

**SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
OF  
THREE FOUNTAINS-PROVO CONDOMINIUMS**

A Utah Condominium Project

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Provo, Utah

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**AMENDED AND RESTATED**  
**DECLARATION OF CONDOMINIUM**  
**OF**  
**THREE FOUNTAINS-PROVO CONDOMINIUMS**

A Utah Condominium Project

This Second Amended and Restated Declaration of Condominium of Three Fountains-Provo Condominiums (herein this "Declaration") is made effective when recorded with the Utah County Recorder's Office by the Three Fountains-Provo Homeowners Association, Inc. ("Association").

**ARTICLE I**  
**RECITALS**

A. The Utah condominium project known Three Fountains-Provo Condominiums ("Project") was originally made subject to that certain instrument entitled, the "Declaration of Condominium of Three Fountains-Provo Phase1, Condominium", as recorded with the Utah County Recorder on December 6, 1972 as Entry Number 19303.

B. A "Supplementary Declaration of Condominium of Three Fountains-Provo" was recorded with the Utah County Recorder on September 24, 1973 as Entry Number 17592.

C. An "Amendment to the Declaration of Condominium of Three Fountains-Provo" was recorded with the Utah County Recorder on August 27, 1991 at Entry Number 33690.

D. An "Amended and Restated Declaration of Condominium of Three Fountains-Provo Condominiums" was recorded with the Utah County Recorder on December 13, 1996 as Entry Number 100494. This "Amended and Restated Declaration of Condominium of Three Fountains-Provo Condominiums" was recorded with the Utah County Recorder a second time on August 3, 2012 as Entry Number 65136 ("Amended and Restated Declaration").

E. A "First Amendment to the Amended and Restated Declaration of Condominium of Three Fountains-Provo Condominiums and First Amendment to the By-Laws of Three Fountains-Provo" was recorded with the Utah County Recorder on October 31, 2016 as Entry Number 108956:2016.

F. The property subject to this Declaration is described in Section 4.1 below and is located in the city of Provo, Utah County, Utah.

G. Section 23 of the Amended and Restated Declaration provides that it may be amended upon the approval of owners representing not less than two-thirds (2/3) of the undivided interests in the Common Areas.

H. Pursuant to Section 23 of the Amended and Restated Declaration, owners representing not less than two-thirds (2/3) of the undivided interests in the Common Areas and Facilities have approved this Declaration. The signature hereinafter of the president of the Association certifies and attests that such vote was obtained.

NOW THEREFORE, 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 all prior amendments to Declaration or any prior Amended and Restated Declaration and all other prior declarations 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, and the Amended and Restated Declaration is hereby amended and restated in its entirety as follows:

## **ARTICLE II DEFINITIONS**

- 2.1 "Act" shall mean the Utah Condominium Ownership Act, codified beginning at §57-8-1, Utah Code Annotated, as the same may be amended from time to time.
- 2.2 "Allocated Interest" shall mean the undivided interest (expressed as a percentage in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit. The Allocated Interest is shown on Exhibit B.
- 2.3 "Articles" shall mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.4 "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.
- 2.5 "Association" shall refer to the Three Fountains-Provo Homeowners Association, Inc. whose membership shall include each Owner of a Unit in the Project, as required by the Act. The Association is incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors who may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, "Association" as used in this Declaration shall refer to that entity.
- 2.6 "Bylaws" shall mean the Bylaws attached hereto as Exhibit "C", or as the same may be amended from time to time.
- 2.7 "Board Member" shall mean a duly qualified and elected or appointed member of the Board of Directors.
- 2.8 "Board of Directors" or "Board" shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the managing body of the Association. It shall have the same meaning as "Management Committee" does in the Act.
- 2.9 "Common Areas" shall mean and refer to: (1) the land described on Exhibit "A"; (2) all portions of the Project except the Units as herein defined; (3) all roofs, foundations, exterior surfaces (except window frames and glass), pipes, ducts, flues, chutes, undecorated floors and ceilings, conduits, wires, and other utility installations to the outlets; bearing walls, perimeter walls, columns and girders; (4) pool, clubhouse, swing set, other recreational areas and facilities, gardens, open space landscaping and perimeter fences; (5) streets and roadways; (6) those areas specifically set forth and designated on the Plat as "Common Area" or as "Limited Common Area", and

- those areas and facilities described elsewhere in this Declaration; and (7) all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 2.10 "Common Expenses" shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas, and other Limited 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 or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act or Governing Documents.
- 2.11 "Condominium Project" or "Project" shall mean and refer to the entire Parcel, as defined in Article III below, together with all rights, obligations, easements, and organizations established by this Declaration.
- 2.12 "Declaration" shall mean this Second Amended and Restated Declaration, including all attached exhibits which are incorporated by reference, and any and all future amendments and supplements to this Declaration.
- 2.13 "Eligible Mortgagee" shall mean and refer to a first mortgagee which has requested notice of certain matters from the Association in accordance with this Declaration.
- 2.14 "Governing Documents" shall mean and refer collectively to the Declaration, Articles, Bylaws, and Rules.
- 2.15 "Insurance Trustee" shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.
- 2.16 "Lender" shall mean a first or second holder of a mortgage or deed of trust on a Unit.
- 2.17 "Limited Common Areas" shall mean and refer to those portions of the Common Areas reserved for the exclusive use of certain Units, as specified herein or on the Plat. Limited Common Areas include driveways, carports, Unit entries, doorsteps, landings, porches, balconies, private yard areas, or other improvements intended to serve only a single Unit whether or not so identified on the Plat. The use and occupancy of the Limited Common Areas shall be reserved to the applicable Units, and each applicable Unit Owner is hereby granted an irrevocable license to use and occupy the same so long as such Owner owns the Unit associated with such Limited Common Area. Conveyance of a Unit includes the use of the Limited Common Area appurtenant to the Unit.
- 2.18 "Manager" shall mean a person, persons, or entity, if any, selected by the Board of Directors to manage the affairs of the Condominium Project.
- 2.19 "Occupant" shall mean any Person, other than an Owner, in possession of, using, visiting, entering into, or living in a Unit, including, without limitation, family members, tenants, guests, or invitees.
- 2.20 "Owner" or "Unit Owner" shall mean the Person(s) owning a Unit in the Condominium Project and an undivided interest in the Common Areas as shown in the records of the

Utah County Recorder. The term Unit Owner or Owner shall not mean or include a Lender or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer otherwise agree, in which event they shall inform the Board in writing of the alternative arrangement.

- 2.21 "Parcel" shall mean and include the entire tract of land as shown on the Plat and as described in Exhibit "A" hereto and incorporated herein by this reference, and the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
- 2.22 "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.
- 2.23 "Plat" shall mean the Three Fountains-Provo Phase I plat map recorded in the office of the Utah County Recorder on December 6, 1972 as Entry No. 19302-1972 and the Three Fountains-Provo Phase II plat map recorded in the office of the Utah County Recorder on September 24, 1973 as Entry No. 17591-1973, and any recorded amended plats.
- 2.24 "Restrictions" shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 2.25 "Rules" shall mean and refer to the rules, regulations, policies, and/or resolutions adopted by the Board of Directors.
- 2.26 "Unit" shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. Mechanical equipment, ducts, pipes, and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. Unit includes all decorated interiors, wallboard and drywall, surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and interior door frames, and interior door trim, consisting of among others and as appropriate, wallpaper, paint, flooring, carpeting, and tile. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members 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. A limited portion of the Garages, including garage doors, garage door openers and all apparatuses thereto, and garage floors are considered part of the Unit. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.

2.27 "Unit Number" shall mean the number, symbol, or address that identifies one Unit in the Condominium Project.

**ARTICLE III  
THE CONDOMINIUM PROJECT**

3.1 Submission. The Association hereby confirms that the Parcel is a Condominium Project pursuant to the Act and the Association hereby declares that the Condominium 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.

3.2 Name and Location. The Condominium Project shall be named and known as THREE FOUNTAINS-PROVO CONDOMINIUMS. The Condominium Project is located in Provo, Utah County, Utah, and the legal description of the real estate included in the Condominium Project is the Parcel described on Exhibit "A" hereto. The name of the Association is THREE FOUNTAINS-PROVO HOMEOWNERS ASSOCIATION, INC.

3.3 Interpretation of Declaration and Applicability of the Act. The Association intends that the Condominium 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 Condominium Project to the extent allowed by the Act.

3.4 Agent for Service of Process. The registered agent 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, until such time as the Board of Directors duly appoints a new agent.

**ARTICLE IV  
DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST, AND CONVEYANCE**

4.1 Description of the Project. The land is located in Provo, Utah County, Utah as set forth on the Plat and is more particularly described on Exhibit "A" below. There are 20 buildings and 86 Units described more particularly as follows:

<u>Building Designation</u>	<u>Number of Units</u>
M1	4
M2	4
M3	4
C4	4
C6	4
<u>Building Designation</u>	<u>Number of Units</u>
TH1	4

TH2	6
TH3	6
TH4	6
TH5	4
C1	4
C2	4
C3	4
C5	4
C7	4
C8	4
M4	4
M5	6
M6	4
M7	2
	86

Each Unit includes a basement, which may include additional rooms and improvements. The garages and carports are depicted on the Plat.

Each Unit in the Manor Houses (M) and Cameo Houses (C) contains 2 bedrooms, 2 bathrooms, and a kitchen/dining/living room area. Each Unit in the Townhouses (TH) contains 2 ½ bathrooms, 2 bedrooms, and a kitchen/dining/living room area.

All the buildings are structurally of frame construction with masonry veneer exterior.

- 4.2 Description and Legal Status of Units. The Plat shows each Unit, its location, and the Common Areas and Limited Common Areas to which it has access. All Units are residential Units and shall be capable of being independently owned, encumbered, and conveyed.
- 4.3 Allocated Interest of Each Unit. The Allocated Interest in the Common Areas which is appurtenant to each Unit is as set forth in Exhibit “B” attached hereto and incorporated herein by reference. A Unit Owner’s Allocated Interest shall be used for all purposes, including voting and the allocation of Common Expenses in the Condominium Project.
- 4.4 Form for Unit Conveyance. Any deed, lease, mortgage, deed of trust or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

Unit \_\_\_\_ of THREE FOUNTAINS-PROVO CONDOMINIUM, together with all improvements located thereon, as said Unit is identified in the Plat of said development recorded December 6, 1972, as Entry Number



19302 (Phase I) and recorded September 24, 1973 as Entry Number 17591(Phase II) of the official records of the Utah County Recorder, State of Utah, and as identified and described in the DECLARATION OF CONDOMINIUM OF THREE FOUNTAINS-PROVO, PHASE 1 CONDOMINIUM, recorded December 6, 1972, as Entry Number 19303, of the official records of the Utah County Recorder, State of Utah. TOGETHER WITH an undivided interest, and a right and easement of use and enjoyment in and to the Common Area described, as provided for and in the percentage shown, in said Declaration. This conveyance is subject to the provisions of said Declaration, including any amendments thereto. The undivided interest in the Common Area conveyed hereby is subject to modification, from time to time, as provided in the Declaration.

Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

## **ARTICLE V**

### **MAINTENANCE**

- 5.1 Maintenance Responsibilities of Owners. Each Owner shall ensure that the interior of his Unit and its equipment and appurtenances are kept in good order, condition, and repair, are safe, are in a clean and sanitary condition, and that all redecorating and painting which may at any time be necessary to maintain the good appearance of such Unit gets done. All such repairs, redecorating, and painting shall be of a quality and kind at least equal to the standards set by the Board and shall be in compliance with applicable building codes. In addition to maintaining the interior of a Unit in good repair, the Owner shall be responsible for ensuring proper maintenance and replacement of the patios, windows, glass surfaces, exterior doors, door locks, any heating or ventilating equipment excluding roof ventilation equipment, electrical equipment, hot water equipment, fireplaces, plumbing fixtures, lighting fixtures, or any other equipment or fixtures that may be in or used exclusively by the Unit. The Owner shall be responsible for the maintenance and repair of any utility pipe or line or system that solely services the Unit, and all ducts, wires, conduits, and other accessories solely used therewith. Each Owner shall be entitled to the exclusive use and possession of the Limited Common Area appurtenant to his Unit and shall be responsible to keep the driveways, decks, patios, and balconies, porch, and landing in a clean and tidy condition. Driveways, decks, patios, balconies, porches, and landings shall not be used for storage purposes and shall be maintained free from clutter and debris as further provided in the Rules. Any Unit maintenance, repair, or remodeling project involving any of the following scenarios shall require written pre-approval from the Board: (1) any use of the Common Areas for staging, storage, assembly, or construction, (2) any changes that would alter or change the exterior appearance of a Unit, (3) any structural changes to a Unit or other changes that could impact an adjoining Unit or the building wherein the Unit belongs. All obligations set forth herein shall be fulfilled to the standards set by the Board of Directors.

The Unit Owners shall make no modification to the Common Areas, or Limited Common Areas without express written approval of the Board, this includes, but is not limited to, the Garage exteriors, the sheds, patio areas, storage units, balconies. Additionally, the Unit Owners shall make no permanent modifications or conversions to the Garage interiors which reduce available parking spaces. Furthermore, to the extent an Owner has modified any such area without the express written approval of the Board, the Owner and its successors in interest shall be solely responsible for the maintenance, repair, and replacement of such area. Nothing in the foregoing shall be construed to authorize a Unit Owner to make such modifications, and the Board shall be entitled, at its sole discretion, to cause any such improvement to be removed and restored to its original condition.

An Owner shall be liable for any and all injury, damage, and/or liability associated with or resulting from any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area or Limited Common Area. The Board may create other Rules governing Unit Owner remodeling or maintenance work, including the establishment of an application process.

- 5.2 Common Area Maintenance. Except as otherwise provided in this Article V, the Association shall provide for such maintenance, repair, replacement, and operation of the Common Areas as may be reasonably necessary to keep them clean, functional, attractive, in good condition and repair, and as prudent to preserve and enhance property values and a high standard of living. The Association shall do all such other and further acts that the Board of Directors deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration. If the need for maintenance, repair, or replacement is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the maintenance, repair, or replacement to be made, and in such a case, the Association shall individually assess the Owner the reasonable costs of such maintenance, repair, or replacement work.

Further descriptions of Association and Owner maintenance, repair, and replacement responsibilities are contained in the maintenance allocation chart attached hereto as Exhibit "D". Unless the maintenance, repair, and replacement obligation is expressly assigned to the Association herein, such obligation shall be fulfilled by the Owner(s).

- 5.3 Limited Common Area Maintenance. All Limited Common Areas upkeep, maintenance, repairs, and replacement shall be performed as necessary to keep them clean, safe, up to building code standards, functional, attractive, and generally in good condition and repair as determined by the Board.

(a) Owner Responsibility. As provided in Section 5.1, each Unit Owner shall be responsible to keep the Limited Common Area appurtenant to his Unit, and as identified in Exhibit D, in a clean and tidy condition and state of good upkeep and repair. Owners shall repair and replace the patios. If an Owner fails to do such, the Association shall inform the respective Owner of the violation and either notify the Owner that they are required to perform such work as detailed by the Board or notify the Owner that the Association will perform such work and levy the costs

resulting from the work as an Individual Assessment against the respective Owner. In any event, if an Owner fails to perform the work in the timeframe required by the Board of Directors, the Association may perform the required Limited Common Area work and individually assess the Owner the resulting costs. Without liability for trespass or otherwise, the Association is expressly permitted (1) to inspect the Limited Common Areas even if required to enter through a Unit to access them; and (2) to perform maintenance, repair, or replacement work upon said items as provided in this Article V.

- (b) Association Responsibility. The Association shall be responsible for the repairs and replacement of the Limited Common Areas as identified in Exhibit D, including the balconies. The Association shall maintain the Unit identification signage on the Units. If the need for upkeep, maintenance, repair, or replacement of these Limited Common Areas is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the maintenance or repair to be made. In such a case, the Association shall individually assess the Owner the costs of such work.

## **ARTICLE VI MANAGEMENT**

- 6.1. 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 Areas, payment of Common Expenses, acquisition of hazard insurance and disposition of such hazard insurance proceeds, 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, the Governing Documents, and the Utah Revised Nonprofit Corporation Act. 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 the Governing Documents. 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 Association or the Board.
- 6.2. Legal Organization. The Association is registered as a nonprofit corporation under the laws of the State of Utah. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or re-incorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.
- 6.3. Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner owns a Unit and such membership shall automatically terminate when the Owner ceases to own a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner shall likewise succeed to such membership in the Association. 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.

- 6.4 Voting. Except as otherwise disallowed or provided 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. In addition, any voting among Association Owners shall be weighted according to the Allocated Interests.
- 6.5 Board of Directors. The governing body of the Association shall be the Board of Directors. The Board of Directors shall consist of five (5) individuals. Except as otherwise provided in this Declaration or the Bylaws, the Board of Directors may act in all instances on behalf of the Association. The Board of Directors may also, as it deems appropriate, recommend amendments to the Bylaws and Declaration and adopt, amend, and repeal the Rules.
- 6.6 Qualification of Board Members. Each Board Member shall be over the age of eighteen (18), shall reside in the Condominium Project, and shall be an Owner, a spouse of an Owner, or a designee of a Unit owned by a trust, LLC, or other legal entity owning a Unit. Each Board Member shall serve for three (3) year terms, which terms shall be staggered so that at the annual Owner meetings one (1) or two (2) (depending on the year) of the five (5) Board Members shall be elected. No two Board Members may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board of Directors shall automatically terminate.
- 6.7 Election of Board Members. At the annual meeting, the Owner of each Unit shall be entitled to vote the Allocated Interest appurtenant to the Unit for each Board Member seat to be filled. There shall not be any cumulative voting (i.e. an Owner casting multiple votes for the same candidate) or fractional voting.
- 6.8 Status and General Authority of Board. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Directors' power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing in its Board of Directors' name. The Board of Directors shall have, and is hereby granted, the following authority and powers:
- (a) The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.
  - (b) The power to sue or be sued.
  - (c) The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
  - (d) The power and authority to borrow money and pledge collateral upon approval of a majority of a quorum present in person or by proxy at a meeting of the owners or in response to a call for action of the owners without a meeting. However, the Board may not enter into loans the total of which exceed(s) ten-thousand dollars (\$10,000)

without the prior affirmative vote of a majority of the Allocated Interest present (in person or by proxy) at a meeting with a proper quorum.

- (e) The authority to promulgate such reasonable Rules, guidelines, policies, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with the Act and this Declaration.
- (f) The authority to establish procedures for the conduct of its meetings, including, but not limited to the power to decide what portion of the meeting shall be closed for executive session, to regulate record keeping, and to allow, control, or prohibit the electronic reproduction (video or audio) of Board meetings.
- (g) The authority to contract for discretionary utility services such as telephone, cable, and internet, and allocate the usage fees as an individual or benefited assessment to Unit Owners who use such services, or to allocate them as a Common Expense to all Unit Owners. If utility usage fees are allocated as a Common Expense, the utility services must be capable of providing the customary uninterrupted and secure level of services that is appropriate and necessary for Owners.
- (h) The power and authority to install, or to cause to be installed, individual meters for each Unit for utility services as may be in the best interests of the Association.
- (i) The power and authority to delegate its responsibilities over management and control of the Common Area and Limited Common Area and regulation of the Project to a Manager, reserving the right, power, and authority however, to control and oversee the administration thereof.
- (j) The power and authority to create advisory committees and appoint advisors to the Board.
- (k) Any powers and authority provided elsewhere in this Declaration or the Bylaws.
- (l) The powers and authority to assign and/or lease parking stalls to Owners or Occupants.
- (m) The powers and authority to select, hire, and fire employees and/or independent contractors for the Association.
- (n) The power and authority to perform any and all other acts not reserved specifically to the Owners, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

6.9 Duties of Board. In addition to the Board of Directors' authority and powers, the Board shall also have the following duties:

- (a) Run the business affairs of the Association.
- (b) Establish a budget for the Association.
- (c) Establish good governance policies.
- (d) Establish Rules and penalties.

- (e) Enforce the Governing Documents on behalf of the Association against violating Owners.
  - (f) Levy and collect Assessments from Owners.
  - (g) Preserve, maintain, and repair the Common Areas and those Limited Common Areas identified in Section 5.2 and Exhibit D.
  - (h) Maintain a reserve fund in an amount the Board determines, based on the reserve analysis, to be prudent.
  - (i) Employ professionals to advise the Association as needed (attorneys, accountants, etc.).
  - (j) Act within the scope of the Board's authority.
  - (k) Comply with state and federal laws.
  - (l) Act in the best interests of the Association and strive to enhance and protect property values.
  - (m) Act in good faith and avoid self-dealing.
- 6.10 Annual Meeting. The Association shall conduct an annual meeting as provided in the Bylaws.
- 6.11 Remedies Available to the Board of Directors. In addition to any other remedies allowed or provided in this Declaration for any violation of the Governing Documents, the Board of Directors may: (1) impose and levy fines for violation of the Declaration, Bylaws, or Rules; (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 recreational facilities and other Common Areas, except that access to one's Unit shall not be restricted; (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 6.12 Reserve Fund. The Association shall maintain a reserve fund for the maintenance, repair, and replacement of the Common Areas and Limited Common Areas, the amount of which shall be determined in the discretion of the Board of Directors, or as otherwise required by the Act. Reserve funds may be collected as part of the annual Assessments. To the extent the Board of Directors deems necessary, surplus monies of the Association shall be retained as additional reserves. The proportional interest of any member of the Association in any reserve fund established under this Section shall be considered an appurtenance of such Owner's Unit and shall not be separated from the Unit to which it appertains and shall be deemed to be transferred with the Unit.
- 6.13 Availability of Condominium Governing Documents. The Association shall maintain current copies of the Governing Documents and the Association's own books, records, and financial statements (as required by the Act and further prescribed by the Bylaws) available for inspection, upon written request, at a mutually convenient time during normal business hours by any Owner or Lender (or any insurer or guarantor of a Lender). The Association may charge a fee for the preparation, photo copying, mailing, or emailing of such documents to an Owner, Lender, title company, real estate agent, or other requesting party.

- 6.14 Managing Agent. The Board of Directors shall contract with or hire a professional Manager to assist the Board of Directors in the management and operation of the Condominium Project. The Board may delegate such of its powers and duties to the Manager as it deems appropriate. Any powers and duties delegated to any Manager may be revoked by the Board of Directors at any time, with or without cause.
- 6.15 Hearing before Board of Directors. As required by the Act, the Board of Directors shall have the authority to create a reasonable hearing process applicable in case the Board or Association shall take adverse action related to any Owner, including by exercising its rights under Section 5.3 hereof.

**ARTICLE VII**  
**BUDGETS, EXPENSES, AND ASSESSMENTS**

- 7.1 Annual Budget. The Board shall prepare, or cause the preparation of, 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, which budget shall be approved by a vote of a majority of the Allocated Interest present (in person or by proxy) at a meeting with a proper quorum. If the Association fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted. Additionally, the Board may revise the budget at any time during the year so long as such budget is approved by a vote of a majority of the Allocated Interest present (in person or by proxy) at a meeting with a proper quorum. For the purposes of this Declaration “capital improvement” shall include an addition of a permanent structural change to the improvements and facilities of the project, but shall exclude expenses to maintain, repair, restore, or replace existing improvements or facilities.
- 7.2 Covenant to Pay Assessments/Assessment Lien. Each Owner is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments 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 interest, late fees, collection charges, costs and attorneys’ fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.
- (a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys’ fees, if any, against the latter for his share of any Assessments levied by the Association 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.

- 7.3 Purpose of Assessments. The Assessments levied by the Association shall be used for the purposes of: promoting the safety and welfare of the Owners; carrying out the management, maintenance, care, preservation, and protection of the Condominium Project; enhancing the quality of life in the Condominium Project; and maintaining and enhancing the value of the Condominium 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.
- 7.4 Annual Assessments. The Association shall fix the amount of the Annual Assessment against each Unit based on the annual budget. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments (or in other such installments as the Board may determine), on dates established by the Board. At least thirty (30) 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.
- 7.5 Special Assessments. In addition to the Annual Assessments, the Board in its sole discretion may levy a Special Assessment up to six hundred dollars (\$600) per unit in any calendar year, 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 and Limited Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Any additional Special Assessments in a calendar year over six hundred dollars (\$600) per unit in any calendar year may be levied upon the affirmative vote of a majority of the Allocated Interest present (in person or by proxy) at a meeting with a proper quorum. Special Assessments shall be imposed upon all Units according to their Allocated Interest. Notice in writing of the amount of any Special Assessment 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.
- 7.6 Individual Assessments. In addition to Annual, and Special, 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 Association in enforcing the Governing Documents against that Unit and Owner; (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 as provided in this Article VII; and (e) attorneys' fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.



- 7.7 Allocation of Assessments. Except as otherwise provided herein, Assessments (other than Individual Assessments) shall be imposed upon all Units according to their Allocated Interest.
- 7.8 Rules Regarding Billing and Collection Procedures. The Board of Directors may adopt Rules setting forth procedures for the purpose of levying the Assessments provided for in this Declaration and for the billing and collection of those 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 until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. 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 of the Owner.
- 7.9 Certificate Regarding Assessments / Payoff Information. Upon the written request of an Owner, the Association shall issue a certificate stating whether or not all Assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner a reasonable fee of up to twenty- dollars (\$25) or an amount greater if so provided in the Act. Upon written request for payoff information needed in connection with the financing, refinancing, or closing of a sale of any Unit, the Association may charge a reasonable fee of up to fifty dollars (\$50), or an amount greater if so provided in the Act, to provide such payoff information.
- 7.10 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 Condominium 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 of Directors.
- 7.11 Application of Excess Assessments. In the event the amount assessed to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board of Directors 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. 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.
- 7.12 No Offsets. All Assessments shall be payable in the amount specified by the Association and no offsets against such amount or the 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.
- 7.13 Reinvestment Fee. Subject to the terms and conditions below, the Board of Directors shall have the right to establish from time to time (but shall not be required to establish)

a Reinvestment Fee assessment in accordance with this Section. If established by the Board of Directors, the Board of Directors or its agent shall record and is hereby 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 (as applicable, a "Transfer") of any Unit, 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 of Directors from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Lot, or (ii) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the following Transfers:

(i) Any Transfer to the United States or any agency or instrumentality thereof, the State of Utah, or any county, city, municipality, district or other political subdivision of the State of Utah;

(ii) Any Transfer to the Association or its successors;

(iii) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Unit transferred;

(iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of a Unit by the estate of an Owner;

(v) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded to remove clouds on title;

(vi) Any lease of any Unit or portion thereof for a period of less than thirty (30) years;

(vii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation;

(viii) Any Transfer in connection with the foreclosure of a deed of trust or mortgage, or a deed given in lieu of foreclosure;

(ix) An involuntary transfer; or

(x) A bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity.

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. The Reinvestment Fee shall be treated as an Individual Assessment under this Declaration.

**ARTICLE VIII**  
**EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES**

- 8.1 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 first became due. Whenever an Assessment is delinquent, the Board of Directors may at its option invoke any one or more or all of the sanctions granted in this Article.
- 8.2 Collection Charge. If any Assessment is delinquent, the Owner may be obligated to pay interest at the rate of fifteen percent (15%) per annum, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article VII. Payments shall first be applied to collection charges, interest, and/or late fees and then unpaid Assessments. Late fees may be assessed each month until the delinquent Assessment is paid in full.
- 8.3 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 attorneys' fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorneys' fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner(s), or to advance lien foreclosures against the Unit of such Owner(s), for the collection of delinquent Assessments.
- 8.4 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a 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 a reasonable attorney's fee incurred by the Association. The Association may, through its duly authorized agents including the Board of Directors, 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.
- 8.5 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 shall 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.
- 8.6 Suspension of Votes. The Board of Directors may suspend, after an opportunity for a hearing, an Owner's right to vote on any matter at regular and special meetings of the

Association for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

- 8.7 Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas (except an Owner's right to access his/her Unit may not be restricted). 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.
- 8.8 Unpaid Assessments and Future Lease Proceeds. If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment is due, the Board of Directors may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

## **ARTICLE IX PROPERTY RIGHTS IN COMMON AREA**

- 9.1 General Easements to Common Area and Units.
- (a) Subject to this Declaration and the Rules, each Owner shall have an equal 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). 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 family member, household guest, contract purchaser, Occupant, or Person who resides in such Owner's Unit.
- (b) The Association, acting through the Board of Directors or its authorized agent, shall have 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 of at least 48 hours, unless emergency situations demand immediate access. The Association, acting through the Board of Directors 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 Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with reasonable notification, unless emergency situations demand immediate access.
- 9.2 Easements for Encroachments. In the event that, by reason of the construction, reconstruction, settlement, movement, or shifting of any part of a building, any part of the Common Areas encroaches or shall hereafter encroach upon any part of any Unit

or any part of any Unit encroaches or shall hereafter encroach upon any part of the Common Areas or any other Unit, valid easements for such encroachment and the maintenance of such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner in the Common Areas if such encroachment occurred due to the willful conduct of such Unit Owner occurring after the date on which this Declaration is recorded.

9.3 Utilities. Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, internet services, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium 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, through the Board, 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, internet, 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 affect the same at the request of the Association. However, no such easement can be granted if it would permanently or significantly interfere with the use, occupancy or enjoyment by any Owner or such Owner's Unit.

9.4 Limitation on Easement - Suspension of Owner's Rights. An Owner's equal 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, after an opportunity for a hearing, the Owner's voting right in the Association and the Owner's right to the use of any recreational 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 provisions of this Declaration or any Rule; 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 Property 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.

**ARTICLE X  
USE RESTRICTIONS**

- 10.1 Rules and Regulations. The Board of Directors shall have 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 Condominium Project is maintained and used in a manner consistent with the Governing Documents. Unit Owners and Occupants shall at all times obey the Rules and see that they are faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such Rules shall apply and be binding upon all Owners and Occupants of the Units. 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 of Directors' determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive. Violations of Rules may result in fines levied by the Board. Fines may be levied pursuant to a schedule of fines the Board adopts for the Association.
- 10.2 Occupancy Use. Units shall be occupied and used only as a private single-family residence. The Common Areas shall be used for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Unit Owners.
- 10.3 Signs. No signs of any kind shall be displayed to the public view on or from any Unit or the Common Areas without the prior written approval of the Board of Directors or unless the signs are authorized pursuant to Rules that may be promulgated by the Board. If the Board allows the sign, the Board may dictate the size, shape, design, location, text, style, and other features of the sign, as well as time periods for allowance.
- 10.4 Nuisance. No noxious or offensive activity shall be carried on or upon the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any Restrictions or Rules adopted by the Board, or any laws, ordinances, statutes, rules, or regulations of any local, county, state, or federal body. Any such violations shall be deemed a nuisance under this Section.
- 10.5 External Fixtures. No external items such as, but not limited to, deck or patio furniture, television and radio antennas, satellite dishes, solar panels, flags and 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 of Directors, and any replacements thereof, shall be constructed, erected, or maintained on the Condominium Project without the prior written approval of the Board of Directors or as allowed by the Rules. The Board of Directors may adopt Rules regulating the location, type, color, and design of these external fixtures.

- 10.6 Window Covers. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board of Directors. No window shall be covered by paint, blankets, rugs, foil, sheets, and the like. The Board of Directors may adopt Rules regulating the type, color, and design of any window coverings that can be viewed from outside of the Units.
- 10.7 Outside Speakers and Amplifiers. No radio, stereo, broadcast, or loudspeaker units shall be placed upon or outside, or be directed to the outside of any Unit without the prior written approval of the Board of Directors.
- 10.8 Repairs. No repairs of any detached machinery, equipment or fixtures, including without limitation, motor vehicles, shall be made upon the Condominium Project, except for emergency repairs or those performed within a Unit's garage.
- 10.9 Unightly 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 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 of Directors.
- 10.10 Animals and Pets. Up to three (3) domestic pets per Unit are allowed. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may implement rules and regulations regarding unleashed animals. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration and all Owners must ensure that their pets abide by all behavioral standards and 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. The Association may levy Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet.
- 10.11 Unit Leasing. In order to protect the value of the Units, carry out the purpose for which the Project was formed by preserving its character as a homogenous residential community of predominantly Owner-occupied Units and to prevent the Project from assuming the character of an apartment, renter-occupied complex the leasing of an entire Unit by any Owner shall be prohibited. Despite this leasing prohibition, the Board of Directors shall have the discretion, pursuant to the Act, to provide an

exemption to avoid undue hardship on an Owner. Any Owner who believes that he or she must lease his or her Unit to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing, a copy of the proposed lease, and such other information as the Board may reasonably require. Leasing in the case of an undue hardship shall be permitted only upon the Board's written approval of the Owner's application, however under no circumstances shall an Owner lease his or her Unit on a daily, weekly, or other short-term basis, including Airbnb or other similar leasing practice. Upon approval of a hardship exemption, the Board shall establish an exemption period of no longer than 18 months, and approval shall automatically terminate upon expiration of such period. Any owner seeking to extend the exemption period must request approval prior to expiration of the exemption period. The Board of Directors may adopt Rules relating this Section and/or the application process for a hardship exemption. Notwithstanding the foregoing, an Owner may have a co-occupant caregiver reside in a Unit and may also rent a room. The Association shall also be entitled to lease any unit that it owns. The Board may also adopt reasonable rules and regulations permitting temporary use of the Units by non-owner residences so long as such use is consistent with the purpose and objectives outlined in this section. If an Owner has a co-occupant lessee in their Unit, the Owners and their co-occupants shall not occupy or use more parking spaces within the project than those specifically allotted to that Owner's Unit. Additionally, any lease arrangement must be in compliance with Provo City ordinances, such leasing ordinances are incorporated herein, and the Association shall have power to enforce the applicable ordinances.

If an Owner fails to comply with this Section or rents or leases a Unit in violation of this Section, the Board may: (a) Assess fines against the Owner and Owner's Unit pursuant to a schedule of fines adopted by the Board; (b) Regardless of whether any fines have been imposed, proceed with any other available legal remedies, including, without limitation, an action to require the Owner to terminate the rental or lease agreement and remove the tenant; (c) Pursuant to Rules that may be adopted under this Section, if the Board determines that a tenant has violated a provision of the Declaration, the Bylaws, or Rules and Regulations, the Board may require an Owner to terminate a rental or lease agreement with that tenant; (d) 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 tenant. 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 Section.

- 10.12 Landscape Maintenance. The Association shall have the right and duty to maintain all landscaping in the Common Area, as well as the right to alter and change any and all such landscaping. The Association shall have the right of access to all Common Area and Limited Common Area of the Condominium Project as necessary for such landscape maintenance.



- 10.13 Holiday Decorations. The Board may adopt Rules restricting 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 religious holiday or national 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.
- 10.14 Recreational Vehicles. Recreational vehicles including, but not limited to, RVs, dirt bikes, campers, boats, snowmobiles, or other similar vehicles, shall be stored at all times in an Owner's garage or for no more than three (3) consecutive days in other approved areas in the Project, as established by Rules or approved in advance by the Board. Recreational vehicles may not be hooked-up to Association or Owner utilities and shall be owned by an Owner or Occupant. The Board may adopt additional Rules regarding Recreational Vehicles in the Project.
- 10.15 Commercial Use Prohibition. No business use and trade may be conducted in or from any residential 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 Condominium Project; (c) the business activity does not involve persons coming onto the Condominium Project who do not reside in the Condominium Project or door-to-door solicitation of residents of the Condominium Project; and (d) the business activity is consistent with the residential character of the Condominium 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 of Directors. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section; leasing of a Unit is subject to Section 10.11 herein.
- 10.16 No Subdivision of Units or Further Restrictions. No Unit shall be split, subdivided, or separated into two (2) or more Units. 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 of Directors 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 of Directors review shall be for the purpose of assuring, in the sole and absolute discretion of the Board of Directors, 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 Directors 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.
- 10.17 Architectural Control. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors 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, lighting, repairs, excavation, patio covers, screens, doors, window and other air conditioners, fireplaces, skylights, storage buildings, solar collectors, decks, balconies, shade screens, awnings, window replacement, window coating or tinting, furniture, decorative alterations or other work that in any way alters the exterior appearance of the Project. The Board, or committee established by the Board for that purpose, may designate the design, color, style, model and manufacturer of any exterior improvement or alteration. 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 of Directors, or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, windows, skylights, electrical, mechanical, plumbing or ventilation systems, and the like. When deemed reasonable and prudent by the Board, Unit (exterior and interior) construction activity, including, without limitation, renovations, remodels, and repairs, shall be performed by a contractor that is properly licensed and insured. The Board may establish other Rules or procedures in carrying out its responsibilities under this Section, including the creation of an application process, establishing completion deadlines and the hours of the day when construction activity is prohibited, and other items deemed necessary by the Board in its sole discretion.

- 10.18 Exterior Lighting. Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board of Directors and shall not be placed in a location so as to become a nuisance to the residents of a neighboring Unit.
- 10.19 Variances. The Board of Directors may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article X if the Board determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on other Owners or Occupants and is consistent with the high quality of life intended for residents. 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 of Directors. The Board shall not have any right or authority to deviate from this Declaration except as specifically provided for in this Section. 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 Section.
- 10.20 Hazardous Substances.
- (a) The Owners shall comply with applicable environmental laws, and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances, on or within the Condominium Project that are not properly controlled, safeguarded, and disposed of. The preceding two sentences shall not apply to the presence, use, or storage on the Condominium Project of small quantities of

hazardous substances that are generally recognized to be appropriate to the maintenance of a Unit or the Condominium 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 brought into the Project by an Owner or her Occupants.
- 10.21 Smoke and Carbon Monoxide Detectors. Each Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Association may, but is not required to enter a Unit, upon advanced notice of at least 48 hours, to ensure that the Unit is in compliance with this Section and Section 10.20 above.
- 10.22 Unit Heating. Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.
- 10.23 No Smoking. The Condominium Project is a smoke-free community. Smoking shall be prohibited everywhere throughout the Project, including, without limitation, inside individual Units, and indoor and outdoor Common Areas and Limited Common Areas. No Owner shall smoke, or permit smoking by any occupant, agent, tenant, invitee, contractor, guest, friend, or family member. Smoking shall include the inhaling, exhaling, breathing, carrying, or possession of any lighted cigarette, cigar, pipe, electronic cigarette, vaping device, other product containing any amount of tobacco, or other similar heated, smoldering, or lit product. The use, manufacture, and/or selling of illegal drugs is also prohibited throughout the Project.
- 10.24 Parking. Owners and Occupants must first use their garages and/or carports before other vehicles may be parked outside of the garage and/or carport. Garages may not be structurally altered so as to reduce the number of parking stalls. Parking is prohibited in any location that would unreasonably impair vehicular or pedestrian access, or that will interfere with the functions of the Association and Residents. Undesignated 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 any 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, 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.
- 10.25 Pool and Clubhouse. The Board of Directors may adopt Rules relating to use of the pool and clubhouse by Owners and Occupants, including, without limitation, restrictions on conduct, guests, length and time of use, food and drink, weather, safety,

dress, reservations, and activities allowed.

## **ARTICLE XI CHANGE IN OWNERSHIP**

The Board of Directors shall maintain up-to-date records showing the name of each Owner, the address of such Owner, and the Unit owned by each Owner. In the event of any transfer of an interest in a Unit, within fourteen (14) days after the date of such transfer, the transferee shall furnish the Board with written notice containing evidence establishing that the transfer has occurred and that the deed or contract accomplishing the transfer is of record in the office of the Utah County Recorder. The written notice shall set forth the name of the transferee and the transferor, the street address of the Unit purchased or acquired by the transferee, the transferee's mailing address, the date of the sale or transfer and the name and address of the transferee's Lender, if any. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and rely on current ownership information respecting any Unit or Units which is obtained from the office of the Utah County Recorder. Prior to the receipt of the written notice, all notices required or permitted to be given by the Association to the Owner shall be deemed to be duly made or given to the transferee if duly and timely made and given to the transferee's predecessor in interest. The address of an Owner shall be deemed to be the address of the Unit owned by such Owner unless the Board is otherwise advised. As outlined in Section 7.13, a Reinvestment Fee may be assessed at each change of ownership, as allowed by law.

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## **ARTICLE XII DESTRUCTION OR DAMAGE**

In the event of destruction or damage of part or all of the improvements in the Condominium Project, the procedures of this Section shall apply.

- (a) If the proceeds of the insurance maintained by the Association are alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.
- (b) If less than 75% of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all of the Unit Owners shall be assessed for any deficiency on the basis of their respective appurtenant percentages of the Allocated Interest, said assessment becoming a lien on the Units as provided in the Act.
- (c) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not alone sufficient to accomplish restoration, and if the Unit Owners within 100 days after the destruction or damage by a vote of at least 67% of the entire Allocated Interest of the Project elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under subsection (b) above.
- (d) If 75% or more of the Project's improvements are destroyed or substantially damaged, and if proceeds of the insurance maintained by the Association are not

sufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after destruction or damage and by a vote of at least 67% of the entire Allocated Interest of the Project, elect to repair or reconstruct the affected improvements, the Association shall promptly record with the Utah County Recorder a notice setting forth such facts. Upon the recording of such notice the provisions of subsections (1) through (4) of the Act at §57-8-31, Utah Code Annotated, shall apply and shall govern the rights of all parties having an interest in the Project or any of the Units.

(e) Any reconstruction or repair which is required to be carried out by this Section shall be accomplished at the direction of the Board of Directors. Any determination which is required to be made by this Section regarding the extent of damage to or destruction of the Project improvements shall be made as follows:

- 1) The Board of Directors shall select three M.A.I. (Members of the Appraisal Institute) appraisers; each appraiser shall independently estimate the percentage of Project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Section shall be the median of the three estimates.

**ARTICLE XIII  
TAXES**

It is understood that under the Act, each Unit, together with its Allocated Interest in the Common Areas in the Project, is deemed a parcel and subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law. ~~Each Unit Owner will, accordingly, pay and discharge any and all taxes which may be assessed against such Owner's Unit.~~

**ARTICLE XIV  
INSURANCE**

14.1 Insurance. The Board of Directors 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 shall be a Common Expense.

14.2 Property Insurance.

(a) Hazard Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, permanent 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 Project’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) Except as provided in Subsection (d) below, the Association’s policy provides primary insurance coverage;

2) notwithstanding Subsection 1) above, and subject to Subsection 3) below:

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.

3) 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 ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and

4) If an Owner does not pay the amount required under Subsection (b) above 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 individual assessment against the Owner for that amount.

- (c) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (d) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance 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.
- ~~(e) Notice Requirement for Deductible. The Association shall provide notice to each Owner his/her 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.~~
- (f) Flood Insurance. If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project, or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board of Directors, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (g) Earthquake Insurance. The Association shall purchase earthquake insurance unless, in the sole discretion of the Board of Directors, the premium becomes too

expensive. If the Board of Directors elects not to purchase earthquake insurance, a vote of a majority of the Allocated Interest present at the annual meeting or other meeting duly called for such purpose, with a proper quorum, may veto the decision of the Board. If the Owners at the meeting veto the decision to not purchase earthquake insurance, the Board of Directors shall purchase earthquake insurance within (60) days of the vote.

- 14.3 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.
- 14.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall, if reasonably available, include: (1) coverage for volunteers and employees, (2) coverage for monetary and non-monetary claims, (3) coverage on claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 14.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (2) provide coverage for theft or embezzlement of funds by: (a) officers and Board Members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, directors, and employees of any Manager of the Association.
- 14.6 Worker's Compensation Insurance. The Board of Directors 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.
- 14.7 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 Mortgagee.

- 14.8 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 14.9 Association has the Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or 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.
- 14.10 Insurance Trustee. In the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of the Allocated Interest, the Board of Directors shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this Article as the Owners or Board (as the case may be) shall require.
- 14.11 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.
- 14.12 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.
- 14.13 Annual Insurance Report. Not later than sixty (60) days prior to the beginning of each fiscal year, the Board of Directors may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board shall be protected in relying on the written report furnished pursuant to this Section provided reasonable care and prudence

were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.

- 14.14 Applicable Law. This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8-43 that became law in 2011, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

## **ARTICLE XV EMINENT DOMAIN**

- 15.1 Total Taking of a Unit. If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, 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.
- 15.2 Partial Taking of a Unit. Except as provided in Section 15.1, if 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 under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 15.3 Taking of Limited Common Area. If the portion of the Condominium 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.
- 15.4 Taking of Common Area. If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Common Area, the Board of Directors shall, as soon as practicable, cause the award attributable to the Common Area so taken to be utilized for the purpose of repairing or restoring the remaining Common Area, and the portion of the award not used for such restoration shall be divided among the Owners in proportion to their Allocated Interest in the Common Area before the taking.

- 15.5 Taking of Entire Condominium Project. In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 15.6 Priority and Power of Attorney. Nothing contained in this Article XV shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. 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.

**ARTICLE XVI  
RIGHTS OF LENDERS – LENDER PROTECTIONS**

- 16.1 Notice of Lenders. A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval, or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with Section 16.6. 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 hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.
- 16.2 Priority of Lenders. 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.
- 16.3 Relationship with Assessment Liens.
  - (a) The lien provided for in Article VII 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.
  - (b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that became due after the

recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

- (c) Without limiting the provisions of Section 16.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed, or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
  - (d) Nothing in this Section 16.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.
- 16.4 Required Lender Approval. Except upon the prior written approval of all Lenders neither the Association nor the Board of Directors shall be entitled to abandon or terminate by an act or omission the legal status of the Condominium Project.
- 16.5 Other Rights of Lenders. Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:
- (a) To inspect current copies of the Governing Documents and other books and records of the Association during normal business hours; and
  - (b) To receive an annual financial statement of the Association within ninety (90) days following the end of the Association's fiscal year.
- 16.6 Notices of Action. Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:
- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender; and
  - (b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- 16.7 Single-Entity Ownership Limitation. The number of Units permitted to be owned by a Single-Entity shall not exceed twenty percent (20%) of the total Units with the Association. The Board may adopt reasonable rules and regulations and reporting procedures to track the number of Units owed 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 rights 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.

## **ARTICLE XVII TERMINATION**

- 17.1 Required Vote. Except as otherwise provided in Articles XII and XV, the Condominium Project may be terminated only by unanimous agreement of Owners of all Units.
- 17.2 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. Such an agreement to terminate shall also be approved by unanimous consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Utah County Recorder and is effective only upon recordation.
- 17.3 Sale of Condominium Project. A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 17.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 17.1 and 17.2 of this Declaration. If any real estate in the Condominium 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 the Condominium 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.
- 17.5 Allocation upon Termination. 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 Condominium 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 XVIII  
RIGHT OF ENTRY**

The Association acting through the Board of Directors or its duly authorized agent shall have the right upon reasonable notice of at least forty-eight (48) hours to enter upon or into any Unit, without trespass, as needed to review and investigate insurance claims or losses, to access property for which the Association is responsible to maintain, repair, or replace if such is more readily accessible from inside a Unit, to abate any unclean or unsanitary condition, or to fulfill its obligations. 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 reasonably believed to be causing damage to a Unit, the smell or sight of smoke in a Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Any repair costs incurred by the Association in addressing an emergency or abating a nuisance shall be assessed against the Owner as an individual assessment as set forth in Section 7.7 above.

**ARTICLE XIX  
OBLIGATION TO COMPLY HEREWITH**

Each Unit Owner and Occupant shall comply with the provisions of the Act, the Governing Documents, and all agreements and determinations lawfully made and/or entered into by the Board or the Association acting in accordance with their authority. Any failure to comply with any of the provisions thereof shall be grounds for an action by the Board of Directors or other aggrieved party for injunctive relief or to recover any loss or damage resulting therefrom, including costs and reasonable attorneys' fees.

**ARTICLE XX  
INDEMNIFICATION OF BOARD OF DIRECTORS**

Each Board Member shall be indemnified and held harmless by the Association against all costs, expenses, and liabilities whatsoever, including, without limitation, attorneys' fees reasonably incurred by him in connection with any proceeding in which he may become involved by reason of his being or having been a Board Member; provided, however, the foregoing indemnification shall not apply if the loss, expense, or liability involved resulted from the willful or intentional misconduct of the Board Member.

**ARTICLE XXI  
CONSENT IN LIEU OF VOTE**

In any case in which the Act or the Governing Documents require the vote of a stated percentage of the Project's Allocated Interest for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Unit Owners who collectively hold at least the stated percentage of the Allocated Interest as outlined and set forth in the Act or the Utah Revised Nonprofit Corporation Act.

**ARTICLE XXII  
AMENDMENTS**

- 22.1 General Amendment Requirements. Except as otherwise provided herein, this Declaration and/or the Plat may be amended only upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interest of the Association. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding at least fifty percent (50%) of the Allocated Interest of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Any amendment(s) shall be effective upon recordation in the office of the recorder of Utah County, State of Utah. In such instrument the Board of Directors shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any signature shall be required.
- 22.2 Lender Approval for Association Amendment or Action. Assuming a Lender has given notice as provided in Section 16.1 above, if a Lender's consent is a condition for amending this Declaration or the Bylaws, or for any other action, such Lender's consent is presumed if:
- (a) Written request of the proposed amendment or action is sent by certified or registered mail to the Lender's address listed with the Association;
  - (b) Sixty (60) days have passed after the day on which notice was mailed; and
  - (c) The Association has not received a written response from the Lender consenting to or refusing to accept the amendment or action.

**ARTICLE XXIII  
GENERAL PROVISIONS**

- 23.1 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, 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.
- 23.2 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.
- 23.3 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.

- 23.4 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration or in the Bylaws or the Rules 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.
- 23.5 Covenants to Run with the Land. The Restrictions and other provisions of this Declaration shall run with and bind the Condominium 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, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.
- 23.6 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 Condominium 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.
- 23.7 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.
- 23.8 Attorneys' Fees. If the Association obtains legal counsel to enforce or defend any of the provisions or requirements of the Governing Documents, or for a purpose the Board reasonably believes will involve litigation, the Association may assess its reasonable attorneys' fees and costs to the party against whom enforcement is sought or against the party making the request or demand, regardless of whether a lawsuit is ultimately initiated or not when reasonably certain that the Association would prevail in the outcome. In the event litigation is pursued under the terms of the Governing Documents, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.
- 23.9 Notices. Any notice to be given to an Owner, a Lender, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- (a) Except as otherwise provided herein or in the Bylaws, notice to an Owner shall be delivered personally, by text message, by email, or placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit or posted on the front or back door of the Unit. Any notice sent



by mail shall be deemed delivered when deposited in the United States mail. Any notice delivered by email or text message shall be deemed delivered when sent. 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. Notice by email is not proper notice if an Owner sends a written request to the Board of Directors stating that the Owner will not accept notices by email. Owners shall register an email address, a phone number that is capable of receiving text messages, and a mailing address with the Association.

- (b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered upon deposit.
- (c) 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, or to any Lender or Lenders, in any manner that this Section 23.9 allows, shall be deemed conclusive proof of such mailing or delivery.
- (d) Notice to the Association shall be delivered personally or by first-class mail, postage prepaid, 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. Notice to the Association may also be delivered by e-mail if the Association designates an email address for such purpose.

23.10 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.

23.11 Nonliability of Officials. To the fullest extent permitted by law, neither the Board of Directors nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error, or negligence if such Board Member or officer acted in good faith within the scope of such person's duties.

23.12 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.

23.13 Security. The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium 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 Association, and the Board of Directors, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located thereon to the extent not insured by the Association pursuant to Article XIV above. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

IN WITNESS WHEREOF, the Association has executed this instrument the day and year set forth below: \_\_\_\_\_

**THREE FOUNTAINS-PROVO  
HOMEOWNERS ASSOCIATION, INC.**

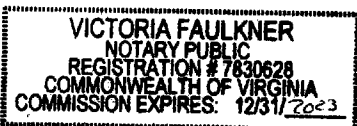
By: Cynthia Taylor

Its: HOA Board President

State of Virginia )  
 ) :ss  
County of chesterfield )

On this 9<sup>th</sup> day of August, 2019, personally appeared before me Cynthia Taylor, who being by me duly sworn, did say that he/she is the HOA Board President of the Three Fountains-Provo Homeowners Association, Inc.; that said instrument was signed by him/her on behalf of said Association after receiving approval from owners representing not less than two-thirds (2/3) of the undivided interests in the Common Areas and Facilities and that the foregoing information is true and accurate to the best of his/her knowledge.

Victoria Faulkner  
NOTARY PUBLIC



**EXHIBIT A  
Legal Description and Parcel Numbers**

The land described in the foregoing document is located in Utah County, Utah and is described more particularly as follows:

**Phase 1:**

COMMENCING at a point located East along the Section Line 338.10 feet and South 759.03 feet from the West Quarter corner of Section 18, Township 6 South, Range 3 East, Salt Lake Base and Meridian, and running thence North 20 deg 30' East 434.25 feet; thence East 278.78 feet; thence South 54.41 feet; thence East 154.00 feet; thence South 57.00 feet; thence East 194.00 feet; thence South 6deg 52' East 320.04 feet; thence West 147.31 feet; thence South 0 deg 08' East 31.01 feet; thence South 89 deg 52' West 120.0 feet; thence North 0 deg 08' West 55.00 feet; thence South 89 deg 52' West 549.74 feet to the point of BEGINNING.

**Phase 2:**

Commencing at a point located East along the section line 1170.94 feet and South 912.55 feet from the West quarter corner of Section 18, Township 6 South, range 3 East, Salt Lake Base and Meridian, thence South 89 deg 52' West 870.24 feet; thence North 11 deg 05' East 117.93 feet; thence North 20 deg 30' East 42.02 feet; thence North 89 deg 52' East 549.74 feet; thence South 0 deg 08' East 23.71 feet; thence East 267.31 feet; thence South 6 deg 52' East 131. 58 feet to the point of beginning, containing an area 2.850 acres.

ALSO, Commencing at a point located East along the Section line 928.61 feet and South 254.17 feet from the West quarter corner of Section 18, Township 6 South Range 3 East, Salt Lake Base and Meridian, thence North 89 deg 52' East 163.00 feet; thence South 6 deg 52' East 211.89 feet; thence West 194.00 feet; thence North 57.00 feet; thence West 154.00 feet; thence North 54.41 feet; thence West 278.78 feet; thence North 20 deg 30' East 47.69 feet; thence North 307.40 feet; thence North 89 deg 52' East 391.10 feet; thence South 6 deg 52' East 62.45 feet; thence South 89 deg 52' West 63.46 feet; thence South 121.00 feet; thence East 78.05 feet; thence South 6 deg 52' East 71.81 feet to the point of beginning, containing an area 4.191 acres.

**Parcel Numbers:**

**Phase 1**

53:023:0001 – 53:023:0030  
53:023:0500

**Phase 2**

53:024:0001 – 53:024:056  
53:024:0500

**EXHIBIT B  
Unit Allocated Interests in Common Areas  
Three Fountains-Provo Homeowners Association, Inc.**

<u>UNIT #</u>	<u>BUILDING NUMBER</u>	<u>PERCENTAGE OF OWNERSHIP INTEREST</u>
<b>PHASE 1:</b>		
1	M1	1.315
2	"	"
3	"	"
4	"	"
5	M2	"
6	"	"
7	"	"
8	"	"
9	M3	"
10	"	"
11	"	"
12	"	"
29	C4	1.170
30	"	"
31	"	"
32	"	"
37	C6	"
38	"	"
39	"	"
40	"	"
45	TH1	.990
46	"	"
47	"	"
48	"	"
49	TH2	"
50	"	"
51	"	"
52	"	"
53	"	"
54	"	"

EXHIBIT B CONTINUED...

<u>UNIT #</u>	<u>BUILDING NUMBER</u>	<u>PERCENTAGE OF OWNERSHIP INTEREST</u>
<b>PHASE 2</b>		
55	TH3	.990
56	"	"
57	"	"
58	"	"
59	"	"
60	"	"
61	TH4	"
62	"	"
63	"	"
64	"	"
65	"	"
66	"	"
77	TH5	"
78	"	"
79	"	"
80	"	"
17	C1	1.170
18	"	"
19	"	"
20	"	"
25	C2	"
26	"	"
27	"	"
28	"	"
21	C3	"
22	"	"
23	"	"
24	"	"
33	C5	"
34	"	"
35	"	"
36	"	"

EXHIBIT B CONTINUED...

<u>UNIT #</u>	<u>BUILDING NUMBER</u>	<u>PERCENTAGE OF OWNERSHIP INTEREST</u>
41	C7	1.170
42	"	"
43	"	"
44	"	"
73	C8	"
74	"	"
75	"	"
76	"	"
13	M4	1.315
14	"	"
15	"	"
16	"	"
81	M5	"
82	"	"
83	"	"
84	"	"
85	"	"
86	"	"
69	M6	"
70	"	"
71	"	"
72	"	"
67	M7	"
68	"	"
<b>TOTAL PHASE 1 AND PHASE 2</b>		<b>100.000%</b>

## EXHIBIT C

### Amended Bylaws of Three Fountains-Provo Homeowners Association, Inc.

THESE AMENDED BYLAWS OF THREE FOUNTAINS-PROVO HOMEOWNERS ASSOCIATION, INC. ("Bylaws") are effective upon recording in the Utah 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

1. These Bylaws shall amend and completely replace all bylaws, and any amendments thereto, executed prior to the date of these Bylaws.
2. These Bylaws are adopted in order to complement the Declaration and to eliminate ambiguity, to further define the rights of the Association and the Unit Owners, to provide for the ability to more easily govern and operate the Association, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

#### ARTICLE I DEFINITIONS

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein are defined in Article I of the Second Amended and Restated Declaration of Condominium of Three Fountains-Provo Condominiums (herein this "Declaration") and shall be given the same meaning and effect.

#### ARTICLE II APPLICATION

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

#### ARTICLE III OWNERS

**3.1 Annual Meetings.** The annual meeting of the Owners shall be held each year in the month of October on a day and at a time established by the Board of Directors. The purpose of the annual meeting shall be electing Board Members, approving the budget by a majority of the quorum present at the meeting, 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 of Directors shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board of Directors may from time to time by resolution change the month, date,

and time for the annual meeting of the Owners.

**3.2 Special Meetings.** Special meetings of the Owners may be called by a majority of the Board of Directors, the President, or upon the written request of Owners holding not less than forty (40%) of the Allocated Interest of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within 60 days of receipt of the request.

**3.3 Place of Meetings.** The Board of Directors may designate any place in the Utah County limits reasonably convenient for the Owners of the Association as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the Association's clubhouse.

**3.4 Notice of Meetings.** The Board of Directors shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Owners. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) or less than fourteen (14) days prior to the meeting. Such notice may be emailed, hand-delivered, or mailed, or delivered in another manner allowed under the Acts such as by text message or posting the notice on an official Association website. If emailed, such notice shall be deemed delivered when sent to the Owner's email address registered with the Association. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Owner at the Owner's address registered with the Association, with first-class postage thereon prepaid. Each Owner shall register with the Association such Owner's current email address and mailing address for purposes of notice hereunder. Such registered email and mailing addresses may be changed from time to time by the Owner 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.

**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 24 hours prior to the commencement of the meeting.

**3.6 Record Date for Notice Purposes.** The Board of Directors may designate a record date, which shall not be more than sixty (60) nor less than fourteen (14) 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 Condominium Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

**3.7 Quorum.** At any meeting of the Owners, the presence of at least a majority of the total allocated ownership interest, whether in person or by proxy, shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at the



annual meeting, the Board shall have power to adjourn the meeting pending notice of subsequently scheduled meeting. A subsequently schedule meeting may take place no sooner than seven (7) days from adjournment, and the quorum requirement shall be reduced to twenty-five percent (25%) of the total allocated ownership interest.

**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 written instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's duly authorized attorney. If a Unit is jointly owned, the written instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's or Owners' duly authorized attorney(s). 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) before the meeting is called to order. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting. To be valid, a proxy must identify the proxy-holder.

**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 (Allocated Interest), as shown in the Declaration. The affirmative vote of a majority of the voting interests 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, these Bylaws, the Declaration, or the Act. When more than one (1) Person owns an interest in a Unit, any Person who is the 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.

**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 of Directors or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Directors. The presence of a Unit Owner in person at any meeting of the Unit Owners shall be deemed a waiver of any notice requirements.

**3.11 Informal Action by Owners.** Any action that is required or permitted to be taken at a meeting of the Owners may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by enough Owners such that the vote would have passed if all of Association Owners had been in attendance at a regularly called meeting.

#### ARTICLE IV BOARD OF DIRECTORS

**4.1 General Powers.** The property, affairs, and business of the Association shall be managed by the Board of Directors. The Board of Directors may exercise business judgment and all of the powers of the Association, whether derived from the Act, the Declaration or

these Bylaws, except such powers that the Articles, these Bylaws, the Declaration, or the Act vest solely in the Owners.

**4.2 Number, Tenure, and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons, each of whom shall serve for three (3) year terms and meet the qualifications provided in the Declaration.

**4.3 Nominations.** No more than sixty (60) or less than fifteen (15) days before an election to the Board of Directors is held, the Association shall notify the Owners of the election, of the number of upcoming vacancies that will filled at the election, and shall issue a call for nominations. Nominations for candidates may be made in writing to a current Board Member at any time after the notice of the election is provided to the Owners and nominations may be made from the floor before the election takes place. Self-nominations are permitted. All nominees shall meet the qualifications for Board Members provided in the Declaration. The Board of Directors may from time to time amend this nomination procedure by resolution.

**4.4 Election.** Election to the Board of Directors shall be by secret written ballot unless there are the same number of candidates as there are vacancies in which event voting by written secret ballot shall not be required. At such election the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest percentage of voting interests shall be elected. Cumulative voting (i.e. an Owner casting multiple votes for the same candidate) is not permitted.

**4.5 Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. 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 of Directors. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

**4.6 Regular Board Meetings.** The Board of Directors shall hold regular meetings, at least monthly, at the discretion of the Board of Directors.

**4.7 Special Board Meetings.** Special meetings of the Board of Directors may be called by the President or a majority of the Board Members, however notice must be provided as set forth in Section 4.10. By unanimous consent of the Board of Directors, special meetings of the Board of Directors may be held without call or notice to the Board Members.

**4.8 Open Meetings.** Except as provided below in (a) through (f), all regular and special 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 of the Association 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.

For purposes of this Article IV, a Board meeting does not include a gathering of Board Members at which the Board does not conduct Association business.

**4.9 Board Meeting Location.** The Board of Directors may designate any place in Utah County, Utah as the place of meeting for any regular or special Board meeting. Board meetings may also be held with Board Members appearing telephonically or by Skype, Facetime, and similar live programs so long as any Board Member appearing as such consents to such appearance. If no designation is made, the place of the Board meeting shall be held in the Association's clubhouse.

**4.10 Notice of Board Meetings.** At least forty-eight (48) hours before a regular or special Board meeting, notice of the meeting shall be given via email to each Board Member, and to each Owner who requests notice of such Board meetings, unless: (i) notice of the Board meeting is included in a meeting schedule that was previously provided to the Owner; or (ii) the Board meeting is to address an emergency and each Board Member receives notice of the Board meeting less than forty-eight (48) hours before the Board meeting. The notice shall be delivered to the Owner by email to the email address that the Owner provides to the Association, shall state the time, date, and location of the Board meeting, and shall provide the information necessary to allow the Owner to participate by telephone or electronic communication if a Board member will be participating via telephone or the same electronic communication.

**4.11 Board Action.** Notwithstanding noncompliance with Sections 4.8, 4.9, and/or 4.10, 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 Sections 4.8, 4.9, and/or 4.10 may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

**4.12 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 Condominium Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

**4.13 Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. 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 more than fifty percent (50%) of the Allocated Interest of the Association. A Board Member may also be removed by the affirmative vote of a majority of the other Board Members if he or she, in any twelve (12) month period, misses, and is

unexcused by a majority of the Board, either three (3) consecutive or seventy-five percent (75%) of the regularly scheduled Board of Directors meetings, or is more than sixty (60) days delinquent in the payment of Assessments.

**4.14 Vacancies and Newly Created Board Memberships.** If vacancies shall occur in the Board of Directors by reason of the death, resignation, disqualification, or removal by the other Board Members as provided in Section 4.11, 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 of Directors occurring by reason of removal of a Board Member by the Owners may be filled by election by the Owners at the meeting at which such Board Member is removed. Any Board Member elected hereunder to fill a vacancy shall serve for the unexpired term of his predecessor, and any Board member appointed hereunder shall serve only until the next regularly scheduled annual meeting or special meeting held for the purpose of electing a successor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

**4.15 Informal Action by Board Members.** Any action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Board Members or as otherwise allowed by the Utah Condominium Ownership Act or the Utah Revised Nonprofit Corporation Act.

**4.16 Waiver of Notice.** Before or at any meeting of the Board of Directors, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such 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.

**4.17 Action Without a Meeting.** The Board has the right to take any action in the absence of a meeting which it could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

## ARTICLE V OFFICERS

**5.1 Officers.** The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may from time to time be appointed by the Board of Directors. The President, Vice President, Secretary, and Treasurer shall be Board Members.

**5.2 Election Tenure and Qualifications.** The officers of the Association shall be chosen by the Board of Directors within seven (7) days following the annual meeting of the Owners. Officers may be chosen at any regular or special meeting of the Board of Directors. Each such officer (whether chosen at a regular meeting of the Board of Directors or otherwise) shall hold such office until the next ensuing regular meeting of the Board of Directors and until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any

instrument in the capacity of more than one (1) office.

**5.3 Subordinate Officers.** The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine. Subordinate officers need not be Board Members of the Association.

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

**5.5 Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Directors at any regular or special meeting.

**5.6 The President.** The President shall be the chief executive of the Association. The President shall be a Board Member and shall preside at meetings of the Board of Directors and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting 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 of Directors.

**5.7 The 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 of Directors or Owners. The Vice President shall perform such other duties as required by the Board of Directors and shall be a Board Member.

**5.8 The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board of Directors 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 Secretary shall also be a Board Member.

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

**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 of Directors.

## ARTICLE VI COMMITTEES

**6.1 Designation of Committees.** The Board of Directors may from time to time by resolution designate such committees as it may deem 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 of Directors. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board of Directors in a written resolution. The Board of Directors may terminate any committee or may remove subordinate officers at any time.

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

**6.3 Quorum and Manner of Acting.** At each meeting of any committee designated hereunder by the Board of Directors, the presence of 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 of Directors 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 of Directors.

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

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

## ARTICLE VII INDEMNIFICATION

**7.1 Indemnification** No Board Member or officer shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Board Member or officer performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve

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

**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 any Bylaw, 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 and officers be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

**7.3 Insurance.** The Board of Directors, 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, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, 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 of Directors, 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 RECORDS, FINANCES, AND AUDITS

The Association shall maintain within the State of Utah all documents, information, and other records of the Association in accordance with the Declaration, these Bylaws, and the Utah Revised Nonprofit Corporation Act in the manner prescribed by a resolution adopted by the Board of Directors.

**8.1 General Records.**

- a. The Board of Directors or the Manager for the Association shall keep detailed records of the actions of the Board of Directors and Manager; minutes of the meetings of the Board of Directors; and minutes of the Owner meetings of the Association.
- b. The Board of Directors shall maintain a book of resolutions containing the rules, regulations, and policies adopted by the Association and Board of Directors.
- c. The Board of Directors shall maintain a list of Owners.
- d. The Association shall retain within the State of Utah other records of the Association for not less than the period specified in applicable law.

**8.2 Records of Receipts and Expenditures.** The Board of Directors or its designee shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Project, itemizing the maintenance and repair expenses of the Common Areas or Association property and any other expenses incurred.

**8.3 Bank Accounts.** Each bank account of the Association shall have at least two (2) names on the account.

**8.4 Financial Reports and Audits.**

- a. An annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board of Directors to all Owners and to any mortgagees of Units who request the same.
- b. The Board of Directors may annually, at the expense of the Association, obtain an "accounting review" or "agreed upon procedures" by a certified public accountant or other similar financial review of the books and records pertaining to the Association and furnish copies thereof to the Owners and Eligible Mortgagees of Units who request this information. From time to time the Board may also, at the expense of the Association, obtain an audit by a certified public accountant of the books and records of the Association. At any time, any Owner or Eligible Mortgagee may, at such Owner's or Eligible Mortgagee's own expense, cause an audit or inspection to be made of the books and records of the Association.

**8.5 Inspection of Records by Owners.**

- a. Except as provided in Section 8.5 below, all records of the Association shall be reasonably available for examination by an Owner and any Eligible Mortgagee of a Unit pursuant to Rules adopted by resolution of the Board of Directors.
- b. The Board of Directors shall maintain a copy, suitable for the purposes of duplication of the following:
  - i. The Declaration, Bylaws, and any amendments in effect or supplements thereto, and Rules of the Association.
  - ii. The most recent financial statement prepared pursuant to Section 8.3 above.
  - iii. The current operating budget of the Association.
- c. The Association shall, within no later than five days or upon a mutually



agreeable time, after receipt of a written request by an Owner, furnish the requested information required to be maintained under subsection b. of this Section.

d. The Board, by resolution, may adopt reasonable Rules governing the frequency, time, location, notice and manner of examination and duplication of Association and the imposition of a reasonable fee for furnishing copies of any documents, information or records described in this Section. The fee may include reasonable personnel costs incurred to furnish the information, including any and all fees the Association may be charged by its designee that assists the Association in furnishing this information, which may include managerial, legal, or accounting fees.

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

a. Personnel matters relating to a specific identified person or a person's medical records.

b. Contracts, leases, and other business transactions that are currently under negotiation to purchase or provide goods or services.

c. Communications with legal counsel that relate to matters specified in subsections a. and b. of this Section, or current or pending litigation.

d. Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.

e. Disclosure of information in violation of law.

f. Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or Rules;

g. Documents, correspondence, or management or Board of Director reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session.

h. Documents, correspondence, or other matters considered by the Board of Directors in executive session.

i. Files of individual Owners, other than those of a requesting Owner or requesting Eligible Mortgagee of an individual Owner, including any individual Owner's file kept by or on behalf of the Association.

## ARTICLE IX AMENDMENTS

**9.1 How Proposed.** Amendments to the Bylaws shall be proposed by either a majority of the Board of Directors or by Owners holding at least thirty-five percent (35%) of the Allocated Interest of the Association. The proposed amendment(s) must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

**9.2 Adoption.** Amendments may be approved by the Association at a duly constituted meeting or by written ballot in lieu of a meeting for such purpose. These Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the

affirmative vote of at least sixty-seven percent (67%) of the Allocated Interest of the Association.

9.3 **Execution and Recording.** An amendment shall not be effective unless and until certified by the President of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the Utah County recorder's office.

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 this instrument the day and year set forth below.

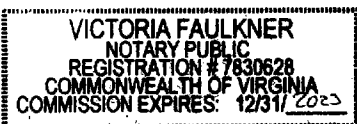
**THREE FOUNTAINS-PROVO  
HOMEOWNERS ASSOCIATION, INC.**

By: Cynthia Taylor

Its: HOA Board President

State of virginia )  
 ):ss  
County of chesterfield )

On this 9<sup>th</sup> day of August, 2019, personally appeared before me Cynthia Taylor, who being by me duly sworn, did say that she is the HOA Board President of the Three Fountains-Provo Homeowners Association, Inc.; that said instrument was signed by him on behalf of said Association after receiving approval from owners representing not less than two-thirds (2/3) of the undivided interests in the Common Areas and Facilities and that the foregoing information is true and accurate to the best of his/her knowledge.



Victoria Faulkner  
NOTARY PUBLIC

**EXHIBIT D**  
**Maintenance Allocation Chart**  
**Three Fountains-Provo Homeowners Association, Inc.**

**\*\*\*Please note – Owners are required to seek approval for all exterior and all structural changes even if such item is under Owner responsibility\*\*\***

ITEM	HOA	OWNER	NOTES
A/C Cupola	X		
A/C Pad & Unit		X	
Address Numbers	X		
Attic	X		
Balconies	X		
Cable/Satellite TV		X	
Carports - Structure	X		
Carport – Concrete Slab		X	
Ceiling		X*	*Drywall and interior surfaces
Circuit Breakers for Unit		X	
Common Area amenities (Clubhouse, Pool, etc.)	X		
Door and Door Frames – Exterior Paint Only	X		
Door and Door frames – Exterior and Interior		X	
Door Hardware/doorbell		X	
Door steps/stoops/porch	X		
Drains – Living Unit & Patio/Porch		X	
Driveways	X		
Dryer Vent Covers and Cleaning		X	
Electrical Wiring/Panel		X	
Exterior Wall Finishes (Rock/Stucco/Siding, shed walls, etc.)	X		
Fence – perimeter,	X		*Including walls surrounding patios
Fences bisecting fences within backyard areas		X	
Fireplace, Flue, & Vent Pipes – Cleaning & Repair		X	
Floor Coverings		X	
Foundation - Structural	X		
Foundation – Cracks, cosmetic	X		
Front Landing/Porch	X		
Furnace		X	
Garage Door, and Door Openers, Springs, Hinges, Parts – maintain, repair, replace		X	
Garage Door Paint	X	X	*HOA is responsible for regularly scheduled painting maintenance consistent with Article V; Owners are

			responsible for additional paint maintenance as desirable or as a result of damage, abuse, or replacement
Gas Pipes		X	
Hose Bib/Faucet/Spigot		X	Excluding such items intended to serve only the Common Areas
Hot Water Heater		X	
Insurance Coverage – Property (attached buildings)	X		
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - Loss Assessment		X	
Insurance Deductible	X	X	Deductible assessed to Owners pro-rata according to losses. HO6 deductible is Owner's responsibility.
Irrigation Lines / Heads - outside yard areas	X		
Landscape	X		
Landscape Drains Around Building	X		
Lights – eaves, porch & garage fixtures & bulbs	X	X	Patio lights are Owner's responsibility
Mailbox & Stand/Structure	X		
Mailbox Lock & Key		X	
Paint - Exterior wall surfaces and trim finishes	X		
Paint – Exterior doors, garage doors, windows	X		
Paint - Interior		X	
Patio Covering	X		
Patio Slab/Steps/Yard areas		X	
Pest Control Interior		X	
Pest Control Exterior	X		
Phone Lines		X	
Plumbing Valves, Pressure Regulator	X	X	Point of connection/Meter to the unit – Owner Before point of connection/Meter – HOA.
Plumbing Main Line	X	X	Point of connection/Meter to the unit – Owner Before point of connection/Meter – HOA.
Plumbing Leak	X	X	Point of connection/Meter to the unit – Owner Before point of connection/Meter – HOA.
Plumbing – Clogging/Stoppage	X	X	Point of connection/Meter to the unit – Owner Before point of connection/Meter – HOA.
Plumbing Pipes Inside Unit		X	
Rain Gutters – clean-out, repair, replacement	X		
Rain Gutters - drains away from building	X		
Roof – repair & replacement	X		
Roof Leak	X		
Screen Doors		X	
Sewer pipes and vents – serving Living Unit		X	
Sewer pipes - portion to more than one Living Unit	X		
Sidewalks and paths on Common Areas	X		
Sliding Glass Doors		X	

Snow Removal – Driveways	X		
Snow Removal – Road and sidewalks	X		
Storm Drains	X		
Street Lights	X		
Streets – Private	X		
Trash	X		
Roof vents and vent covers - Exterior	X		
Wall - Bearing Interior Wall	X		
Wall - Partition Interior Wall		X	
Water – Culinary (supply to outside shut-off)	X		
Water – Culinary (Serving only the unit)		X	
Water - Landscape	X		
Weather stripping		X	
Windows (exterior and interior) – Glass, Screens, frames, boxes		X	
Window Wells and Well Covers	X		