


WHEN RECORDED, MAIL TO:

Paxton R. Guymon, Esq.  
**YORK HOWELL & GUYMON**  
6405 South 3000 East, Suite 150  
Salt Lake City, Utah 84121



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JEFFERY SMITH  
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RECORDED FOR STONECREST AT TIMPANOGO

**SECOND AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR  
STONECREST AT TIMPANOGOS CONDOMINIUMS**

**(A Utah Residential Condominium Project Located in Provo City, Utah County, Utah)**

(\* To be recorded against Utah County Tax Parcel Nos. 66-303-0001 through 66-303-0021 and 66-677-0022 through 66-677-0045; Tax Parcel No. 04-109-0031; and the Common Area identified as Tax Parcel No. 66-303-0022)

**SECOND AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR  
STONECREST AT TIMPANOGOS CONDOMINIUMS**

This *Second Amended and Restated Declaration of Condominium for Stonecrest at Timpanogos Condominiums* (this "**Declaration**") is made and executed this 8 day of July, 2019, by Stonecrest at Timpanogos, LLC, a Utah limited liability company ("**Declarant**").

1. RECITALS.

1.1. On May 14, 2019, that certain Amended and Restated Declaration of Condominium was recorded in the Utah County Recorder's Office, State of Utah, as Entry No. 42544 (the "**Amended Declaration**") to create a residential condominium project known as Stonecrest at Timpanogos Condominiums (the "**Project**").

1.2. Declarant was, and still remains, the sole owner of all condominium Units in the Project.

1.3. As the sole owner of all condominium Units in the Original Project, Declarant is authorized and entitled to, and hereby does, amend, restate and replace the Amended Declaration in its entirety with this Second Amended and Restated Declaration.

1.4. Declarant now desires to adopt this Second Amended and Restated Declaration of Condominium to replace the Amended Declaration in its entirety. Upon the recordation of this Declaration in the official records of the Utah County Recorder's Office, the Amended Declaration shall be deemed to be null and void, with no further force or effect. The Property against which this Declaration shall be recorded is described in Section 3.1 below and shall include all tax parcel identified by tax parcel number on the front cover page of this Declaration.

1.5. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land and encumber the Project in perpetuity.

1.6. The Project will have common areas and facilities in which each Unit Owner will own and hold an undivided interest. The Project is a Utah Condominium project subject to, and governed by, the provisions of this Declaration and the Utah Condominium Ownership Act, Sections 57-8-1 et seq. of the Utah Code.

NOW, THEREFORE, for the foregoing purposes, the Owners adopt the following covenants, conditions, easements and restrictions to govern the use, maintenance, and management of the Project:

## 2. DEFINITIONS.

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

2.2. Act shall mean the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code).

2.3. Amendment shall mean any amendment to this Declaration made in accordance with the Declaration and the Act.

2.4. Association shall mean the Stonecrest at Timpanogos Condominiums Owners Association, Inc., a Utah nonprofit corporation. Each Owner of a Unit shall automatically be a Member of the Association.

2.5. Buildings shall mean the two (2) residential condominium buildings located on the Property, which Property is more fully described in Section 3.1.

2.6. Bylaws shall mean the Bylaws of the Association, as amended from time to time.

2.7. Capital Improvement shall mean any improvement with a useful life of more than three (3) years.

2.8. Common Areas and Facilities shall mean all portions of the Project other than the Units, as described in Section 6.1 hereof. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is described in Section 6.2 hereof and is set forth in Exhibit A hereto.

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

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

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

2.12. Declarant shall mean and refer to Stonecrest at Timpanogos, LLC, a Utah limited liability company, which owns the Property and both Buildings located thereon as of the execution date of this Declaration.

2.13. Family Member shall mean the parent, sibling, child, grandparent, or grandchild of an Owner and that Family Member's spouse and/or children.

2.14. Lease shall mean any agreement for the leasing or rental of any Unit or portion of the Project.

2.15. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities allocated by the Declaration or the Act, and as may be shown on the Map, for the exclusive use of one or more, but fewer than all, of the Units.

2.16. Management Committee shall mean the Board of Trustees of the Association, appointed or elected in accordance with this Declaration and the Bylaws.

2.17. Manager shall mean the person, firm or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

2.18. Map or Plat shall mean the Record of Survey Map (or Condominium Plat) of the Project, recorded in the official records of the Utah county Recorder's Office, State of Utah.

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

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

2.21. Non-Owner Occupied Unit shall mean: (i) for a Unit owned in whole or in part by an individual(s), the Unit is occupied by someone when no individual Owner or Family Member of the Owner occupies the Unit as the individual Owner's or Family Member's primary residence or second home; or (ii) for a Unit owned entirely by a trust or other entity created for estate planning purposes, the Unit is occupied by anyone other than the person(s) for whom the entity or trust was created for or a Family Member of such person(s).

2.22. Owner shall mean any person or entity at any time owning in fee simple a Unit within the Project as such ownership is shown by the records of the Utah County Recorder, State of Utah. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

2.23. Owner-Occupied shall mean a Unit occupied as a primary residence or second home by (1) Owner(s), Family Member of the Owner(s), or if the Owner is an entity or trust created for estate planning purposes, the person(s) for whom the entity or trust was created for or a Family Member of such person(s).

2.24. Project shall mean the Property, the Units, the Common Areas and Facilities and all improvements submitted by this Declaration to the provisions of the Act.

2.25. Property shall mean that certain real property situated in Utah County, State of Utah, more particularly described in Section 3.1 below, on which the Buildings, the Units, and other improvements are located.

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

2.27. Rental Restrictions shall mean the restrictions and requirements for all rental activity and leases of the Units as set forth in Section 10.10 of this Declaration.

2.28. Size shall mean the area of floor space within a Unit, in square feet, rounded off to a whole number. Declarant's determination of the Size of a Unit, as set forth in this Declaration or in any amendment or supplement hereto, shall be conclusive. Declarant has determined that all 45 Units in the Project are approximately the same Size, and each Unit shall be deemed to be the same Size for purposes of this Declaration and all Association matters.

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

2.30. Total Votes of the Association shall mean the total number of votes appertaining to all Units, as described in Section 20 hereof.

2.31. Unit shall mean a physical portion of the Project designed for separate ownership and occupancy as described in Section 5 hereof.

2.32. Unit Number shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

### 3. DESCRIPTION OF THE PROPERTY.

3.1. The Property on which both Buildings, the Units and related improvements are located is situated in Utah County, Utah, having a street address of 455 North 400 West, Provo, Utah 84604, comprised of 21 existing condominium units in Phase 1 (described below) and the land and building located on Phase 2 (described below), which building in Phase 2, by this Declaration, is being converted into 24 condominium units, such that, together, the Buildings will be part of the same condominium project containing a total of 45 Units. The Property is comprised of the following two (2) phases described as follows:

#### **Phase 1**

Units 1 through 21 (inclusive), Stonecrest at Timpanogos Phase 1, an Expandable Residential Condominium, a Utah condominium project, as identified in the Record of Survey Map recorded on October 2, 2009, in Utah County, as Entry No. 105131:2009 of Plats (as the same may have been heretofore amended or supplemented), and in the Declaration recorded on

October 2, 2009, in Utah County as Entry No. 105132:2009 (as said Declaration may have been heretofore amended or supplemented); together with the appurtenant undivided interest in said Project's Common Areas as established in said Declaration (Tax Parcel Nos. 66-303-0001 through -0021 and the Common Area Parcel identified as Tax Parcel No. 66-303-0022)

**AND**

**Phase 2**

Fee simple title in and to the parcel described as Commencing South 0°21'43" East 196.63 Feet and South 89°38'17" West 399.79 Feet from the Northeast Corner of Block 115, Plat "A," Provo City Survey; thence North 99.6 Feet; thence East 99.2 Feet; thence North 00°04'59" East 0.44 Feet; thence North 00°04'59" East 22.16 feet; thence East 297.49 feet; thence South 122.2 Feet; thence West 397.45 feet to the Point of Beginning (Tax Parcel No. 04-109-0031)

Together with a 30 foot-cross access and parking easement, notes and restrictions as shown the plat of Stonecrest at Timpanogos Phase 1 Recorded October 2, 2009, as Entry No. 10531:2009 in Book 66 of Plats at Page 303, Utah County, State of Utah.

(\*Note: the above-referenced "Phase 2" property is also described as follows: COM S 196.63 FT & W 399.79 FT FR NE COR. BLK. 115, PLAT A, PROVO CITY SURVEY; N 99.6 FT; E 99.92 FT; N 0 DEG 4' 59" E .44 FT; N 0 DEG 4' 59" E 22.16 FT; E 137.31 FT; S 0 DEG 3' 57" W 18.02 FT; N 89 DEG 55' 51" W 8.43 FT; S 0 DEG 0' 30" W 52.87 FT; N 89 DEG 51' 37" W 13.36 FT; S 0 DEG 2' 30" W 51.35 FT; W 215.41 FT TO BEG. AREA 0.578 AC.)

4. **CONFIRMATION OF SUBMISSION TO ACT.**

Declarant hereby confirms and acknowledges that the Property, the Buildings and all other improvements thereon are subject to the provisions of the Act. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a residential condominium project known as the Stonecrest at Timpanogos Condominiums. All of said Project is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project; further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

## 5. DESCRIPTION OF UNITS.

The boundary lines of each Unit are as set forth on the Map (condominium plat filed of record) and consist of the undecorated and/or unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, and the interior surfaces of windows and doors. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings (including drop ceilings), windows and window frames, doors and door frames, and trim, consisting of, among other items and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits or other utility lines or installations constituting a part of a Unit and serving only such Unit, and any structural members or any other property of any kind, including fixtures and appliances, within such Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the Building within which such Unit is situated shall be considered part of the Unit. Each Unit shall include both the portions of a Building that are not Common Areas and Facilities within such boundary lines and the space so encompassed, excepting Common Areas and Facilities. Without limitation, a Unit shall include any finishing material applied or affixed to the interior surfaces of the interior walls, floors and ceilings; non-supporting interior walls; and all utility outlets, fixtures or appliances found within the boundary lines of the Unit and servicing only that Unit. Notwithstanding the fact that they may be within the boundaries of the Unit, the following are not part of any Unit: bearing walls, floors, ceilings and roofs (except the interior finished surfaces thereof), foundations, ceiling equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations, except the outlets thereof when located within the Unit. Exhibit A hereto contains the Unit Number of each Unit in the Project.

## 6. COMMON AREAS AND FACILITIES.

6.1. The Common Areas and Facilities shall mean and include the Property on which all Units are located and all portions of the Project not included as part of any Unit, including, but not by way of limitation, the foundation, columns, girders, beams, supports, exterior and bearing walls, roofs, exterior siding, stairwells, lobbies, fire escapes and entrances and exits of the Building; the grounds and recreational facilities, if any, and certain parking areas in the Project, if any, designated as part of the Common Areas and Facilities on the Map; the areas used for storage of janitorial supplies and maintenance equipment and materials; installations of all central services, including power, light, gas, hot and cold water, heating, ventilating and garbage collection; tanks, pumps, motors, fans, ducts and, in general, all apparatuses and installations existing for common use; all utility pipes, lines or systems servicing the Units as a whole and not exclusively servicing only one Unit; all ducts, flues, chutes, wires, conduits and other accessories and utility installations to the outlets used therewith; all other parts of the Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities on the Map; and all repairs and replacements of any of the foregoing. Parking stalls, if any, which are Common Areas and Facilities may be utilized for locating trash containers and similar items if needed by the Association.

6.2. The undivided interest in the Common Areas and Facilities appurtenant to each Unit is set forth in Exhibit "A" attached hereto. The undivided interest appurtenant to each Unit is calculated based on the Size of each Unit compared to the aggregate Size of all Units. Declarant has determined that all 45 Units are approximately the same Size. The undivided interest in the Common Areas and Facilities that is appurtenant to each Unit shall have a permanent character and shall not be altered. Each Unit shall have an equal One-Forty-Fifth (1/45<sup>th</sup>) undivided interest.

## 7. LIMITED COMMON AREAS AND FACILITIES.

7.1. Limited Common Areas and Facilities shall mean a portion of the Common Areas and Facilities reserved for the use of certain Owners to the exclusion of other Owners, as indicated by the Map, to be for the exclusive use of one or more but fewer than all of the Units. Mechanical systems serving only certain Units shall be Limited Common Areas and Facilities with respect to the Units which they serve. Owners may not reallocate Limited Common Areas and Facilities between or among Units in which they have an interest.

## 8. NATURE AND INCIDENTS OF UNIT OWNERSHIP.

8.1. Each Unit is a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in accordance with the provisions of this Declaration.

8.2. Subject to the limitations contained in this Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas and Facilities and the exclusive right to occupy and use their Unit and any Limited Common Areas and Facilities designated for exclusive use by such Owner or all Owners.

8.3. Except as otherwise provided herein, each Owner shall have the exclusive right to paint, repaint, tile, wax, paper, carpet or otherwise decorate the interior surfaces of the walls, ceilings, floors and doors forming the boundaries of their Unit and the surfaces of all walls, ceilings, floors and doors within such boundaries. Each Owner shall keep the interior of their Unit, including without limitation, interior walls, windows, ceilings, floors and permanent fixtures and appurtenances thereto, in a sanitary condition and in a good state of repair. In the event that any such Unit should develop an unsanitary condition or fall into a state of disrepair and in the event that the Owner of such Unit should fail to correct such condition or state of disrepair promptly following written notice from the Management Committee, the Management Committee shall have the right, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to enter said Unit and correct or eliminate said unsanitary condition or state of disrepair. Owners of adjoining Units may not reallocate or change the boundaries of such Units. Except as otherwise provided herein, no Owner may subdivide their Unit.

8.4. The Management Committee shall have the right, if reasonably necessary, to enter into any Unit for the purpose of cleaning, maintenance, repairs, including emergency repairs, and for the purpose of abating a nuisance, or a known or suspected dangerous or unlawful activity.



## 9. TITLE TO UNITS.

9.1. Title to a Unit within the Project may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

9.2. Title to any part of a Unit within the Project shall not be separated from any other part thereof during the period of ownership, and each Unit, and the undivided interest in the Common Areas and Facilities appurtenant to each Unit, shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

9.3. No Owner shall be permitted to timeshare or to allow any other form of interval ownership or interval right to use form of timesharing of any Unit within the Project.

9.4. The Common Areas and Facilities shall be owned in common by all of the Owners (with each Unit and the owners of each Unit holding an undivided 1/45<sup>th</sup> interest in the Common Areas and Facilities), and no Owner may bring any action for partition thereof.

9.5. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof except the undivided interest therein appurtenant to his interest in a Unit. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

9.6. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Project, if authorized by the Association and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

9.7. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the county wherein the Project is located and its Unit Number as indicated in this Declaration or as shown on the Map. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to ownership

of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

9.8 Nothing in this Declaration shall adversely impact the rights of a Mortgagee or its assignee to take any of the following actions: (i) foreclose or take title to a Unit pursuant to the remedies in the Mortgage; (ii) accept a deed or assignment in lieu of foreclosure in the event of default by an Owner subject to such Mortgage; or (iii) sell or lease a Unit acquired by the Mortgagee or its assignee.

#### 10. RESTRICTIONS ON USE; RENTAL RESTRICTIONS.

The Units and Common Areas and Facilities, including but not limited to the Limited Common Areas and Facilities, except as otherwise permitted in writing by the Management Committee, shall be used in accordance with the following restrictions:

10.1. Residential Use Only. All Units are intended to be used for residential purposes only in accordance with applicable zoning ordinances. The Units are restricted to such uses. Units may be rented or leased only in accordance with the Rental Restrictions set forth in Section 10.10 below.

10.2. Nuisances; Safety Hazards. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property. Without limiting the breadth of the foregoing, aluminum foil, newspapers, or any other similar materials may not be used to cover the windows in any Unit. The Common Areas and Facilities shall be used only in a manner which is consistent with a residential condominium project.

10.3. Signs. No signs, flags or advertising devices of any nature, including, without limitation, informational or directional signs or devices, shall be erected or maintained on any part of the Project, without the prior written approval of the Management Committee, except as may be customary in marketing a Unit "for sale" in accordance with reasonable sign restrictions that the Management Committee is authorized to adopt and enforce.

10.4. No Subdivision. No Unit, or portions thereof, may be further divided or subdivided into two or more other Units. This provision does not prohibit a Unit from being owned by more than one person in the form of a tenancy in common or other form of joint undivided ownership. An Owner may lease portions of a Unit to two or more tenants.

10.5. Remodeling; Construction Work. No Owner shall, without the prior written consent of the Management Committee, do any act that would impair the structural soundness or integrity of the Building or the safety of property, impair any easement or hereditament appurtenant to the

Project, or make or permit to be made any alteration, improvement or addition to the Common Areas and Facilities. Owners may remodel or redecorate the interior space of their Units, without Management Committee approval, so long as the remodeling or redecoration involves quality workmanship and materials and does not impair the structure integrity of the Buildings.

10.6. No Obstruction of Common Areas. There shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Unit, except with the prior consent of the Management Committee.

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

10.8. Rules and Regulations. Each Owner shall comply strictly with all rules and regulations adopted by the Management Committee of the Association for the governance of the Units, the Common Areas and the Project, as such rules and regulations may be modified, amended and construed by the Association in the sole and reasonable discretion of the Management Committee.

10.9. Leases. All Non-Owner Occupied Units, shall have a written Lease agreement between an Owner and occupant respecting a Unit shall be subject in all respects to the provisions of this Declaration, the Articles and Bylaws and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. All such Lease agreements shall be in writing and a copy of the Lease shall be filed with the Association. Other than as set forth in Section 10, there is no restriction on the right of any Owner to lease his Unit. An Owner shall be responsible and liable for any damage to the Project caused by its tenant.

10.10 Non-Owner Occupancy Restrictions. Non-Owner Occupied Units, including, without limitation, Leases and short-term nightly rentals, are allowed so long as the following requirements are satisfied: (i) the leasing and/or rental activity must be permitted and allowed by the applicable zoning and ordinances of Provo City, as the same may be amended; (ii) the Owners of the Non-Owner Occupied Units must obtain all permits and licenses, if any, required by Provo City; and (iii) notwithstanding any other provision to the contrary in this Declaration, no more than 22 of the 45 Units in the Project may be Non-Owner Occupied at any given time. The purpose of this restriction is to ensure the at least 23 of the Units (more than 50% of the total Units) remain

Owner-Occupied. The restriction on the number of Non-Owner Occupied Units shall not apply to a Unit that has been acquired by a Mortgagee due to default by an Owner. If a Unit is occupied by a Family Member of the Owner, then the following applies notwithstanding anything to the contrary herein: (1) the Unit is considered Owner-Occupied, (2) the Owner shall be responsible and liable under this Declaration and for any damage to the Project caused by its Family Member, and (3) no written agreement regarding occupancy needs to be created between the Family Member and Owner, but Owner shall notify the Management Committee of the Family Member(s) residing in the Unit and obtain any permits required by Provo City. The Management Committee is authorized to, and shall create and enforce, appropriate rules and procedures to track the number of Non-Owner Occupied Units in the Project ("Rental Restrictions"), enforce these Rental Restrictions, and to adopt and enforce reasonable fines and other remedies for any violations of these Rental Restrictions. These Rental Restrictions shall be administered and enforced in a fair and consistent manner.

## 11. ASSOCIATION AND MANAGEMENT COMMITTEE.

11.1. Each Owner shall be a member of the Association. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

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

11.2.1. The management and maintenance of the Project and the administration of the affairs of the Association shall be conducted by a Management Committee consisting of three (3) natural persons as provided in the Bylaws. The Management Committee shall be elected as provided in this Declaration and in the Bylaws.

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

11.2.2.1. To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.

11.2.2.2. To carry out through a Manager those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association or Management Committee, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Management Committee, be authorized to perform any of the functions or acts required or permitted to be performed by the Management Committee itself.

11.2.2.3. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefor.

11.2.2.4. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

11.2.2.5. To determine and pay the Common Expenses.

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

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

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

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

11.2.2.10. To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Management Committee, the Association or the Project in excess of \$50,000 without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of \$10,000 shall not require Association approval.

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

11.2.2.12. To repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or

by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

11.2.2.13. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Association, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Management Committee and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and supplies.

11.2.2.14. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of the Bylaws. The Association or the Management Committee shall make available to the Owners, Mortgagees and the holders, insurers and guarantors of the First Mortgage on any Unit current copies of the Declaration, Articles, Bylaws and other rules governing the Project and other books, records and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

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

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

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

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

11.2.2.19. When a member of the Management Committee is sued for liability for actions undertaken in his role as a member of the Management Committee, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Management Committee who so acted. Members of the Management Committee are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose gross negligence gave rise to the damages.

11.2.3. Neither the Management Committee nor the Manager, if any, shall sell any Property of the Association except as permitted by the Act and this Declaration.

## 12. MAINTENANCE, ALTERATION AND IMPROVEMENT.

12.1. The Management Committee, acting on behalf of the Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and Facilities and all improvements thereon and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair; provided, however, that unless otherwise stated herein, each Owner shall keep the Limited Common Areas designated for use in connection with his Unit in a clean, sanitary and attractive condition. The Management Committee shall be responsible for the maintenance and repair of the exterior of the Building, other improvements and grounds, including, without limitation, painting thereof, repair and replacement of exterior trim, siding, railings, roof and fences, cleaning, repair, and the maintenance of all landscaping, fire and landscaping sprinkling systems, walkways and driveways. The Management Committee shall also be responsible for maintenance, repair and replacement of Common Areas and Facilities within the Building, and any items located within or used in connection with the Common Areas and Facilities. The costs associated with the maintenance, replacement and repair of the Common Areas and Facilities shall be a Common Expense.

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

12.3. Additions or Capital Improvements to the Project which cost no more than \$25,000 (as measured by 2019 dollars) may be authorized by the Management Committee alone, so long as the Association has such funds available to it without imposing a special assessment. Additions or Capital Improvements the cost of which exceeds \$25,000 must, prior to being constructed, be authorized by at least a majority of the undivided ownership in the Project. Any additional or Capital Improvements which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed, be authorized by at least sixty-six percent (66%) of the Project's undivided ownership interest. For purposes of this Section 12.3, "materially alter the nature of the Project" shall mean any addition or Capital Improvement that changes the project from a residential condominium project to a commercial project or any other non-residential use.

12.4. No Owner shall enlarge or otherwise modify the exterior of his/her Unit or Limited Common Area or add any devices or structures such as, for illustration and not limitation, fences, greenhouses, solariums, room additions, or decks, unless and until the Owner has received written consent from the Management Committee. The Management Committee may function by itself or may appoint a committee to be charged with the responsibility of keeping the Project's exterior and common areas consistent in appearance.

In the event the Management Committee grants an Owner the right to convert Common Area into Limited Common Area or modify Limited Common Area into Common Area, the entire cost of any such improvement or modification shall be borne by the Owner. Ownership interests in the Common Areas shall also be amended to reflect the additional private ownership of the Owner, increasing the Owner's interest and concurrently reducing the Ownership interests of the other Owners. The other Owners' consent is not required for such an amendment. Moreover, the Owner shall pay all expenses associated with the preparation, execution and recordation of any amendments reflecting such conversion.

Should any improvement or modification to a Unit or to the Project by an Owner cause any increase in the cost of the Association's insurance, painting, or other expense, such increase in expense shall be added to the affecting Owner's monthly assessment. Further, any such additional expense affected thereby and applicable to non-yearly periodic maintenance projects such as, but not limited to, roofing, staining or painting, shall also be added to any special assessment of the Owner.

### 13. INSURANCE.

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

13.1.1. A "master" or "blanket" type policy of property insurance shall be maintained covering the entire Project, including: Common Areas and Facilities; the Building including all Units (other than the interior contents thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas or Facilities or owned by the Association, but excluding land, foundations, excavations, and other items normally not covered by such policies. References herein to a "master" or



“blanket” type policy of property insurance are intended to denote single entity condominium insurance coverage. As a minimum, such “master” or “blanket” policy shall afford protection against loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, and by all other perils which are customarily covered with respect to projects similar to the Project in construction, location, and use, including (without limitation) all perils normally covered by the standard “all risk” endorsement, where such endorsement is available. Such “master” or “blanket” policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all elements of the Project covered by such policy, exclusive of land, foundations, excavation, and other items normally excluded from coverage. If the Management Committee deems such advisable, the insurance policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement (under which the insurer agrees to replace the insurable property regardless of the cost) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance); or (2) a Replacement Cost Endorsement (under which the insurer agrees to pay up to one-hundred percent (100%) of the property’s insurable replacement cost but no more) and, if the policy includes a co-insurance clause, an Agreed Amount Endorsement (which waives the requirement for co-insurance). Unless the Management Committee otherwise determines, the maximum deductible amount for such a policy covering the Common Areas and Facilities shall be Two Thousand Dollars (\$2,000.00) and for losses related to individual Units that are covered by such a policy, the maximum deductible related to each individual Unit shall be One Thousand Dollars (\$1,000.00). Funds to cover these deductible amounts shall be included in the Association’s operating reserve account.

13.1.2. If a Unit within the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a “master” or “blanket” policy of flood insurance shall be maintained covering the Building (a separate policy is required for each separate multi-story building that houses Units), any machinery and equipment that are not part of a Building and all Common Areas and Facilities within the Project (hereinafter “Insurable Property”) in an amount deemed appropriate, but not less than the lesser of: (1) the maximum limit of coverage available under the National Flood Insurance Administration Program for the Building and any other Insurable Property within any portion of the Project located within a designated flood hazard area; or (2) one hundred percent (100%) of the insurable value of all such facilities. The maximum deductible amount for any such policy shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy face amount.

13.1.3. The name of the insured under each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall be the Association for the use and benefit of the individual Owners. (Said Owners shall be designated by name, if required.) Notwithstanding the requirement of the two immediately foregoing sentences, each such policy may be issued in the name of an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual

Owners. Loss payable shall be in favor of the Association (or Insurance Trustee), as a trustee for each Owner and each such Owner's Mortgagee. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policy. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

13.1.4. Each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall contain the standard mortgage clause, or equivalent endorsement (without contribution), commonly accepted by private institutional mortgage investors in the area in which the Project is located. In addition, such mortgage clause or another appropriate provision of each such policy shall provide that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in the policy.

13.1.5. Each policy required to be maintained by the foregoing Sections 13.1.1 and 13.1.2 shall provide, if available, for the following: recognition of any insurance trust agreement; a waiver of the right of subrogation against Owners individually; the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively or the Association; and the policy is primary in the event the Owner has other insurance covering the same loss.

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

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

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

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

13.1.9. Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance. Each Owner hereby appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as his or her

attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or any Insurance Trustee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for the use and benefit of the Owners and their Mortgagees, as their interests may appear.

Each insurance policy maintained pursuant to the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which has a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide or an A or better rating from Demotech, Inc., or which is written by Lloyd's of London. No such policy shall be maintained where: (1) under the terms of the carrier's charter, bylaws, or policy, contributions may be required from, or assessments may be made against, an Owner, a Mortgagee, the Management Committee, or the Association; (2) by the terms of the carrier's charter, bylaws, or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or (3) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Management Committee, the Association, or Owner) from collecting insurance proceeds. The provisions of this Section 13.1.9 and of the foregoing Sections 13.1.1, 13.1.2, 13.1.7, and 13.1.8 shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association may deem appropriate from time to time.

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

#### 14. DESTRUCTION OR DAMAGE.

14.1. All of the Owners irrevocably constitute and appoint the Association as their true and lawful attorney-in-fact in their name, place and stead for the purpose of dealing with the Project upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his or her attorney-in-fact as herein provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of an Owner which may be necessary or appropriate to exercise the powers herein granted. All insurance proceeds shall be payable to the Association except as otherwise provided in this Declaration.

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

14.3. In the event all or any part of the Project is damaged or destroyed, the Association shall proceed as follows:

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

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

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

14.3.4. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project and if less than seventy-five percent (75%) of the Project is damaged or destroyed, such repair and reconstruction shall nevertheless be carried out. The Association shall levy a Special Common Assessment sufficient to provide funds to pay the actual costs of such repair and reconstruction to the extent that such insurance proceeds are insufficient to pay such costs. Such Special Common Assessment shall be allocated and collected as provided in Section 19.1.3 hereof, except that the vote therein specified shall be unnecessary. Further levies may be made in like manner if the amounts collected (together with the proceeds of insurance) are insufficient to pay all actual costs of such repair and reconstruction.

14.3.5. If the proceeds of the insurance maintained by the Association are less than the estimated costs to repair and reconstruct the damaged or destroyed part of the Project, and if seventy-five percent (75%) or more of the Project is damaged or destroyed, such damage or destruction shall be repaired and reconstructed, but only if within one hundred (100) days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Total Votes of the Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages vote to carry out such repair and reconstruction. If, however, the Owners do not, within one hundred (100) days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Total Votes of the Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages to carry out such repair and reconstruction, the Association shall record in the

office of the County Recorder of Utah County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

14.3.5.1. The Project shall be deemed to be owned in common by the Owners;

14.3.5.2. Each Owner shall own an undivided interest in the Project equal to his ownership interest in the Common Areas and Facilities;

14.3.5.3. Any liens affecting any of the Units shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Project; and

14.3.5.4. The Project shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance of the Project, if any, shall be considered as one fund and shall be divided among all Owners in an amount equal to the percentage of undivided interest owned by each Owner in the Project after first paying out of the respective share of each Owner, to the extent sufficient for the purposes, all liens on the undivided interest in the Project owned by such Owner.

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

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

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

14.6. This Section 14 shall not be amended unless Owners entitled to vote at least sixty-six percent (66%) of the Total Votes of the Association and, to the extent such amendment is materially adverse to Mortgagees, Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages consent and agree to such amendment and such consent and agreement is reflected in an instrument duly executed by the Association and recorded in accordance with the provisions of this Declaration.

## 15. TERMINATION.

15.1. Except as otherwise provided in this Declaration, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-six percent (66%) of the Total Votes of the Association and Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages at a meeting of Owners and Mortgagees duly called for such purpose at which a quorum is present.

15.2. All of the Owners may remove the Project from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens, including Mortgagees, affecting any of the Units consent or agree by instruments duly recorded that their liens are transferred to the fractional ownership interest of the Owners in the Project.

15.3. A termination agreement may provide that all of the Project shall be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

15.4. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 15.1 and 15.2. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and their successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and their successors in interest remain liable for all assessments and other obligations imposed on Owners by this Declaration.

15.5. Following termination of the Project, the proceeds of any sale of real estate, together with the assets of the Association, shall be held by the Association as trustee for Owners and Mortgagees as their interests may appear. Following termination, Mortgagees holding Mortgages on the Units which were recorded before termination may enforce those liens in the same manner as any lienholder.

## 16. EMINENT DOMAIN.

16.1. Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Management Committee and each Owner and Mortgagee shall be entitled to timely written notice thereof and the Management Committee shall, and the Owners and Mortgagees at their respective expense may, participate in the proceedings incident thereto.

16.2. With respect to the Common or Limited Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Owner's interest therein. After such determination, each Owner, or Mortgagee to the extent of the unpaid balance of its Mortgage, shall be entitled to a share in the damages in the same proportion as his ownership interest in the Common Areas and Facilities.

16.3. With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Section 14 above and shall be deposited with the Management Committee as trustee. Even though the damages or awards may be payable to one or more Owners, the Owners shall deposit the damages or awards with the Management Committee as trustee. In the event an Owner refuses to so deposit his award with the Management Committee, then at the option of the Management Committee, either a Special Common Assessment shall be made against the defaulting Owner and his Unit in the amount of this award or the amount of such award shall be set off against the sum hereafter made payable to such Owner.

16.4. In the event the Project is removed from the provisions of the Act pursuant to Section 15 above, the proceeds of the damages or awards shall be distributed or used in accordance with the Owners respective undivided interest in the Common Areas and Facilities.

16.5. If one or more Units are taken, in whole or in part, and the Project is not removed from the provisions of the Act, the taking shall have the following effects:

16.5.1. If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenantable, the Unit shall be made tenantable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owners of the Unit. The balance of the award, if any, shall be distributed to the Mortgagee to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owner.

16.5.2. If the taking destroys or so reduces the size of a Unit that it cannot be made tenantable, the award shall be distributed to the Mortgagee of the Unit to the extent of the unpaid balance of its Mortgage and the excess, if any, shall be distributed to the Owners thereof. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Owners in the manner



approved by the Management Committee. The ownership interest in the Common Areas and Facilities appurtenant to the Units that continue as part of the Project shall be equitably adjusted to distribute the ownership of the Common Areas and Facilities among the reduced number of Owners.

16.6. Changes in Units, in the Common Areas and Facilities and in the ownership of the Common Areas and Facilities that are affected by the taking referred to in this Section 16.6 shall be evidenced by an Amendment to this Declaration and the Map, which need not be approved by the Owners.

#### 17. MORTGAGEE PROTECTION.

17.1. The Association shall maintain and have current copies of the Declaration, Articles, Bylaws, and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

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

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

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

## 18. AMENDMENT.

18.1. Except as provided elsewhere in this Declaration, any amendment to this Declaration or the Map shall require the affirmative vote of at least sixty-six percent (66%) of the Total Votes of the Association cast in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners. Any amendments of a materially adverse nature to Mortgagees, after timely written notice to Mortgagees, must be agreed to by Mortgagees that represent at least fifty-one (51%) of the votes of Units that are subject to Mortgages. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the office of the Utah County Recorder of an instrument executed by the Association. In such instrument an officer or a member of the Management Committee of the Association shall certify that the vote required by this Section for amendment has occurred.

18.2 With respect to the vote required by Mortgagees pursuant to Section 18.1, the Mortgagees approval of the amendment may be implied when a Mortgagee fails to submit a response to any written proposal for amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with return receipt requested.

## 19. ASSESSMENT OF UNITS BY THE ASSOCIATION.

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

19.1.1. Each Owner shall be liable for a proportionate share of the Common Expenses, such share being the same as the percentage of undivided ownership interest in the Common Areas and Facilities appurtenant to the Unit owned by him, as determined in accordance with the provisions of Section 20 below. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section 19 shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit annually.

19.1.2. The Association may not impose a Regular Common Assessment per Unit which is more than twenty-five percent (25%) greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, casting a majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Units. The Association shall provide notice, by first class mail to all Owners, of any increase in the Regular Common Assessments not less

than thirty (30) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

19.1.3. In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Management Committee shall not, without the vote or written assent of Owners, casting a majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. The portion of any Special Common Assessment levied against a particular Unit shall be equal to the percentage of undivided interest in the Common Areas and Facilities appurtenant to such Unit. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to pay an increase in real property taxes or when the special assessment against an Owner is a remedy utilized by the Management Committee to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, rules and regulations of the Association, or any other governing instrument for the Project. The Management Committee shall provide notice by first class mail to all Owners of any Special Common Assessments not less than thirty (30) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Management Committee and the Management Committee may permit Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.

19.1.4. All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Management Committee, from the date when due until paid. Furthermore, Owners who do not pay their Common Assessments when due shall be subject to a late fee of up to One Hundred Fifty Dollars (\$150.00), adjustable from year to year at the discretion of the Management Committee. All payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. The Association shall provide written notice to the Mortgagee and any guarantor on such Unit upon any sixty (60) day delinquency in the payment of assessments or charges owed by an Owner. All Common Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

19.1.5. There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The lien for unpaid Common Assessments and related charges shall be effective upon recordation in the Office of the Utah County Recorder of a written notice of lien by the Management Committee or the Manager. The written notice of lien shall set forth the amount of the Common Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Common Assessment for more than ninety (90) days. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the state of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Common Assessments against the Unit which shall become due during the period of foreclosure, and all such Common Assessments shall be secured by the lien being foreclosed. The Management Committee shall have the right and power in behalf of the Association to bid in at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Association may bring an action at law against the Owner personally obligated to pay the same or the Association may foreclose the lien in accordance with the provisions of the Utah Condominium Ownership Act (Title 57, Chapter 8, Utah Code Ann.). The Association and each Owner hereby appoint First American Title Insurance, Inc., 330 East 400 South, Salt Lake City, Utah 84111, its successors and/or assigns, as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8 Utah Code Ann. Provided, however, the Association reserves the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. Each Owner hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Common Assessments. The Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 17.2 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. The Management Committee, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the

Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Management Committee, the Common Area Manager and every Owner, in favor of all who rely on such statement in good faith.

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

19.1.7. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 19.1.6 shall not pass to successors in title unless assumed by them. Provided, however, a lien to secure unpaid assessments shall not be affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.

The Management Committee shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters; provided, however, that the Management Committee may expend up to \$5,000.00 per year of reserve funds for other purposes so long as an adequate level of reserve funds is maintained. The Management Committee may also authorize the temporary transfer of money from the reserve account to the Association's operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt of the Association, and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer; provided, however, the Management Committee may, upon making a documented finding that a delay in the restoration of such funds to the reserve account would be in the best interests of the Project and Association, delay such restoration until the time it reasonably determines to be necessary. The Management Committee shall exercise prudent fiscal management in the timing of restoring any transferred funds to the reserve account and shall, if necessary, levy a Special Common Assessment to recover the full amount of the expended funds within the time limit specified above. Any such Special Common Assessment shall not be subject to the limitations set forth in Section 19.1.3 hereof.

19.2. If an Owner shall at any time lease his Unit and shall default in the payment of Common Assessments, the Management Committee may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due,

and the payment of such rent to the Management Committee shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

19.3. The Management Committee and the Association shall comply with the requirements of the Act concerning a Reserve Analysis and Reserve Funds as set forth in Utah Code Ann. § 57-8-7.5.

## 20. VOTING.

At any meeting of the Association, each Owner of a Unit either in person or by proxy, shall be entitled to vote the number of votes appurtenant to each respective Unit as set forth in Exhibit "A." The number of votes appurtenant to each respective Unit shall be based on the Unit's undivided interest in the Common Areas and Facilities. The undivided interest appurtenant to each Unit shall be equal to the percentage derived by dividing the Size of each Unit by the aggregate Size of all Units in the Project, as set forth in Exhibit "A." The number of votes appurtenant to each Unit shall have a permanent character, and, except as otherwise permitted and provided for in this Declaration, shall not be altered without the unanimous consent of all Owners expressed in a duly recorded Amendment. Notwithstanding any provision to the contrary in this Declaration, for each Unit owned by the Declarant, the Declarant shall have ten (10) times the number of votes pertaining to each Unit not owned by the Declarant. By way of example, if Declarant has sold 40 of the Units to third parties, but Declarant still owns 5 of the Units, Declarant shall have 50 total Votes and the remaining 40 Units shall have a total of 40 Votes. This provision is intended to ensure that Declarant retains majority voting control over the affairs of the Association until such time as Declarant owns only 4 or fewer Units in the Project.

## 21. EASEMENTS.

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

21.2. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he is occupying and to any Limited Common Areas and Facilities appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Condominium.

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

21.4. Some of the Common Areas and Facilities are or may be located within the Units or may be conveniently accessible only through the Units. The Association shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, cleaning, repair (emergency or otherwise) or replacement of any Common Areas and Facilities or for making emergency repairs at any time therein necessary to prevent damage to the Common Areas and Facilities or to any Unit. In addition, agents of the Association may enter any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, landscaping, construction or reconstruction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association with funds from the Common Expense Account. Similarly, Owners shall have a right of reasonable access through the Common Areas and Facilities and other Units (upon reasonable advance notice to the owner(s) of such Units) if reasonably necessary to access, repair, replace or maintain any Unit or item appurtenant to such Unit.

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

## 22. NOTICES.

Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, or by telecopy or facsimile transmission. Notice to Owners shall be addressed to each Owner at the address given by such Owners to the Management Committee for the purpose of service of such notice or to the Unit of such Owner if no such address has been given to the Management Committee. In any instance herein where Mortgagees are entitled to vote or be provided notice, notice to Mortgagees shall be addressed to each Mortgagee at the address provided by such Mortgagee to the Management Committee for the purpose of service of such notices required by this Declaration and the Bylaws. Notice shall be deemed given when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office/location at which it is received, on the next regular business day; and if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid.

### 23. NO WAIVER.

The failure of the Management Committee or its agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, the Bylaws, to exercise any right or option herein contained or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Management Committee or its agents or designees of the payment of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Management Committee of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.

### 24. ENFORCEMENT.

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

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

24.2.1. The judgment of a court; or

24.2.2. A foreclosure for the failure of an Owner to pay assessments duly levied by the Association.

24.3. The Association shall only be empowered to cause or require alteration or demolition of any construction to enforce any restrictions contained in this Declaration pursuant to judicial proceedings.



## 25. DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION.

25.1. Statement of Intent. Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Unit that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas and Facilities. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit, in the condition it and the Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners, by purchasing a Unit, and the Declarant covenant and agree that all claims and disputes relating to the Project or the Units, or relating to the Common Areas and Facilities, shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the notice and right to cure requirements, and knowing approval of the Owners, as set forth in the provisions of this Section 25 (including the subsections below). In addition, the Association and the Owners agree that they take ownership and possession of the Units and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

25.2. Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, contractor, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Building, Unit, or other Improvement on a Lot, Common Areas, or any other Improvement on or component of the Project (a “Dispute”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 25.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

25.2.1. Any allegation that a condition in any of the Buildings or Units or the Common Areas, or other Improvements in the Project, is or involves a construction defect;

25.2.2. Any disagreement as to whether an alleged construction defect has been corrected;

25.2.3. Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

25.2.4. Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

25.2.5. Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

25.2.6. Any alleged violations of consumer protection, the Act, the implied warranties of habitability or other common law doctrines or claims, unfair trade practice, or other statutes or laws;

25.2.7. Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

25.2.8. Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

25.2.9. Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

25.2.10. Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

25.2.11. Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

25.2.12. Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

25.2.13. Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement or Units, Common Areas, Limited Common Areas, off-site improvements, management of the Association, or other claims regarding the Project.

25.3. Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant or any contractors hired by Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred twenty (120) days to cure or resolve the claim or defect or to try to get the builder or the appropriate contractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 120-day Right to Cure period, the parties shall participate in formal mediation with a mutually-

acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 120-day cure period.

25.3.1. "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

25.4. Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the Total Votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC ("CDRS"). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

25.5. Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

25.6. No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Section 25. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding

before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

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

26. **RIGHTS RESERVED FOR DECLARANT.** During the Declarant Control Period (i.e., so long as Declarant owns at least 5 of the Units), the Declarant shall have the right to use any Lot, Unit, or part of the Common Areas in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Units owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Areas and/or Limited Common Areas as the Declarant may desire. The Declarant shall have the right to maintain one (1) or more sales offices and model Units. Such offices and model Units may be located in any Unit with the permission of the Owner of that Unit, who may be the Declarant, or in one (1) or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices.

27. **AGENT FOR SERVICE OF PROCESS.**

The name and address of the person to receive service of process in all cases provided by the Act shall be the registered agent and address of the Association as shown on the official

corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

28. SEVERABILITY.

The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

29. CAPTIONS.

The captions in this Declaration are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

30. LAW CONTROLLING.

This Declaration and the Map shall be construed and controlled by and under the laws of the State of Utah.

31. EFFECTIVE DATE.

This Declaration shall take effect when recorded in the office of the Utah County Recorder.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 8 day of July, 2019.

DECLARANT:

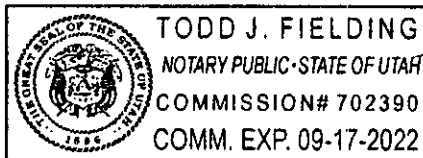
Stonecrest at Timpanogos, LLC, a Utah limited liability company

By: [Signature]  
Title: Manager

STATE OF UTAH )  
: ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 8 day of July, 2019, by David Curtis, as authorized manager/member of Stonecrest at Timpanogos, LLC, a Utah limited liability company.

SEAL:



[Signature]  
NOTARY PUBLIC

**EXHIBIT A****Schedule of Units, Votes and Undivided Interests in Common Areas****STONECREST AT TIMPANOGOS CONDOMINIUMS**

<b>Unit Numbers</b>	<b>Size of Unit</b>	<b>No. of Votes Per Unit</b>	<b>Percentage of Undivided Interest Per Unit</b>
Units 1-45	Each Unit is deemed to have 635 square feet	Each Unit (not owned by Declarant) shall have 2.22 Votes	2.22%
<b>Total</b>	<b>28,575</b>	<b>99.9 (rounded to 100)</b>	<b>99.9% (rounded to 100%)</b>

\*\* Note – the Votes per Unit shown above are subject to the provisions of Section 20 of the Declaration which provides that for each Unit owned by Declarant, Declarant shall have ten (10) times the number of votes pertaining to each Unit not owned by the Declarant. Hence, each Unit owned by Declarant shall have 22.2 Votes while owned by Declarant.

**EXHIBIT B**

Association Bylaws

Attached

**BYLAWS  
OF  
STONECREST AT TIMPANOGOS CONDOMINIUMS  
OWNERS ASSOCIATION, INC.**

ARTICLE ONE: NAME AND LOCATION

The name of the corporation is Stonecrest at Timpanogos Condominiums Owners Association, Inc. (the "Association"). The principal office of the Association shall be located at 1800 North State Street-OFC, Provo, Utah 84604, but the meetings of Owners and Trustees may be held at such other places as may be designated by the Board of Trustees. For purposes of these Bylaws and the other governing documents of the subject condominium project, the "*Board of Trustees*" shall have the same meanings as the "*Management Committee*."

ARTICLE TWO: APPLICATION OF BYLAWS

All present and future owners, mortgagees, lessees and occupants of any Unit or Condominium and any other persons who may use the facilities or Stonecrest at Timpanogos Condominiums (the "Project") in any manner are subject to these Bylaws, the Amended and Restated Declaration of Condominium for Stonecrest at Timpanogos Condominiums dated on or about the date of these Bylaws (the "Declaration") and all rules made pursuant hereto and any amendments hereof. The acceptance of a deed or conveyance or entering into of a lease or the act of occupancy of a Unit or Condominium shall constitute an agreement that the provisions of the Declaration and these Bylaws and any rules and regulations made pursuant hereto, as they may be amended from time to time, are accepted, ratified and will be complied with. Certain capitalized terms in these Bylaws shall be defined in accordance with the definition for such terms set forth in the Declaration.

ARTICLE THREE: MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Owners shall be held within one (1) year from the date of incorporation of the Association, and each subsequent annual meeting shall be held in July of each calendar year at a date and time fixed by the Board of Trustees, or such other month or date as the Board of Trustees may designate.

Section 2. Special Meetings. Special meetings of the Owners may be called at any time by the president or by the Board of Trustees, or upon written request of the Owners who are entitled to vote at least twenty-five percent (25%) of all the votes of the membership.

Section 3. Notice of Meetings. Written notice of each meeting of the Owners shall be given by, or at the direction of, the secretary of the Association or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Owner entitled to vote thereat, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of special meeting,



the purpose of the meeting. Notice of a meeting can also be given by email to each of the Owners. Owners may also call meetings on shorter notice provided all Owners agree to such shorter notice.

Section 4. Quorum. The presence at the meeting of Owners entitled to cast, or of proxies entitled to cast, fifty percent (50%) or more of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Owners entitled to vote shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented by proxy.

Section 5. Voting. At all meetings of Owners, each Owner may vote in person, by written ballot, or by proxy. Except as otherwise provided in Section 7 of this Article Three, in the event that ownership of a Unit is jointly held by two or more persons (each a "Joint Owner") the Association may accept the vote of any one Joint Owner as the vote for such Unit, unless it receives written notice to the contrary from any of the other Joint Owners of such Unit. The Association may accept votes, consents, written ballots, waivers, proxy appointments, and proxy revocations of the Owners in accordance with the provisions of UTAH CODE ANN. § 16-6a-713.

Section 6. Action Taken Without a Meeting. Any action that may be taken at any regular or special meeting of the Association may be taken without a meeting if the following requirements are met:

6.1 A written ballot is distributed to every Owner entitled to vote setting forth the proposed action, providing an opportunity to signify approval or disapproval of the proposal and providing a reasonable time for the Owner to return the ballot to the Association.

6.2 The number of votes cast by ballot within the specified time under Subsection 6.1 equals or exceeds the quorum required to be present at a meeting authorizing the action.

6.3 The number of approvals of the action equals or exceeds the number of votes required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by written ballot.

6.4 The written ballot distributed to Owners affords an opportunity for the Owner to specify a choice between approval and disapproval of each order of business proposed to be acted upon by the Association and further provides that the vote of the Owners shall be cast in accordance with the choice specified.

In addition to foregoing, any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice if the requirements of UTAH CODE ANN. § 16-6a-707 have been satisfied.

Section 7. Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist

only where the instrument authorizing such proxy to act shall have been executed by the Owner himself or by his attorney thereunto duly authorized in writing or which satisfies the requirements of UTAH CODE ANN. § 16-6a-712. The instrument authorizing the proxy to act shall meet the requirements set forth in Subsection 6.4 above and shall indicate the name of the secretary of the Association, or such other officer or person or who may be acting as the secretary at the meeting to whom the proxy is to be given for the purpose of casting the vote to reflect the absent Owner's vote as specified in the form of proxy. If a Unit is jointly held, the instrument authorizing a proxy to act must have been executed by all Joint Owners of such Unit or their attorneys thereunto duly authorized in writing. Such instrument authorizing a proxy to act shall be delivered at the beginning of the meeting to the secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

ARTICLE FOUR:  
BOARD OF TRUSTEES. ELECTION. TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Trustees of at least three (3) but no more than five (5), who need not be Owners of the Association (each a "Trustee"). The Board of Trustees shall be the "*Management Committee*" of the Association for purposes of the Utah Condominium Ownership Act and the subject condominium project.

Section 2. Initial Selection and Term of Office. Declarant shall have the exclusive right to appoint and to remove all Trustees so long as Declarant holds a majority of the number of votes as section forth in Section 20 of the Declaration (the "Declarant Control Period"). At the end of the Declarant Control Period, the Owners shall elect the Trustees at a meeting of the Owners each calendar year. Trustees shall serve one year terms, which may be renewed by the Owners by vote each calendar year.

Section 3. Election. Except as set forth in Section 2 above, election to the Board of Trustees shall be by vote of the Owners. At such election, the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provision of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4. Removal. After the end of the Declarant Control Period, any Trustee may be removed from the Board of Trustees, with or without cause, by a majority vote of the Owners of the Association. In the event of death, resignation or removal of a Trustee, a successor shall be selected by the remaining Owners of the Board of Trustees and shall serve for the unexpired term of said Trustee's predecessor.

Section 5. Compensation. No Trustee shall receive compensation for any service the Trustee may render to the Association. However, any Trustee may be reimbursed for actual reasonable expenses incurred in the performance of Trustee duties.

Section 6. Action Taken Without a Meeting. The Trustees shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written

approval of all the Trustees. Any action so approved shall have the same effect as though taken at a meeting of the Trustees.

Section 7. Vacancies. If a vacancy occurs on the Board of Trustees, including a vacancy resulting from an increase in the number of Trustees, the vacancy may be filled by the Owners or by the Board of Trustees in accordance with UTAH CODE ANN. § 16-6a-810.

#### ARTICLE FIVE: MEETING OF TRUSTEES

Section 1. Regular Meetings. The Board of Trustees shall hold a regular meeting at least one time per calendar year.

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

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

#### ARTICLE SIX: POWERS AND DUTIES OF THE BOARD OF TRUSTEES

Section 1. Powers. The board of Trustees shall have power to:

1.1 Adopt and publish rules and regulation governing the use of the Common Areas and Facilities, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof,

1.2 Upon reasonable notice and the opportunity for a hearing to an Owner, suspend the voting rights of an Owner during any period in which such Owner shall be in default in the payment of assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period not to exceed sixty (60) days for the infraction of published rules and regulations;

1.3 Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provision of these Bylaws, the Articles, or the Declaration;

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

1.5 Employ a Manager, an independent contractor, and such other employees as they deem necessary, and to prescribe their duties.

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

2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Owners who are entitled to vote;

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

2.3 As more fully provided in the Declaration, to:

2.3.1 Fix the amount of the annual assessment against each Unit at least fifteen (15) days in advance of each annual assessment period;

2.3.2 Foreclose at its discretion the lien against any Unit for which assessments are not timely paid and/or to bring an action at law against the Owner personally obligated to pay the same.

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

2.5 Procure and maintain adequate liability, and hazard insurance on property by the association, and adequate officers' and trustees' indemnity insurance, and all other insurance required by the Declaration;

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

2.7 Cause the Common Areas and Facilities to be maintained;

2.8 Permit First Mortgagees of Units in the Project to pay taxes or other charges which are in default and which may have become a charge against the Common Areas of the Association, and such First Mortgagees may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and such First Mortgagees, upon making such payments, shall be owed immediate reimbursement therefor from the Association; and

2.9 Assess and collect all assessments referred to or authorized in the Declaration.

## ARTICLE SEVEN: OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be president, a secretary, and a treasurer, and such other officers as the Board of Trustees may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the annual meeting of the Owners each year, or as deemed necessary by the Owners.

Section 3. Term. The officers of this Association shall be elected annually by the Board of Trustees and each shall hold office for one (1) year or until his or her successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise be disqualified to serve.

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

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

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board of Trustees. The officer appointed to such vacancy shall serve for the remainder of the term of the office he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant Section 4 of this Article Eight.

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

President: The president shall preside at all meetings of the Board of Trustees; shall see that orders and resolution of the Board of Trustees are carried out; and shall sign all leases mortgages, promissory notes, checks, deeds and other written instrument on behalf of the Association.

Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Trustees and of the Owners;; serve notice of meetings of the Board of Trustees and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; and shall perform such other duties as required by the Board of Trustees.

Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Trustees; shall, together with the president, sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association book to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and statement of income and expenditures, and deliver a copy of each to the Owners. The treasurer may choose to work with a management company to carry out the financial duties of the Association.

ARTICLE EIGHT:  
INDEMNIFICATION OF OFFICERS AND TRUSTEES

The Association shall provide any indemnification required or permitted by the laws of Utah, including without limitation indemnification required to be provided pursuant to UTAH CODE ANN. §§ 16-6a-901 to 910, and the Association shall indemnify Trustees, officers, agents and employees as follows:

Section 1. Third Party Litigation. The Association shall indemnify any Trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceedings, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was such Trustee or officer or an employee or agent of the Association, or is or was serving at the request of the Association as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith, and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. Association Litigation. The Association shall indemnify any Trustee or officer of the Association who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was such a Trustee or officer of an employee or agent of the Association, or is or was serving at the request of the Association as trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was

brought, or any other court having jurisdiction in the premises, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.

Section 3. Expenses. To the extent that a Trustee or officer of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or 2 of this Article Nine, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, without the necessity for the determination as to the standard of conduct as provided in Section 4 of this Article Nine.

Section 4. Determination of Right to Indemnity. Any indemnification under Section 1 or 2 of this Article Nine (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Trustee or officer is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 1 or 2 of this Article Nine. Such determination shall be made (i) by the Board of Trustees of the Association by a majority vote of a quorum consisting of Trustees who were not parties to such action, suit or proceeding, or (ii) if such quorum is not obtainable, or even if obtainable, and such a quorum of disinterested Trustees so directs, by independent legal counsel (who may be regular counsel for the Association) in written opinion; and any determination so made shall be conclusive.

Section 5. Advance of Expenses. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding, as authorized in the particular case, upon receipt of an undertaking by or on behalf of the Trustee or officer to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article Nine.

Section 6. Other Indemnification Rights. Agents and employees of the Association who are not Trustees or officers of the Association may be indemnified under the same standards and procedures set forth above, in the discretion of the Board of Trustees of the Association.

Section 7. Benefited Parties. Any indemnification pursuant to this Article Nine shall not be deemed exclusive of any other rights to which those indemnified may be entitled and shall continue as to a person who has ceased to be a trustee or officer and shall inure to the benefit of the heirs, executors, and administrators of such a person.

## ARTICLE NINE: ACCOUNTING; RECORDS

### Section 1. Accounting

1.1 The books and accounts of the Association shall be kept in accordance with reasonable accounting procedures used by similar condominium projects under direction of the treasurer.

1.2 At the close of each fiscal year, the books and records of the Association shall be reviewed by an independent management company or public accountant approved by the Association.

Section 2. Inspection of Records. The membership register, books of account and minutes of meeting of the Association, of the Board of Trustees and of committees of the Board of Trustees, and all other records of the Project maintained by the association or Manager shall be made available for inspection and copying by any Owner of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as an Owner, at the office where the records are maintained. Upon receipt of an authenticated written request from an Owner along with the fee prescribed by the Board of Trustees to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the Owner a copy of any and all records requested. The Board of Trustees shall establish reasonable rules with respect to:

- 2.1 Notice to be given to the custodian of the records by the Owner during to make the inspection;
- 2.2 Hours and days for the week when such an inspection may be made; and
- 2.3 Payment of the cost of reproducing copies of documents requested by an Owner.

Every member of the Board of Trustees, subject to the conditions set forth above, shall have the absolute right at any reasonable time to inspect and make copies of all books, records and documents of the Association and to inspect all real and personal properties owned or controlled by the Association.

#### ARTICLE TEN: ASSESSMENTS

All assessments shall be made in accordance with the general provisions of the Declaration. The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board of Trustees in assessing Common expenses against the Units and Owners, the treasurer shall keep an accurate record of such assessments and of the payment thereof by each Owner.

#### ARTICLE ELEVEN: AMENDMENTS

Section 1. Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Owners, by a vote of a majority of a quorum of the Owners present in person or by proxy.

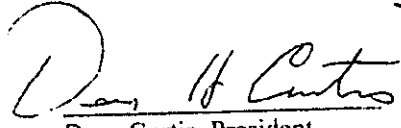

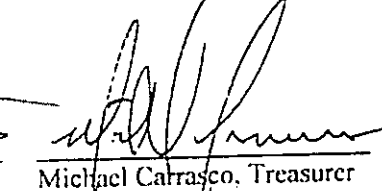
Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.



Section 1. Amendment Procedure. These Bylaws may be amended, at a regular or special meeting of the Owners, by a vote of a majority of a quorum of the Owners present in person or by proxy.

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

ADOPTED by this initial members of the Board of Trustees/Management Committee as of this 8 day of July, 2019.

 Dean Curtis, President	 David Curtis, Secretary	 Michael Carrasco, Treasurer
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