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RECORDER, SALT LAKE COUNTY, UTAH  
M15 LLC  
927 S STATE ST  
SLC UT 84111  
BY: KRA, DEPUTY - MI 55 P.

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**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
M15 LOFTS CONDOMINIUMS**

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This Declaration of Covenants, Conditions and Restrictions of M15 Lofts Condominiums (this "Declaration") is executed as of the 1st day of August, 2018, by M15 LLC, a Utah limited liability company ("Declarant").

RECITALS:

- A. Capitalized terms in this Declaration are defined in Article I.
- B. Declarant holds legal title to a certain tract of real property located in Salt Lake City, Salt Lake County, Utah, referred to herein as the "Property," and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.
- C. Declarant intends to develop the Property into a residential condominium project to be known as "M15 Lofts Condominiums". It is intended that the various Units described in this Declaration will be conveyed to Owners in fee simple. The Declarant further intends, by recording this Declaration and the Plat, to submit the Project and all improvements situated from time to time in or upon the Property to the provisions of the Utah Condominium Ownership Act, as amended, Utah Code Annotated, Section 57-8-1 et seq., as a fee simple Condominium Project and to impose upon said property mutually beneficial covenants, conditions and restrictions under a general plan of improvement for the benefit of all Condominiums within said Condominium Project and the Owners thereof.

NOW, THEREFORE, it is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Declarant and its assigns and all owners of all or any part of the Property, including without limitation any Unit, together with their respective grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

**ARTICLE I  
DEFINITIONS**

When used in this Declaration (including in that portion hereof titled "Recitals") the following terms shall have the meaning indicated:

1.1 "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association which have been filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, or which shall be filed at or about the time that this Declaration is filed for record.

1.2 "Assessment Percentage" means, as to each Unit, the percentage indicated on Exhibit B attached hereto and incorporated herein by this reference.

1.3 “Association” means M15 Lofts Condominium Association, Inc., a Utah nonprofit corporation.

1.4 “Board of Directors” or “Board” means the governing board of the Association which shall be appointed or elected in accordance with the Declaration, the Articles of Incorporation, and Bylaws of the Association. The Board of Directors may also be referred to in the Declaration, the Articles of Incorporation, and/or the Bylaws as the management committee.

1.5 “Bylaws” mean the Bylaws of the Association, as the same may be amended and supplemented from time to time, a copy of which are attached hereto as Exhibit D.

1.6 “Common Areas” mean that part of the Project which is not specifically included within the Units, as may be designated in the Plat and supplements thereto, and all portions of the Project not specifically included within the individual Units and all Common Areas as defined in the Act, whether or not enumerated herein, as further described in Section 2.3 below.

1.7 “Common Expense Fund” means the fund created or to be created pursuant to the provisions of Article V and Section 5.2(A) of this Declaration and into which all monies of the Association shall be deposited. Two separate and distinct funds shall be created and maintained as part of the Common Expense Fund, one for operating expenses and one for capital expenses, provided that such separate and distinct funds shall be for accounting purposes and funds allocated for operating expenses and capital expenses may, at the discretion of the Board, be commingled in a single account constituting the Common Expense Fund.

1.8 “Common Expenses” mean those costs and expenses arising out of or connected with the maintenance and operation of the Project and Association as described in Article V hereof and which determine the assessments made to Owners.

1.9 “Condominium” means a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Unit concerned which are used in conjunction with such residence.

1.10 “Condominium Act” means the Utah Condominium Ownership Act, UTAH CODE ANN. §57-8-1 *et seq.*, and all amendments thereto.

1.11 “Condominium Building” means a structure containing multiple Units constituting a portion of the Project, as further described in Section 2.1 of this Declaration.

1.12 “Condominium Building Exteriors” mean those portions of the Condominium Buildings which are open to the elements, such as roofs, exterior walls, exterior doors, footings, foundations, basement walls, and window wells.

1.13 “Declarant” means M15 LLC, a Utah limited liability company, and/or any successor thereof which, either by operation of law or through a voluntary conveyance, transfer, or assignment, comes to stand in the same relation to the Property (or a portion thereof) as did its predecessor.

1.14 “Declaration” means and refers to this “Declaration of Covenants, Conditions and Restrictions of The M15 Lofts Condominiums,” including all exhibits hereto, as the same may hereafter be modified, amended, and supplemented.

1.15 “Eligible Mortgagee” means a First Mortgagee which has requested notice of certain matters from the Association in accordance with Section 11.1 of this Declaration.

1.16 “First Mortgage” means any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.17 “First Mortgagee” means any person named as a Mortgagee under a First Mortgage, or any successor to the interest of any such person under a First Mortgage, which First Mortgage is not subject to any lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.18 “Governing Documents” means this Declaration, Articles of Incorporation and Bylaws for the Association, the Plat, and rules and regulations issued from time to time by the Association.

1.19 “Insurance Trustee” has the meaning given in Section 6.4(E) below.

1.20 “Limited Common Areas” mean any Common Areas designated as reserved for use by the Owner of a certain Unit or Units to the exclusion of the other Owners in the Project as further described in Section 2.4 of this Declaration.

1.21 “Manager” means 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 Project.

1.22 “Member” means every person who holds membership in the Association.

1.23 “Mortgage” means any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.24 “Mortgagee” means a beneficiary of a Mortgage as well as a named Mortgagee.

1.25 “Owner” means the person or persons, including the Declarant, owning a fee simple interest in a Unit in the Project, as such ownership is shown by the official records of the Salt Lake County Recorder’s office, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has obtained title in fee simple to a Unit pursuant to a judicial or nonjudicial action, including without limitation a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure) or to any person or persons purchasing a Unit under contract (until such contract is fully performed and legal title conveyed of record).

1.26 “Plat” means the condominium map for The M15 Lofts Condominiums, recorded in the official records of the Salt lake County Recorder’s office, State of Utah or which shall be recorded at the time that this Declaration is recorded, and all amendments thereto.

1.27 “Project” means the Property and the improvements to be constructed thereon as part of the plan of development, as further depicted on Exhibit C attached hereto and incorporated herein by this reference, and the ownership of the Property created and governed by this Declaration, the Articles, and the Bylaws.

1.28 “Property” means the entire tract of real property now or hereafter covered by the Plat. A description of the real property covered by the Plat on the effective date of this Declaration is set forth in Exhibit A attached hereto and incorporated herein by this reference.

1.29 “Reinvestment Fee” shall mean the charge which may be levied and assessed pursuant to Section 5.6. The Reinvestment Fee assessed, if any, shall be in compliance with Utah Code Ann. §57-1-46, as may be amended or replaced.

1.30 “Section” means a numbered section of this Declaration.

1.31 “Director” means a member of the Board of Directors.

1.32 “Unit” means any of the separately numbered and individually described residential condominium units now or hereafter shown on the Plat, as further described in Section 2.2 of this Declaration. Except where the context specifically otherwise requires, reference to a Unit shall include reference to the Condominium thereon.

## ARTICLE II PROPERTY DESCRIPTION

2.1 Condominium Buildings. The Condominium Buildings to be constructed on the Property consist of three (3) above ground stories, and no basements. The Buildings are to be constructed of wood framing, stucco and metal panel exteriors, vinyl-framed windows, full-lite metal doors, and insulated overhead garage doors. The number of Units in the Buildings is twenty (20). Parking lots and sidewalks located on the Common Areas will be available for use in connection with the Units on a non-exclusive basis pursuant to the terms and conditions of this Declaration, and rules and regulations implemented by the Association from time to time. Furthermore, the Buildings and other improvements, including reconstruction and additions, shall conform to the architectural drawings and plans approved by the City of Salt Lake for the construction of the Project. The Condominium Buildings and other improvements are fully depicted on the Plat.

2.2 Description of the Units. The boundary lines of each Unit are the undecorated and unfinished interior surfaces of its perimeter walls, bearing walls, lowermost floor, uppermost ceiling, bottom surface of floor-ceiling assembly separating a portion of it from the unit above, top surface of floor-ceiling assembly of floor-ceiling assembly separating a portion of it from the unit below, interior surfaces of windows and doors, window frames and door frames and trim. Each Unit shall include both the portions of the Condominium Buildings that are not Common Areas within such boundary lines and the space so encompassed. Without limitation, a Unit shall include all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, glass and window units, doors and door units, trim, carpeting, tile and linoleum and all systems, fixtures, or appliances found within the boundary lines of the Unit and servicing only the Unit. Exhibit B hereto contains a table setting forth the number designation of each Condominium Building and Unit. The Units are more particularly described in the Plat.

2.3 Description of Common Areas. The Common Areas shall be parking areas, landscaping, roadways, walkways, utility systems and entries. The location and the configuration of the Improvements referred to in the foregoing sentence may be depicted on the Plat. The Common Areas shall mean and include: the improvements referred to above, and all portions of

the Project and all Property including all Limited Common Areas as herein described not contained within any Unit. The Common Areas shall further include all portions of the Condominium Buildings not contained within any Unit, including, but not by way of limitation: the foundations, columns, girders, beams, supports, main walls, unit dividing walls and floor-ceiling assemblies, roofs, corridors, stairs, stairways, and entrances and exits of the Condominium Buildings; installation of all central services, including power, light, water, pumps, motors, fans, ducts, and in general all apparatus and installations existing for common use; all patios, courts and driveways; any utility pipes, lines or systems servicing more than a single Unit, including all ducts, flues, chutes, wires conduits and other accessories and utility installations to the outlets used therewith; and all Limited Common Areas within the Condominium Buildings associated with the Units herein described. Common Areas shall include all other parts of the Property necessary or convenient to the existence, maintenance and safety, or normally common in use, or which may have been designated as Common Areas in the Plat; and all repairs and replacements of any of the foregoing.

2.4 Description of Limited Common Areas. Limited Common Areas mean and include those portions of the Common Areas reserved for the use of certain Units to the exclusion of other Units. The Limited Common Areas shall include balconies, patios or green areas that are immediately adjacent to or contiguous with the Units, as more particularly identified in the Plat. The use and occupancy of designated Limited Common Areas shall be reserved to its associated Unit and each Owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas.

2.5 Percentages of Undivided Interest in Common Areas. Each Unit and its owner shall have an equal undivided interest in the Common Areas for all purposes, including voting, regardless of the size or value of the Unit.

2.6 Security Gates and Security Devices. Security gates and/or other security devices designed to limit access and to provide more privacy for Owners may be constructed, removed, modified or relocated from time to time within the Condominiums. Neither the Declarant or the Association nor any director, officer, agent or employee of the Declarant or the Association shall be liable to any Owner or occupant or their families, guests or invitees for any claims or damages resulting, directly or indirectly, from the construction, existence or maintenance of any such security gate or other security device. All present and future Owners of any Unit and all present and future occupants of any Unit are advised that, notwithstanding anything to the contrary, any security gate or similar facility currently situated, or planned for construction, or hereafter constructed, may be removed at some future date or dates. Declarant makes no representations regarding, and shall have no liability for, the adequacy or degree of security or protection provided by any security gate or other facility constructed.

### **ARTICLE III THE ASSOCIATION**

3.1 Membership. Each Owner shall be entitled and required to 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 such Owner. 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 membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of such Unit shall automatically constitute a devise, encumbrance, conveyance, or other disposition of the Owner's membership in the Association and 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 sale or transfer of a Unit. The Association shall make available to the Owners, Mortgagees, and the holders, insurers, and guarantors of the First Mortgage on any Unit current copies of this Declaration, the Articles, the Bylaws, and other rules governing the Project and other books, records and financial statements of the Association. The term "available" as used in this Section 3.1 shall mean available for inspection or to make digital or paper copies, upon prior request, during normal business hours or under other reasonable circumstances.

3.2 Board of Directors. Until such time as the responsibility for electing the Board of Directors of the Association is turned over to the Owners, the Declarant shall have the exclusive right to appoint and remove all Directors of the Board of Directors. This exclusive right of the Declarant to appoint and remove the Directors shall terminate after the first to occur of the following:

(A) Three (3) years from the date on which the first Unit in the Project is conveyed; or

(B) One hundred twenty (120) days after seventy-five percent (75%) of the Units have been conveyed to Owners.

3.3 Personal Liability. Neither the Declarant, Declarant's affiliate, parent, or related entities (collectively "Declarant Entities"), nor any director, officer, manager, shareholder, member or employee or agent of Declarant Entities, nor any member of the Board, officer, manager or other employee or committee member of the Association shall be personally liable to any Member, or to any other person, including the Association, for any damage, loss, claim or prejudice suffered or claimed on account of any act, omission to act, negligence or other matter, of any kind or nature except for acts performed intentionally and with malice.

3.4 Votes. Each Member shall be entitled to the number of votes that are appurtenant to such Member's Unit. Each Unit shall have one (1) vote. The number of votes appurtenant to each Unit shall be permanent, and shall not change in the event an Owner modifies a Condominium to increase or decrease the size of such Unit relative to other Units. If there is more than one Owner of a particular Unit, the votes relating to such Unit shall be exercised as such Owners may determine among themselves. No Unit shall have more than one (1) vote regardless of the number of persons having an ownership interest in the Unit. The votes cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the votes attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. If such an objection is made, the votes involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists. The Declarant shall have full voting rights with respect to each Unit which it owns. For voting purposes, the Declarant shall be deemed to own Units that have not yet been constructed, but which are identified on Exhibit B, and Units that have been constructed but have not been sold to third persons, and may cast votes with respect to such Units.

3.5 Maintenance of Condominium Building Exteriors. The Association shall maintain all Condominium Building Exteriors as follows: paint, repair, replacement and care of roofs,

foundations, window wells, sump pumps, common area fences, exterior building surfaces, exterior door and other exterior improvements, as well as all trees, shrubs, grass, walks and steps located on or around a Unit. Such exterior maintenance shall not include glass surfaces and window screens, fenced or private yards and their fences included with any Unit, the maintenance for which shall be the responsibility of each of the applicable Owner(s). The Association shall, perform, at a minimum, all maintenance requirements set forth in the maintenance manual provided by Declarant (the "Maintenance Manual"). The Association shall have the right of entry to any Condominium or any Limited Common Area at any time to perform emergency repairs and at other reasonable times to do other work necessary for maintenance of the Condominium Building Exteriors and the Project. If the need for maintenance or repair of the Condominium Building Exteriors with respect to a Unit is caused through the willful or negligent acts of its Owner(s), or through the willful or negligent acts of the family, guests, tenants or invitees of the Owner(s) of the Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become a part of the assessment to which such Unit is subject.

3.6 Professional Management. The Association may carry out through a property management contract or 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, 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 Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement, employment agreement, lease of recreational or parking areas or facilities, and any other agreement to which the Declarant is a party that is executed on or before the termination of Declarant's control of the appointment of the Board of Directors as described in Section 3.2 may be terminated by the Association without cause and without penalty at any time after the termination of such control upon 30 days' prior notice to the Manager and/or the Declarant, as applicable. The above term and termination provisions shall not apply to any other types of service contracts.

3.7 Registered Agent. The registered agent of the Association shall be the person designated herein to receive service of process on behalf of the Association and/or Project in accordance with the Condominium Act. The name and address of the initial registered agent of the Association are: Jim Nielson, 927 S. State, Salt Lake City, Utah, 801-355-3003.

3.8 Amplification. The provisions of this Article III may be amplified by the Articles and the Bylaws; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

3.9 Proceedings. The Association, acting through the Board, shall have the power and the duty to bring, prosecute and settle litigation for itself and the Project, provided that it shall make no settlement which results in liability against the Board of Directors, the Association or the Project in excess of \$15,000 without prior approval by a three-quarter majority of the votes of Owners.



**ARTICLE IV  
PROPERTY RIGHTS IN COMMON AREAS AND UNITS**

4.1 Easement of Enjoyment. Each Member shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Areas. Each Owner shall have an unrestricted right of ingress or egress to and from its Unit over and across such Common Areas, and the non-exclusive right to the use of all parking stalls within the Common Areas. Each Owner of a Unit shall also have the exclusive right to use and enjoy any Limited Common Areas that may be designated for the exclusive use by the Owner of such Unit. Such rights and easements shall be appurtenant to, and shall pass with title to, each Unit and in no event shall be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any family members, household guest, tenant, lessee, contract purchaser, or other person who resides in such Owner's Unit.

4.2 Easements for Encroachments. In the event the construction, reconstruction, repair, shifting, settlement, or any other movement of any portion of the improvements causes any part of a Condominium built in substantial accord with the boundaries for such Condominium as depicted on the Plat to encroach upon the Common Areas, or upon an adjoining Unit, or if any part of the Common Areas encroaches or shall encroach upon a Unit or Condominium for any such reasons, an easement for such encroachment and for the maintenance of the same shall be deemed to exist and does hereby exist. In addition, there is also hereby created an easement for any encroachment by any roof or balcony overhang upon an adjoining Unit or any part of the Common Areas.

4.3 Limitation on Easement. An Owner/Member's equal undivided interest, right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

(A) The right of the Association, after providing reasonable notice and an opportunity for a hearing given to a Member, to suspend a Member's voting right in the Association and a Member's right to the use of any recreational facilities included in the Common Areas for any period during which (i) an assessment on such Member's Unit remains unpaid; (ii) for a period not exceeding 60 days for any infraction by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association; or (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

(B) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas; and

(C) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children; and providing other governmental or municipal service;

4.4 Party Walls. Each wall or ceiling-floor physical boundary which is built as part of the original construction (or reconstruction) of the Condominiums upon the Units and placed on the dividing line (whether horizontal or vertical) between the Units shall constitute a "Party Wall" and, to the extent not inconsistent with the provisions of this Section 4.4, the general rules

of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply to all Party Walls within the Project. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of such Party Wall. If a Party Wall is destroyed or damaged by fire or other casualty, the provisions of Article VII hereof shall apply. Notwithstanding any other provision of this Section 4.4, an Owner who by his negligent or willful act causes a Party Wall to be damaged shall bear the entire cost of furnishing repairs to the Party Wall. The right of any Owner to contribution from any other Owner under this Section 4.4 shall be appurtenant to the land and shall pass to such Owner's successors in title.

4.5 Form for Conveying Units. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit may describe the interest or estate involved substantially as follows:

“Condominium Unit \_\_\_\_\_, as shown in the Condominium Plat for The M15 Lofts Condominiums appearing in the Records of the County Recorder of Salt Lake County, State of Utah, in Book No. \_\_\_\_\_, Page No. \_\_\_\_\_, of Plats, and as defined and described in the Declaration of Covenants, Conditions and Restrictions of The M15 Lofts Condominiums (the “Declaration”), recorded the \_\_\_\_\_ day of \_\_\_\_\_, 2017, as Entry No. \_\_\_\_\_; TOGETHER WITH an equal undivided interest in, and right and easement of use and enjoyment in and to, the Common Areas described in the Declaration; TOGETHER WITH an exclusive right to use any Limited Common Area associated with such Unit as described in the Declaration.”

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

4.6 Transfer of Title. The Declarant agrees to cause the conveyance to the Association of title to the Common Areas free and clear of all liens (other than the lien of current general taxes, the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities, and the lien or claim created by this Declaration), before the first conveyance of a Unit from Declarant to a third-party purchaser.

## **ARTICLE V ASSESSMENTS**

5.1 Agreement to Pay Assessments. The Declarant for each Unit owned by it within the Project and each Owner of any Unit by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article V. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above twenty percent (20%) of the annual assessment for the prior year only by a vote of at least sixty seven percent (67%) of the votes (determined in accordance with Section 3.4) of Members who are voting in person or

by proxy, at a meeting duly called for this purpose. The Board may fix the annual assessment at an amount not in excess of the maximum amount permitted herein.

5.2 Annual Assessments. Annual assessments shall be computed and assessed against all Units in the Project as follows:

(A) Common Expense. Annual assessments shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas, the Condominium Building Exteriors, and furnishing common utility services and other common items to the Condominiums. Such estimated expenses may include, without limitation, the following: expenses of management; operation and maintenance costs; real property taxes and special assessments on the Common Areas (and the Units until the Units are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder or under the Articles or Bylaws; repairs and maintenance of the Common Areas and Condominium Building Exteriors; landscaping; picnic areas; tot lots; sport courts; wages of Association employees, including fees for a Manager; repairs and replacements of window well sump pumps; utility charges, including charges for utility services to the Condominiums to the extent not separately metered or billed and utilities for the Common Areas; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance repairs, and replacement of those Common Areas and Condominium Building Exteriors that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration, the Articles, or the Bylaws. The aggregate of all such items shall constitute the "Common Expenses" and all funds received from assessments under this Section 5.2(A) shall be part of the "Common Expense Fund." Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses, which together shall constitute the Common Expense Fund.

(B) Apportionment. Common Expenses shall be apportioned among and assessed to all Units and their Owners in accordance with the Assessment Percentages for each Unit, as set forth on Exhibit B, which is attached hereto and incorporated herein by this reference. The Declarant shall be liable for the amount of any assessments against Units owned by it subject to the provisions of Section 5.4 below.

(C) Annual Budget. Annual assessments shall be determined on the basis of a fiscal year beginning January 1 and ending December 31 next following, provided the first fiscal year shall begin on the date of the conveyance of the first Unit by Declarant. On or before December 1 of each year thereafter, the Board of Directors shall prepare and furnish to each Owner, or cause to be prepared and furnished to each Owner, an operating budget for the upcoming fiscal year. The budget shall itemize the estimated expenses of Common Expense for such fiscal year, anticipated receipts (if any) and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the annual assessment for the upcoming fiscal year and as the major guideline under which the Project shall be operated during such annual period.

(D) Notice and Payment. Except with respect to the first fiscal year, the Board of Directors shall notify each Owner in writing as to the amount of the annual assessment against his or her Unit on or before December 1 each year for the fiscal year beginning on January 1 next

following. Except as otherwise provided by the Board, each annual assessment shall be payable in twelve (12) equal monthly installments, one such installment due on the first day of each calendar month during the fiscal year to which the assessment relates; provided, however, the annual assessment for the first fiscal year shall be based upon such portion of the first fiscal year. All unpaid installments of any annual assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from 15 days after the date each such installment became due until paid. The Board of Directors shall also have the right to assess a late fee of up to five percent (5%) of any assessment installment not paid within fifteen (15) days following the due date thereof. In addition, in the event that any installment of the annual assessment is not paid within 15 days of the date such installment becomes due, the Association may, at its option, and upon 15 days' prior written notice to the Owner, accelerate the due date for all remaining unpaid installments of the annual assessment for the remainder of the fiscal year and all accrued but unpaid interest thereon. Payment of the annual assessment installments so accelerated shall be due at the expiration of said 15 day notice period and interest shall accrue on the entire sum at the rate established by the Board not to exceed eighteen percent (18%) per annum from such date until paid in full. The failure of the Board of Directors to give timely notice of any annual assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment.

(E) Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, to pay actual Common Expenses incurred by the Association, the Board of Directors may, on behalf of the Association, levy additional assessments in accordance with the procedure set forth in Section 5.3 below, except that the vote therein specified shall be unnecessary.

5.3 Special Assessments. In addition to the annual assessments authorized by this Article V, the Board of Directors may, on behalf of the Association, levy, at any time and from time to time, upon the affirmative vote of at least sixty-seven percent (67%) of the voting power of the Association in person or by proxy at a meeting called for such purpose, special assessments, payable over such periods as the Board of Directors may determine, for the purpose of defraying, in whole or in part, the cost of any conversion, expansion, construction or reconstruction, unexpected repair or replacement of the Project or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including, without limitation, Common Expenses). This Section 5.3 shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners in accordance with their Assessment Percentages. Notice in writing of the amount of each such special assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than 15 days after such notice shall have been given. All unpaid portions of any special assessment shall bear interest at the rate established by the Board not to exceed eighteen percent (18%) per annum from the date such portions become due until paid. All funds received from assessments under this Section 5.3 shall be part of the Common Expense Fund. In connection with any such special assessment made pursuant to this Section 5.3, if at the time of such assessment is made or the time such assessment becomes due and payable, the Declarant is only obligated to pay twenty-five percent (25%) of the annual assessment attributable to Units it owns pursuant to Section 5.4 below, it shall only be required to pay twenty-five percent (25%) of the special assessment otherwise attributable to each such Unit. The provisions of this Section 5.3 are not intended to preclude or limit the assessment collection or use of annual assessments for the aforesaid purposes.

5.4 Uniform Rate of Assessment. The amount of any annual or special assessment against each Unit shall be fixed at a uniform rate based on the Assessment Percentages allocated to each Unit, as set forth on Exhibit B, except that, to the extent permitted by the Condominium Act, Declarant shall pay only twenty-five percent (25%) of the annual assessment attributable to each Unit which it owns until Declarant conveys such Unit to a third-party purchaser. If the Declarant ceases to qualify for the reduced twenty-five (25%) rate as to any Unit during the period to which an annual assessment is attributable, the assessment attributable to such Unit shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual assessments may be collected on a monthly basis and special assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the special assessment. So long as the Declarant qualifies for the reduced assessment rate with respect to the Units which it owns, if the assessments for any fiscal year of the Association shall fail to equal or exceed the actual expenses incurred by the Association during any such fiscal year because of the Declarant's right to pay reduced assessments, then the Declarant shall pay to the Association a sufficient amount, up to the amount for that fiscal year of the full assessment for each Unit owned by Declarant to meet any such deficit, so long as a written notice of such deficit is given by the Association to the Declarant within 60 days following the termination of the fiscal year for which the assessment is made.

5.5 Notice and Quorum for Any Action Authorized Under Sections 5.1 and 5.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 5.1 or Section 5.3 shall be sent to all Members not less than 30 days nor more than 60 days prior to date of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.6 Reinvestment Fee Covenant. Subject to the terms and conditions of Section 5.6(B) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section 5.6 and Utah Code § 57-1-46. If established by the Board, the following terms and conditions shall govern Reinvestment Fees.

(A) Upon the occurrence of any sale, transfer or conveyance (as applicable, a "Transfer") of any Unit, but excluding the initial sale or Transfer by or to Declarant or an affiliate or successor of Declarant, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time. The initial Reinvestment Fee shall be the lesser of (a) an amount established by the Board, or (b) the maximum rate permitted by applicable law.

(B) Notwithstanding anything to the contrary contained in this Section 5.6, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

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

- (ii) Any Transfer to the Association or its successors.
- (iii) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than ten percent (10%) of the value of the Unit transferred.
- (iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a Unit by the estate of an Owner.
- (v) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, removing clouds on titles, and any exchange of Units between Declarant and any original purchaser from Declarant.
- (vi) Any lease of any Unit or portion thereof for a period of less than thirty years.
- (vii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.
- (viii) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

(C) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

5.7 Lien for Assessments. All sums assessed to Owners of any Unit within the Project pursuant to the provisions of this Article V, together with penalties and interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article V, the Board of Directors may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Salt Lake County, State of Utah. No notice of lien shall be recorded until there is a delinquency in payment of any assessment made pursuant to this Declaration. 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 judicial foreclosure of deeds of trust or mortgages or in any other manner permitted by law. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8-45 to First American Title Company, Inc., with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of this Declaration. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, (including reasonable attorney's 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 assessment against the Unit which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Board of Directors 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. The lien described in this Section 5.7 shall not be affected

by any sale or transfer of a Unit subject to such lien, except that a sale or transfer of a Unit pursuant to a foreclosure of a First Mortgage shall extinguish a subordinate lien for Common Expenses and assessments which became payable prior to such foreclosure sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Unit from liability for, nor the Unit so sold or transferred from the lien of, any Common Expense charge or assessment thereafter becoming due.

5.8 Personal Obligation of Owner. The amount of any annual or special 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 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 assessment hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

5.9 Personal Liability of Purchaser. The personal obligation of an Owner to pay unpaid assessments against his Unit as described in Section 5.8 shall not pass to successors in title unless expressly assumed by them or required by the Condominium Act. 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.

5.10 Reserves and Working Capital. In addition to its day-to-day operating funds, the Association shall establish the following funds:

(A) Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and Condominium Building Exteriors which the Association is obligated to maintain, repair, or replace. Such fund shall be sufficient to provide for the maintenance requirements set forth in the Maintenance Manual, as well as for repairs and annual inspections of major systems, including the roof and exterior enclosure wall. The reserve fund shall be maintained out of regular assessments for Common Expenses.

(B) Working Capital Fund. The Declarant shall establish and maintain for the Project, a working capital fund equal to at least two (2) monthly installments of the annual assessment of each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of the closing of sale of that Unit. The Reinvestment Fee referenced in Section 5.6 will be applied to this working capital fund to satisfy this obligation. Any portion of such Reinvestment Fee in excess of such Unit's share (i.e., such Unit's two (2) monthly assessment installments) will also be transferred to the working capital fund. Notwithstanding the foregoing, the contribution to the working capital fund for each unsold Unit shall be paid by the Declarant to the Association within 60 days after the date construction of the Unit, including without limitation the installation of carpets, cabinets, fixtures, and appliances, has been completed. With respect to each Unit for which the Declarant pays the contribution to the working capital fund, Declarant shall be reimbursed for such contribution either by the purchaser of such Unit (through that purchaser's Reinvestment Fee or portion thereof) at the time of the closing of the sale to such purchaser or by the Association

upon termination of the Declarant's control of the Association as described in Section 3.2, whichever is earlier. The working capital fund must be maintained in a segregated account for the use and benefit of the Association. The purpose of the working capital fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Association. Amounts paid into the working capital fund are not to be considered advance payments of any regular assessment. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. The Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

5.11 Evidence of Payment of Annual and Special Assessments. Upon receipt of a written request by a Member or any other person and payment of a fee not to exceed \$10, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all annual and special assessments (including interest, costs and attorneys' fees, if any, as provided in Section 5.2 above) have been paid with respect to any specified Unit as of the date of such certificate, or (b) if all annual and special assessments have not been paid, the amount of such annual and special assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bond fide purchaser of, or Mortgagee on, the Unit in question and against the Association and the remaining Owners.

5.12 Nonpayment of Assessments: Termination of Rights; Collection of Rents from Tenants.

(A) Termination of Rights. If an Owner fails or refuses to pay any assessment when due, the Association, through its management committee, may, after giving notice and an opportunity to be heard in accordance with this Section 5.12(A), terminate an Owner's right to receive utility services paid as a common expense, and/or terminate an Owner's right to access and use of recreation facilities. Before terminating such rights, the Association shall give written notice to the Owner in the manner provided in this Declaration, the Bylaws, or the rules of the Association, which notice shall state (1) that utility services or rights of access and use of the recreational facilities will be terminated if payment of the assessment is not received within five (5) days from the date the notice is delivered to the Owner, (2) the amount of the assessment due, including interest or late fees; and (3) the right of the Owner to request a hearing. An Owner who is given notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee of the Association within 14 days from the date the notice is received. The hearing shall be conducted in accordance with the standards provided in this Declaration, the Bylaws, or the rules of the Association. If a hearing is requested, utility services or right of access to and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered. Upon payment of the assessment due, including interest and late fees, the Owner's right to utility services and access to and use of the recreational facilities shall be immediately reinstated.

(B) Collection of Rents from Tenants. If the Owner of a Unit who is leasing the Unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the Association, through its management committee, upon compliance with this Section 5.12(B),



may demand the tenant of such Unit to pay to the Association all future lease payments due to the Owner, commencing with the next monthly or periodic payment, until the amount due to the Association is paid. The Association must give the Owner written notice in accordance with this Declaration, the Bylaws, or the rules of the Association of its intent to demand full payment from the tenant. The notice shall (1) provide notice to the tenant that full payment of the remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in this Declaration, the Bylaws, or the rules of the Association; (2) state the amount of the assessment due, including interest and late fees; (3) state that any costs of collection, not to exceed \$150 or such greater amount as may be permitted under the Condominium Act, and other assessments that become due may be added to the total amount due; and (4) provide the requirements and rights described in this Section 5.12(B). If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the Association may deliver written notice to the tenant, in accordance with this Declaration, the Bylaws, or the rules of the Association, demanding further payment due to the Owner be paid to the Association. A copy of the notice must be mailed to the Owner. The notice provided to the tenant must state: (i) that due to the Owner's failure to pay the assessment within the time period allowed, the Owner has been notified of the Association's intent to collect all lease payments due to the Association pursuant to this Section 5.12 and the Condominium Act; (ii) that until notification by the Association that the assessment due, including interest and late fees, has been paid, all future lease payments due to the Owner are to be paid to the Association; and (iii) payment by the tenant to the Association in compliance with this Section 5.12(B) will not constitute a default under the terms of the lease agreement, and that if payment is in compliance with this Section 5.12(B), suit or other action may not be initiated by the Owner against tenant for failure to pay. All funds paid to the Association pursuant to this Section 5.12(B) shall be deposited in a separate account and disbursed to the Association until the assessment due, including cost of administration not to exceed \$25 or such greater amount as may be permitted by the Condominium Act, is paid in full. Any remaining balance shall be paid to the Owner within five (5) business days after payment in full is made to the Association. Within five (5) business days after the assessment has been paid in full to the Association, the Association shall notify the tenant in writing that future lease payments are no longer due to the Association, and shall mail a copy of such notice to the Owner.

## ARTICLE VI OPERATION AND MAINTENANCE

6.1 Maintenance of Condominiums. Each Condominium and Unit shall be maintained by the Owner thereof so as not to detract from the appearance of the Property and so as not to affect adversely the value or use of any other Condominium or Unit. The Association shall have no obligation regarding maintenance or care of Condominiums or Units except as set forth in Section 6.2 or elsewhere in this Declaration.

6.2 Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Units and to keep them clean, functional, attractive, and generally in good condition and repair. At a minimum, the Association shall perform all maintenance requirements set forth in the Maintenance Manual. The Association shall also provide for the maintenance of all Condominium Building Exteriors. The expenses incurred by the Association for such purposes shall be paid for with funds from the Common Expense Fund. The Association will own, operate, and maintain all sewer and storm drain laterals within the Project. The Association will pay all costs, fees, and expenses with respect to

the storm drain and sewer systems and sewer utilities as part of the Common Expenses. The Association will be responsible for costs, damages, losses, and other liabilities arising from any defect in the storm drain or sewer systems, including clogging, “backups” and other failures of the sewer system. The Association shall have the right to make assessments, as part of the Common Expenses or as special assessments, to pay for all costs, expenses, and charges related to the storm drain and sewer systems, including without limitation storm drain and sewer charges imposed by any governmental agency and costs of repair and maintenance, and to impose liens therefore as permitted in this Declaration.

6.3 Utilities. The Owner shall pay for all utility services furnished to each Unit which are separately billed or metered to individual Units by the utility or other party furnishing such service. The Association shall pay such bills which are not separately metered and charge an appropriate share to each Unit and Owner as part of the Common Expenses.

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

(A) Hazard Insurance. The Association shall maintain a “master” or “blanket” type policy of property insurance shall be maintained covering the entire Project, including: Common Areas (including, for the avoidance of doubt, Limited Common Areas); all Condominium Buildings including all Condominiums (other than the interior content thereof); fixtures, building service equipment, personal property and supplies comprising a part of the Common Areas 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. At a minimum, such “master” or “blanket” policy shall afford protection against the following: (i) loss or damage by fire, by other perils normally covered by the standard extended coverage endorsement, (ii) if the Project contains a steam boiler, loss or damage resulting from steam boiler equipment accidents in an amount not less than \$50,000 per accident per location (or such greater amount as deemed prudent based on the nature of the Project); and (iii) all other perils which are customarily covered with respect to condominium 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.

(B) Liability Insurance. The Association shall maintain in force, and pay the premium for a policy providing comprehensive general liability insurance coverage covering all of the Common Areas (including, for the avoidance of doubt, Limited Common Areas), Condominium Building Exteriors, public ways in the Project, including any dedicated trail system(s), all other areas of the Project that are under the Association’s supervision, and 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/or Condominium Building Exteriors,

and legal liability arising out of lawsuits related to employment contracts of the Association. Additional coverages under such policy may 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 the 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 Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

(C) Fidelity Bonds. 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 a 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. A lesser amount of fidelity insurance coverage is acceptable for the Project so long as the Association and the Manager adhere to the following financial controls: (1) the Association or the Manager maintains separate bank accounts for the working account and the reserve account, each with appropriate access controls, and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (2) the Manager maintains separate records and bank accounts for each Association that uses its services, and the Manager does not have authority to draw checks on or to transfer funds from the Association’s reserve account; or (3) two members of the Board must sign any checks written on the reserve account. Nevertheless, in no event may the amount of such bonds be less than the sum equal to three (3) months’ aggregate assessments on all Units plus reserve funds. The fidelity bonds shall name the Association as obligee and shall contain waivers by the issuers thereof of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees” or similar terms or expressions. The premiums on all fidelity 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. The fidelity bonds required hereunder 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 and to any Insurance Trustee.

(D) Additional General Requirements.

(i) The name of the insured under the hazard insurance policy required to be maintained by the foregoing Section 6.4(A) shall be “M15 Lofts Condominium Association for use and benefit of the individual owners of the M15 Lofts Condominium Project” or words of similar effect (said Owners shall be designated by name, if required by applicable law). Notwithstanding the requirement of the immediately foregoing sentence, 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, if applicable), as a trustee for each Owner and each such Owner's Mortgagee. The Association or Insurance Trustee, if applicable, shall hold any insurance proceeds in trust for the Owners and their First Mortgagees, as their interests may appear. Each Owner and each such Owner's Mortgagee, if any, shall be beneficiaries of such policies in the percentage of common ownership or in an amount determined pursuant to a reasonable formula, if any, prescribed in this Declaration, as the same may be amended. Evidence or certificates of insurance shall be issued to each Owner and Mortgagee upon request.

(ii) Each policy required to be maintained by the foregoing Section 6.4(A) 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 10 days' prior written notice to the Association and to each Mortgagee which is listed as a scheduled holder of a Mortgage in such policy.

(iii) Each policy required to be maintained by the foregoing Section 6.4(A) shall provide, if available, for the following: (1) recognition of any insurance trust agreement; (2) a waiver of the right of subrogation against Owners individually; (3) the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively; and (4) the policy is primary in the event the Owner has other insurance covering the same loss.

(E) Insurance Trustees and General Requirements Concerning Insurance. 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 and taking all actions with respect thereto, including without limitation: 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.

(F) Insurers; Policies. Each insurance policy maintained pursuant to the foregoing Sections 6.4(A) and 6.4(B) shall be written by an insurance carrier which is licensed to transact business in the State of Utah and which is a generally acceptable insurance carrier. The insurance carrier shall have 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: (i) 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 Board or the Association (ii) 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 (iii) the policy includes any limiting clauses (other than insurance conditions) which could prevent the party entitled (including without limitation the Board, the Association, an Owner, or their designees) from collecting insurance proceeds. The provisions of this Section 6.4(F) and of the foregoing Sections 6.4(A) and 6.4(B) 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.

(G) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board 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.

## ARTICLE VII DAMAGE OR DESTRUCTION

7.1 Association as Attorney-in Fact. All of the Owners irrevocably constitute and appoint the Association 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 the Declarant or 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.

7.2 Definition of Repair and Reconstruction. 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 Condominium and the Common Areas having substantially the same vertical and horizontal boundaries as before.

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

(A) Notice to First Mortgagees. The Association shall give timely written notice to any holder of any First Mortgage on a Unit or who requests such notice in writing in the event of substantial damage to or destruction of any part of the Common Areas or a Condominium subject to such First Mortgage.

(B) Estimate of Costs. 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.

(C) Sufficient Insurance. 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.

(D) Insufficient Insurance—Less than Seventy-Five Percent (75%) Destruction. 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 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 assessment shall be allocated and collected as provided in Section 5.3 above, 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.

(E) Insufficient Insurance—Seventy-Five Percent (75%) or More Destruction. 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 100 days following the damage or destruction, Owners entitled to vote at least seventy-five percent (75%) of the votes of the Members vote to carry out such repair and reconstruction. If, however, the Owners do not, within 100 days after such damage or destruction, elect by a vote of at least seventy-five percent (75%) of the votes of the Members to carry out such repair and reconstruction but rather elect to terminate the Project, and if Eligible Mortgagees who represent at least fifty-one percent (51 %) of the votes of Units subject to Mortgages held by Eligible Mortgagees approve such termination, the Association shall record in the office of the County Recorder of Salt Lake County, State of Utah, a notice setting forth such facts. Upon the recording of such notice, the following shall occur:

(i) The Project shall be deemed to be owned in common by the Owners,

(ii) Each Owner shall own an undivided interest in the Project equal to such Owner's Common Expense allocation percentage as set forth on Exhibit B;

(iii) 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

(iv) 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 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. The division of funds shall be based on the fair market values of the Units and Condominiums immediately prior to the damage or destruction, and the Owners shall divide said funds based upon the relative value of the Units and Condominiums prior to the damage or destruction.

(F) Priority. 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.

7.4 Repair or Reconstruction. 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 Condominium and the Common Areas 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 this Declaration and the original architectural plans and specifications.

7.5 Disbursement of Funds for Repair and Reconstruction. If repair or reconstruction is to occur, the insurance proceeds held by the Association and any amounts received from assessments made pursuant to Section 7.3(D) 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.

## **ARTICLE VIII CONDEMNATION**

8.1 Condemnation. If at any time or times all or any part of the Project shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article VIII shall apply. A voluntary sale or conveyance of all or any part of the Project in lieu of condemnation, but under threat of condemnation, shall be deemed to be a taking by power of eminent domain. If any Unit or portion thereof or the Common Areas or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding, or is otherwise sought to be acquired by a condemning authority, the Board of Directors shall give prompt written notice of any such proceeding or proposed acquisition to each Owner in the Project and to any First Mortgagee who has requested in writing notice thereof. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or any part thereof, and each Owner hereby appoints, or by accepting a deed to a Unit is deemed to appoint, the Association as such Owner's attorney-in-fact for the purposes of such representation.

8.2 Proceeds. All compensation, damages and other proceeds from any such taking by power of eminent domain (collectively, the "Condemnation Award") shall be made payable to the Association and shall be held in trust for the Owners and their First Mortgagees as their interests may appear. Any Condemnation Award shall be distributed by the Board of Directors, on behalf of the Association as herein provided.

8.3 Complete Taking. In the event the entire Project is taken by power of eminent domain, ownership pursuant hereto shall terminate and the Condemnation Award shall be

allocated among and distributed to the Owners and the Owners shall divide the Condemnation Award based upon the relative values of the Units and Condominiums immediately prior to the condemnation. Such distribution shall be made by check payable joint to the respective Owners and their respective Mortgagees, as appropriate.

8.4 Partial Taking. In the event less than the entire Project is taken by power of eminent domain, the following shall occur:

(A) Allocation of Award. As soon as practicable, the Board of Directors shall, on behalf of the Association, reasonably and in good faith, apportion the Condemnation Award between compensation, severance damages or other proceeds and shall allocate such apportioned amounts and pay the same to the Owners as follows:

(i) The total amount apportioned to taking of or injury to the Common Areas shall be allocated among and distributed to all Owners (including Owners whose entire Units have been taken).

(ii) The total amount apportioned to severance damages shall be allocated among and distributed equally to the Owners of those Units that have not been taken.

(iii) The respective amounts apportioned to the taking of or injury to a particular Unit shall be allocated and distributed to the Owner of such Unit.

(iv) The total amount apportioned to consequential damages and any other taking or injuries shall be allocated and distributed as the Association determines to be equitable under the circumstances;

(v) If apportionment or allocation is already established by negotiation, judicial decree, statute or otherwise, the Association shall employ such apportionment and allocation to the extent it is relevant and applicable;

(vi) Distribution of allocated proceeds shall be made by check payable jointly to individual Owners and their respective Mortgagees, as their interests may appear; and

(vii) No provision of this Article VIII or any other provision of this Declaration, the Articles, or the Bylaws shall entitle the Owner of a Unit or other party to priority over any First Mortgagee holding such Unit with respect to the distribution to such Unit of the proceeds of any award, settlement or proceeds from any eminent domain or condemnation proceeding.

(B) Continuation and Reorganization. If less than the entire Project is taken by power of eminent domain, ownership pursuant hereto shall not terminate but shall continue. In such event the Project shall be reorganized as follows:

(i) If any partial taking results in the taking of an entire Unit, then the Owner thereof shall cease to be a member of the Association and all voting rights shall terminate,



(ii) If any partial taking results in the taking of a portion of a Unit, the voting rights appertaining to such Unit shall continue.

(iii) If any partial taking results in the taking of a portion of a Unit and if there is a determination made by the Board of Directors, after duly considering any recommendations, proposals, or other input from the Owners, that such taking makes it impractical to use the remaining portion of such Unit, then all voting rights terminate and the remaining portion of such Unit shall thenceforth be part of the Common Areas;

(iv) The Board of Directors, after duly considering any recommendations, proposals or other input from the Owners, shall have the duty and authority to make all determinations and to take all actions necessary or appropriate to effectuate reorganization of the Project under the provisions of this Section 8.4(B); provided, however, that if any such determination shall have been or such action taken by judicial decree, the Board of Directors shall defer thereto and proceed in accordance therewith.

(C) Repair and Reconstruction. Any repair and reconstruction necessitated by condemnation shall be governed by the provisions specified in Article VII hereof for cases of Damage or Destruction; provided, however, that the provisions of said article dealing with sufficiency or insufficiency or insurance proceeds shall not be applicable.

## **ARTICLE IX TERMINATION**

9.1 Required Vote. Except as otherwise provided in Article VII and Article VIII, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the votes attributable to all Units.

9.2 Termination Agreement. An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units subject to First Mortgages held by Eligible Mortgagees. Such approval (and any other approval related to an amendment to this Declaration) shall be deemed given when an Eligible Mortgagee fails to submit a response within 60 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in Salt Lake County, Utah and is effective only on recordation.

9.3 Sale of Project. A termination agreement may provide that the entire 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.

9.4 Association Duties. The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 9.1 and 9.2. 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 effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Mortgagees as their interests may appear, based on the relative value of each Unit and Condominium. 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.

9.5 Proceeds of Sale. 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.

## **ARTICLE X GENERAL USE RESTRICTIONS**

10.1 Rules and Regulations. The Association shall have authority to promulgate and enforce such reasonable rules, regulations and procedures as may be necessary or desirable to aid the Association in carrying out any of its functions or to insure that the Property is maintained and used in a manner consistent with the interest of the Owners.

10.2 Use of Common Areas. The Common Areas shall be used only in a manner consistent with their community nature and with the rules, regulations and use restrictions applicable to Units and Condominiums. No admission fees, charges for use, leases, or other income generating arrangement of any type shall be employed or entered into with respect to any portion of the Common Areas. Provided, however, vending machines and similar devices approved by the Board may be made available within the Common Areas.

10.3 Use of Units and Condominiums. All Units are improved with Condominiums and are restricted to such use. Each Condominium shall be used only as a single-family residence. No Unit or Condominium shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Condominium, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance covering the Common Areas or Condominiums.

10.4 Exception for Declarant. Notwithstanding the restrictions contained in this Article X, for the five (5) year period following the date on which this Declaration is filed for record in the office of the County Recorder of Salt Lake County, Utah, Declarant shall have the right to use any Unit or Condominium owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any activities designed to accomplish or facilitate improvement and sale of all Units owned by Declarant. Without limiting the foregoing, Declarant shall have the right to maintain one or more sales offices and model Condominiums. Such offices and model Condominiums may be located in any Condominium owned or leased by Declarant, or in one or more separate structures or facilities placed upon the Property for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. Declarant

shall also have the right to maintain a reasonable number of promotional, advertising, or directional signs, banners, or similar devices at any place or places on the Property. Declarant shall have the right from time to time to locate or relocate any of its sales offices, model Condominiums, signs, banners or similar devices.

#### 10.5 Leases.

(A) Any lease agreement between an Owner and a lessee respecting a Unit or Condominium shall be subject in all respects to the provisions of this Declaration, the Articles, and Bylaws, and shall provide that 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 shall be for an initial term of not less than 30 days. At least fifty percent (50%) of the total Units in the Project shall be Owner-occupied as principal residences. No Owner, person, or entity shall own more than two (2) Units at one time. An Owner shall be responsible and liable for any damage to the Project caused by its tenant. Without limiting the generality of the foregoing, the following shall also apply with respect to leasing of a Unit:

(B) Any Owner who leases his Unit shall file with the Board of Directors or Manager a copy of the rental or lease agreement affecting said Unit and shall obtain prior written approval of the lease by the Board of Directors. Any such lease agreement shall include terms providing as follows:

(i) Tenants shall agree not to allow or commit any nuisance, waste, unlawful or illegal act on the premises.

(ii) Owner and tenant shall acknowledge that the Association is an intended third-party beneficiary of the lease agreement, that the Association shall have the right to enforce compliance with the Declaration and Bylaws and to abate any nuisance, waste, unlawful or illegal activity on the premises; and that the Association shall be entitled to exercise all of the owner's rights and remedies under the lease agreement to do so.

The provisions of this Declaration, the Bylaws and the rules and regulations shall apply with equal force to renters or lessees of a Unit.

(C) The Board of Directors or Manager may regulate, limit or prohibit rentals of the Units and may require that any such rental be conducted through the Board of Directors. Prior to a tenant's occupancy of a Unit, the Owner must provide the Board of Directors with the name, address and telephone number of the tenant and a copy of the executed lease agreement.

(D) Any Owner who rents or leases his Unit shall be responsible for the conduct of his tenants, and upon written notice from the Board of Directors or the Manager said Owner shall be responsible for correcting violations of the Declaration, Bylaws, or rules and regulations of the Association committed by such tenants.

(E) If an Owner fails to correct violations by tenants within 72 hours of notice of such violation from the Board of Directors, the Board of Directors or Manager shall be deemed to be the agent of the Owner and empowered to take any enforcement action the Owner would be entitled to take, the cost of such action to be assessed to the Owner and payable within 30 days of assessment. Such costs shall be collected and enforced in the same manner as

assessments under the Declaration and Bylaws.

(F) The power of the Board of Directors or Manager hereunder shall include, but not be limited to, any and all legal remedies available under the laws of the State of Utah. Any Owner by the act of renting or leasing his Unit shall be deemed to have consented to these procedures and shall indemnify and save harmless the Board of Directors and the Manager from and against any and all liability therefore. It is expressly understood that the remedies available to the Board of Directors or Manager shall include but not be limited to the right to seek eviction of the tenant without any liability to the Owners.

10.6 Easements. Easements for installation and maintenance of utilities are reserved as shown on the Plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance and use of such utilities. Easements for the installation and maintenance of utilities are also reserved within each Condominium. It is contemplated that telephone, gas, electricity and other utilities may originate in one Condominium and terminate in another Condominium. A right of access to all such utilities is reserved to the Association and to all utility suppliers. The Association further reserves the right to grant other utility easements which are reasonably necessary to the development and operation of the Project.

10.7 Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render any part of the Property unsanitary or unsightly or which would be offensive or detrimental to any other part of the Property or to the occupants thereof. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on the Property without the prior written approval of the Board.

10.8 Temporary and Other Structures. No structures of a temporary nature, trailer, basement house, tent, shack, shed, garage, barn or other outbuildings shall be used at any time as a residence either temporarily or permanently, nor shall said structures be permitted on the Property at any time. No old or secondhand structures shall be moved onto any Unit, it being the intention hereof that all Condominiums erected and maintained on Units or within the Property shall be new construction of good quality, workmanship and material.

10.9 Unsightly Articles. No unsightly articles shall be permitted to remain on or near a Unit so as to be visible from any other Unit or the Common Areas. Without limiting the generality of the foregoing, snow removal equipment and garden or maintenance equipment shall be kept at all times, except when in actual use, in an enclosed structure or screened from view. No one shall park or perform maintenance on boats, recreational vehicles, trailers, mobile homes, cars, and trucks in any Common Areas, Limited Common Areas, or in the garage access drive. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit except within an enclosed structure or when appropriately screened from view.

10.10 No Further Subdividing. No Unit or Common Area may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written approval of the Association; provided, however, that nothing herein shall be deemed to prevent or require the approval of the Association for the transfer or sale of any Unit or Condominium to more than one person to be held by them as tenants in common, joint tenants, or otherwise.

10.11 Signs. No sign of any kind shall be displayed to the public view without the approval of the Association, except such signs as may be used by Declarant in connection with the development of the Project and the sale of Condominiums and/or Units and except such signs of customary and reasonable dimensions as may be displayed on a Unit advertising a Unit or Condominium for sale or lease. Display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on residences will be provided by the developer and shall be maintained as originally installed.

10.12 No Hazardous Activities. No activities shall be conducted on the Property and no improvements constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires nor incinerators shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

10.13 Repair of Buildings. No improvement upon the Property shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or other-wise finished by the Owner thereof or the Association as applicable.

10.14 Improvements and Alterations. There shall be no excavation, construction or alteration which in any way alters the exterior appearance of any improvement within the Property nor removal of any Condominium or other improvement within the Property (other than repairs or rebuilding) without the prior written approval of the Association.

10.15 Rooftop Antennas. No television, ham radio, citizens band or radio antenna, satellite receiving or other similar electronic receiving or sending device shall be permitted upon the rooftop or side of any unit or Common Area or elsewhere if exposed to view from any other Unit or Common Area. Such antennas, if used, must be of the type that are installed within the natural building structure. In no case will any such receiving or sending antenna or other device be allowed to interfere with the peace and quiet enjoyment of any neighboring Owner's premises or home entertainment facilities or equipment. Provided, however, Declarant and the Association reserve the right and option to install cable service lines and antennas as needed throughout the Project in connection with its development.

10.16 Animals; Household Pets. An Owner shall not permit any animals of any kind to be raised, bred, or kept in his Unit or in the Limited Common Areas appurtenant to his Unit. Notwithstanding the foregoing, household pets may be kept or housed in Units provided that no more than two dogs, two cats, or one of each may be kept or housed in Units. No household pet weighing in excess of fifty (50) pounds may be kept or housed in Units. In no event shall any pet

be permitted in any portions of the Common Areas unless carried or on a leash. Each Owner who keeps a pet in a Unit shall promptly remove all pet waste from the Common Areas. Each Owner who keeps a pet in a Unit shall indemnify and hold all other Owners, the Association and Board of Directors harmless against any loss or liability of any kind or character whatsoever arising from or as a result of having such pet in the Project. If a pet disturbs other Owners by barking or biting or in other ways becoming obnoxious, the Board of Directors will give notice to the Owner of such pet to cause such annoyance to be discontinued; and if such annoyance is not discontinued and corrected, the Board of Directors may revoke its permission to keep the pet in the Project and the pet shall be removed therefrom.

10.17 Architectural Control. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the color, nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Board of Directors.

10.18 Privacy Fencing. It is the responsibility of each homeowner to maintain individual yard fences to match the standard, uniform height, condition, appearance and color of the original fences provided.

10.19 General Obligations. Each Owner shall enjoy and be subject to all rights and duties assigned to Owners pursuant to this Declaration. With respect to unsold Units, the Declarant shall enjoy the same rights and assumes the same duties with respect to each unsold Unit.

## **ARTICLE XI MORTGAGEE PROTECTION**

11.1 Notice of Action. Upon written request made to the Association by a First Mortgagee, or an insurer or governmental guarantor of a First Mortgage, which written request shall identify the name and address of such First Mortgagee, insurer or governmental guarantor and Unit number or address of the Condominium, any such First Mortgage, insurer or governmental guarantor shall be entitled to timely written notice of:

(A) Any proposed amendment of this Declaration, the Articles, or the Bylaws effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interest in the general or limited common elements appertaining to any Unit or the liability for the Common expenses appertaining thereto; (iii) the number of votes in the Association appertaining to any Unit; and (iv) the purposes to which any Unit or the common elements are restricted;

(B) Any proposed termination of the condominium regime of the Project;

(C) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or governmental guarantor;

(D) Any delinquency in the payment of assessments or charges owed by an Owner, whose Unit is subject to a First Mortgage held, insured or guaranteed by such First

Mortgagee, insurer or governmental guarantor, which default remains uncured for a period of sixty (60) days;

(E) Any lapse, cancellation or material modification of any insurance policy or fidelity bond required to be maintained by the Association; and

(F) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 11.2 below or elsewhere herein.

11.2 Matters Requiring Prior Approval of Eligible Mortgagees. Notwithstanding anything in this Declaration to the contrary, the prior written consent of Eligible Mortgagees of Mortgages on Units shall be required with respect to any of the following matters:

(A) Any restoration or repair of the Project after partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications for the Project unless the approval of the Eligible Mortgagees of First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to First Mortgages held by such Eligible Mortgagees are allocated, is obtained.

(B) Any election to terminate the condominium regime after substantial destruction or a substantial taking in condemnation of the Property shall require the approval of the Eligible Mortgagees of First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to First Mortgages held by such Eligible Mortgagees are allocated.

(C) Except where the formula for reallocation of interests in the Common Areas after partial condemnation or partial destruction of the Project is fixed in advance by this Declaration or by applicable law, no reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Project may be effected without the approval of the Eligible Mortgagees of First Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to First Mortgage held by Eligible Mortgagees are associated.

11.3 Matters Requiring Prior Approval of Owners and Eligible Mortgagees. Except as provided elsewhere in this Declaration, and in addition to the consent required pursuant to Section 11.2 above, the following actions shall require the consent of the Owners and/or Mortgagees indicated below:

(A) The consent of Owners of Units to which at least seventy five percent (75%) of the votes in the Association are allocated and the approval of the Eligible Mortgagees of First Mortgages on Units to which at least seventy five percent (75%) of the votes of Units subject to a Mortgage appertain shall be required to terminate the condominium regime of the Project.

(B) The consent of Owners of Units to which at least seventy six percent (76%) of the votes in the Association are allocated and the approval of at least seventy six percent (76%) of the votes of Units subject to a Mortgage appertain, shall be required to materially amend any provisions of this Declaration, the Bylaws, or equivalent documents of the Project, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of liens;
- (iii) reserves for maintenance, repair, and replacement of Common Area improvements;
- (iv) any insurance or fidelity bonds required to be maintained;
- (v) rights to use of the Common Areas;
- (vi) responsibility for the maintenance and repair of the Project;
- (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (viii) boundaries of any Unit;
- (ix) the interests in the Common Areas or the Limited Common Areas;
- (x) convertibility of Units into Common Areas or of Common Areas into Units;
- (xi) leasing of Units;
- (xii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit.

Any Mortgagee, insurer or governmental guarantor, who receives a written request from the Association to approve additions or amendments to the constituent documents and who fails to deliver or post to the Association a negative response within 60 days shall be deemed to have approved such request, provided the written request was delivered by certified or registered mail, with a "return receipt" requested.

11.4 Availability of Project Documents and Financial Statements. The Association shall maintain and have current copies of this 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. The Association shall make the most recent audited financial statement and any unaudited financial statement for the preceding fiscal year (if the Project has been established for a full fiscal year) available to the holder, insurer, or guarantor of any First Mortgage on submission of a written request for it. The audited financial statement shall be made available within 120 days of the Association's fiscal year-end.

11.5 Subordination of Lien. 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.

11.6 Payment of Taxes. In the event any taxes or other charges which may or have become a lien on the Common Areas are not timely paid, or in the event the required hazard insurance described in Section 6.4(A) 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.

11.7 Priority. 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.

## ARTICLE XII DISPUTE RESOLUTION

### 12.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(A) Declarant, the Association and its officers, trustees, and committee members, all persons subject to this Declaration, including Owners, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Project without the emotional and financial costs of litigation. Accordingly, the Bound Parties agree to resolve disputes according to the procedures set forth in this Article.

(B) As used in this Article, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) The design or construction of Improvements within the Project.

Except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the notice required by Section 12.2(A), unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## 12.2 Dispute Resolution Procedures.

(A) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(B) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(C) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(A) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the claim to mediation. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. Unless the parties mutually agree otherwise, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Declaration. A request for mediation shall be made in writing, delivered to the Respondent, and filed with the person or entity administering the mediation. The request may be made concurrently with the

filing of a demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The claimant shall thereafter be entitled to initiate an arbitration proceeding as pursuant to Section 12.2(E), below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(D) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may initiate arbitration proceedings pursuant to Section 12.2(E) below to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the Declaration or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees.

(E) Arbitration. In the event that a Claim is not resolved through negotiation or mediation pursuant to Sections 12.2(B) and 12.2(C), above, the claimant may bring the Claim for resolution by binding arbitration in accordance with the American Arbitration Association's Construction Industry Arbitration Rules, current at the time of initiating arbitration and the Utah Uniform Arbitration Act. Such arbitration shall be the exclusive and final means of resolving Claims and, to the extent permitted by applicable law, the Bound Parties waive any rights to a jury trial as well as other rights that such Bound Parties may have in court that are not available or are more limited in arbitration. The prevailing party in such arbitration shall be entitled to recover from the non-prevailing party its reasonable costs incurred in the arbitration, including, without limitation, attorney's fees.

12.3 Claims Against Declarant. In addition to compliance with the foregoing dispute resolution procedures, neither the Association, nor any person acting on behalf of the Association shall initiate any proceeding against Declarant or any of its affiliates, agents, contractors, employees, members, or officers (together, the "Declarant Parties"), unless first approved by a vote of the Owners entitled to cast no less than 76% of the total votes of the Owners. Before an Owner, the Association, or any person acting on their behalf may bring any action or assert any Claims against any Declarant Party related to a claimed defect discovered in the design or construction of the Project, any of the Units, or any common elements, the Board shall notify Declarant in writing of such defect and provide Declarant no less than 30 days to commence actions to investigate and, if appropriate, cure such defect. If any such defect is discovered by an Owner, such Owner shall notify the Board and such Owner may not bring any action relating to the defect until notice has been provided to Declarant and the 30-day cure period has passed. Prior to bringing any Claims relating to any such defect against a Declarant Party, the Association or the Owner seeking to bring such Claim must first obtain a "Certificate of Merit" from a design professional or contractor licensed in Utah to do work of the kind which

is the subject of the claimed defect and qualified to perform such evaluation, containing the following:

(A) a statement that, based on the facts of the case and the materials reviewed, in the professional opinion of such professional, the claimed defect is more likely than not a result of negligence on the part of the Declarant Party against whom the Claim is being brought;

(B) an identification of all documents, reports and inspections relied upon by the professional in forming such opinion;

(C) an explanation of the applicable professional standard of care which the Declarant Party allegedly violated;

(D) an opinion that the Declarant Party's negligence was the cause of the claiming party's damages;

(E) an explanation of the reasoning behind the professional's opinions;

(F) evidence of the professional's qualifications to make such opinions.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Notices. Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if mailed postage prepaid to the person who appears as an Owner, at the latest address for such person, appearing in the records of the Association at the time of mailing.

13.2 Term. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of forty (40) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by seventy-five percent (75%) of the votes of the Members cast at an election held for such purpose or otherwise approved in writing by such Members within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension.

13.3 Amendment. Except as provided elsewhere in this Declaration, including without limitation Section 11.3(B), any amendment to this Declaration shall require the affirmative vote or written approval of at least sixty-seven percent (67%) of the total votes of the Association. Any amendment authorized pursuant to this Section 13.3 shall be accomplished through the recordation in the office of the Salt Lake County Recorder of an instrument executed by the Association. In such instrument an officer or Director of the Association shall certify that the vote required by this Section 13.3 for amendment has occurred. Anything in this Article XIII or Declaration to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Declaration to such extent and with such language as may be requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit(s) or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of

an amendment duly signed by or on behalf of the authorized officers of Declarant with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such an amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such amendment, when recorded, shall be binding upon all of the Project and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section 13.3 deletes, diminishes or alters such control, Declarant alone shall have the right to amend this Declaration to restore such control. Within ten (10) years from the date of recording this Declaration, and so long as the Declarant is the Owner of any Unit in the Project, this Declaration may be amended or terminated only with the written approval of the Declarant. The Declarant alone may amend or terminate this Declaration prior to the closing of a sale of the first Unit to be sold to an Owner.

13.4 Declarant's Rights Assignable. The rights of Declarant under this Declaration or in any way relating to the Property may be assigned, whereupon the assignee of Declarant shall have all the rights of Declarant hereunder.

13.5 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder thereof. This Declaration shall be liberally construed to effect all of its purposes.

13.6 Covenants to Run With Land. This Declaration and all of the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter acquire any interest in a Unit or in the Common Areas, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Unit or Condominium shall comply with, and all interests in all Units or in the Common Areas shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments and determinations contemplated by this Declaration. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

13.7 Lists of Owners and Eligible Mortgages. The Board shall maintain up-to-date records showing: (i) the name of each person who is an Owner, the address of such person, and the Unit which is owned by him; (ii) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity and the Unit which is encumbered by the Mortgage held by such person or entity; and (iii) the name of each person or entity who is an insurer or governmental guarantor, the address of such person or entity, and the Unit which is encumbered by the Mortgage insured or guaranteed by such person or entity. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the office of the County Recorder of Salt Lake County, Utah. The Board may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it or, at its option, the Board may act and

rely on current ownership information respecting any Unit or Units which is obtained from the office of the County Recorder of Salt Lake County, Utah. The address of an Owner shall be deemed to be the address of the Unit owned by such person unless the Board is otherwise advised.

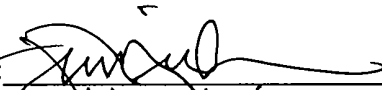
13.8 Assessment of Fines. The Association may assess a fine against an Owner after the requirements of this Section 13.8 have been met for a violation of the rules and regulations of the Association which have been promulgated in accordance with this Declaration, the Condominium Act, and/or the Bylaws. Before assessing a fine, the Association, through its management committee, shall give notice to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within ten (10) days from the date of the notice, or such longer period of time as may be specified in the notice. A fine may be assessed pursuant to this Section 13.8 only for a violation of a rule or regulation which is specifically listed in this Declaration, the Bylaws, or the rules of the Association as an offense which is subject to a fine. The amount of any such fine shall be in the amount specified in this Declaration, the Bylaws, or the rules of the Association for that specific type of violation, not to exceed \$500 or such greater amount as may be permitted in the Condominium Act. Cumulative fines for a continuing violation may not exceed \$500 per month, or such greater amount as may be permitted in the Condominium Act. An Owner who is assessed a fine pursuant to this Section 13.8 may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed. The hearing shall be conducted in accordance with the Bylaws or the rules of the Association. No interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered. An Owner may appeal a fine issued pursuant to this Section 13.8 by initiating a civil action within 180 days after (a) a hearing has been held and a final decision has been rendered by the Association, or (b) the time to request an informal hearing under this Section 13.8 has expired without the Owner making such a request. A fine assessed under this Section 13.8 which remains unpaid after the time for appeal has expired becomes a lien against the Owner's Unit in accordance with the same standards as a lien for nonpayment of common expenses pursuant to Article V above.

13.9 Effective Date. This Declaration and any amendment or supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

*[Remainder of page intentionally left blank.  
Signature page follows immediately.]*

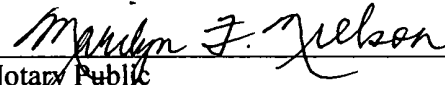
Executed on the day and year first written above.

DECLARANT: **M15 LLC**  
a Utah limited liability company

By:   
Name: Jim Nielson  
Its: Member

STATE OF UTAH )  
 ) ss.  
County of Salt Lake )

On the 10 day of August, 2018, personally appeared before me Marilyn F. Nielson, the Member of M15 LLC, a Utah limited liability company, who duly acknowledged to and before me that he executed the foregoing instrument for and on behalf of said limited liability company, having authority to so act.

  
Notary Public



[Seal]

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The following property is located in Salt Lake County, Utah:

ALL LOTS 2, 3, 4, 5, 6, AND 7, BLOCK 2, DIETER & JOHNSON MAIN STREET ADDITION, ACCORDING TO THE OFFICIAL PLAT THEREOF, FILED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER IN PLAT BOOK C AT PAGE C-33 OF OFFICIAL RECORDS, SAID LOTS BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID BLOCK 2, SAID POINT BEING THE NORTHWEST CORNER OF SAID LOT 7, AND RUNNING THENCE NORTH 89°51'39" EAST ALONG THE NORTH LINE OF SAID LOT 7 A DISTANCE OF 136.18 FEET TO THE NORTHEAST CORNER OF SAID LOT 7, SAID POINT BEING ON THE WEST LINE OF A 17.50 FOOT ALLEY WAY; THENCE SOUTH 0°03'39" WEST ALONG SAID WEST LINE 154.10 FEET TO THE SOUTHEAST CORNER OF SAID LOT 2; THENCE SOUTH 89°51'39" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 136.18 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2 AND SAID BLOCK 2; THENCE NORTH 0°03'40" EAST ALONG THE WEST LINE OF SAID BLOCK 2 A DISTANCE OF 154.10 FEET TO THE POINT OF BEGINNING

CONTAINS 20,986 SQ. FT. OR 0.482 ACRES

TO BE KNOWN AS UNITS A, B, C, D, E, F, G, H, J, K, L, M, N, P, Q, R, S, T, U, and V.



**EXHIBIT B**

**CONDOMINIUM OWNERSHIP AND PERCENTAGES**

B-1

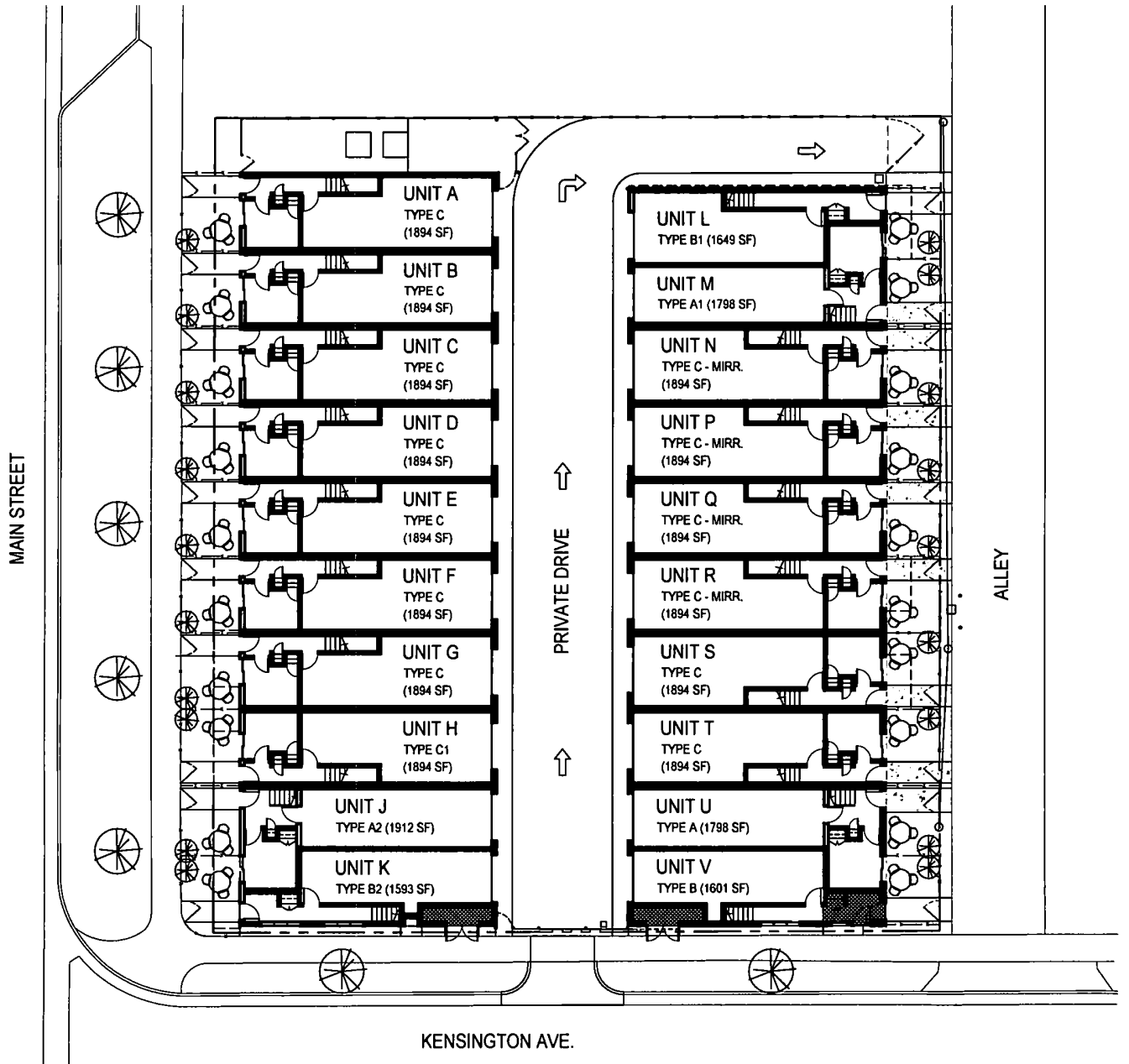
Condominium Ownership & Percentages

Unit Number	Unit Type (Plan)	Assessment Percentage	Unit Square Footage	Ownership Percentage of Common Areas
A	C1	5.14%	1,894	5%
B	C	5.14%	1,894	5%
C	C	5.14%	1,894	5%
D	C	5.14%	1,894	5%
E	C	5.14%	1,894	5%
F	C	5.14%	1,894	5%
G	C	5.14%	1,894	5%
H	C	5.14%	1,894	5%
J	A2	5.19%	1,912	5%
K	B2	4.32%	1,593	5%
L	B1	4.47%	1,649	5%
M	A1	4.88%	1,798	5%
N	C	5.14%	1,894	5%
P	C	5.14%	1,894	5%
Q	C	5.14%	1,894	5%
R	C	5.14%	1,894	5%
S	C	5.14%	1,894	5%
T	C	5.14%	1,894	5%
U	A	4.88%	1,798	5%
V	B	4.34%	1,601	5%
TOTAL		100%	36,867	100%

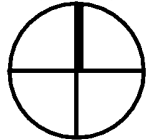
**EXHIBIT C**

SITE PLAN

See attached.



PROJECT NORTH



# CONDOMINIUM SITE PLAN

DET. NAME:

DET NUMBER:

SCALE: N.T.S.  
 ISSUED: 4.6.2018 REVISION:  
 PROJECT: M-15 LOFTS

# ST-06

## Axis Architects

**EXHIBIT D**

**BYLAWS OF THE ASSOCIATION**

See attached.

**BYLAWS  
OF  
M15 LOFTS CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is M15 LOFTS CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Association". The initial principal office of the Corporation in the State of Utah shall be located at 927 S. State St., Salt Lake City, UT 84111, but meetings of members and trustees may be held at such places within the State of Utah, County of Salt Lake, as may be designated by the Board of Trustees.

**ARTICLE II  
DEFINITIONS**

Section 2.1 "Association" shall mean and refer to M15 Lofts Condominium Association, Inc., a Utah Non-Profit Corporation, its successors and assigns.

Section 2.2 "Declarant" shall mean and refer to M15 LLC, a Utah limited liability company, its successors and assigns, if such successors or assigns should acquire from the Declarant all of its rights and obligations of development.

Section 2.3 "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions of the M15 Lofts Condominiums applicable to the Property recorded in the Office of the Recorder of Salt Lake County, State of Utah, and amendments thereto.

Section 2.4 "Member" shall mean and refer to those persons entitled to Membership as provided in the Declaration.

Section 2.5 "Owner" or "Owners" when referring to all or more than one Owner as the context requires, shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Unit. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

Section 2.6 "Property" shall mean and refer to that certain real property described in the Declaration of Condominium, as amended and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 2.7 "Unit" shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a Building upon the Subject Property and the Percentage Interest appurtenant thereto.

**ARTICLE III**  
**MEETING OF MEMBERS**

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held on the date which is the one-year anniversary of the date of formation of the Association, and each subsequent regular annual meeting of the Members shall be held within thirty (30) days of the same date of each year thereafter. Notice of annual meeting shall be given to each Member in writing at least fifteen (15) days prior to the date set for said meeting. Such notice shall specify the place, day and hour of the meeting with agenda.

Section 3.2 Special Meetings. Special meetings of the Members may be called by or at the request of the president or by the Board of Trustees, or upon written request of the Members holding one-fourth (1/4) of the Percentage Interests.

Section 3.3 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, , at least fifteen (15) days before such meeting to each Member. Such notice shall specify the place, day and hour of the meeting, agenda and, in the case of a special meeting, the purpose of the meeting.

Section 3.4 Quorum. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in the Declaration, shall be as follows: At each scheduled meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at a scheduled meeting, such meeting may be adjourned pending notice of subsequently scheduled meeting at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequently scheduled meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

Section 3.5 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

Section 3.6 Voting. Since a Unit Owner may be more than one person, if only one of such person is present at a meeting of the Association that person shall be entitled to cast the votes appertaining to that Unit. But if more than one of such person is present, the votes appertaining to that Unit shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Unit without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Unit may not be divided between Owners of such Unit or with respect to matters before the Association; all such votes appurtenant to any one Unit shall be voted in one block. A Member who, at the time of any meeting called hereunder, has outstanding assessments or other amounts owing to the

Association which are past due, may not vote at such meeting and such Member's votes will not be counted toward a quorum for any action to be taken at such meeting.

Section 3.7 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 3.8 Written Notice. Any notice allowed or required by these Bylaws shall be made by mailing a copy of such notice, postage prepaid, to the address last appearing on the books of the Association or supplied by such Member for the purpose of such notice unless such Member elects to receive written notices by email. Should a Member elect to receive notice via email, a copy of such notice sent to the email address provided to the Association by such Member for such purpose shall be deemed sufficient notice for all purposes here under.

#### **ARTICLE IV BOARD OF TRUSTEES: SELECTION AND TERM OF OFFICE**

Section 4.1 General Powers. The property, affairs and business of the Association shall be managed by its Board of Trustees (defined in the Declaration as a "Board of Directors"). The Board of Trustees may exercise all of the powers of the Association, whether derived from law or the Articles of Incorporation, except such powers as are by law, by the Articles of Incorporation, by these Bylaws or by the Declaration vested solely in the Members. The Board of Trustees may by written contract delegate, in whole or in part, to a professional management organization or person such of its duties, functions and powers as are properly delegable. The Board's responsibilities shall include, but shall not be limited to the following:

- 4.1.1 preparing and administering an operational budget;
- 4.1.2 establishing and administering an adequate reserve fund;
- 4.1.3 scheduling and conducting the annual meeting and other meetings of the members;
- 4.1.4 collecting and enforcing the assessments;
- 4.1.5 accounting functions and maintaining records;
- 4.1.6 promulgation and enforcement of the condo rules, if any;
- 4.1.7 maintenance of any common elements; and
- 4.1.8 all other duties imposed upon the Board pursuant to the Governing Documents, including enforcement thereof.

Section 4.2 Number and Election and Tenure. The Board of Trustees shall consist of not fewer than three (3) individuals. The initial Board of Trustees shall be composed of three (3) natural persons, designated by Declarant, who need not be Members of the Association. Thereafter, so long as Declarant has the exclusive right to appoint Board Members, pursuant to the terms of the Declaration, Declarant may appoint, remove and replace each trustee at its discretion. After such time as Declarant's exclusive right to appoint Board Members has terminated as set forth in the Declaration, the acting Board shall hold a



special meeting wherein the Members will elect new Board Members. The new Board Members shall be elected from among the Members by the Members entitled to vote at such special meetings. The term of one of the new Board Member expires at the first annual meeting after such special meeting held to elect such new Board Members (the "Election Meeting"), the term of the other two Board Members expires at the second annual meeting after such Election Meeting. Upon the expiration of each staggered term, Board Members shall be elected by the Members entitled to vote at the annual meetings for a two (2) year term to succeed those whose terms expire. Despite the expiration of a Board Member's term, the Board Member shall continue to serve until the election and qualification of a successor, or until such Board Member's earlier death, resignation, or removal from office.

Section 4.3 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to either the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member may be removed at any time, for or without cause, by the affirmative vote of seventy-five percent (75%) of the Total Votes of the Association at a special meeting of the Members duly called for that purpose. Further, any director that is more than (30) days delinquent in the payment of any assessment may be removed by agreement of the other two directors.

Section 4.4 Vacancies. If vacancies shall occur in the Board of Trustees by reason of the death, resignation or disqualification of a Board Member, the Board Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Board Members then in office, though less than a quorum, in any way approved by such Board Members at the meeting. Any vacancy in the Board of Trustees occurring by reason of removal of a Board Member by the Members may be filled by election at the meeting at which such Board Member is removed.

Section 4.5 Compensation. No Board Member shall receive compensation for any services that he may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of his duties as a Board Member to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as a Board Member (e.g., as a manager).

Section 4.6 Action Taken Without a Meeting. The Board Members 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 Board Members. Any action so approved shall have the same effect as though taken at a meeting of the Board of Trustees.

Section 4.7 Telephonic conferences. The Board Members may participate in a meeting by the Board by means of telephonic conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

**ARTICLE V**  
**MEETINGS OF THE BOARD OF TRUSTEES**

Section 5.1 Regular Meetings. Regular meetings of the Board of Trustees shall be held semi-annually without notice, at such place and hour as may be fixed from time to time by Board Members.

Section 5.2 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) Board Members after not less than three (3) days' notice to each Board Member.

Section 5.3 Quorum. A majority of the number of Board Members shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board Members present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Trustees.

Section 5.4 Annual Budget. The board shall prepare and make available to each member an operating budget for the upcoming Fiscal Year.

Section 5.5 Reserve Fund. The board shall have a reserve analysis done every six years as per Utah Code 57-8-7.2.

**ARTICLE VI**  
**AVAILABILITY OF DOCUMENTS**

Copies of the Declaration, Articles, Bylaws, rules and regulations and other books and records shall be available for inspection during normal business hours of the Association, for inspection by Owners, or by first Mortgagees (and holders, guarantors, or insurers thereof).

**ARTICLE VII**  
**OFFICERS AND THEIR DUTIES**

Section 7.1 Officers. The officers of the Association shall be a President, a Secretary, and a Treasurer. The Association may also have such other officers as may from time to time be appointed by the Board of Trustees.

Section 7.2 Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board of Trustees annually at the regular annual meeting of the Board of Trustees. In the event of failure to choose officers at such regular annual meeting of the Board of Trustees, officers may be chosen at any regular or special meeting of the Board of Trustees. Each such officer (whether chosen at a regular annual meeting of the Board of Trustees or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Trustees and until his successor shall have been chosen and qualified, or until his death, or until his resignation, disqualification or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary. The President shall be and remain a Board Member of the Association during the entire term of his or her respective office. No other officer need be a Board Member.

Section 7.3 Subordinate Officers. The Board of Trustees may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority and perform such duties as the Board of Trustees may from time to time determine. The Board of Trustees may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities and duties. Subordinate officers need not be members or Trustees of the Association.

Section 7.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause.

Section 7.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special meeting.

Section 7.6 President. The President shall preside at meetings of the Board of Trustees and at meetings of the members. The President shall sign on behalf of the Association all conveyances, mortgages documents and contracts and shall do and perform all other acts and things that the Board of Trustees may require of him or her.

Section 7.7 Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration or any resolution of the Board of Trustees may require to be kept. The Secretary shall also act in the place and stead of the President in the event of the absence of the President or the President's inability or refusal to act. The Secretary shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. The Secretary shall perform such other duties as the Board of Trustees may require of him or her.

Section 7.8 Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Trustees, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the members and at any meeting of the Board of Trustees. The Treasurer shall perform such other duties as the Board of Trustees may require of him or her.

Section 7.9 Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of his duties as an officer to the extent such expenses are approved by the Board of Trustees and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in his capacity as an officer (e.g., as a manager).

Section 7.9 Committees: The Board of Trustees may, if it elects, appoint committees as deemed appropriate in carrying out its purposes.

## **ARTICLE VIII ENFORCEMENT**

Section 8.1 General Rights of Enforcement. The Association as the agent and the representative of the Owners and members shall have the right to enforce, by any proceeding at law or in equity, the covenants set forth in these Bylaws, and/or any and all covenants, restrictions, assessments, liens or easements provided for in any contract, deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 8.2 Fine for Violation. The board may adopt resolutions providing for fines or other monetary penalties for the infraction of the Governing Documents. Fines will be levied after notice thereof and an opportunity to be heard. The Board may levy fines in the amounts that it, in its sole discretion, shall determine to be reasonable for each violation of the Governing Documents, including those violations which persist after notice and an opportunity for a hearing is given.

Section 8.3 Specific Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Lot or Parcel of the violator, and to suspend an Owner's right to vote or any person's right due to nonpayment of assessments.

**ARTICLE IX  
INDEMNIFICATION**

Section 9.1 Indemnification of Third Party Actions. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, 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 a Board Member or officer of the Association, or is or was serving at the request of the Association as a director, 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 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 an adverse judgment, order, settlement or 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 interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 9.2 Indemnification of Association Actions. The Association shall indemnify any person 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 a Board Member or officer of the Association, or is or was serving at the request of the Association as a director, 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 interests of the Association and 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 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 indemnity for such expenses which such court shall deem proper.

Section 9.3 Determinations. To the extent that a person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections 9.1 or 9.2 hereof, 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. Any other indemnification under Section 9.1 or 9.2 hereof shall be made by the Association only upon a determination that indemnification of the person is proper in the circumstances because he has met the applicable standard of conduct set forth respectively in

Sections 9.1 or 9.2 hereof. Such determination shall be made either (i) by the Board of Trustees by a majority vote of disinterested Board Members, or (ii) by independent legal counsel in a written opinion, or (iii) by the members or the affirmative vote of at least fifty percent (50%) of the Total Votes of the Association at any meeting duly called for such purpose.

Section 9.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding as contemplated in this article may be paid by the Association in advance of the final disposition of such action, suit or proceeding upon a majority vote of a quorum of the Board of Trustees and upon receipt of an undertaking by or on behalf of the person to repay such amount or amounts unless it ultimately be determined that he is entitled to be indemnified by the Association as authorized by this article or otherwise.

Section 9.5 Scope of Indemnification. The indemnification provided for by this article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any provision in the Association's Articles of Incorporation, Bylaws, Declaration, agreements, vote of disinterested members or Board Members or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. The indemnification authorized by this article shall apply to all present and future Board Members, officers, employees and agents of the Association and shall continue as to such persons who cease to be Board Members, officers, employees or agents of the Association and shall inure to the benefit of the heirs and personal representatives of all such persons and shall be in addition to all other rights to which such persons may be entitled as a matter of law.

Section 9.6 Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Board Member, officer, employee or agent of the Association, or who was or is serving at the request of the Association as a Board Member, director, officer, employee or agent of another corporation, entity or enterprise (whether for profit or not for profit), as may be required by the Declaration.

Section 9.7 Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

## **ARTICLE X CORPORATE SEAL**

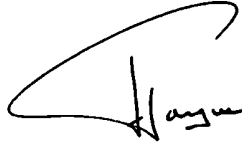
The Association may obtain a seal, in such form as the Association may elect, having the name of the corporation, the year of incorporation, and the words "Corporate Seal".

**ARTICLE XI  
AMENDMENTS**

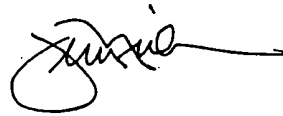
Section 11.1 These Bylaws may be amended, at a regular or special meeting of the Members, by Members holding seventy five-percent (75%) of the Percentage Interests, in person or by proxy.

Section 11.2 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.

IN WITNESS WHEREOF, the Officers of M15 Lofts Condominium Association, Inc., have executed these Bylaws this 1st day of September, 2017.



\_\_\_\_\_  
Pierre Langue, President



\_\_\_\_\_  
Jim Nielson, Secretary/Treasurer