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10/5/2017 8:59:00 AM \$188.00  
Book - 10605 Pg - 9795-9877  
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AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS

FOR

900 SOUTH TEMPLE

A UTAH CONDOMINIUM PROJECT

IN

SALT LAKE COUNTY, UTAH

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
900 SOUTH TEMPLE  
a Condominium Community**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple (the "Declaration") is recorded by the 900 South Temple Condominium Association, upon its approval by the Owners, and is effective as of the date it is recorded in the Salt Lake County Recorder's Office.

**RECITALS**

- A. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
- B. The original Declaration and Bylaws of the 900 South Temple a Utah Condominium Project was recorded on May 26, 1982 in the office of the Salt Lake County Recorder as Entry No. 3678721, in Book 5376, beginning at Page 1146 (the "Enabling Declaration").
- C. An Addendum and Amendment to the Declaration and Bylaws of 900 South Temple a Utah Condominium Project was recorded on June 14, 1982 in the office of the Salt Lake County Recorder as Entry No. 3683844, in Book 5383, beginning at Page 220.
- D. A Second Amendment to the Declaration and Bylaws of 900 South Temple a Utah Condominium Project was recorded on August 18, 2005 in the office of the Salt Lake County Recorder as Entry No. 9464730, in Book 9175, beginning at Page 6561.
- E. The Association, with the authority and approval of the Owners, hereby adopts this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Project and which shall amend and completely replace the Enabling Declaration and all prior declarations and amendments thereto, (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.
- F. This Declaration is adopted to replace and update the terms of the Enabling Declaration and any amendments and supplements thereto, to further define the rights of the Association and the Owners, and to provide for a general plan for managing the Project; all in furtherance of the Association's efforts to efficiently and economically protect and enhance the value of the Units and the Project and to create a superior living environment.
- G. The Association and Owners hereby desire to establish the Terms and Conditions for the mutual benefit and burden of the Association, and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Project.
- H. This Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple, together with the Plats, the Bylaws, and rules and regulations adopted by the Association, shall define and govern the rights of the Owners, and the Association related to the Project.
- I. The Management Committee has obtained the approval of the Owners necessary to adopt and record this Declaration and the attached Exhibits.

NOW, THEREFORE, pursuant to the Recitals set forth above and incorporated herein, the Association hereby adopts this Declaration.



## ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **“Act”** shall mean the Condominium Ownership Act codified at Utah Code Ann. §§ 57-8-1 et seq., as may be amended from time to time.
- 1.2 **“Articles”** shall mean the Articles of Incorporation or the chartering document of any other legal entity, as may be amended from time to time, if any entity shall be formed and remain in effect for the Association.
- 1.3 **“Assessment”** shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
- 1.4 **“Association”** shall refer to the 900 South Temple Condominium Association, the membership of which shall include each Owner in the Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity, under a different legal name, or if the Owners act as a group without legal organization, “Association” as used in this Declaration shall refer to that entity or group.
- 1.5 **“Balcony”** shall refer to any balcony, patio, or deck associated with any Unit.
- 1.6 **“Building”** shall mean the building containing the Units in the Project.
- 1.7 **“Bylaws”** shall mean the bylaws of the Association attached as Exhibit C, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.8 **“Committee”** or **“Management Committee”** shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce all of the reasonable rules covering the operations and maintenance of the Project.
- 1.9 **“Committee Member”** or **“Management Committee Member”** shall mean a duly qualified and elected or appointed member of the Management Committee.
- 1.10 **“Common Area”** shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Project, except to the extent any fixture, structure, or other area is part of a Unit as defined herein. Unless otherwise specifically included or excluded on the Plat or in this Declaration, Common Area includes but is not limited to:
  - (a) All real property included within the Project, including any air space or subsurface rights, whether leasehold or in fee simple;
  - (b) All fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water;
  - (c) All apparatus and installations clearly intended and existing for common use including, if any, stairways, elevators, vestibules, roofs, tanks, pumps, ducts, fans, compressors, wiring, and central or common installations and equipment to provide power, light, water, heating, air conditioning, and garbage disposal;
  - (d) All Limited Common Areas;
  - (e) All windows, on the exterior of the Building, including those on the exterior boundary of Units;

- (f) All doors on the exterior boundary of a Unit, including doors to the Balcony areas, and associated thresholds, jams, hinges, doorbells, chimes, handles, and locks and all components therein;
- (g) All roadways and parking areas in the Project that are not otherwise specifically dedicated to a governmental body or by other means specifically excluded from the Project in the Plat or Declaration; and
- (h) All other parts of the Project necessary or convenient to its existence, maintenance, safe operations, or normally in common use.

The definition of Common Area in this Declaration shall supersede the definition of “Common Area and Facilities” in the Act and shall apply in all instances when the term “Common Areas and Facilities” is used in the Act.

- 1.11 **“Common Expenses”** shall mean all sums lawfully assessed against the Owners for the costs and expense for: (a) administration, maintenance, repair, or replacement of the Common Areas; and (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) utilities (other than utilities that are separately metered and charged to the Units), extermination, landscape maintenance, and other related services; (d) insurance and bonds required or allowed by this Declaration; (e) amounts deposited in reserves; (f) other charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (g) any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.
- 1.12 **“Declaration”** shall mean this Declaration, including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and any and all amendments to this Declaration.
- 1.13 **“Electronic Transmission”** or **“Electronically Transmitted”** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, text, facsimile, or otherwise.
- 1.14 **“Governing Documents”** shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.
- 1.15 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.16 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Units to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of the Unit.
- 1.17 **“Manager”** shall mean any Person engaged by the Association to manage the Project.
- 1.18 **“Occupant”** shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit or the Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall

include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).

- 1.19 **“Owner”** shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the County Recorder of Salt Lake County, Utah; however, Owner shall not include a trustee for a deed of trust.
- 1.20 **“Person”** shall mean a natural individual, corporation, estate, limited liability company, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity.
- 1.21 **“Plat”** shall mean the record of survey map or maps of the Project (the “condominium plat” as used in the Act) recorded in the records of the County Recorder of Salt Lake County, Utah and all amendments and supplements thereto
- 1.22 **“Project”** shall mean the Property and the land, whether leasehold or in fee simple, the Buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith; as defined by the Plat and this Declaration and including the Units, the Common Area, and the Limited Common Areas. Project as defined in this Declaration is intended to have the same definition as “Property” as defined in the Act.
- 1.23 **“Property”** shall mean the property legally described in Exhibit A and all easements and rights appurtenant thereto.
- 1.24 **“Rules”** shall mean and refer to the Rules and Regulations, a formal document, adopted by the Association.
- 1.25 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.26 **“Undivided Interest”** shall mean the interest of the Owner of a Unit in the Common Areas, which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act. Each Unit shall have an Undivided Interest as expressed in Exhibit B to this Declaration.
- 1.27 **“Unit”** shall mean and refer to an individual condominium unit, unit, or condominium, (all as defined in the Act), which shall consist of a separate physical part of the property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building, and which is identified on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest appurtenant to such Unit.

## ARTICLE 2: THE PROJECT

- 2.1 **Submission to the Act.** The Association hereby confirms and restates that the Project is a condominium project as defined in the Act.
- 2.2 **Binding Effect of Governing Documents.** The Association hereby confirms that the Property is part of the Project and the Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs,

executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.

- 2.3 **Project Name.** The Project is named “900 South Temple” and is located entirely in Salt Lake County, Utah.
- 2.4 **Nature of the Project.** The Project primarily consists of one (1) building containing a total of fourteen (14) Units and a manager’s apartment, a separate freestanding two (2) car garage, and an exterior open parking lot. The building has one level of underground parking and storage area. The building is constructed of concrete frame with concrete slab floors. The exterior is brick and glass windows. The interior floors are concrete slab with carpet or other floor coverings. There are two fully automatic passenger elevators electrically operated.
- 2.5 **Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.6 **Registered Agent.** The registered agent of the Association shall be as provided for in the entity filings of the Association with the State of Utah. The Committee may approve a change in the registered agent of the Association without any need for Owner consent.

### **ARTICLE 3: DESCRIPTION OF UNITS, LIMITED COMMON AREA, & UNDIVIDED INTERESTS**

- 3.1 **The Unit.**
- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification in this Declaration, each Unit consists of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines (boundary) of the respective levels of the Units as shown on the Plat. All framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing, structures, and concrete in any bearing walls are part of the Common Area. Generally, all wallboard, dry wall, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Area. All materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all paneling, tile, wallpaper, paint, carpet, hardwood flooring, linoleum, and other materials constituting any part of the finished surfaces or installed on the finished surfaces in a Unit are part of the Unit. All parts of exposed concrete structural components in the Building (including the surface) in or on the boundary of a Unit shall be Common Area. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures located inside the designated vertical and horizontal boundaries of a Unit and those between the point at which the same enter the Owner’s Unit and the closer of the point where the same join the utility lines serving another Unit or exit the Building, are part of the Unit.

- (d) Variances between the Plat and as-built construction. The boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.
- (e) Each Unit, together with its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered and may be inherited or devised by will. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.
- (f) Each Unit shall be assessed separately for taxes, assessments, and other charges of the state of Utah or of any political subdivision or special improvement district or of any other similar authority. The Common Area shall not be subject to separate taxation or assessment.
- (g) Each Owner may separately convey, encumber, or mortgage the Owner's Unit. No Owner may encumber the Common Areas, except to the extent of the Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest and in the event of any foreclosure (judicial or otherwise) the Person taking title shall be subject to this Declaration.

### 3.2 **Limited Common Area.**

- (a) **Specific Identification of Limited Common Areas.** The Limited Common Area associated with each Unit shall consist of areas identified on the Plat or in this Declaration as Limited Common Area.
- (b) **Parking Spaces and Storage Assignments.** Parking and Storage spaces are assigned to Units as provided for on Exhibit B to this Declaration. They shall be Limited Common Area associated with the Unit.
- (c) Any windows, shutters, awnings, doors, porches, Balconies, Patios, or other apparatus intended to serve a single Unit, but located outside the boundaries of the Unit, shall constitute a Limited Common Area pertaining to that Unit exclusively.
- (d) Should it be unclear from the Plat or this Declaration if a particular area is Common Area or Limited Common Area, the Management Committee shall have absolute authority in determining the proper designation of that area based on the following factors: advice of counsel, fairness to all Owners, and any established use, each of which shall have equal weight but none of which shall be individually determinative.
- (e) **No Severance of Limited Common Area.** The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

3.3 **Undivided Interest of Each Unit in the Votes of the Association.** The Owners of each Unit shall be entitled to vote their Undivided Interest for all matters related to the Association that Owners are permitted or required to vote or approve. The Undivided Interests shall be as provided for on Exhibit B. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change any Undivided Interest.

3.4 **Plat.** The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Association and the Project. If any conflict exists between the Plat and this Declaration, this Declaration shall control.

## **ARTICLE 4: MAINTENANCE, REMODELING, AND UTILITIES**

### **4.1 Owner Responsibility.**

- (a) The Owner of a Unit shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all of the following with regard to the Owner's Unit or Limited Common Area:
  - (1) All exterior doors, including thresholds, jams, hinges, doorbells, chimes, handles, and locks (regardless of whether they are part of the Common Area or Unit);
  - (2) All windows, including but not limited to window frames, casings, and glass (regardless of whether they are part of the Common Area or Unit);
  - (3) All paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
  - (4) All drywall, wallboard, or similarly functioning materials within the Unit;
  - (5) All framing, insulation, and other materials associated with interior nonbearing walls;
  - (6) All fixtures, appliances, and other improvements in the Unit;
  - (7) All carpet, sunshades, or other coverings installed on the balcony adjacent to the Unit; and
  - (8) All equipment, lines, pipes, wiring, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, internet, television (including satellite dishes), telephone, ventilation, and any other utility service, wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively and regardless of whether they are located in the Common Area or Unit.
- (b) Without the prior approval of the Committee, an Owner shall not (1) replace or make any alterations, repairs, or modifications to the surface of any doors from Units to Common Area, or any part of the exterior of a Building including any door that the Owner is obligated to maintain, such as Balcony doors, (2) replace or make any alterations, repairs or modifications to the windows, and (3) paint or otherwise modify Balcony areas. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular person, or that they comply with particular materials or aesthetics requirements or other standards. The Committee may adopt reasonable Rules related to the oversight and approval of any and all repairs made to Units.
- (c) The Owner shall be responsible for keeping the following areas in a clean and sanitary condition and free of pests, including rodents, birds and bugs:
  - (1) The Unit;
  - (2) The Balconies appurtenant to the Unit;
  - (4) Any Limited Common Area storage areas associated with the Unit; and
  - (5) The interior surface of any window on the exterior boundary of the Unit.
- (d) Limited Common Areas. The Committee may set forth in the Rules complete restrictions on all or some items or specific restrictions or guidelines on what may or may not be kept, installed, or left on or in any Balcony, storage area, parking area, or other Limited Common Areas.

- (e) **Parking Spaces.** Subject to an Owner's obligation to comply with Rules related to parking areas that may include requirements to keep such areas free of clutter, debris, and other items, the Association shall be responsible for cleaning parking areas.

#### **4.2 Association Responsibility.**

- (a) Except as maintenance and cleaning obligations are otherwise assigned to the Owners or others in this Declaration, the Association shall repair, maintain, replace, and clean the Common Area, which shall include but not be limited to the obligation to repair, maintain, replace, and clean (as appropriate) the following:
  - (1) All foundations, concrete pillars, and suspended concrete slabs and pads;
  - (2) All framing and structural components of the building including the exterior and bearing walls, roof, ceilings and floors;
  - (3) Insulation in exterior walls, bearing walls, or in any wall on the boundary to a Unit;
  - (4) The exterior surfaces of the Building and all components that are a part of the exterior surface of the Building. The Association may clean the exterior surface of windows at the discretion of the Management Committee, but all obligations to maintain, replace, and repair windows shall remain the responsibility of the Unit Owner;
  - (5) The interior Common Area stairways;
  - (6) Exterior Limited Common Area balconies and any railings associated therewith (including any water penetration related thereto);
  - (6) The roof and all related components;
  - (7) All equipment, lines, pipes, wiring, vent covers on the exterior of the Building, equipment and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, internet, television, telephone, and any other utility service, wherever they might be located, to the extent they serve more than one Unit;
  - (8) All Common Area hallways and common spaces; and
  - (9) All Limited Common Areas, except as otherwise set forth in this Declaration
- (b) The Association shall have the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject only to the obligation to get approvals for material alterations to the Project). The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration.
- (c) Owner approval for certain improvements. Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:
  - (1) Any improvement (repair, replacement, modification, or upgrade) to the Project that does not materially alter the Project may be authorized by the Committee alone.
  - (2) A material alteration to the Project is the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, hot tub, workout room, tennis court, pond, or parking area. Landscaping alterations, general remodeling, the updating of existing fixtures such as

boilers, electrical systems, plumbing equipment, and the addition or removal of signs or small structures are not material alterations to the Project.

- (3) Regardless of its cost and prior to being constructed or started, any improvement that would materially alter the Project must be authorized by the vote of Owners holding at least sixty-five percent (65%) of the Undivided Interests at a meeting called for that purpose and must be approved of by the Management Committee. No material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners.
- (d) **Standard of Maintenance.** The Committee shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area and Limited Common Area, so long as those areas are maintained in the best interests of the Owners and consistent with the standards of an upscale condominium project. The Management Committee may set forth specific duties for the Building Manager in the Rules and Regulations.
- (e) **Assessment of Maintenance Expenses to Specific Owner.** Subject to the provisions related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by the fault or negligence of an Owner or an Occupant, the Association may assess the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance.

#### **4.3 Remodeling, Maintenance, and Repair of Units.**

- (a) An Owner may complete any maintenance or upgrades to the interior of a Unit, not otherwise defined as remodeling, without prior approval of the Association.
- (b) **Remodeling.** The Association may regulate and restrict remodeling within the Project. Unless and until the Association adopts Rules regulating remodeling, the following restrictions shall apply.
  - (1) For the purpose of this Declaration, remodeling shall include but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, tile or hardwood; kitchen or bathroom modifications; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, fireplaces, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling.
  - (2) Before beginning any remodeling or deviating from a previously approved remodeling plan, the Owner shall:
    - (i) Notify the Management Committee and provide the following: (1) a written description of the proposed remodeling, (2) a description of how any debris or materials removed will be disposed of, (3) the date the remodeling is expected to begin, (4) the date the remodeling is expected to be completed, (5) the names, contractor's license numbers, proof of current workers compensation insurance, and proof of current liability insurance for all contractors and other persons expected or required to perform work in the remodeling, if available (all of this information shall be provided to the Association before work begins), (6) any expected nuisance that the remodeling may create such as noise or dust, and (7) the Owner's proposal for mitigating any expected nuisance, and (8) the location and times for delivery and storage of any construction materials or other items if they are to be delivered or stored outside of the Unit.



(ii) Wait to begin the remodeling until the Management Committee gives written approval. If the Association does not respond within fifteen (15) days of a notice of remodeling, the Owner may complete the remodeling to the Unit consistent with the information provided in the notice and the requirements of this Declaration. The Committee may respond by approving the request, requesting additional information, or denying the request if the notice is not complete or if the remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information or denies the request, the Owner shall not begin the remodeling.

(iii) Pay or agree to pay any fees or costs required by the Committee associated with reviewing or monitoring the remodeling.

(3) Without prior written permission of the Committee and regardless of whether any response from the Committee is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (1) any use of the Common Area or any roadways for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area or roadways by vehicles, materials, or persons, (4) any use of any Association garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling, or (5) modification to any Common Area.

(4) The Committee shall have no authority to approve of any remodeling inconsistent with the Terms and Conditions, that modifies the boundaries of any Unit from the original construction (unless any such modification is otherwise specifically allowed in this Declaration or by law), or that would cause unsafe conditions or a legal nuisance.

(5) Management Committee approval is required for any remodeling located on, or affecting the Common Area.

(c) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures. The Committee shall have no obligation to verify that any remodeling or other repairs and modifications to Units are completed as required herein.

4.4 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain or clean a Unit or Limited Common Area as required in the Governing Documents, or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Committee to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Project; then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Committee determines to be required and requesting that the same be carried out within a period of at least fifteen (15) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice then the Committee may cause corrective action to be taken (which may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.

4.5 **Utilities.** All utilities for individual Units (except those utility costs that are metered collectively and paid by the Association as a Common Expense item) will be metered separately to each Unit and such utility charges shall be the responsibility of the Unit Owner. So long as any utilities are collectively metered and paid by the Association, the Association shall apportion the cost and

expenses among the Units receiving or utilizing those utilities. The Association shall apportion those expenses in the manner that the Management Committee deems appropriate.

## **ARTICLE 5: PROPERTY RIGHTS IN UNITS AND COMMON AREA**

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

- (a) Subject to limitations in the Governing Documents, each Owner shall have an Undivided Interest in and easement of use and enjoyment in and to, the Common Areas for the purposes for which they were intended. Such use cannot hinder or encroach upon the lawful rights of the other Owners and may not extend into the Limited Common Area reserved for the use of an Owner of another Unit. Each Owner shall have an unrestricted and non-exclusive right of ingress or egress to and from the Owner's Unit over and across such Common Area, subject to any other restrictions related to such use. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Authorized Occupants shall have the same access and use rights to the Common Area as an Owner. All such rights shall be subject to any Rules established by the Management Committee.
- (b) The Association shall have nonexclusive easements with the right of access to each Unit, including any Limited Common Areas, to make inspections, to prevent or mitigate damage to Units and to Common Area, and to maintain, repair, replace or effectuate the restoration of the Common Area and those portions of the Unit that the Association is responsible for maintaining which are accessible from such Unit. Such rights shall be exercised only after the notice required in this Declaration. The Association shall have a nonexclusive right to grant permits, licenses, and easements upon, across, over, under, and through the Common Area for purposes necessary for the proper operation of the Project

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

- 5.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the Buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment, shall exist for the life of the structure.
- 5.4 **Limitation on Easement.** An Owner's Undivided Interest, right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to reasonably limit or restrict Owner's access to and use of certain portions of the Common Area set aside for the functioning of the Association. (Such as the manager's apartment, roof, maintenance areas, etc.)
  - (b) The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 5.5 **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Project.

#### **ARTICLE 6: USE LIMITATIONS AND CONDITIONS**

- 6.1 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and Regulations and procedures as may aid the Association in carrying out any of its functions and to ensure that the Project is maintained and used in a manner consistent with the interest of the Owners.
- 6.2 **Signs.** The Association may regulate and restrict signs in the Project, to the extent permitted by law, in the Rules. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, a-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Unless and until the Association adopts a rule regulating signs in the Project, all signs are prohibited. The Association's prohibition on signs shall be subject to applicable state and federal laws.
- 6.3 **Nuisance.** No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 6.4 **Smoking.** Smoking is prohibited in the Project, including in the Units, Limited Common Areas and Common Areas. It shall be a nuisance and prohibited under Section 6.3 to permit or cause any smoke to drift or otherwise enter into the Common Areas, any Unit, or the Limited Common Area of any Unit. The Association relies upon the definitions of the terms "e-cigarettes" and "smoking"

as used in the Utah Indoor Clean Air Act (Utah Code Ann. § 26-38a-1 et seq.) in defining such terms for this section.

(a) "E-cigarette"

(i) means any electronic oral device:

(A) that provides a vapor of nicotine or other substance; and

(B) which simulates smoking through inhalation of the device; and

(ii) includes an oral device that is:

(A) composed of a heating element, battery, or electronic circuit; and

(B) marketed, manufactured, distributed, or sold as: an e-cigarette; e-cigar; e-pipe; or any other project name or descriptor, if the function of the project meets the definition of subsection (a)(i).

(b) "Smoking" means: (i) the possession of any lighted or heated tobacco product in any form; (ii) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah; (iii) using an e-cigarette; or (iv) using an oral smoking device intended to circumvent the prohibition of smoking.

(c) The Committee may adopt reasonable Rules to address new non-combustible tobacco products that may not otherwise fall into the prohibition against smoking in this Section to expressly include such products in this smoking restriction.

(d) Notwithstanding the forgoing language in this Section, those Units owned by a continuing and identical ownership interest on or before the recording of this Declaration shall be grandfathered from the smoking prohibition and those Owners and Occupants shall be permitted to smoke in the Project subject to the following restrictions:

(i) Smoking shall be prohibited in the interior common areas.

(ii) Any smoking activity within the Project shall remain subject to Utah's nuisance laws.

(iii) Upon a change of ownership, as evidenced by the records of the County recorder, the Unit's qualification for this exception irrevocably terminates.

6.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless it is approved by the Committee.

6.6 **Parking.** Unless otherwise permitted by the Association in the Rules, and except for "customary parking" and "temporary parking," as permitted by this Section, no automobiles or other vehicles of any type (including, without limitation, motorcycles, trailers, campers, vans, recreational vehicles, or boats) shall be parked, stored, or located within any portion of the Project, including any Unit or Common Area. "Customary parking" shall mean the parking of operable automobiles, motorcycles, noncommercial trucks and vans within allowed spaces in the parking areas. Parking spaces in the underground parking area are assigned to each Unit as set forth in Exhibit B. The above ground uncovered parking is not assigned and shall be used on a first come first served basis. "Temporary parking" shall mean parking of operable vehicles belonging to Owners and Occupants and their visitors, including the parking of delivery trucks, service vehicles, and other commercial vehicles being used in the furnishing of goods and services to the Owners and Occupants. The Association may adopt Rules relating to the parking of vehicles within the area of the Project including, without limitation, (1) rules allowing or causing the removal of any vehicles that are improperly parked, (2) restrictions on the type and condition of vehicles in any customary

or temporary parking, (3) restrictions on the time period and duration of temporary parking, and (4) the assessment of fines to Owners who violate the Rules or the assessment of fines to Owners whose guests violate such Rules.

- 6.7 **Storage.** The Committee may adopt Rules regulating what may be placed on, left in, or planted in the limited common storage areas and on balconies or patios.
- 6.8 **Recreational Vehicles.** Unless otherwise approved by the Committee, recreational vehicles including but not limited to boats, trailers, 4-wheelers, and motor homes may not be parked in the Project at any time.
- 6.9 **External Fixtures.** To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porch, patio, or Balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Project, shall be constructed, erected, or maintained on the Project without the prior written approval of the Committee. All maintenance, repair and replacement of any approved external items is the obligation of the Unit Owner.
- 6.10 **Window Covers.** The Committee may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, reflective film, or similar items.
- 6.11 **External Laundering.** Unless otherwise permitted in the Rules, external laundering and drying of clothing and other items are prohibited.
- 6.12 **Outside Speakers and Amplifiers.** Unless otherwise permitted in the Rules, the exterior installation of any radio, stereo, or speaker equipment, or the projection of sound or music on or directed to the outside of any Unit shall be prohibited.
- 6.13 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Project except for temporary emergency situations or as permitted by the Committee in the Rules.
- 6.14 **Unightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Trash and garbage shall be properly and promptly disposed of as provided for in the Rules.
- 6.15 **Animals.** No pets of any type are allowed in the Project, temporarily or permanently. The Committee may grant exceptions to this prohibition to comply with applicable State or Federal laws. The Committee may adopt Rules adding further Terms and Conditions related to animals in the Association not inconsistent with this Declaration including the assessment of fines or charges to Owners and Occupants who violate such Rules. An Owner who keeps a pet or animal of any kind is liable for any and all damage caused by such pet or animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such pet or animal. Notwithstanding the pet restrictions in this Section, the Association may allow the occupant of the manager's apartment to keep pets or animals at the discretion of the Committee.

- 6.16 **Landscape Maintenance.** Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, or other plantings in the Common Area without the written approval of the Committee.
- 6.17 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Owner and approved in writing by the Committee. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit. Upon reasonable notice that an item or items of abnormally high weight will be in a Unit, the Association may require the Owner to pay the costs of an engineer or architect hired by the Association to verify that the Owner is not exceeding a safe floor load weight.
- 6.18 **Hanging Items.** Nothing may be hung from or attached to the railing or support joists of the Balconies without prior written permission of the Committee.
- 6.19 **Residential Occupancy.** Except as provided in this Section, no Unit may be used for any purpose other than a residential purpose.
- (a) No trade or business may be conducted in or from any Unit unless:
- (1) The existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
  - (2) The business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (3) The business activity does not involve Persons coming onto the Project who do not reside in the Project or solicitation of Occupants or Owners of the Project;
  - (4) The business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Project;
  - (5) The business activity is disclosed to the Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Project;
  - (6) There is no commercial delivery of packages or mail other than deliveries consistent with typical residential use,
  - (7) The business activity will not result in the increase of the cost of any of the Association's insurance;
  - (8) All Owners of the Unit reside in the Unit, in which the business activity is conducted, for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
  - (9) The Committee's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely as often as the Committee shall determine in its discretion.
- (b) No Unit may be used as a time-share property.
- 6.20 **No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.** No Unit shall be split, subdivided, separated or timeshared into two or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a

Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Project shall be recorded on the Project unless the Committee and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

- 6.21 **Architectural Control.** No changes to anything outside of the boundary of Units shall be commenced, erected, maintained, made, or done without the prior written approval of the Committee or any Committee established by the Committee for that purpose. By way of illustration, but not of limitation, the following are considered changes outside the boundary of a Unit: painting of the exterior of the Building; landscaping; excavation; Balcony covers; changing or modifying screens, changing doors leading to Balconies or Building hallways; modifying the exterior surface of doors to Balconies, Common Area, or Building hallways; the addition or modification of an evaporative cooler, fireplace, stove, or other vent or exhaust, chimney, skylight, solar collector, shade screen, or awning; exterior window coating or tinting; window replacement, decorative alterations to the exterior of any Unit, and other work that in any way alters the appearance of the Project from anywhere outside of a Unit (not including changes made in and to a Unit visible through windows). The Committee may designate the design, style, model and manufacturer of any such improvement or alteration. Such designations shall be for the purpose of achieving uniformity of appearance which is hereby deemed and agreed to be necessary to preserve and enhance the value of Units and the Project.
- 6.22 **Lighting.** Lighting fixtures outside of Units shall be allowed only to the extent approved by the Committee.
- 6.23 **Variances.** The Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article if the Committee determines in its discretion (by unanimous vote): (a) either (i) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Committee.
- 6.24 **Hazardous Substances.**
- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project.
  - (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting

from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section shall survive any subsequent transfers of the Unit (voluntary or otherwise).

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

#### **ARTICLE 7: ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 7.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 7.2 **Modifying or Changing the Name of the Project.** The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 7.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 7.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 7.5 **Availability of Documents.** The Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term “available” as used in this section shall mean available for inspection and copying within thirty (30) days after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Committee determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, or social security numbers. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it.



Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information.

- 7.6 **Management Committee.** The governing body of the Association shall be the Management Committee elected and removed as provided in the Bylaws. The Committee shall consist of three (3) members. Except as otherwise provided in this Declaration or the Articles of Incorporation, the Committee shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Committee. Except as may be specifically provided in the Declaration, Articles of Incorporation, or by applicable law; no Owner or group of Owners other than the Committee may direct the actions of the Association.
- 7.7 **Reasonable Ongoing Requirements for Committee Members.** The Bylaws may place reasonable obligations and requirements on existing Committee Members to retain their membership on the Committee, such as a requirement that a Committee Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Committee Member who fails to comply with the reasonable requirements, which may include some action of the remaining Committee Members.
- 7.8 **Limitation on Authority of Owners, Committee Members & Officers.**
- (a) Except as provided herein or in the Bylaws, the Management Committee, any individual Owner, and any individual Committee Member or Officer shall have no authority to and may not act on behalf of the Association or the Committee to:
    - (1) Amend or terminate any Governing Document;
    - (2) Elect or remove members of the Committee;
    - (3) Establish or change the qualifications, powers and duties, requirements, or terms of Committee Members or of the Committee; or
    - (4) Authorize or agree to any deviation or exception from the Terms and Conditions.
- 7.9 **No Reliance on Actions Contrary to Governing Documents.** No one may rely upon any authorization (from the Committee or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.
- 7.10 **Registration with the State.** In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

## **ARTICLE 8: GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION**

- 8.1 **Rights and Responsibilities of the Association.** The Association shall have the following rights and responsibilities, in addition to any others set forth in the Governing Documents or provided by law:
- (a) **Paying Expenses.** The Association shall provide for the payment of Association expenses.

- (b) **Setting and Collecting Assessments.** The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.
- (c) **Entering Units.** After having given the appropriate notice as provided for in this Declaration, the Association shall have the right, at the discretion of the Committee, at all times upon reasonable notice (and at any time in case of an emergency) to enter into any Unit to abate any infractions, to make repairs or correct any violation of any of the Terms and Conditions, or to abate any condition that threatens the health or property of any Owner or Occupant.
- (d) **Adopting and Enforcing Rules.** The Association may adopt Rules for the regulation and operation of the Project. If they are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to a judicial determination if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.
- (e) **Hiring Managers and Delegating Responsibilities.** The Association shall hire a Manager to assist the Committee in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Committee shall have the right to approve Association budgets, fines to Owners, and General and Special Assessments. Any powers and duties delegated to any Manager or other Person may be revoked by the Committee at any time, with or without cause. Any management agreement must be terminable without penalty and with or without cause upon thirty (30) days' notice. **THE MANAGEMENT COMMITTEE HAS NO AUTHORITY TO ENTER INTO ANY MANAGEMENT AGREEMENT OR CONTRACT INCONSISTENT WITH THE TERMS OF THESE GOVERNING DOCUMENTS OR THAT PROVIDES FOR ANY TERMINATION FEE OR REQUIREMENT FOR TERMINATION FOR CAUSE.**
- (f) **Other Necessary Rights.** The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.
- (g) **Enforcement Rights.** In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services paid as a common expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (h) **Enforcement.** The Committee shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (i) **Reserve Fund.** The Association shall establish and fund a reserve fund and obtain and update a Reserve Analysis as required in this Declaration.
- (j) **Preventing Conflicts with Service Providers and Vendors.** The Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Committee Member, Manager, or of any officer, employee, or owner of the Manager; (2) any business or entity in which any Committee Member, Manager, or

employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 1% ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Committee Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the Manager and relatives of the Manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purpose of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.

- (k) Establishing Hearing Procedures. The Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two weeks' notice of the hearing to the Owners, and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- (l) Annual Meeting. The Committee shall arrange for and conduct an annual meeting at least once a year as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- (m) Bulk Services Agreements. The Association shall have the right to enter into agreements, as the Committee deems appropriate, for the provision of cable, television, internet, telephone, or other similar services for all of the Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and in any Assessment, may be broken out as a separate line item on invoices, statements, or notices of assessment.
- (n) Review and Audit of Association Finances. The Association shall have an independent accountant conduct a review of the Association's finances every five (5) years. The Association shall make any such review available to the Owners. Any Owner may have an audit conducted of the Association's records by a CPA, at that Owner's expense, and the Association shall cooperate in providing access to any records needed for that audit. Upon receipt of a request signed by owners holding twenty percent (20%) of the outstanding ownership interests, the Committee shall have an audit conducted of the Association's finances and shall make the audit available to the Owners.
- (o) Electronic Cars and Charging Stations. The Association may allow and shall have the right to regulate and impose reasonable requirements on the installation of charging stations and the charging of electric vehicles in the Association. An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits. The Association shall have the power to establish Rules implementing this section and such rules may include, but are not limited to, the following: (1) requiring the Owner to

pay the cost of installation, maintenance, insurance, and power related to any charging station or vehicle charging, (2) requiring the Owner to pay the cost of measuring the power usage, (3) rules imposing charges to an Owner for reasonable estimates by the Management Committee of power consumption when the Owner is allowed to connect to common area power without a requirement for specific metering, (4) rules imposing charges to an owner for reasonable costs of managing and administration of extra billing, power allocation, metering, or other costs associated with electric vehicle charging, (5) rules establishing standards related to the construction or use of any charging equipment or cables, (6) rules requiring that Owners pay for any costs associated with the modification to electrical systems necessary to support charging or charging equipment, (7) rules requiring proper maintenance, certification, inspections, and cleaning of any charging equipment and components, (8) rules related to the location and storage of any charging equipment, and (9) any other reasonable rules related to charging and charging stations.

- (p) **Project Air Space, Drones, & Unmanned Aircraft.** The Association shall have the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property. The Association shall also have the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property and (2) in any airspace within 1000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Project's airspace shall not subject the Association to liability for damages to persons or property relating to the operation of such a device. Any Owner or tenant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device and (2) indemnify and defend the Association, its manager, and all officers and Committee Members (past or present), from any claims related to the device. The Association shall have the power to establish Rules implementing this section and such Rules may include, and are not limited to, the following: (1) requiring Owners to provide information about and/or photographs of the device to the Association, (2) requiring flying devices to be marked with the Owner's name or other information, (3) establishing certain areas, hours, minimum or maximum height limitations, or banning flying of devices completely, (4) banning altogether or designating required commercial drone delivery landing sites, and (5) any other reasonable Rules related to the flying of devices.

## **ARTICLE 9: BUDGETS & ASSESSMENTS**

- 9.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.
- 9.2 **Budget and Regular Assessment.**
- (a) The Committee is authorized and required to prepare a proposed budget for each fiscal year. The proposed budget for the following fiscal year shall be prepared and sent to the Owners not later than thirty (30) days prior to the annual meeting.

- (b) The Committee may revise the budget from time to time as it deems appropriate throughout the calendar year and, if it intends to adjust assessments, shall provide the revised budget with notice of any revised assessments.
  - (c) The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Committee deems appropriate.
  - (d) If the proposed budget is modified before adoption and after the mailing required prior to the annual meeting, the Committee shall send a written copy of the final budget to all Owners no later than thirty (30) days after the adoption of the proposed budget or any revised budget.
  - (e) The Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Undivided Interest for each Unit.
- 9.3 **Payment of Regular Assessments.** Unless otherwise established by the Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 9.4 **Adjustments to Regular Assessments.** In the event the Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Undivided Interest. Upon notice of the adjustment, and unless modified by the Committee, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 9.5 **Personal Obligation for Assessment.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments or fees that accrue while they are an Owner as provided for in the Governing Documents, and also any Assessments that were assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with any interest, collection charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment is assessed.
- 9.6 **Improvements.** Expenses for improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner as determined by the Committee.
- 9.7 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Special Assessments to individual Units) shall be allocated to Owners based on the Undivided Interest applicable to the Unit.
- 9.8 **Rules Regarding Billing and Collection Procedures.** The Committee may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.

- 9.9 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. For any valid request, and upon payment of a fee of not more than \$25.00, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.
- 9.10 **Account Payoff Information.** The Association may charge a fee for providing association payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit. The Association may set forth the amount of the fee in the Rules, but such fee shall not exceed \$50.00. Within five business days of any complete payoff information request, the Association shall provide assessment payoff information needed for the closing. A request for payoff information needed for a closing must: (1) be conveyed in writing, (2) be conveyed to the primary contact person designated by the Association with the Association's registration with the Utah Department of Commerce, (3) contain (i) the name, telephone number, and address of the person making the request; and (ii) the facsimile number or email address for delivery of the payoff information, (4) be accompanied by a written consent for the release of the payoff information: (i) identifying the person requesting the information as a person to whom the payoff information may be released; and (ii) signed and dated by an owner of the unit for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 9.11 **Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Management Committee (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 9.12 **Special Assessments to Individual Units.** Special Assessments may be assessed by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
  - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit if such cost is the responsibility of the Owner as provided for in this Declaration;
  - (c) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
  - (d) Fines, late fees, collection charges, and interest; and
  - (e) Attorneys' fees, costs and other professional expenses relating to any of the above.
- 9.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof may be a special Assessment pertaining to that Unit, at the discretion of the Committee.
- 9.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Committee in its discretion may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Undivided

Interests of each Unit in the Common Expenses of the Project, as the Committee deems appropriate. The decision of the Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 9.15 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 9.16 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 9.17 **Loans.** Upon approval of Owners holding forty percent (40%) of the Undivided Interests by vote at a meeting called for that purpose, the Association may borrow money, enter into leases, and may provide such security as necessary for the loan or lease, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Unit shall be security for any loan to the Association without that Unit Owners' consent.

#### **ARTICLE 10: NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS**

- 10.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Committee may, at its option, invoke any or all of the remedies granted in this Article.
- 10.2 **Collection Charges and Interest.** The Association may adopt or establish billing and collection procedures, including the amount of late fees and interest, in the Rules or by resolution. If the association does not adopt collection procedures, the following shall apply. Monthly Assessments shall be due and payable on the first of the month and late if not received by the 15th of that month. Late fees shall be twenty-five dollars (\$25.00) for each month that an Owner's account has an unpaid balance after the due date. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at eighteen (18%) per annum. The Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable charge imposed by a Manager related to collections.
- 10.3 **Joint and Several Liability of Owner and Future Owners.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Unit.
- 10.4 **Lien.** The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, fines, attorney fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of

the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (1) a lien or encumbrance recorded before this Declaration is recorded, (2) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (3) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.

- 10.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or its assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 10.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Ann. Sections 57-1-20 and 57-8-44 to -53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to Quinn A. Sperry, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 10.7 **Homestead Waiver.** Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 10.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to receive a utility service for which the Owner pays a Common Expense and access to any common recreational amenities.
- 10.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late. Any tenant who fails to pay such rent when demanded shall be liable to the Association for the amount of any unpaid rent and all collection costs and reasonable attorney fees related to the failure to pay as provided for in Section 10.10 and regardless of whether an action is commenced or not.
- 10.10 **Attorney Fees Incurred As a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (1) obtain advice about a default, (2) collect unpaid Assessments, (3) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments, (4) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding, (5) examine the debtor or others related to collections, (6) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a chapter 13



plan for the duration of the plan, (7) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including, but not limited to, seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments, and (8) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit an Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

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

#### **ARTICLE 11: INSURANCE**

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** The Association shall annually obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (1) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (2) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (3) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: **“NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION,”** and (4) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: **“NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION.”** The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the meeting.

### 11.3 Property Insurance.

#### (a) Hazard Insurance.

- (1) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Units, fixtures, and building service equipment.
  - (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, and windows.
  - (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.
  - (iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
  - (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
  - (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) “Inflation Guard Endorsement,” if available; (2) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction); and (3) “Equipment Breakdown,” if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
  - (1) The Association’s policy provides primary insurance coverage; and
  - (2) Notwithstanding Subsection 11.3(b)(1) and subject to Subsection 11.3(b)(3):
    - (i) the Owner is responsible for the Association’s policy deductible; and

- (ii) building property coverage, often referred to as Coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
- (3) (i) As used in this Subsection (3):
- (A) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
  - (B) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.
  - (C) "Unit Damage Percentage" means the percentage of total damage resulting in a covered loss that is attributable to Unit Damage.
- (ii) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the association's property insurance policy.
  - (iii) If an Owner does not pay the amount required under Subsection (11.3)(b)(3)(i) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.
- (c) Flood Insurance.
- (1) If any part of the Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project or, at a minimum, that portion of the Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of:
    - (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard areas; or
    - (ii) one hundred percent (100%) of the insurable value of the Insurable Property.
  - (2) If the Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, at the discretion of the Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association may purchase earthquake insurance as the Committee deems appropriate. If the Committee elects not to purchase earthquake insurance, a vote of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote.
- (e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000.00, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

- (f) Association's Right to Not Tender Claims That Are Under the Deductible. If, in the exercise of its business judgment, the Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible, and a claim is submitted to the Association's property insurance insurer: (i) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (ii) the Association is responsible for any loss to any Common Area; (iii) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in section 11.3(b)(3)(iii), recover any payments the Association makes to remediate that Unit; and (iv) the Association need not tender the claim to the Association's insurer.
- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 11.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- 11.4 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall not be less than two million dollars (\$2,000,000) covering all claims for death or injury to any one Person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 **Directors' and Officers' Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Committee, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. At the discretion of the Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 **Insurance Coverage for Theft & Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Committee members of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, and (d) officers, Committee Members, and employees of any Manager of the Association.

- 11.7 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Committee deems appropriate.
- 11.8 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 **Right to Negotiate All Claims and Losses and Receive Proceeds.** The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association; and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action, as is necessary, related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds, the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 11.11 **Insurance Trustee.** At the discretion of the Committee or upon written request executed by Owners holding 50% or more of the Undivided Interests, the Committee shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Committee (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.12 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 **Waiver of Subrogation Against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association, the Owners, any person residing with an Owner if an Owner resides in the Unit, and the Association's agents and employees.
- 11.14 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.

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

## **ARTICLE 12: DESTRUCTION OF IMPROVEMENTS**

- 12.1 **Reconstruction.** In the event of partial or total destruction of the Building, the Association shall promptly take the following actions:
- (a) Ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds. If the Committee in good faith determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Committee shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Committee as soon as possible.
  - (b) The Committee, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any, or establish a procedure by which any insurance proceeds shall be available for either a cash payment or for reconstruction.
  - (c) Engage the services of a reputable licensed architect to advise and consult with the Committee or any Insurance Trustee on all actions and decisions necessary under this Article.
  - (d) If an appraisal of any or all Units is required under this Article, the Committee shall select the appraiser and any appraisal relied upon by the Committee shall be final and not subject to challenge by any Owner for purposes of this Article.
- 12.2 **Insurance Proceeds Sufficient for Reconstruction.** In case of fire or any other disaster and if insurance proceeds are sufficient to reconstruct the Building and all Units suffering damage therein, then the insurance proceeds shall be applied to reconstruct the Building and any Units suffering damage. As used herein, reconstructing the Building shall mean restoring the Building and Units to substantially the same condition in which they existed prior the fire or other disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before.
- 12.3 **Insurance Proceeds Insufficient for Reconstruction.** If insurance proceeds will be insufficient for reconstruction, the following shall apply:
- (a) If the cost of reconstruction is equal to or less than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Project (prior to the damage and destruction), then the Association shall proceed forward with reconstruction applying any insurance proceeds as provided for in Section 12.2. The cost of reconstruction in excess of insurance proceeds and reserves shall be a Common Expense.
  - (b) If the cost of reconstruction is greater than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Project (prior to the damage and destruction), then the Committee shall call a special meeting of the Owners for the purpose of voting on whether to reconstruct or not.
  - (c) If the Owners, by a vote at such meeting of not less than seventy-five percent (75%) of the Undivided Interests, decide not to proceed with such reconstruction:
    - (1) The Property shall be deemed to be owned in common by the unit owners;

- (2) The undivided interest in the Property owned in common which shall appertain to each Owner shall be the Owners' Undivided Interest as determined in this Declaration;
  - (3) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the Owners in the Property;
  - (4) The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of the undivided interest owned by each Owner in the Property, after first paying out of the respective shares of each Owner, to the extent sufficient, all liens on the undivided interest in the Property owned by each Owner.
- (d) Unless Owners holding more than seventy-five percent (75%) of the Undivided Interests vote to not proceed with reconstruction, the Association shall proceed with reconstruction as provided for in Section 12.3(a).

### **ARTICLE 13: EMINENT DOMAIN**

- 13.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes the adjustment required for this section. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.
- 13.2 **Partial Taking of a Unit.** Except as provided in Section 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.
- 13.3 **Taking of Limited Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Project adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association.

- 13.5 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Project is terminated and the provisions related thereto in this Declaration shall apply.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

#### ARTICLE 14: TERMINATION

- 14.1 **Required Vote.** The Project may be removed from the provisions of the Act and terminated as allowed by law. The Property may be sold as allowed by law.
- 14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Salt Lake County, Utah and is effective only on recordation.
- 14.3 **Sale of Project Following Termination.** A termination agreement may provide that the entire Project shall be sold following termination. If, pursuant to such 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.
- 14.4 **Sale of Project Without Termination.** Pursuant to and as provided for in the Act, the Unit Owners may, by an affirmative vote of at least three-fourths (3/4) of such Unit Owners, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the property either in conjunction with the termination of the Project or not. Such action shall be binding upon all Unit Owners and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale.
- 14.5 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project on the termination of the Project or related to the approval of the sale of the Project pursuant to section 14.4. The contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration or until a sale is approved pursuant to Sections 14.4. If any real estate in the Project is to be sold, immediately upon approval of the sale of the Property by the Owners or the Approval of the Owners of Termination of the Project, title to that real estate shall immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period



of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

- 14.6 **Proceeds of Sale.** The proceeds of any sale of real estate or assets of the Association shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Committee. If any Owner disputes the appraised amount, the Owner shall notify the Association of the dispute within ten (10) days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly with the Association's appraiser select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.7 **Allocation Upon Termination.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders.

#### ARTICLE 15: AMENDMENTS

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty-seven percent (67%) of the total Undivided Interest. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration.
- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Committee, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the office of the County Recorder of Salt Lake County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Unit or Units upon the approval by vote of sixty-seven percent (67%) of the total Undivided Interest in the same manner as required to amend this Declaration. Any such Plat may make material changes to the existing or prior Plat including

the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Project. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein is obtained, each and every Owner: (1) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat, and (2) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction.

- 15.5 **Amendment to Conform to Law.** The Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through VA, FHA, FNMA or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:
- (a) The Association must obtain from an attorney who has significant experience and a regular practice in area of Community Association law and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this section.
  - (b) The members of the Committee must unanimously agree to the Amendment at the time it is recorded.
  - (c) The Committee must provide to the Owners: (1) the proposed amendment instrument, (2) the language of this section of the Declaration, (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing, (4) the attorney opinion letter required for the amendment, and (5) a notice in which the Association (a) notifies the Owner that it intends to amend the Declaration pursuant to this section, (b) provides the Owner a right to object to the amendment within thirty (30) days, and (c) provides instructions on how, when, and where to properly make the objection. The Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners.
  - (d) Within forty-five (45) days of providing the information to the Owners required by this section, not more than thirty percent (30%) of the Owners object to the amendment in a written notice to the Association.
  - (e) Having otherwise complied with all of the requirements of this section, the Committee Members shall each sign the amendment instrument verifying that this section has been complied with to the best of their knowledge and that no more than thirty percent (30%) of the Owners objected after having received proper notice. The amendment shall be effective upon the recording of the instrument in the office of the Recorder of Salt Lake County.
- 15.6 **Consent of Two-Thirds Owners to Alter Undivided Interests.** Notwithstanding anything to the contrary herein, and unless otherwise prohibited by the Act, the consent of two-thirds of the Owners shall be required to alter any Undivided Interest.

**ARTICLE 16: INTERPRETATION, CONSTRUCTION AND APPLICATION OF  
DECLARATION**

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Articles, the Bylaws, and then the Rules. The Declaration shall take priority over the Plat.
- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the Project. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like

applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

#### **ARTICLE 17: NOTICE**

17.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be delivered as follows:

(a) Notice to an Owner from the Association.

(1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:

(i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.

(ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Unless otherwise provided by law, such as provided in Utah Code Ann. § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.

(iii) By electronic transmission to an Owner which includes:

(A) An email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent.

(B) By facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Unless otherwise provided by law, any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent.

(C) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent.

(iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.

(2) Notwithstanding Subsection (1) of this section, the Association shall send all notices by U.S. Mail if an Owner, by written demand, demands that the Association send all notices by mail.

(3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Unit,

whether electronic or not. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Unit.

- (4) In case posting of a notice on the Unit is permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry Into a Unit.
- (1) In case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
  - (2) In case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit, (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute, and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
  - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit the Association shall: (i) give notice to the Owner that an entry is required at least two weeks in advance with such notice stating: (a) that the Association or its authorized Persons will enter the Unit, (b) the date and time of the entry, (c) the purpose of entering the Unit, (d) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (e) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, (f) any other information the Association deems appropriate to include, and (ii) post the written notice described above on the front door to the Unit at least seven days prior to entry into the Unit.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by certified or registered mail to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a recorded document evidencing a security interest in a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
- (d) Notice to Association from an Owner.
- (1) An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
    - (i) by a written notice delivered personally to the Manager, which shall be effective upon delivery;
    - (ii) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
    - (iii) by electronic transmission to the Association: (1) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of

Association communications, or (2) that is emailed to an e-mail address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed effective when received, or five (5) days after it is sent.

- (iv) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent.

#### **ARTICLE 18: ATTORNEY FEES AND COSTS**

##### **18.1 Legal Costs Associated with Disputes with Owners.**

- (a) Owners Liable for Fees Incurred in Dispute. If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that it intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) Costs. The term “costs” as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) Exception to Owner’s Liability for Fees and Costs. If, related to (1) any dispute with an Owner, (2) any challenge by an Owner to a position of the Association on a Term and Condition, or (3) a request of an Owner for direction on the application of a Term and Condition: the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that: (1) the association could not establish an initial position on without having incurred the fees and costs, or (2) results in a substantial modification to a prior position taken by the Association; then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This exception shall not apply if a lawsuit is pending with regard to the Owner and the issues arise as part of and during the lawsuit.

#### **ARTICLE 19: RESERVES**

##### **19.1 Requirement for Reserves.** The Association shall obtain a Reserve Analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, pursuant to the following provisions:

- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Owners.
- (b) Amount. In formulating the Association’s yearly budget, the Association shall include a reserve fund line item in an amount the Committee determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association’s annual budget that identifies the amount to be placed into the reserve fund.

- (c) **Owner Veto.** Within 45 days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a 51% vote of the Undivided Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
- (b) **Surplus Monies Applied to Reserves.** The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
- (c) **Segregation of Reserves.** The Association shall segregate money held for reserves from regular operating and other accounts.
- (d) **Reserve Analysis.** The Association shall cause a Reserve Analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The Reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the association may fund the annual contribution set forth in the reserve analysis. The Reserve Analysis and updates shall project a minimum of thirty (30) years into the future.
- (e) **Qualifications for Person Preparing Reserve Analysis.** The Reserve Analysis report shall be prepared by a Person or Persons with (1) experience in current building technologies, (2) a solid working knowledge of building-cost estimating and life-cycle costing for facilities, and (3) the tools and knowledge to prepare a report. Preferably, the Person preparing the reserve study shall have the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a Reserve Analysis.
- (f) **Disclosure and Approval at Annual Meeting.** If required by law, annually, at a special meeting or at the annual meeting of Owners, the Association shall present the most recent Reserve Analysis and any updates to the Reserve Analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this section and indicate in the minutes any decision relating to funding a reserve fund.
- (g) **Summary and Copies of Reserve Analysis.** The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

## ARTICLE 20: LEASING AND NON-OWNER OCCUPANCY

- 20.1 **Declaration and Rules Govern Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-owner occupancy of a Unit shall be governed by this section and procedures adopted as allowed in this section.
- 20.2 **Definitions.** For the purpose of this section:
- (a) “Non-Owner Occupied Unit” means:
    - (1) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner or Family Member of the Owner occupies the Unit as the individual Owner’s or Family Member’s primary residence; or
    - (2) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone other than the person for whom the entity or trust was created or a Family Member of that person.
  - (b) “Family Member” means:
    - (1) the parent, sibling, or child of an Owner and that family member’s spouse and/or children, or
    - (2) in the case of a Unit owned by a trust or other entity created for estate planning purposes, a Person occupying the Unit if the trust or other estate planning entity that owns the Unit was created for the estate of (i) a current Occupant of the Unit; or (ii) the parent, child, or sibling of the current Occupant of the Unit.
- 20.3 **Non-Owner Occupancy.** Except as provided in subsection 20.4, no Unit is permitted to be a non-Owner Occupied Unit. All Occupants of an organizationally owned Unit shall be non-Owner occupants.
- 20.4 **Permissible Non-Owner Occupied Units.** The following Units may be non-Owner Occupied Units:
- (a) A Unit owned by a Person in the military for the period of the Owner’s deployment.
  - (b) A Unit occupied by a Unit Owner’s parent, child, or sibling.
  - (c) A Unit whose Owner was relocated by the Owner’s employer for a period of not less than two years.
  - (d) A unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of:
    - (1) a current resident of the Unit; or
    - (2) the parent, child, or sibling of the current resident of the Unit.
  - (e) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity’s organizing documents; and (2) has a twenty-five percent (25%) of greater share of ownership, control, and right to profits and losses of the entity.
  - (f) Units that were Non-Owner Occupied when this Declaration was recorded with the Salt Lake County Recorder may continue to be Non-Owner Occupied under this exception until: (1) an Owner, or an officer, owner, member, trustee, beneficiary, Committee Member, or Person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit or (2) the ownership of the Unit, as evidenced by the



records at the County recorder, changes in any way. Upon either of these occurrences, the Unit's qualification for this exception irrevocably terminates

20.5 **Permitted Rules.** The Committee may adopt Rules requiring:

- (a) Reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, vehicles, phone numbers, etc.
- (b) Reasonable fees related to the administration of leased and Non-Owner Occupied Units, and
- (c) Other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

20.6 **Requirements for Leasing and Non-Owner Occupancy.** The Owners of all Units must comply with the following provisions:

- (a) Any lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Non-Owner Occupant;
- (b) If required in the Rules or requested by the Committee, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Committee;
- (c) The Committee, at its discretion, may require a deposit to be paid to the Association as a condition to any Non-Owner Occupancy. All or part of such deposit may be nonrefundable.
- (d) A Non-Owner Occupant may not occupy any Unit for transient, short-term (less than twelve months), hotel, resort, vacation, or seasonal use (whether for pay or not);
- (e) No Unit Owner shall lease less than the entire Unit;
- (g) Any Owner who shall lease his Unit shall be responsible for assuring compliance by the non-Owner Occupant with the Governing Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against his/her non-Owner Occupant who is in violation of the Governing Documents within ten (10) days after receipt of written demand to do so from the Management Committee, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his non-Owner Occupant. Neither the Association, the Management Committee, nor any agent retained by the Association to manage the Project shall be liable to the Owner or non-Owner Occupant for any eviction under this section that is made in good faith. Any expenses incurred by the Association related to an eviction, including attorney fees, service fees, storage fees, constable or sheriff fees, and costs of suit, shall be charged as an Assessment to such Owner;

20.7 **Exceptions.** If a Non-Owner Occupied Unit is owned by a Family Member of the Occupant, then the following applies notwithstanding anything to the contrary herein:

- (a) Section 20.3 shall not apply and such Unit may be Non-Owner Occupied;
- (b) Subsections 20.6(a) & 20.6(c)-(e) shall not apply to that occupancy;

- (c) No written agreement regarding occupancy needs to be created between the Occupant and the Owner; and
- (d) Any written agreement regarding occupancy, to the extent it exists, may not be requested by the Management Committee until an Occupant has violated a provision of the Governing Documents and if requested, may only be requested related to remedying or taking action as a result of such a violation.

20.8 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner(s) of a Unit shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Governing Documents. The Owner and the Non-Owner Occupant, or similarly situated individual, shall be joint and severally liable for any violations of the Governing Documents. In addition to any other remedy for noncompliance with the Governing Documents, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the Non-Owner Occupant. The Association, the Management Committee, the Manager, and any agent of the Association shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association (with the Association's choice of counsel), the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph.

#### **ARTICLE 21: GENERAL PROVISIONS**

- 21.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 21.2 **Non-liability of Officials.** To the fullest extent permitted by applicable law, neither the Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 21.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 21.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or that Owner's guest or Occupant, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify each and every other Owner and Occupant and to hold such other Persons harmless from, and to defend such Persons against, any claim of any Person for personal injury or property damage occurring within the indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's insurance; or (b) the injury or damage occurred by reason of the intentional act of the Association.

- 21.5 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 21.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner, guest, or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Project and/or residing in this Project, Owners and Occupants agree that the Association and the Committee are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.
- 21.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a disability (as defined by Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the Building, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 21.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE PROJECT THAT THE ASSOCIATION AND THE COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.

The President of the 900 South Temple Condominium Association, hereby signs below and certifies that the required sixty-seven percent (67%) vote was obtained in a meeting of the members and is so documented in the records of the Association.

IN WITNESS WHEREOF, the Association has executed this Declaration.

Dated this 04 day of October, 2017.

900 SOUTH TEMPLE CONDOMINIUM ASSOCIATION

By: Mary Ann Mante  
Signature

Mary Ann Mante  
Printed

Its: President

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 04, day of October, 2017, the signer of this instrument whose identity is personally known to me, or proven on the basis of satisfactory evidence, personally appeared before me, and who by me duly sworn/affirmed, did say that he/she is the President (Title of Signer) of the 900 South Temple Condominium Association and that said document was signed on behalf of and under authority of the 900 South Temple Condominium Association.

[Signature]

Notary Public



**EXHIBIT A**  
LEGAL DESCRIPTION

Beginning at the Northwest Corner of Lot 5, Block 57 Plat 'B' Salt Lake City survey, and running thence East 132.00 feet; thence South 110.00 feet; thence East 31.18 feet to a private alley; thence South along the West line of said alley 55.00 feet; thence West 162.63 feet thence North 165.00 feet to the point of beginning.

Parcel Numbers:

16051380020000; 16051380030000; 16051380040000; 16051380050000; 16051380060000;  
16051380070000; 16051380080000; 16051380090000; 16051380100000; 16051380110000;  
16051380120000; 16051380130000; 16051380140000; 16051380150000; 16051380010000.

**EXHIBIT B**  
**UNDIVIDED INTERESTS & PARKING SPACE ALLOCATION**

Unit Designation	Size in Square Feet	Percentage of Undivided Interest in Common Areas	Assigned Limited Common Areas	
			Parking Space(s) as marked on Map	Storage Space as marked on Map
1E	2794	6.2	One space, marked 1E	1E
1W	2794	6.2	One space, marked 1W	1W
2E	3107	7.3	Two spaces, marked 2E	2E
2W	3107	7.3	Two spaces, marked 2W	2W
3E	3107	7.3	Two spaces, marked 3E	3E
3W	3107	7.3	Two spaces, marked 3W	3W
4E	3107	7.3	Two spaces, marked 4E	4E
4W	3107	7.3	Two spaces, marked 4W	4W
5E	3107	7.3	Two spaces, marked 5E	5E
5W	3107	7.3	Two spaces, marked 5W	5W
6E	3107	7.3	Two spaces, marked 6E	6E
6W	3107	7.3	Two spaces, marked 6W	6W
7E	3107	7.3	Two spaces, marked 7E	7E
7W	3107	7.3	Two spaces, marked 7W	7W

A map showing the locations & assignments of the parking spaces & storage spaces follows this chart and is incorporated herein by reference. This map supersedes & replaces any inconsistent maps included in the Enabling Declaration, any amendments thereto, or the original Plat and Record of Survey Map.

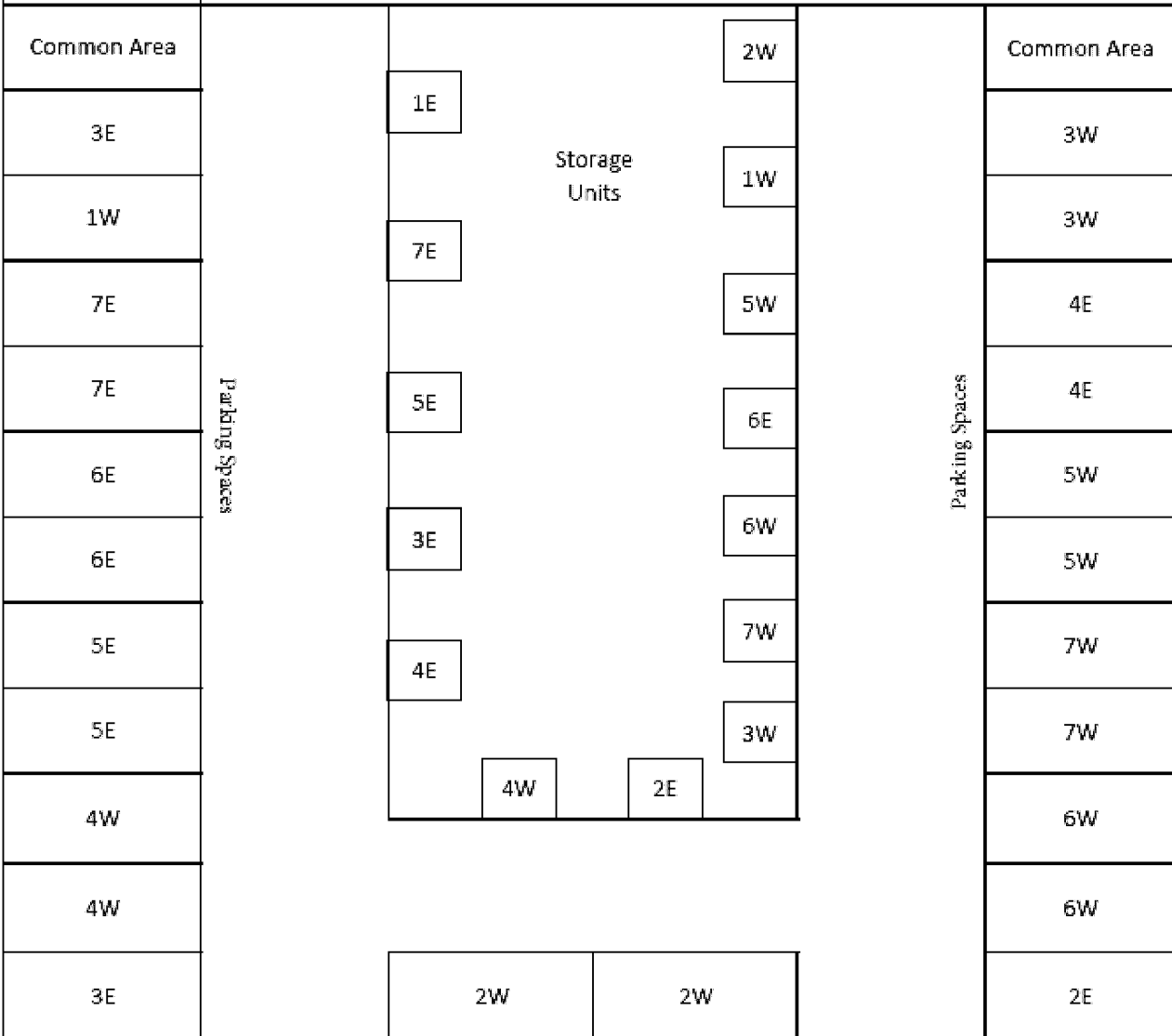
## MAP OF PARKING & STORAGE SPACE ASSIGNMENTS

Two Space Garage

2E
1E

The Unit numbers identify the Limited Common Areas appurtenant to each Unit

Parking Spaces for Adjoining Property Owner
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**EXHIBIT C**

**900 SOUTH TEMPLE  
BYLAWS**



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**BYLAWS  
OF  
900 SOUTH TEMPLE  
CONDOMINIUM ASSOCIATION**

These bylaws are hereby adapted and established as the Bylaws of the 900 South Temple Condominium Association (the "Association"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I: DEFINITIONS**

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR 900 SOUTH TEMPLE ("the Declaration"), as amended, shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

**ARTICLE II: MEETINGS OF THE OWNERS**

- 2.1 **Annual Meetings.**
- (a) **Requirement.** An annual meeting of the Owners shall be held no less than once each calendar year.
  - (b) **Date and Time.** Unless changed by the Committee, the annual meeting of Owners shall be held the last week in June of each year. The Committee may from time to time change the date and time for the annual meeting of the Owners.
  - (c) **Purpose.** The Annual Meeting shall be held for the following purposes:
    - (1) Electing members of the Committee;
    - (2) So long as required by law, distributing the most recent reserve study, permitting discussion on reserve funding options, and voting on whether and how to fund the reserve account;
    - (3) Approval of the budget by a vote of the Owners;
    - (4) Distributing any annual insurance report if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;
    - (5) If no earthquake insurance has been obtained, voting to confirm this decision; and
    - (6) Transacting such other business as may have been properly included in the notice of the meeting. No business may be conducted at an annual meeting other than as provided for in these Bylaws or as indicated in the Notice of the meeting.
  - (d) **Approval of Minutes.** The minutes of the annual meeting shall be approved by the Management Committee within 90 days of the annual meeting.

- (e) Election of Committee Members. If the election of the Committee Members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

## 2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by the Committee, the President, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Undivided Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call a special meeting, provide notice of the special meeting, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

- 2.3 **Place of Meetings.** The Project shall be the place for any annual or special meeting unless special circumstances make it unavailable, in which case the meeting shall be held within five miles of the location of the Project.

- 2.4 **Meetings by Telecommunications.** Any or all of the Owners may participate in an annual or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other during the meeting. A member participating in a meeting as allowed in this section is considered to be present in person at the meeting. The Committee may establish procedures and rules related to this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.

- 2.5 **Notice of Meetings.** The Committee shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners, whether annual or special, to be delivered to the Owners, not more than sixty (60) nor less than ten (10) days prior to the meeting.

- 2.6 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Committee may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

- 2.7 **Quorum.** At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than thirty percent (30%) of the Undivided Interest of the Association, or Owners representing five (5) or more Units shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time the owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all owners at least seven (7) days before the postponed meeting which shall include the

statement: “The meeting will occur without any requirement for a minimum number of owners present.”

- 2.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner’s attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner’s attorney when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act. Such instrument shall be delivered to the Secretary of the Association or to such other officer or person who has been authorized by the Association to accept proxies at the meeting. Such instrument shall be delivered either prior to or at the meeting, but no later than any point after the start of the meeting at which it is announced by the person in charge of the meeting as the final time to deliver proxies.
- 2.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit(s) of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Undivided Interests entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.
- 2.10 **Ballots and Written Consent.** The Association may, consistent with the requirements of the Revised Nonprofit Corporation Act, utilize (i) written consents to take action without a meeting or (ii) mailed ballots. Any Owner may deliver written consent by electronic transmission. A written consent delivered by electronic transmission is considered to be written, signed and dated for purposes of action without a meeting if the written consent is delivered with information from which the Association can determine that the written consent was sent by the member and the date on which the written consent was transmitted.
- 2.11 **Minutes of Meetings.** Minutes shall be taken of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present at the meeting in person and by proxy, (2) the determination of whether a quorum was achieved, (3) the date of the meeting, (4) the identification of any issue that is voted on or decided in the meeting, (5) the number of votes cast for and against any issue decided upon, (6) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be sent to all Owners within twenty-one (21) days of the annual meeting.
- 2.12 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other means of member voting and meetings to the extent not prohibited by the Act and the Revised Nonprofit Corporation Act.

### **ARTICLE III: MANAGEMENT COMMITTEE**

#### **3.1 Number, Tenure, Qualifications, and Election.**

- (a) **Number of Members.** The Committee shall be composed of three (3) persons.
- (b) **Member Requirements.** To be on the Committee, a Person must be an Owner or spouse of an Owner and over the age of eighteen years old. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Committee. Only one Committee Member may serve per Unit. Any candidate or member of the Committee shall, upon a request by any Owner, produce sufficient documentation establishing that person's right to serve on the Committee.
- (c) **Term.** The term of each Committee Member shall be two (2) years. The terms of the Committee Members shall overlap so that two (2) Committee Members shall be elected one year, one (1) the next year, then back to two (2) the following year, and so on.
- (d) **Nominations.** An Owner may submit his or her own name or the name of any other Owner to serve on the Committee. Nominations shall be submitted to the Association Secretary any time prior to the annual meeting or any subsequent meeting at which the election is held. If the Association gives advance notice of any person seeking election to the Committee in a notice, ballot, or proxy; it shall include the names of every person nominated prior to the preparation and mailing of the notice. If the name of a person is submitted who is not in attendance at the meeting, that name shall not be added to the final ballot for election of Committee Members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve. Nominations may be submitted from the floor of any meeting in which Committee elections are held.
- (e) **Disqualification.** If any Committee Member is alleged to not meet the qualification requirements in the Declaration and any Committee Member is notified of or discovers this alleged lack of qualification, the Committee shall promptly investigate and verify whether the Committee Member is qualified or not, and during this period shall not make any further decisions. If the Committee Member is not qualified, the Committee Member's membership on the Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Committee established that the Committee Member was not qualified. If a Committee Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Committee, the decisions and actions of the Committee and that Committee Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this section or until the Committee Member is disqualified if no such notice is provided.
- (f) **Removal for Failure to Participate.** If any Committee Member shall fail to appear (in person or by some other means allowing for participation) at four (4) successive regular Committee meetings or fifty percent (50%) or more of the regular meetings within the preceding 12 months, after having received proper notice of the meetings and after the Committee has attempted in good faith to schedule meetings consistent with all of the Committee Member's schedules, the other Committee Members may by unanimous vote, except for the Committee Member to be removed, remove that Member and appoint a new Member.

### 3.2 Meetings.

- (a) Regular Meetings. The Committee shall hold regular meetings at least quarterly, and more often at the discretion of the Committee.
- (b) Who Is Entitled to Attend. All regular meetings shall be open to all Owners. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Committee is in executive session.
- (c) Special Meetings. Special meetings of the Committee may be called by or at the request of any two (2) Committee Members or the President of the Association. Notice of any special meeting shall be given at least 48 hours prior thereto to each Committee Member. No notice of special meetings is required to be provided to Owners, although any Owner may attend any special meeting if the Owner appears at the physical location of the meeting in person.
- (d) Quorum and Manner of Acting. Two (2) Committee Members shall constitute a quorum for the transaction of business at any meeting of the Committee. The act of a majority of the Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Committee Members shall be the act of the Committee. The Committee Members shall act only as a Committee, and individual members shall have no powers as such.
- (e) Notice to Owners. Any Owner may request notice of Committee meetings by requesting such notice from either a Committee Member or the Manager and providing a valid email address at which the Member will receive notice. Any Owner who has requested notice of Committee meetings shall be given notice along with the Committee members.
- (f) Owner Comments at Committee Meetings. At each Special or Regular Meeting of the Committee, the Committee shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Committee may select a specific time period during the meeting and limit Owner comments to such a time period. The Committee may set a reasonable length of time that each Owner may speak.
- (g) Attendance by Telephone or other Electronic Communication. The Committee may allow attendance and participation at any meeting of the Committee by telephone or any other means that allows for the Committee Members to communicate orally in real time including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Committee meets by electronic communication, the Committee must provide information necessary to allow any Owner who has requested notice of meetings the ability to participate by the available means of electronic communication.
- (h) Place and Notice of Meetings.
  - (1) The Committee may designate any place in Salt Lake County as the place of meeting for any regular meeting called by the Committee but shall in good faith attempt to hold meetings at the Project or in as close a proximity to the Project as reasonably possible.
  - (2) All Committee Members and Owners shall be given at least seven (7) days' notice of regular meetings. Owners requesting notice of regular meetings by email shall be provided email notice at the email address the owner provides not less than 48 hours before the meeting. No notice is required to Owners of a Committee meeting if: (a) the meeting is to address an emergency; and (b) each Committee Member receives notice of the meeting less than 48 hours before the meeting.

- (3) The notice to Owners in part (2) above shall include: (a) the time and date of the meeting, (b) the location of the meeting, and (c) if a Committee Member may participate by means of electronic communication, the information necessary to allow a unit owner to participate by the same means of electronic communication.
- (i) Minutes of Committee Meetings. Minutes shall be taken of all regular and special Committee meetings. The minutes shall include, at a minimum, (1) the identification of the Persons present at the meeting, (2) the determination of whether a quorum was achieved, (3) the date of the meeting, (4) the identification of any issue that is voted on or decided in the meeting, (5) the number of votes cast for and against any issue decided upon, (6) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting.
- (j) Executive Session.
  - (1) The Management Committee or any other Committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
  - (2) Executive sessions may be held to discuss and make decisions related to the following matters:
    - (i) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;
    - (ii) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
    - (iii) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment;
    - (iv) To discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
    - (v) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
  - (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Committee.
  - (4) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session
  - (5) The minutes of the meeting at which an executive session is held shall include:
    - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," or "To discuss the pending litigation with XYZ."



- (ii) Any decisions made during executive session.
- (6) Care shall be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of members of the Committee.

**3.3 Informal Action and Action by Committee Members Without a Meeting.**

- (a) Any action required or permitted by law or the governing documents to be taken at a Management Committee's meeting may be taken without a meeting if notice is transmitted in writing by letter or electronic transmission to each member of the Committee and either:
  - (1) each Committee Member consents in writing (i.e. via letter or electronic transmission); or
  - (2) each member of the Committee by the time stated in the notice takes one of the following actions:
    - (i) signs a writing for such action; or signs a writing against such action, abstains in writing from voting, or fails to respond or vote; or
    - (ii) fails to demand in writing that the action be taken at a meeting
- (b) Notice under 3.3(a) shall state, at a minimum:
  - (1) the action to be taken,
  - (2) the time by which the Committee Member must respond to the notice, and
  - (3) that failure to respond by the time stated in the notice will have the same effect as abstaining, and failing to demand in writing that the action not be taken without a meeting shall constitute a waiver of that right.
- (c) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (1) describing the action taken;
  - (2) signed by each Committee Member; and
  - (3) not revoked pursuant to subsection 3.3(e).
- (d) Action taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Committee Members then in office were present and voted.
- (e) A Committee Member may revoke consent to any action given pursuant to this section by communicating in writing that the member has changed his or her vote, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
- (f) The Committee may utilize online, telephonic, electronic, email, remote, and any other means of Committee Member voting to the extent not prohibited by the Act and the Revised Nonprofit Corporation Act.
- (g) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Committee.

- (h) Action taken pursuant to this section has the same effect as action taken at a meeting of the Committee and may be described as an action taken at a meeting of the Committee in any document.
- (i) For purposes of this section:
  - (1) “Signed” or “signature” is any indication on the document, whether paper or electronic, that the document is from and consented to by the person who is purported to have sent it. For example, a typed name at the bottom of an email satisfies the signature requirement.
  - (2) “Writing” shall refer to an email, letter, facsimile, or any other physical or other electronic transmission.
  - (3) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
  - (4) Any response to any electronic communication shall be:
    - (i) to the address of the sender using the same address and means of communication as was used to send the request for consent of an action, such as email, facsimile, or hand delivery; or
    - (ii) to any address in regular use, electronic, telephonic, or physical, by the Person sending the request.
- (j) A communication shall satisfy the requirement to “describe the action taken” if:
  - (1) it is in the form of an email and it includes with the email the content of prior emails in the email chain that describe or include the proposed action;
  - (2) it is in the form of a facsimile and it includes either as a separate page or on the page in which a response is given, the request for action or a description of the proposed action; or
  - (3) the writing from the Committee Member sufficiently describes or restates the proposed action.

3.4 **Compensation.** No Committee Member shall receive compensation or discounts in assessments for any services that he/she may render to the Association as a Committee Member; provided, however, that a Committee Member may be reimbursed for expenses incurred in the performance of his/her duties as a Committee Member, but only to the extent that such expenses are pre-approved by a unanimous vote of the Committee and any monetary distributions to Committee Members or discounts in assessments are disclosed to all Owners in a monthly report.

3.5 **Resignation and Removal.** A Committee Member may resign at any time by delivering a written resignation to any other member of the Committee or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Committee Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Undivided Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose. If the Owners vote to remove all of the members of the Committee, they shall immediately thereafter and at the same meeting elect new members of the Committee using the procedures normally applicable for election of Committee members at an annual meeting. If the Owners vote to remove less than all of the members of the Committee, the Owners may vote to

elect replacement members at the special meeting. If the Owners vote to remove less than all of the members of the Committee and either due to inadvertence or choice do not elect replacements at the special meeting, the remaining members of the Committee, by majority vote, shall appoint replacement members for the remainder of the term of the Committee Members who were removed.

- 3.6 **Vacancies.** If vacancies shall occur in the Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Committee Member, the Committee Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Committee Members then in office, even though less than a quorum may be available.

#### **ARTICLE IV: OFFICERS**

- 4.1 **Officers.** The officers of the Association shall be President, Vice President, and Secretary/Treasurer.
- 4.2 **Election, Tenure and Qualifications.** The officers of the Association shall be chosen by the Committee annually at the first meeting of the Committee following the annual meeting and thereafter at any time. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. All officers must be members of the Committee during the entire term of their respective offices.
- 4.3 **Subordinate Officers.** The Committee 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 Committee may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 **Resignation and Removal.** Any officer may resign any officer position at any time by delivering a written resignation to any Committee Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. At any time, the Committee may appoint new or different officers, with or without cause.
- 4.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur by any cause, such vacancies may be filled by the Committee at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Committee shall ensure that the duties and responsibilities of the office are performed.
- 4.6 **The President.** The President shall preside at meetings of the Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the person presiding over a meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive persons who may include but not be limited to any Person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order" and (4) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Committee. The President shall have the general authority to implement decisions of the Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without

Committee approval as is necessary and prudent to preserve and protect the Project. The President shall be responsible for the duties of any other office while that office is vacant.

- 4.7 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's resignation, absence, inability, or refusal to act. The Vice President shall perform such other duties as required by the Committee.
- 4.8 **The Secretary/Treasurer.** The Secretary/Treasurer shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Committee may require such person to keep. The Secretary/Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Committee. The Secretary/Treasurer shall have the authority and obligation to generally implement the requirements of the Governing Documents as they relate to the funds of the Association, including the requirement to obtain a review by an independent accountant every three years and the preparation and filing of appropriate tax returns. The Secretary/Treasurer shall also act in the place and stead of the President in the event of the President and Vice President's resignation, absence, inability, or refusal to act. The Secretary/Treasurer shall perform such other duties as required by the Committee.
- 4.9 **Compensation.** No officer shall receive compensation or discounts in assessments for any services rendered to the Association as an officer; provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer, but only to the extent that such expenses are pre-approved by a unanimous vote of the Committee, and any monetary distributions to Committee Members or discounts in assessments are disclosed to all Owners in a monthly report.

#### **ARTICLE V: SUB-COMMITTEES**

- 5.1 **Designation of Committees.** The Management Committee may from time to time designate such committees (each a "Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Committee designated hereunder shall include at least one (1) Management Committee Member. A Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in the minutes. The Management Committee may terminate any Committee at any time.
- 5.2 **Proceedings of Committees.** Each Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Committee may from time to time determine. If required by the Committee, each such Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Committee.
- 5.3 **Quorum and Manner of Acting.** The Committee may establish any procedural or quorum requirements for voting by the committee. The members of any Committee designated by the Committee hereunder shall act only as a Committee, and the individual members thereof shall have no powers, as such. A Committee may exercise the authority granted by the Management Committee.

- 5.4 **Resignation and Removal.** Any Committee member may resign at any time by delivering a written resignation to any member of the Committee or any presiding officer of the Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Committee may at any time, with or without cause, remove any member of any Committee.
- 5.5 **Vacancies.** If any vacancy shall occur in any Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Committee, constitute the then total authorized membership of the Committee and, provided that two (2) or more members are remaining, may continue to act. A vacancy may be filled at any meeting of the Management Committee.

#### **ARTICLE VI: INDEMNIFICATION**

- 6.1 **Indemnification.** No Committee Member, officer, or member of a Committee shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Committee Member, officer, or Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Committee Member, officer of the Association, or a member of a duly formed Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Committee Member, officer of the Association, or member of a Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken as such Committee Member, officer, or Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.
- 6.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Committee Members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Committee Member, officer, Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association by the Committee, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## ARTICLE VII: AMENDMENTS

- 7.1 **Amendments.** Except as otherwise provided herein or by the Act, these Bylaws may be amended by the affirmative vote of Owners holding Undivided Interests totaling not less than sixty-seven percent (67%) of the total Undivided Interest. The approval required to amend the Bylaws may be obtained by ballot, vote, or any other means allowed by law. The vote of approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the Recorder of Salt Lake County, Utah.

## ARTICLE VIII: WAIVER OF IRREGULARITIES

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) If the objecting Person was in attendance at the meeting, they are waived if no objection to the particular procedural issue was made at the meeting,
  - (b) If the objecting Person was not in attendance at the meeting but had proper notice of the meeting, they are waived if no objection to the particular procedural issue was made within sixty (60) days of the date the meeting was held,
  - (c) If the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue was made within ninety (90) days of the date of the meeting,
  - (d) If the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting,
  - (e) For any action, vote, or decision that occurred without a meeting, within one hundred twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Document or other Law that has been violated and a brief statement of the facts supporting the claimed violation.
- 8.3 **Irregularities That Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration.
  - (b) Any failure to obtain the proper number of votes, consents, or approvals required to approve or take a particular action.
  - (c) Any failure to obtain a proper quorum.

The President of the 900 South Temple Condominium Association, hereby signs below and certifies that the required sixty-seven percent (67%) vote was obtained in a meeting of the members and is so documented in the records of the Association.

IN WITNESS WHEREOF, the Association has executed these Bylaws.

Dated this 04 day of October, 2017.

900 SOUTH TEMPLE CONDOMINIUM ASSOCIATION

By: Mary Ann Montes  
Signature

Mary Ann Mantes  
Printed

Its: President

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this 04, day of October, 2017, the signer of this instrument whose identity is personally known to me, or proven on the basis of satisfactory evidence, personally appeared before me, and who by me duly sworn/affirmed, did say that he/she is the President (Title of Signer) of the 900 South Temple Condominium Association and that said document was signed on behalf of and under authority of the 900 South Temple Condominium Association.

[Signature]  
Notary Public



**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

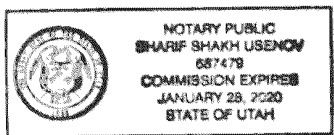
By signing this document, I hereby certify:

- 1) I am the Owner of Unit 6W in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: [Handwritten Signature] Signature: \_\_\_\_\_  
 Print Name: R/Larry Ashton Print Name: \_\_\_\_\_

STATE OF UTAH )  
 ) ss.  
 COUNTY OF SALT LAKE)

On the 16<sup>TH</sup> day of June, 2017, before me SHARIF UseNOV, a notary public, personally appeared RALPH L ASHTON (LARRY ASHTON), and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



[Handwritten Signature]  
 Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**



**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

- 1) I am the Owner of Unit 7E in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: [Handwritten Signature]

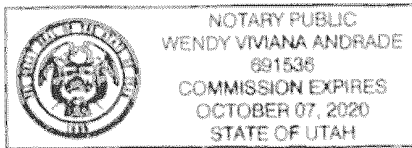
Print Name: JOHN H. BARNARD

Signature: [Handwritten Signature]

Print Name: LYN ANN BARNARD

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE

On the 16<sup>th</sup> day of JUNE, 2017, before me WENDY VIVIANA ANDRADE, a notary public, personally appeared JOHN H. BARNARD & LYN ANN BARNARD, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



[Handwritten Signature]  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**



**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

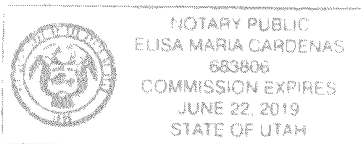
- 1) I am the Owner of **Unit** 2W in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: Michele S. Franks  
Print Name: Michele Franks

Signature: Michele S. Franks  
Print Name: Michele Franks

STATE OF UTAH            )  
  ) ss.  
COUNTY OF Salt Lake )

On the 19 day of June, 2017, before me Elisa Cardenas, a notary public, personally appeared Michele S. Franks, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



Elisa Cardenas  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

- 1) I am the Owner of Unit 2E in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: Christine Gailey

Signature: \_\_\_\_\_

Print Name: christine Gailey

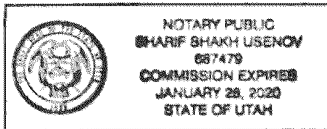
Print Name: \_\_\_\_\_

STATE OF UTAH )

) ss.

COUNTY OF SALT LAKE

On the 17<sup>TH</sup> day of JUNE, 2017, before me SHARIF SHAKH USENOV, a notary public, personally appeared CHRISTINE GAILEY, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



[Signature]  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

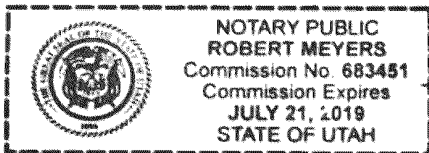
- 1) I am the Owner of Unit 3W in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: Leslie Mark Lang  
Print Name: Leslie Mark Lang

Signature: Mary Susan Berkebile  
Print Name: Mary Susan Berkebile

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE

On the 14 day of JUNE, 2017, before me ROBERT MEYERS, a notary public, personally appeared Leslie Mark Lang + Mary Susan Berkebile and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



Robert Meyers  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

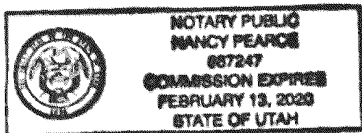
By signing this document, I hereby certify:

- 1) I am the Owner of Unit 4 E in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: Mary Ann Mantes Signature: Ernest George Mantes, Jr.  
Print Name: Mary Ann Mantes Print Name: ERNEST GEORGE MANTES, JR.

STATE OF UTAH )  
) ss.  
COUNTY OF Salt Lake

On the 14 day of June, 2017, before me Nancy Pearce, a notary public, personally appeared Mary Ann and Ernest Mantes, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



Nancy Pearce  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

- 1) I am the Owner of Unit 6 EAST in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: William Irvin Owens II

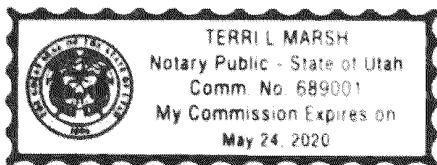
Signature: \_\_\_\_\_

Print Name: WILLIAM IRVIN OWENS II

Print Name: \_\_\_\_\_

STATE OF UTAH            )  
  ) ss.  
COUNTY OF Salt Lake

On the 16<sup>th</sup> day of June, 2017, before me Terri L. Marsh, a notary public, personally appeared William Irvin Owens II, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.



Terri L. Marsh  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

By signing this document, I hereby certify:

- 1) I am the Owner of Unit 1E in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

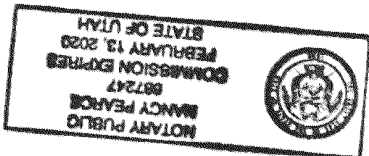
Signature: Mary L Rantz  
Print Name: Mary L Rantz

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF Salt Lake )

On the 28<sup>th</sup> day of July, 2017, before me Nancy Pearce, a notary public, personally appeared Mary L Rantz, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.

Nancy Pearce  
Notary Public



**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**



**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

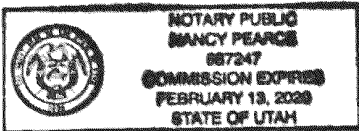
By signing this document, I hereby certify:

- 1) I am the Owner of Unit 3E in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: Janet M. Schaap Signature: \_\_\_\_\_  
 Print Name: Janet M. Schaap Print Name: \_\_\_\_\_

STATE OF UTAH )  
 ) ss.  
 COUNTY OF Salt Lake

On the 16<sup>th</sup> day of June, 2017, before me Nancy Pearce  
Janet Schaap ~~the~~, a notary  
 public, personally appeared Janet Schaap, and proved on the  
 basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and  
 acknowledged that he/she executed the same.



Nancy Pearce  
 Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**

---

I, Janet M. Schaap,  
as Trustee of the  
Janet M. Schaap Trust...

**EXHIBIT D**  
**900 South Temple Condominium Association**  
**900 South Temple, a Utah Condominium Project**  
**OWNER CONSENT AND ACKNOWLEDGEMENT**

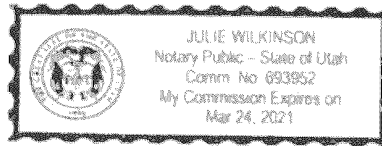
By signing this document, I hereby certify:

- 1) I am the Owner of Unit 7W in the 900 South Temple Condominium project; and
- 2) I have read and approve of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for 900 South Temple and consent to its recording against my Unit.

Signature: *Roy Vincent*  
Print Name: ROY E VINCENT

Signature: *Lisa Hubbert*  
Print Name: LISA HUBBERT

STATE OF UTAH            )  
  ) ss.  
COUNTY OF UT        )



On the 20<sup>th</sup> day of June, 2017, before me Julie Wilkinson, a notary public, personally appeared Roy Vincent, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) are subscribed to this instrument, and acknowledged that he/she executed the same.

*Julie Wilkinson*  
Notary Public

**Please return this form to Mary Ann Mantes, 908 East South Temple, Unit 4E, Salt Lake City, Utah 84102.**