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**AMENDED AND RESTATED  
DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, & RESTRICTIONS**

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This Amended and Restated Declaration is made as of the date of the recording in the Salt Lake County Recorder's Office by the Condominium Forest Glen, Inc., a Utah Nonprofit Corporation (the "Association").

### RECITALS

1. This Declaration supersedes and replaces in its entirety the First Amended Declaration of Covenants, Conditions and Restrictions of Forest Glen – Phase I – VI, a Condominium that was recorded as Entry No. 9118380 on July 13, 2004 at the Salt Lake County Recorder's Office, and all amendments thereto and prior versions thereof predating the recording of this Declaration ("Prior Declaration").
2. The Bylaws of the Association, recorded concurrently herewith, supersede and replace any previous Bylaws and any amendments thereto.
3. The Association is the authorized representative of the Owners of certain real property known as Forest Glen Condominiums, located in Salt Lake County, State of Utah and more particularly described on Exhibit A attached to and incorporated in this Declaration by reference.
4. This Property consists of 17 Buildings, 136 Units, and certain Common Areas. The name by which the Project shall be known is "Forest Glen Condominiums".
5. Pursuant to Article XVII, Section 17.03 of the Prior Declaration, this Declaration has been voted on and approved by at least sixty-seven percent (67%) of the voting interest in the Association. A Certificate of Approval of the amendment is attached as Exhibit C and incorporated into this Declaration by reference.
6. The Association desires to establish, for its own benefit and for the mutual benefit of all current and future Owners and occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth in this Declaration.

### SUBMISSION

1. The Property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Utah Condominium Ownership Act (the "Act").
2. The Property is made subject to, and shall be governed by the Act, this Declaration, and the covenants, conditions and restrictions set forth herein. The Property is also subject to the right of the Salt Lake City and other authorized municipalities to access the roads within the Project for emergency vehicles, service vehicles, and for all of the utility installations up to the residential meters.

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

## **COVENANTS, CONDITIONS, AND RESTRICTIONS GENERALLY**

In consideration of the Recitals above, the Association, in order to further preserve and maintain the integrity of the Project, declares that the Property shall be held, sold and conveyed subject to the following easements, covenants, conditions, and restrictions, which run with the Property and are binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each owner thereof.

### **ARTICLE 1 DEFINITIONS**

When used in this Declaration (including the "Recitals" and "Submission"), the following terms have the meaning indicated. Capitalized terms are defined in this Article. Terms that are applicable to a single section are defined in that section. Any term used in this Declaration which is defined by the Act, to the extent permitted by the context of this Declaration, has the meaning given by the Act. This Declaration incorporates all terms defined in the Act under Utah Code Ann. § 57-8-3.

1.1 "Articles" and "Bylaws" shall mean the Articles of Incorporation and Bylaws of the Association as the same may from time to time be duly amended. The Articles, among other things, establish the Board to manage the affairs of the Association. The Bylaws, among other things, set forth the number of persons constituting the Board, the method of the Board's selection, the Board's general powers, and the method of calling a meeting of Members of the Association.

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

1.3 "Association" shall mean Condominium Forest Glen, Inc., a Utah non-profit corporation, incorporated under the laws of the State of Utah, and its successors and assigns. The Association may also be referred to as the Forest Glen Condominium Association.

1.4 "Association Rules" shall mean the rules adopted from time to time by the Association pursuant to ARTICLE 7 hereof.

1.5 "Board of Directors" or "Board" shall mean the Board of Directors for the Association.

1.6 “Building” shall mean any structure which (a) is permanently affixed to the land, and (b) has one or more floors and a roof.

1.7 “Capital Improvement” shall mean all new improvements intended to add to, enhance, or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

1.8 “City” shall mean Salt Lake City, Utah, a municipal corporation of the State of Utah.

1.9 “Common Areas” or “Common Areas and Facilities” shall mean and refer to:

(a) the real property, parts of real property, interests in real property, and improvements and fixtures thereto, which are not specifically included within the respective units as herein defined, including, without limitation, all grounds, foundations, columns, girders, supports, Building exteriors, main walls, roofs, landscaped areas, and all parts of the Property which are from time to time devoted primarily to parking, approaches, exits, entrances, walkways, parks, open spaces, streets, paths, trails and slopes, incidental and interior roadways, service roads and other similar areas;

(b) all parts of the Project normally in common use or necessary or convenient to its use, existence maintenance, safety, or management, including all property rights, improvements, fixtures and personal property which are from time to time devoted primarily for the common use and benefit of the Owners and situated upon public property or the private property of the Owners, including, without limitation all easements running in favor of the Association and the improvements, fixtures and personal property situated within or upon said easements, landscaping, irrigation systems and associated pumps and hardware, street lighting systems, project identification, directional and street signs, and street fixtures;

(c) all Common Areas and Facilities specifically set forth and designated as such on the Plat or Plats of the Property;

(d) all Common Areas and Facilities as defined in the Act, whether or not expressly listed herein or on the Plat or Plats of the Property;

(e) all property rights, improvements, fixtures and personal property owned by or leased to the Association from time to time for the common use and benefit of the Owners and situated upon public property or the private property of the Owners.

The Common Areas and Facilities designated in each final subdivision Plat recorded by Declarant with regard to the property shall be deemed conveyed by Declarant to the Association concurrently with the recording thereof. Unless otherwise stated in writing, the conveyance of Common Areas and Facilities from the Declarant to the Association shall be deemed a conveyance free of all liens and

encumbrances except current real property taxes (which taxes shall be prorated as of the date of the conveyance), title exceptions of record and the covenants, conditions, reservations, restrictions and easements contained in this Declaration.

1.10 “Common Expenses” shall mean the actual and estimated costs of:

- (a) maintenance, management, operation, repair, and replacement of the Common Areas and Facilities, and all other areas within the Property and outside of the Property which are maintained by the Association, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, etc., as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;
- (b) unpaid Special, Reconstruction and Capital Improvement Assessments;
- (c) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (d) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Units to the extent such services are paid for by the Association;
- (e) the costs of fire, casualty, liability, workmen’s compensation and other insurance covering the Common Areas and Facilities;
- (f) the costs of any other insurance obtained by the Association;
- (g) reasonable reserves as deemed appropriate by the Board;
- (h) the costs of bonding the members of the Board, any professional managing agent or any other person handling the funds of the Association;
- (i) taxes paid by the Association;
- (j) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas and Facilities or portions thereof;
- (k) the costs of any other item or items approved by the Board and incurred in connection with the Common Areas and Facilities, this Declaration, the Articles or the Bylaws, or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

1.11 “Declarant” shall mean Nagle Construction Company, Inc. and its successors and assigns as identified in the Prior Declaration.

1.12 “Design Guidelines” shall mean the guidelines adopted from time to time by the Board at its sole discretion, setting forth certain architectural standards and specifications regarding the location and design of the improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Association Property.

1.13 “Expansion Property” shall mean real property that may be added to the Project by recording additional Plats.

1.14 “Governing Documents” shall mean a written instrument by which the Association may (a) exercise powers; or (b) manage, maintain, or otherwise affect the Property. Governing Documents includes the Articles, the Bylaws, any Plat, this Declaration, and Association Rules.

1.15 “Hazardous Material” means (a) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not airborne), which is deemed to be a pollutant or a contaminant or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other government restrictions or requirements, any amendments or successor(s) thereto, replacements thereof of publications promulgated pursuant thereto (collectively “Environmental Regulations” and individually, an “Environmental Regulation”); (b) petroleum; (c) asbestos; (d) polychlorinated biphenyls; and (e) any radioactive material. In addition to the foregoing, the term “Environmental Regulations” shall be deemed to include, without limitation, local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other government restrictions and requirements, any amendments and successors thereto, replacements thereof and publication promulgated pursuant thereto, which deal with or otherwise in any manner relate to, environmental matters of any kind.

1.16 “Improvements” shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property of any Unit or of any structure or thing affixed on the Property or any Unit, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing or activity. Improvements include, but are not limited to, all Buildings, structures, landscaping and lawns, exterior walkways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities, repairs, alterations, painting and all other structures or objects of any type or kind installed or constructed on the Property.

1.17 “Institutional Mortgagee” shall mean a Mortgagee which is a bank, or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any insurance company, any federal or state agency, or any other institution specified by the Board.

1.18 “Limited Common Areas” shall mean and refer to those Common Areas and Facilities designated herein or on a Plat of the Property as reserved for the use of a certain Unit or group of Units to the exclusion of the other Units as further described in this Declaration. Limited Common Areas include, without limitation:

- (a) the mechanical rooms, elevators and/or elevator lobbies, interior hallways and corridors, and storage areas of the Buildings;
- (b) any shutters, awnings, window boxes, windows, doors, doorsteps, and other apparatus intended to serve a single Unit but located outside the boundaries of such Unit;
- (c) all installations for and all equipment connected with furnishing the Condominium Project with utility service, including, but not limited to, utility systems, mechanical systems, and exhaust and ventilation systems;
- (d) elevators, hallways and waiting areas, storage spaces, parking areas, entrances, exits, and walkways and other areas and improvements that are designed to serve fewer than all of the Units; and
- (e) any parcels of real property and Improvements and fixtures located thereon (i) that are owned by a Person other than the Association but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement, or other agreement, and (ii) that are used or possessed by the Association for the benefit of Owners of fewer than all of the Units.

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system, or any fixture (exclusive of each unit's water heater, furnace(s) and air conditioner(s) which are not common facilities) lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Area allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Areas is a part of the general Common Area. Nonstructural walls located wholly within a Unit are a part of the Units in which they are located.

1.19 “Meeting of the Board” or “Meeting” shall mean a gathering of the Board, whether in person or by electronic system that allows for oral communication in real time (such as web conferencing, video conferencing, and telephone conferencing), at which the Board can take binding action; Communication by email shall not be considered a Meeting.

1.20 “Member” shall mean every individual or entity who qualifies for membership in the Association pursuant to ARTICLE 2.

1.21 “Mortgage” shall mean any duly recorded mortgage or deed of trust encumbering a Unit.

1.22 “Mortgagee” shall mean the mortgagee or beneficiary under any Mortgage. A “First Mortgagee” shall refer to a Mortgagee whose Mortgage has priority over any other Mortgage encumbering a specific Unit.

1.23 “Occupant” shall mean and include the Declarant, the Owners, their respective heirs, successors and assigns (including Mortgagees), and any person who shall be from time to

time entitled to the use and occupancy of space located within the Project under any lease, sublease, license or concession agreement, or other instrument or arrangement under which such rights are acquired.

1.24 "Owner" shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Unit, including Declarant, and the purchaser under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

1.25 "Permittees" shall mean all Occupants and all other invitees of Occupants.

1.26 "Plat" shall mean any subdivision plat, any plat of a condominium project, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Units, Buildings, improvements, or Residences; (c) on which or in an instrument recorded in conjunction therewith is expressed the intent that the Units, Buildings, improvements, or Residences created by the Plat shall comprise the Project; and (d) which is filed for record in the office of the Salt Lake County Recorder. Recorded prior to this Declaration are subdivision plats for each phase recorded in the Salt Lake County Recorder's Office as follows:

**Phase I (Bldgs. 2554 through 2568):** recorded on October 19, 1978 as Entry No. 3184703;

**Phase II (Bldgs. 2578 through 2592):** recorded on September 14, 1979 as Entry No. 3336680;

**Phase III (Bldg. 2514):** recorded on July 30, 1980 as Entry No. 3458792;

**Phase IV (Bldg. 2550):** recorded on October 23, 1981 as Entry No. 3617109;

**Phase V (Bldg. 2512):** recorded on April 30, 1986 as Entry No. 4238329;

**Phase VI (Bldg. 2510):** recorded on August 17, 1988 as Entry No. 4664219.

Said subdivision plats each constitute a Plat.

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

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

1.29 "Unit" shall mean each or any individual Unit as more particularly described in this Declaration, and any other Unit or parcel shown on any recorded final Plat filed by the Declarant to the extent such units or parcels are part of the Property, together with the undivided interest in and to the Common Areas and Facilities appertaining to that Unit. Fixtures and the like shall also be considered part of the Unit. All pipes, wires, conduits, or other public utility lines or installation

constituting part of a particular Unit or serving only that Unit, and any structural members of any other property of any kind, including fixtures, and appliances within any Unit which are not 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. References in the Declaration to a specific Unit shall refer to the particular Unit as set forth in this Declaration and, as applicable, on the recorded final Plat for such Unit.

1.31 "Utah Condominium Ownership Act" or the "Act" shall refer to the applicable provisions of the Condominium Ownership Act described in Utah Code 57-8-1 et seq., as amended from time to time.

## ARTICLE 2 MEMBERSHIP IN THE ASSOCIATION

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

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of such Unit and then only to the transferee or Mortgagee of such Unit. Any attempt to separate the membership in the Association from the Unit to which it is appurtenant shall be void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in such Owner's name to the transferee of such Owner's interest in such Unit, the Association shall have the right to record the transfer upon the books of the Association so that the name of the Member corresponds with the ownership of the Unit set forth in the Salt Lake County Recorder's office. No part of a Unit nor any part of the legal rights comprising ownership of a Unit may be separated from any other part thereof during the period of condominium ownership so that each Unit, the undivided interest in and to the Common Areas and Facilities appurtenant to such Unit, and the right to use and occupy the same, shall always be conveyed, devised, encumbered, and otherwise effected only together and may never be separated from one another.

2.3 Voting Rights. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws, and Association Rules. The Association shall have one class of Members. Each Member shall be entitled to one (1) vote for each Unit such Member owns. When more than one person owns an interest in a Unit, such persons shall designate to the

Association, in writing, a representative who shall exercise the vote for such Unit on behalf of all co-Owners of the Unit. In no event shall fractional votes be exercised in respect to any Unit.

2.4 Approval of Members. Unless a different percentage is otherwise provided for in this Declaration, the Articles, or the Bylaws, the vote of a majority of Members shall be required to approve any matter before the Members. Votes may be taken by an action by written consent. Quorum requirements for the Association, if any, shall be set forth in the Bylaws.

2.5 Undivided Interest in Common Areas and Facilities. Each Unit Owner shall have, for each Unit owned, an equal, undivided ownership interest in and to the Common Areas and Facilities as set forth in Exhibit "B."

2.6 No Partition. The Common Areas and Facilities shall be owned in common by all the Owners of Units and no Unit Owner may bring an action for partition thereof.

2.7 Limited Common Areas. The use and occupancy of designated Limited Common Areas shall be reserved to its associated Unit and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas. Limited Common Areas include those depicted on the Plat and those described in Article I herein.

2.8 Entry by other Owners. An Owner shall permit other Owners, or their representatives, when necessary for the other Owner's use and enjoyment of the other Owner's Unit, to enter his Unit for the purpose of installing, altering, or repairing mechanical, electrical, or plumbing services, provided that the requests for such non-emergency entry are made at least 24 hours in advance and that such entry is at a time convenient to the Owner. In case of emergency, such rights of entry shall be made only after notice that is reasonable under the circumstances has been given.

### **ARTICLE 3 COVENANT FOR ASSESSMENTS**

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

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

and this Declaration.

3.3 Regular Assessments. The amount and timing of payment of Regular Assessments shall be determined by the Board pursuant to the Articles and Bylaws after giving due consideration to the current maintenance, operational, and other costs and the future needs of the Association. Prior to the beginning of each fiscal year of the Association, the Board shall estimate the total Common Expenses to be incurred for the upcoming fiscal year. The Board shall then determine the amount of the Regular Assessment to be paid by each Owner. Written notice of the annual Regular Assessments shall be sent to every Owner; provided that failure to provide adequate notice does not relieve the Owner's obligation to pay the Regular Assessment in installments as established by the Board. In the event the Board shall determine that the estimate of total charges for the current year is, or will become inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessment against each Owner, and the date or dates when due.

3.4 Special Assessments. In addition to the Regular Assessments authorized in Section 3.3, the Association may levy a Special Assessment or Special Assessments from time to time to cover any unexpected expenses, operating shortfalls, major repairs, additions, or Capital Improvements. Special Assessments may be levied against one or more individual Unit or against all Units. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

3.5 Rate of Assessment. All Regular, Reconstruction and Capital Improvement Assessments shall be fixed by the Board at a rate computed and assessed with respect to each Unit at a percentage equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Unit owned by the Unit Owner as set forth in Exhibit B. Notwithstanding the foregoing, as to the Units in building 2556, the only building without an elevator, the rate of assessment shall be reduced by a dollar amount calculated by the Treasurer based on elevator expenses during the previous 12 months. All Regular, Reconstruction and Capital Improvement Assessments may be collected at intervals selected by the Board.

3.6 Exempt Property. The following portions of the Property shall be exempt from the Assessments created herein; all properties dedicated to and accepted by, or otherwise acquired by a public authority; and the Common Areas and Facilities.

3.7 Individual Assessments. In addition to any other Assessments authorized herein, the Association also may levy an Individual Assessment against any owner individually and against such Owner's Unit to reimburse the Association for costs incurred in bringing an Owner and his Unit into compliance with the provisions of this Declaration, the Articles, the Bylaws or Association Rules, together with attorney's fees, interest and other charges related thereto which Individual Assessment may be levied by the Association after notice to an Owner and an opportunity for a hearing.

3.8 Board Discretion to Reduce or Abate. In the event the amount budgeted to meet Common Expenses for any year proves to be excessive in light of the actual Common Expenses,

the Board in its sole discretion may either reduce the amount of the Regular Assessment or may abate collection of Regular Assessments as it deems appropriate.

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

3.10 Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Areas and Facilities. All amounts collected as reserves, whether pursuant to the preceding sentence of this Section or otherwise, shall be deposited by the Board in a separate bank account to be held for the purposes for which they are collected.

3.11 Reinvestment Fee. If the Association has recorded a Notice of Reinvestment Fee Covenant separate from this Declaration, within thirty (30) days after the effective date of any transfer of legal title to a Unit, the new Owner shall pay to the Association, in addition to any other required amounts, a reinvestment fee, in an amount determined by the Board from time to time. However, notwithstanding the foregoing, the following are not subject to the above referenced reinvestment fee:

- a. an involuntary transfer;
- b. a transfer that results from a court order;
- c. a bona fide transfer to a family member of the seller within three degrees of blood relation who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes;
- d. a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- e. the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed \$250.

#### **ARTICLE 4 NONPAYMENT OF ASSESSMENTS**

4.1 Delinquency. Any Assessment provided for in this Declaration which is not paid when due shall be delinquent on said due date (the "delinquency date"). The Board shall have authority to establish the due date, late fees, and interest rate by resolution. Unless otherwise established, in writing, by a resolution of the Board, Regular Assessments shall be due on the 1<sup>st</sup> of each month and a late fee shall apply to any payment received after the 15<sup>th</sup> of the month or, if mailed, postmarked after the 15<sup>th</sup> of the month. Unless otherwise established, in writing, by a

resolution of the Board, the late fee for any delinquent payment shall be fifteen percent (15%) of the delinquent balance.

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

a. The Association may bring an action to recover a money judgment against the Owner for unpaid Assessments, interests, late fees, costs, and attorney's fees.

b. The Association may foreclose the Association's lien against the Unit for the unpaid Assessments, interest, late fees, costs, and attorney's fees pursuant to Utah Code 57-8-47.

c. The Association may, after giving notice and an opportunity to be heard in accordance with Utah Code 57-8-52, terminate an Owner's right to receive utility services for which the Owner pays for as a common expense and access to and use of Common Areas and Facilities.

d. Subject to Utah Code 57-8-53, the Association may require tenants of a Unit to make future lease payments directly to the Association so long as Assessments remain unpaid for such Unit.

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

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

4.5 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit, the amount of any assessment that is more than sixty (60) days past due.

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

## ARTICLE 5 COVENANTS, CONDITIONS, AND RESTRICTIONS

5.1 Permitted Use. No Unit shall be used except for single-family, residential purposes. All Units and Improvements must comply with the Design Guidelines.

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

a. Emission of smoke, fumes, odors, gases, vapors, steam, dust, sweepings, dirt, cinders or other particles or substances into the atmosphere which are detectable outside of the Unit where created and/or which may be detrimental to the health, safety, welfare or comfort of any Owner or any other person, to the condition of any other portion of the Property, or to any vegetation within the Property.

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

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

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

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

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

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

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

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

5.3 Waste Disposal. No trash, garbage or waste material, including, but not limited to, scraps, grass, shrub or tree clippings, lumber, metals and plant waste, shall be kept, stored or allowed to accumulate on any portion of the Property except in an approved bin. All trash, garbage and other waste materials shall be regularly removed from each Unit and the Property. Incineration of trash, garbage, or waste materials on the Property is prohibited; provided, however, that the Association is permitted to burn weeds.

5.4 Hazardous Materials.

a. Restriction on Hazardous Materials. Any Hazardous Materials brought upon, kept, used, generated, stored, treated, disposed of or released in or about any Unit, or soils or groundwater appurtenant to the same, by any Owner of such Unit, any Occupant or Permittee of such Owner, or any party acting on behalf of any of them and in a manner which does not comply with applicable Environmental Regulations shall be referred to herein as a "Hazardous Condition."

In the event any Hazardous Condition occurs on a Unit, the Owner of such Unit shall promptly take all actions at its sole expense as are reasonably necessary to correct said violation to the satisfaction of the regulating entity.

b. Indemnity. If an Owner of a Unit breaches the obligations stated in Section 5.4(a) above or if a Hazardous Condition exists at any time, the Owner of such Unit shall indemnify, defend and hold the Owners of each other Unit within the Property harmless from any and all claims, judgments, damages, penalties, fines, costs, expenses liabilities or losses, including, without limitation, (1) diminution in value of the Property, (2) damages for the loss or restriction on use of usable space or of any amenity of the Property, (3) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings, or investigations, (4) costs, expenses, reasonable attorneys' fees, consultant fees, expert fees and incidental costs incurred in connection with any of the above or any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental or quasi-governmental entity. The obligations contained in this ARTICLE 5 shall survive the termination of this Declaration.

5.5 Restrictions on Signs. Unless otherwise established by resolution of the Board in Association Rules or another written instrument, the following regulations regarding signs apply: No signs or advertising devices of any nature, including without limitation, commercial, informational, or directional signs or devices, shall be erected or maintained: a) on or in any Unit if visible from the street; or b) on any other part of the Project, without the prior inspection and written approval of the Association, except as may be necessary temporarily to caution or warn of danger. If the Association consents to the erection of any such signs or devices, the same shall be removed promptly at the request of the Association.

5.6 Pets and Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas except for Board approved service animals of Owners or their guests or invitees with disabilities. Each Owner who keeps a service animal in the Project shall indemnify and hold all other Owners and the Association harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such animal in the Project. If a service animal poses a risk to the health or safety of another occupant in the Project, to personal property, or to real property, to the extent permitted under the law, the Association may require the animal to be removed from the Project.

5.7 No Alterations. No Owner shall, without the prior written consent of the Association in each specific instance, make, or cause to be made any alteration, addition, removal, or improvement in or to the Common Areas or any part thereof, or do any act that would impair the structural soundness or integrity of the Common Areas and Facilities or other Improvements thereon or thereto, or jeopardize the safety or persons or property or impair any easement or hereditament appurtenant to the Project. The Association shall have authority to create and enforce Association Rules regulating the placement of satellite dishes, outdoor antennas, and other similar appliances for the purpose of addressing legitimate safety concerns in a manner that is no more burdensome to the Owner than necessary. No satellite dishes, outdoor antennas, or other similar appliances shall be larger than one meter in width or shall extend higher than twelve (12) feet above the Owner's roofline unless expressly permitted by resolution of the Board in Association

Rules or in another written instrument. Solar panels shall not be installed or attached to any Common Areas and Facilities or to any other exterior portion of a Unit.

5.8 No Obstructions. No Owner shall obstruct the Common Areas or any part thereof. No Owner shall store or place anything in the Common Areas or plant anything on the grounds without prior, written consent from the Board.

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

5.10 Commercial Business. Commercial Business shall not be permitted within the Project. However, nothing in this article shall be construed to prevent the Association from entering into contracts with utility providers which contracts would involve installing and maintaining equipment within the Project which may be used for providing services to parties that are not members of the Association. Notwithstanding the foregoing, each Owner shall be permitted to conduct work activities within the confines of his or her Unit that are incidental to a job where the primary place of business is in a location other than the Unit if such activities do not create any unreasonable interference with other Members' use and enjoyment of their properties and such activities are not apparent from outside of the Unit. For instance, a Unit Owner may make and receive business phone calls, emails, and faxes within his or her Unit.

5.11 Restrictions on Leases. No Owner shall be permitted to lease his or her Unit. However, the following shall be exempt from the foregoing rental restriction:

- a. any Owner in the military for the period of the Owner's deployment;
- b. any Owner renting to the Owner's parent, child, or sibling;
- c. any Owner whose employer has relocated the Owner for two years or less;
- d. any Unit owned by an entity that is occupied by an individual who:
  - i. has voting rights under the entity's organizing documents; and
  - ii. has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- e. any Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:

- i. a current resident of the Unit; or
- ii. the parent, child, or sibling of the current resident of the Unit.

An Owner who is renting his or her Unit at the time that this rental restriction passes may continue to rent until the Owner occupies the Unit; or until an officer, owner, member, trustee, beneficiary, director, or person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the same; or until the Unit is transferred. The Board shall create procedures by rule or resolution to track and ensure consistent administration and enforcement of this rental restriction.

#### 5.12 Parking and Vehicles.

a. No motor vehicle exceeding 7.5'h x 20'1 x 7'w (7.5 feet in height and 20 feet in length and 7 feet in width) and no commercial vehicle, mobile home, trailer, detached camper or camper shell, boat, or other similar equipment or vehicle may be kept or parked at the Condominium Project.

b. No motor vehicle shall be constructed, repaired or serviced at the Condominium Project.

c. Owners shall only park in the space assigned to their Unit, which assignments shall be made by the Association, provided that each Unit's assigned space shall be in the Limited Common Element parking area associated with the Building in which said Unit is located. In addition to the parking space associated with the Owner's Unit, and subject to paragraph 5.12(e), there are additional indoor parking spaces which the Association may, from time to time, rent to Owners or, if those parking spaces have not been so rented, the Owners may use for guest parking on the same terms as the outdoor parking facilities set forth below. In addition to the parking space associated with the Owner's Unit, and subject to paragraph 5.12(e), each Owner of a Unit or its Guests may, on a first-come, first-serve basis, use one additional non-assigned parking space in the Condominium Project's outdoor parking facilities during any period during which the Owner or one or more of its Guests are staying in the Owner's Unit. Further, the Project's outdoor parking facilities are not intended for and shall not be used as a regular parking space for any Owner's or his or her guest's vehicle(s).

d. An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has by virtue of its ownership of a Unit (other than in connection with the sale, lease or other conveyance of such Owner's Unit), except that an Owner may lease one or more of its parking stalls only to someone in the same building on a month-to-month basis, which lease agreement must be terminable at will by the Owner, the Owner's agent or the Board of Directors, and which agreement must be approved in advance by the Board of Directors.

5.13 Storage Areas. Storage areas located in the Limited Common Elements of a Building are available to the Owners of Units within said Buildings first on the basis of which Unit's parking space is adjacent to the storage area, then to Units in the same Building, and finally on a first-come, first-serve basis and in accordance with separate lease agreements with the Association for such storage areas and lockers.

5.14 Rules and Regulations. Each Owner shall comply strictly with all Association Rules and other regulations adopted by the Association for the governance of the Units, the Common Areas, and the Project, as such rules and regulation may be modified, amended, and construed by the Association. Each Owner shall be held responsible for the noncompliance of the

same by its Permittees, guests, tenants, licensee, or invitees.

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

5.16 Subdivision of Units. A Unit may not be subdivided.

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

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

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

5.20 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including, but not limited to tents and trailers without the prior written consent of the Board.

## **ARTICLE 6 GENERAL CONSTRUCTION REQUIREMENTS**

6.1 Construction of Improvements in Each Unit. All work performed in the construction, maintenance, repair replacement, alteration or expansion of any Improvement in or on a Unit shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Unit, or part thereof, to or from any of the Common Areas and Facilities, (b) construction work being performed in any other Unit; or (c) the use, enjoyment or occupancy of any other Unit. Any replacement, alteration or expansion of any Improvement in a Unit shall be in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof and no such work shall cause any Improvement located in any other Unit to be in violation of any such laws, rules, regulations, orders or ordinances. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Improvement in or

on a Unit shall be done in a good and workmanlike manner and in accordance with engineering standards and Association rules.

6.2 Staging of Construction of Improvements. Staging for the construction, maintenance, repair, replacement, alteration or expansion of any Improvement in or on a Unit, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to such Unit.

## **ARTICLE 7 DUTIES AND POWERS OF THE ASSOCIATION**

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

a. enforce the provisions of the Declaration, the Articles and the Bylaws by appropriate means and carry out the obligations of the Association hereunder, including without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, the promulgation for the Association Rules as provided Section 7.2 below, which shall include the establishment of a system of fines or penalties enforceable as Individual Assessments;

b. acquire, maintain and otherwise manage all of the Common Areas and Facilities, including the grounds and all improvements and landscaping thereof, and all personal property acquired by the Association, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain, including, without limitation, the landscaped areas, the roadways, the sidewalks and the parking areas, as provided in this Declaration or pursuant to agreement with the City or other governmental agency or authority;

c. pay any real and personal property taxes and other charges assessed against the Common Areas and Facilities unless the same are separately assessed to the Owners;

d. obtain, for the benefit of the Common Areas and Facilities, all water, gas and electric, refuse collections and other services;

e. grant easements where necessary for utilities and sewer facilities over the Common Areas and Facilities to serve the Property as provided in ARTICLE 13 below;

f. contract for and maintain such policy or policies of insurance as may be required by this Declaration or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association and its Members;

g. delegate its powers to committees, officers, or employees as provided in the Bylaws, employ a manager or other persons and contract with independent contractors or

managing agents who have professional experience in the management of condominium developments or planned unit developments to perform all or any part of the duties and responsibilities of the Association;

h. establish and maintain a working capital and contingency fund in an amount to be determined by the Board;

i. have the power of entry upon any Unit where necessary in connection with construction, maintenance or repair for the benefit of the Common Areas and Facilities, or the Owners;

j. at its sole discretion, provide trash pickup and disposal and snowplowing service for the benefit of the Owners and their Units;

k. acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Areas and Facilities, the administration of the affairs of the Association or for the benefit of the Members;

l. at its sole discretion, contract for communication services (e.g., cable television, Internet, telephone, etc.) for the benefit of the Owners who have subscribed for the service; and

m. have the power to establish in cooperation with the City a special tax assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right to convey or lease, with or without the payment of monetary consideration, all or any portion of the Common Areas and Facilities to said district.

7.2 Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (the "Association Rules"). The Association Rules shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas and Facilities; *provided, however*, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be delivered to each Owner in the same manner established in this Declaration for the delivering of notices. Upon such delivery, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Mortgagee upon request. In the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or the Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

7.3 Delegation of Powers. The Association shall have the right according to law, to delegate any of its powers under this Declaration, the Articles and Bylaws; *provided, however*, no

such delegation, whether to a professional management company, committee or otherwise shall relieve the Association of its obligation to perform such delegated duty.

7.4 Schedule of Fines and Penalties. The Association has the authority, from time to time, to set forth in the Association Rules a schedule of fines and penalties for violations of the Association's governing documents.

## **ARTICLE 8 REPAIR AND MAINTENANCE**

8.1 Repair and Maintenance by Association. Without limiting the generality of the statement of duties and powers contained in this Declaration, the Association shall have the duty to accomplish the following upon the Units, Common Areas and Facilities (including the grounds) or other land within and about the Project in such a manner and at such times as the Board shall prescribe and shall have a right of entry sufficient to allow accomplishment of the same:

a. maintain, repair, and replace the Common Areas and Facilities (including the grounds) in a clean, safe, and attractive condition at all times, and maintain all other areas within and in the vicinity of the Property which the Association deems appropriate to maintain or is obligated to maintain in a clean, safe, and attractive condition at all times, including, without limitation, the exteriors and roofs of the Buildings, exterior concrete walls and wooden fences except as otherwise provided herein, concrete walls and metal railings located around window wells, exterior sprinkler systems other than valves and controllers except as otherwise provided herein;

b. repair, restore, replace and make necessary improvements to the Common Areas and Facilities (including the grounds);

c. maintain, repair, and replace all drainage facilities and easements which constitute Common Areas and Facilities in accordance with the requirements of any applicable flood control district;

d. cause the appropriate public utility to maintain any utility easements located within the Common Areas and Facilities;

e. maintain the public rights-of-way within the Project; and maintain, repair, and replace all other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may from time to time be requested by the vote of Members holding not less than sixty-seven percent (67%) of the voting power of the Members;

8.2 Repair and Maintenance by Owner. Every Owner shall:

a. maintain, repair, and replace those portions of such Owner's Unit that are not considered to be Common Areas and Facilities and all improvements located therein including, without limitation, any balconies, balcony components and fixtures, plumbing fixtures, water heater, heating equipment, air conditioner, lighting fixtures, and appliances in and connected to

the Unit in a clean, safe, and attractive condition at all times, and in compliance with this Declaration, the Articles, Bylaws and the Association Rules;

b. maintain all Limited Common Areas appurtenant to the Owner's Unit in a clean, safe, and attractive condition at all times, and in compliance with this Declaration, the Articles, Bylaws and the Association Rules;

c. notwithstanding anything to the contrary herein, no material alteration shall be made to any exteriors and other structures on such Owner's Unit without the prior, written consent of the Board of Directors. Painting shall be considered a material alteration.

d. No Owner shall trim any trees or shrubs on the grounds without prior, written consent from the Board.

### 8.3 Design Guidelines.

a. The Board may appoint an Architectural Review Committee ("ARC") and may establish provisions related to the ARC in the Association Rules. The ARC may consist entirely or in part of members of the Board. If the Board does not appoint an ARC, the Board shall serve as the ARC. The ARC shall prepare or adopt and promulgate on behalf of the Board design and development guidelines (the "Design Guidelines") and application and review procedures applicable to the Association Properties or any portion thereof. The Design Guidelines and procedures shall be those of the Association and the ARC shall have the sole and full authority to prepare and to amend the same, subject to approval of the City (if applicable). Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Design Guidelines, the ARC or the Board shall hold a Meeting at which it provides the Members an opportunity to be heard. The ARC or the Board shall deliver to the Members notice of the Meeting and its purpose at least 15 days prior to the Meeting. The Association shall make copies of the guidelines and procedures available, upon request, to Owners, builders, and developers who seek to engage in development of or construction upon any portion of the Association Properties, and such Owners, builders and developers shall conduct their operations strictly in accordance therewith.

b. Any construction, alteration, modification, removal or destruction, within the Project, including the location of all improvements, must be approved in writing by the ARC prior to the commencement of the same. No person commencing such construction, alteration, modification, removal or destruction prior to receipt of such written approval shall acquire any vested rights in any such improvement. A majority of the members of the ARC shall have the power to act on behalf of the ARC, without the necessity of a Meeting. All decisions rendered by the ARC must be by written instrument setting forth the action taken by the members consenting thereto.

c. The ARC may, at its sole discretion, withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Unit or incompatible with the Design Guidelines. Considerations such as siting, shape, size, color, design, height, solar access or other effects on the enjoyment of other Units or Common Area, and any other factors which the ARC

reasonably believes to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

d. Approval or disapproval by the ARC of any matter proposed to it or within its jurisdiction shall not be deemed to constitute precedent, waiver or estoppel impairing its right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

e. Any Owner adversely impacted by action of the ARC may appeal such action to the Board. If, however, the ARC's duties are being carried out by the Board, then no such right to appeal shall exist.

f. All appeals and hearings shall be conducted in accordance with procedures set forth by the Board by resolution.

g. The ARC's approval of any proposal shall automatically be revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner has applied for and received an extension of time from the ARC.

h. The ARC may inspect from time to time, all work performed and determine whether it is in substantial compliance with the approval granted. If the ARC finds that the work was not performed in substantial conformation with the approval granted, or if the ARC finds that the approval required was not obtained, the ARC shall notify the Owner in writing of the noncompliance. The notice of noncompliance shall specify the particulars of noncompliance and shall require the owner to remedy the noncompliance by a specific date. Any Owner who receives a notice of noncompliance may appeal the notice in accordance with the appeals procedure set forth by the Board. A notice of noncompliance may be recorded in the office of the county recorder.

i. Neither the Board nor the ARC shall be liable to any Owner, occupant, builder or other person for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the ARC or a member thereof, provided only that the member has in accordance with the actual knowledge possessed by him or her, acted in good faith. The ARC is not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes or other governmental regulations, all of which are the responsibility of the Owner.

#### 8.4 Standards for Maintenance and Construction.

a. Maintenance of the exterior of Buildings and Improvements shall be accomplished in accordance with the Design Guidelines.

b. Throughout any period of construction upon a Unit, the Owner of such Unit shall keep the Unit and all streets used by construction equipment or trucks in a clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures

necessary or appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Unit and shall so conduct all such construction so as not to interfere with free and ready access to existing Buildings and neighboring Units.

8.5 Right of Association to Maintain and Install. In the event any Owner fails properly to perform his or her maintenance responsibility, the Association may cause such maintenance to be accomplished as hereinafter set forth.

a. Upon finding by the Board of a deficiency in such maintenance, the Board shall give notice of deficiency to the responsible Owner which shall briefly describe the deficiency and set a date for hearing before the Board or a committee selected by the Board for such purpose. The Board may delegate its power under this Section to a duly appointed committee of the Association.

b. Such hearing shall be held not less than ten (10) nor more than thirty (30) days from the date of said notice.

c. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt and which shall provide the Owner with the right to present oral and written evidence and to confront and cross-examine adverse witnesses. If the Board or any committee renders a decision against the responsible Owner, it shall further set a date by which the deficiency is to be corrected by the responsible Owner. A decision of a committee may be appealed to the Board, but a decision of the Board shall be final.

d. If a deficiency continues to exist after the time limitation imposed by a final decision of the Board or any such committee, the Board or such committee shall have a right of entry upon such Unit and Limited Common Areas and may cause such maintenance to be accomplished.

e. In the event the Board or such committee elects to cause such maintenance to be accomplished and the Association pays for all or any portion of such maintenance, such amount shall be an Individual Assessment to the affected Owner and Unit.

## **ARTICLE 9 INSURANCE**

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

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

9.3 Liability Insurance. The Association shall obtain comprehensive general liability (CGL) insurance insuring the Association, the agents and employees of the Association and the Owners, against liability incident to the use, ownership, or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One

Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

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

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

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

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

9.8 Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in ARTICLE 10 hereof. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers.

## **ARTICLE 10 DESTRUCTION OF IMPROVEMENTS**

In the event of partial or total destruction of the Common Areas and Facilities, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be insufficient to accomplish such repair or restoration, a Reconstruction Assessment may be levied by the Association to provide the necessary funds or such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event any excess insurance proceeds remain, the Board shall distribute pro rata such excess funds to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Mortgagee of his Unit as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Unit. All amounts collected as Reconstruction Assessments shall only be used

for the purposes set forth in this Article and shall be deposited by the Board in a separate bank account to be held in trust for such purposes. Such funds shall not be commingled with any other funds of the Association.

## **ARTICLE 11 EMINENT DOMAIN**

The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Common Areas and Facilities, the Members hereby appoint the Board and such persons as the Board may delegate to represent all of the Members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the Common Areas and Facilities, the rules as to restoration and replacement of the Common Areas and Facilities and the improvements thereon shall apply as in the case of destruction of the improvements upon the Common Areas and Facilities. In the event of a total taking, the Board shall distribute pro rata any award to the Members. The rights of an Owner and the Mortgagee of such Owner's Unit as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Unit.

## **ARTICLE 12 RIGHTS TO THE COMMON AREAS AND FACILITIES**

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

- a. The right of the Association to establish reasonable rules and regulations pertaining to the use of the Common Areas and Facilities.
- b. The right of the Association subject to the approval rights of Mortgagees pursuant to ARTICLE 15 hereof, to dedicate or transfer all or any part of the Common Areas and Facilities to any public agency, authority or utility or other entity for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer, including, without limitation, the conveyance, lease or other transfer of any portion of the Common Areas and Facilities to a special tax assessment district or to the City, shall be effective unless approved by Members holding not less than sixty-seven percent (67%) of the voting power of the Members.
- c. The right of the Association to establish, in cooperation with the City, a special assessment district for the performance of all or a portion of the maintenance and other functions now within the responsibility of the Association, together with the right of the Association to convey, lease or otherwise transfer, subject to the provisions of subsections

12.1(b) above, all or any portion of the Common Areas and Facilities to said district.

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

### **ARTICLE 13 EASEMENTS**

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

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

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

c. The foregoing provisions of this Section shall not be deemed to give any Owner the right to connect to any utility line or facility without first complying with all the requirements of the utility company providing the service in question, including without limitation, the payment of all required connection fees and related charges.

13.2 Utilities. Easements of record over the Property for the installations and maintenance of electric, telephone, communication lines, water, gas, sanitary sewer lines and drainage facilities are hereby reserved and established for the benefit of each Owner and their respective successors and assigns.

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

a. General, nonexclusive easements for the purpose of pedestrian traffic over, upon, and across any portion of privately-owned property located within the Project which has been improved or made available for such use by the owner of such property.

b. General, nonexclusive easements for the purpose of vehicular traffic over, upon, and across (1) any portion of privately-owned property located within the Project which has been improved or made available for such use by the owner of such property; (2) the public streets and alleys now and hereafter abutting any portion of the Property.

#### **ARTICLE 14 NATURE OF EASEMENTS AND RIGHTS GRANTED**

14.1 Easements Appurtenant. Each and all of the easements and rights granted or created herein are appurtenances to the affected portions of the Property and none of the easements and rights may be transferred, assigned or encumbered except as an appurtenance to such portions. For the purposes of such easements and rights, the particular areas of the Property which are benefitted by such easements shall constitute the dominant estate, and the particular areas of the Property which are burdened by such easements and rights shall constitute the servient estate.

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

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

#### **ARTICLE 15 RIGHTS OF LENDERS**

15.1 Filing Notice; Notices and Approvals. A mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee or its mortgage servicing contractor has delivered to the Board a written notice stating that such Mortgagee is the holder of a mortgage encumbering a Unit within the Property. Such notice shall state whether such mortgagee is a First Mortgagee. Where the approval of any percentage of Mortgagees is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of the percentage of only those mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association, in addition to having delivered the notice provided in this Section, a Mortgagee must also make such request, either in a separate writing delivered to the Association or in the notice provided above in this Section, in order to be entitled to such right. Except as provided in this Section, a Mortgagee's rights pursuant to this Declaration, including, without limitation, the priority of the lien of Mortgages over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice to the Board. Any notice or request delivered to the Board by a Mortgagee shall

remain effective without any further action by such Mortgagee for so long as the facts set forth in such a notice or request remain unchanged.

15.2 Priority of Mortgage Lien. No breach of the covenants, conditions, or restrictions herein contained nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Unit but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit, except as otherwise provided in this Article.

15.3 Relationship with Assessments Liens.

a. The lien provided for in ARTICLE 3 hereof for the payment of Assessments shall be subordinate to the lien of any Mortgage only to the extent required by law, if any.

b. If any Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage, the foreclosure of the lien of said Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall have accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

c. Any Mortgagee who obtains title to a Unit by reason of any of the Events of Foreclosure, or any purchaser 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 which accrue prior to the time such Mortgagee or purchaser takes title to the Unit, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments to all Units within the Property.

d. Nothing in this Section shall be construed to release any Owner from his obligation to pay for any Assessment levied pursuant to this Declaration.

## **ARTICLE 16 AMENDMENTS**

16.1 Manner of Amending. This Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of voting Members representing sixty-seven percent (67%) of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

16.2 Consent to Amend. If an Owner consents to the Amendment of this Declaration or the Association bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

16.3 Mortgagee's Rights. No amendment may impair the validity or priority of the lien of any Mortgage held by any Mortgagee or impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

16.4 Acceptance of Deed. By acceptance of a deed of conveyance to a Unit or Residence, each Owner thereby gives its full, irrevocable, and unqualified consent on behalf of itself, its mortgagees, and its successors-in-title to the amendment of this Declaration in the manner provided in this Article.

## ARTICLE 17 GENERAL PROVISIONS

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

17.2 Not a Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the property to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to and for the purposes expressed herein.

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

17.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Owner, their respective legal representatives, Occupants, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded; after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years.

17.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of residential units on the Property and for the maintenance of the Property and the Common Areas and Facilities. The Article and Section headings have been inserted for convenience only, and shall not be considered

or referred to in resolving questions of interpretation or construction.

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

17.7 Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Such remedy shall be deemed cumulative and not exclusive.

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

17.9 Notice Generally. Any notice to be given to an Owner or Mortgagee or mortgage servicing contractor under the provisions of this Declaration shall be in writing and may be delivered as follows:

a. Notice to an Owner shall be deemed to have been properly delivered when delivered personally, sent by email, or placed in the first class United States mail, postage prepaid, to the most recent physical address or email address furnished by such Owner in writing to the Association for the purpose of giving notice or, if no such address has been furnished, then to the street address of such Owner's Unit. Any notice sent by email shall be deemed delivered the earlier of twenty-four (24) hours after being sent or confirmed receipt. Any notice deposited in the mail shall be deemed delivered the earlier of forty-eight (48) hours after such deposit or upon confirmed receipt. 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 on all such co-Owners.

b. Notice to a Mortgagee or its mortgage servicing contractor shall be deemed to have been properly delivered when placed in the first class United States mail, postage prepaid, to the address furnished to the Association by such Mortgagee or such contractor for the purposes of notice.

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

17.11 Personal Covenant. To the extent the acceptance of a conveyance of a Unit creates a personal covenant between the Owner of such Unit and the Association or other Owners, such personal covenant shall terminate and be of no further force or effect from and after the date when a person or entity ceases to be an Owner except to the extent this Declaration may provide otherwise with respect to the payment of money to the Association.

17.12 Non-liability of Officials. To the fullest extent permitted by law, neither the Board, nor any other committee of the Association or any member of such Board or committee shall be liable to any Member or the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

**IN WITNESS WHEREOF**, the Association adopted this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for and respecting the Forest Glen Condominiums with the necessary approval of Unit owners as required herein, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**CONDOMINIUM FOREST GLEN, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

STATE OF UTAH )

) SS:

COUNTY OF SALT LAKE )

On the \_\_\_\_\_ day of \_\_\_\_\_, 2019, who by me being duly sworn, did say that he/she is the \_\_\_\_\_ of Condominium Forest Glen, Inc. and that the foregoing instrument was properly ratified by sixty-seven percent (67%) of the Unit Owners.

\_\_\_\_\_  
Notary Public

**EXHIBIT A  
LEGAL DESCRIPTION**

**Legal Description: Forest Glen Condominium**

Beginning at a point that is the intersection of the extension of the South line of Warnock Avenue and the East line of Block 45, 10 Acre Plat 11A 11, B.F.S., said point of beginning being South 89°58' 42" West along the Warnock Avenue monument line and its extension 886.300 feet and South 0°14' 48" West 30.538 feet from the monument at Warnock Avenue and Highland Drive and said point of beginning also being North 0°14' 48" East 1628.587 feet from the Southeast Corner of said Block 45;

thence South 89°51' 42" East along the extension of the South line of Warnock Avenue 442.387 feet to the Easterly line of the D. & R.G.W. Railroad Brickyard Spur; thence along said Easterly line South 6°02' 15" West 538.813 feet; thence along the Westerly line of the Jordan and Salt Lake City Canal South 8°08" East 220.37 feet and South 29°08' East 431.56 feet to the Northeast corner of Lot 1, Block 2, ROCKWOOD Sub-division; thence South 89°52' West along the North line of said ROCKWOOD Subdivision and beyond 304.3 feet to said Easterly line of said Brickyard Spur;

thence North 6°02' 15" East 5.015 feet; thence South 89°51' 08" West 213.714 feet to the Northeast corner of Lot 10, Block 2, ROCKWOOD PARK;

thence North 3°08' 54" East 50.082 feet; thence South 89°5' 08" West 116.905 feet to the East line of Block 45, 10 Acre Plat "A", B.F.S.;

thence North 0°14' 48" East 1078.587 feet to the point of beginning,

Containing 11.529 acres.

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**EXHIBIT B**  
**ALLOCATED INTEREST OF EACH UNIT**

Forest Glen Condominiums contains 136 residential Units. An equal, undivided share of the common area is attributed to each Unit. As such, each Owner is allocated a 0.735% share of interest in the common for each Unit owned.

**EXHIBIT C  
CERTIFICATE OF APPROVAL**

The undersigned, being duly authorized Directors of the Condominium Forest Glen, Inc., being duly sworn, certify as follows:

1. Attached to this Certification is the AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS OF FOREST GLEN CONDOMINIUMS, a Condominium Development situated in Salt Lake City, Salt Lake County, State of Utah.
2. The Prior Declaration and other proceeding amendment(s) were properly amended by sixty-seven percent (67%) of the Association's membership.
3. The Association authorized the recording of the Amended and Restated Declaration with this Certificate.

Dated: February 16, 2019

Condominium Forest Glen, Inc.

By: Carolyn Bowles  
Representative of the Board of Directors

STATE OF UTAH            )  
  ) ss  
COUNTY OF SALT LAKE )

On the 21<sup>st</sup> day of February, 2019, personally appeared before me Carolyn Bowles, who being by me duly sworn did say, for himself or herself, that he or she is a duly elected member of the Association's Board of Director, and that the foregoing instrument was duly approved in writing by sixty-seven percent (67%) of the Unit Owners.

[Signature]  
NOTARY PUBLIC

