come before the meeting. If the election of Board Members cannot be held on the day designated herein for the Annual Meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held at a Special Meeting of the Owners to be convened as soon thereafter as may be convenient or through action taken without a meeting as permitted in Section 3.11. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting of the Owners. Voting may be cast in

person, proxy, or via email at the Annual Meeting. The results of voting at the Annual Meeting shall be announced at the same meeting.

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

3.3 **Place of Meetings.** The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting that is large enough to accommodate all Owners. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association or its Manager. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owners to communicate orally in real time including telephone and video conferencing.

3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

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

3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners entitled to notice of the Owner meeting.

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

3.8 **Proxies**. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owners' attorneys when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) at least 7 days before the date of the Owner meeting. The Secretary may record receipt of proxies in the meeting minutes.

3.9 **Votes**. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration, which is one equal vote per Unit. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owner, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not delinquent and are paid in full at least 48 hours prior to commencement of the meeting shall be entitled to vote.

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

3.11 **Action Taken Without a Meeting**. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email,

facsimile, text, or paper document.

3.12 **Minutes of Meetings.** The Secretary shall take minutes of Owner meetings. The minutes may include (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes shall be available to requesting Owners within thirty (30) days of the meeting.

#### **ARTICLE IV BOARD OF DIRECTORS**

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

4.2 **Number and Qualifications.** The Association shall be governed and managed by a Board composed of five (5) Persons. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Unit in the Project. Only one representative may serve as a Board Member per Unit owned. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such Person's membership on the Board shall automatically terminate.

4.3 **Election.** The election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration (which is one equal vote per Unit). The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted.

4.4 **Term of Office.** Board Members shall serve a term of three (3) years. Each Board Member shall hold office until their successor has been elected and hold their first meeting. Terms shall be staggered so that two Board Members are elected in consecutive years and then one Board Member is elected in the third year. This staggering pattern of Board Member elections (i.e. 2-2-1) shall be repeated every three years.

4.5 **Regular Meetings.** The Board shall hold meetings at least quarterly and more often at the discretion of the Board.

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

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

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

4.9 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address or text messaging number at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

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

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

4.11 **Meetings Generally.** The Board may designate any place in Davis County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information to requesting Owners to access the meeting.

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

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

4.14 **Resignation and Removal.** Board Members may resign at any time by delivering a written resignation to another Board Member or the Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at



any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of a majority of those Owners in attendance at such meeting. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by a majority vote of the other active Board Members upon the occurrence of any of the following: failure to attend two (2) consecutive Board meetings, failure to remain current on Assessments, failure to fulfill Board Member duties, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

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

4.16 **Action Without a Meeting**. Board Members have the right to take any action in the absence of a meeting which they could take at a meeting if a majority of the Board Members consent to the action in writing. The term "in writing" shall specifically include email and text messaging. Additionally, the Board Members may also take action without a meeting if the Board complies with any applicable sections of the Nonprofit or Community Association Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

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

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

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

## ARTICLE V OFFICERS

5.1 **Officers**. The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and one at large position.

5.2 **Election, Tenure, and Qualifications**. The officers of the Association shall be elected each year by the Board of Directors at the first Board meeting following each Annual Meeting of the Owners. Each such officer shall hold such office until the next Annual Owners Meeting and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President

may not also be the Secretary. No person holding two (2) or more offices shall act or execute any instrument in the capacity of more than one (1) office.

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

5.4 **Resignation and Removal**. Officers may resign at any time by delivering a written resignation to any Board Member or the Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any meeting called for such purpose, with or without cause.

5.5 **Vacancies**. If a vacancy occurs in an office for any reason, or if a new office is created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

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

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

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

5.9 **Treasurer**. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each Owner meeting and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

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

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees**. The Board may designate committees as it deems appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such

committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

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

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

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

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

## **ARTICLE VII INDEMNIFICATION**

7.1 **Indemnification.** No Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case,

even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

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

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

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

## **ARTICLE VIII RULES AND REGULATIONS**

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

## **ARTICLE IX AMENDMENTS**

9.1 **Amendments.** Amendments to the Bylaws may be adopted by the Owners upon the affirmative vote of at least fifty-one percent (51%) of the total voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the Davis County Recorder. In such instrument, a Board Member shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that

Unit. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

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

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

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

**IN WITNESS WHEREOF**, the Association has executed and adopted these Bylaws this 10 day of Sept, 2020.

**SUNDOWNER HOMEOWNERS  
ASSOCIATION, INC.**

a Utah nonprofit corporation

By: L Eugene Black

Name: L Eugene Black

STATE OF UTAH )  
COUNTY OF DAVIS ) ss.

Its: CHAIRMAN

On the 10 day of Sept, 2020, personally appeared before me L Eugene Black, who by me being duly sworn, did say that she/he is an authorized representative of Sundowner Homeowners Association, Inc., and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public: Jordan Cahoon

