

WHEN RECORDED, RETURN TO:

Richards Law, PC  
4141 So. Highland Drive, Ste. 225  
Salt Lake City, UT 84124  
(801) 274-6800

13584599  
3/3/2021 8:41:00 AM \$78.00  
Book - 11129 Pg - 823-875  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
RICHARDS LAW PC  
BY: eCASH, DEPUTY - EF 53 P.

AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS AND  
RESERVATION OF EASEMENTS OF THE  
BIRCH ESTATES CONDOMINIUMS  
(Including Bylaws)  
A Utah Condominium Project

**TABLE OF CONTENTS**

**Recitals ..... 1**

**Article I - Definitions ..... 2**

**Article II - Property Description ..... 5**

**Article III - Restrictions on Use ..... 6**

    3.1 Animals ..... 6

    3.2 Leasing of Units ..... 6

    3.3 Fences ..... 9

    3.4 Residential Use ..... 9

    3.5 Vehicles; Parking; Towing ..... 9

    3.6 Window Coverings ..... 9

    3.7 Modifications to Unit or Common Area ..... 10

    3.8 Signs, Attachments ..... 10

    3.9 Offensive Activities, Prohibited Behavior and Use ..... 10

    3.10 Antennas/Dishes ..... 11

    3.11 Temporary Structures or Equipment ..... 11

    3.12 Rubbish and Trash ..... 12

    3.13 Association Rules and Regulations ..... 12

**Article IV - Maintenance Obligations ..... 12**

**Article V - Assessments ..... 15**

**Article VI - Property Rights, Easements, Construction ..... 21**

**Article VII – The Association ..... 22**

**Article VIII - Compliance, Enforcement, Appeal ..... 23**

**Article IX - Insurance ..... 25**

**Article X - Amendment ..... 28**

**Article XI – Mortgagee Rights ..... 29**

**Article XII - Miscellaneous Provisions ..... 29**

**Exhibit A – Legal Description ..... 33**

**Exhibit B - Unit Numbers, Square Footage, Undivided Interests ..... 34**

**Exhibit C - Bylaws ..... 35**

THIS AMENDED AND RESTATED DECLARATION of Covenants, Conditions, Restrictions and Reservation of Easements of the Birch Estates Condominiums including Bylaws is made on the date evidenced below by the Birch Estates Condominium Association, a Utah nonprofit corporation (the “Association”).

## RECITALS

A. This Amended and Restated Declaration of Condominium and Reservation of Easements including Bylaws (“Declaration”) supersedes and replaces the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements of Birch Estates recorded October 29, 2007, as Entry No. 10261193, records of the Salt Lake County Recorder, in its entirety and including all subsequent amendments or supplements thereto (the “Original Declaration”) and including the Bylaws included within the Original Declaration.

B. Pursuant to Article XII, Section 12.3 of the Original Declaration and Utah Condominium Ownership Act 57-8-39, unit owners representing the required affirmative votes have approved the adoption of this document.

C. This Amended and Restated Declaration including Bylaws shall be binding upon all real property described in **Exhibit A** attached hereto and it is agreed by acceptance of a conveyance, contract for sale, lease, rental agreement, or any form of security agreement or instrument, or any privileges of use or enjoyment, respecting the property or any unit in the property regime created by this Declaration, that this Declaration, together with the Plat and plans referred to herein, states covenants, conditions, restrictions, and reservations effecting a common plan for the condominium development mutually beneficial in all of the described units, and that the covenants, conditions, restrictions, reservations and plan are binding upon the entire property and upon each such unit as a parcel of realty, and upon its owners or possessors, and their heirs, personal representatives, successors and assigns, through all successive transfers of all or part of the property or any security interests therein without requirement of further specific reference or inclusion in deeds, contracts or security instruments, and regardless of any subsequent forfeiture, foreclosures, or sales of units under security instruments.

D. The Birch Estates Condominiums, a Utah condominium project, is and continues to be submitted to the Utah Condominium Ownership Act, Utah Code Ann. §57-8-1 *et seq.*, as amended or substituted from time to time (the “Act”), with the rights, privileges and obligations as set forth herein and in the Act.

## ARTICLE I - DEFINITIONS

When capitalized in this Declaration, words have the meanings set forth in this article.

**1.1** “*Act*” means the Utah Condominium Ownership Act (Section 57-8-1 et seq., Utah Code Annotated, 1953), as the same may be amended or substituted from time to time.

**1.2** “*Assessment*” means any charge imposed or levied by the Association on or against an Owner or Unit pursuant to a Governing Document or applicable law.

**1.3** “*Association*” means and refers to the Birch Estates Condominiums Association a Utah nonprofit corporation, or any successor incorporated or unincorporated association of the Unit Owners acting under the authority of this Declaration and the Bylaws.

**1.4** “*Bylaws*” means the Bylaws of the Association, as they may be amended from time to time and are attached hereto in their current form as **Exhibit “C.”**

**1.5** “*Common Area*” means that portion of the property which is not included within the Units, including (a) all open spaces, sidewalks, roadways and walkways within the Project, (b) all landscaped areas, (c) parking areas and (d) any related amenities and all improvements, other than utility lines, now or hereafter constructed or located thereon. The Common Areas are further shown on the Plat.

**1.6** “*Common Expenses*” means sums which are required by the Association to effect the purposes of the Association and to perform or exercise its functions, duties, or rights under the Act and the Governing Documents.

**1.7** “*Common Wall*” shall mean any wall, floor, or ceiling, which is common to and separates any two or more attached Condominiums, but which does not separate the interior portions of any Condominium with any Condominium Building Exteriors.

**1.8** “*Community*” means the Birch Estates Condominiums, including all Units and Common Area, and all other real property and interests described in the Plat and herein.

**1.9** “*Condominium*” shall mean and refer to a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements associated with that Condominium which are used in conjunction with such residence.

**1.10** “*Condominium Building*” shall mean and refer to a building or structure containing two or more Units, constituting a portion of the Project.

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

**1.12** “*Eligible Holder*” means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices provided to Eligible Holders under this Declaration. The written request shall state the name and address of the Eligible Holder and the Unit number to which the Eligible Holder’s mortgage interest applies.

**1.13 “Good Standing”** means: (1) no Assessment (including any fine) imposed against the Owner or Unit is more than 60 days’ past due, and (2) more than 60 days has elapsed since a fine has been assessed against the Owner or Unit.

**1.14 “Governing Documents”** means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, and Rules and Regulations.

**1.15 “Improvements”** means every structure or improvement of any kind, including but not limited to landscaping, Units, porches, fences, parking stalls, carports, driveways, or other products of construction efforts on or in respect to the Property (but does not include any exterior antenna or satellite dish authorized in accordance with the Declaration).

**1.16 “Includes” or “including”** means (regardless of capitalization) that the items listed are not an exclusive list, unless the word “only” or similar language is used to expressly indicate that the list is an exclusive list.

**1.17 “Limited Common Area”** means all of the real property identified as limited common area on the Plat and shall include parking stalls and carports assigned to specific Units and shall also include the following, if designated to serve a single Unit but located outside the Unit’s boundaries (and not designated as part of a Unit pursuant to the definition of Unit below): patios, entrance ways, stairs, walkways, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, fences, areas enclosed by an authorized fence, storage areas, and any other fixture. Limited Common Areas are Common Areas limited to the use of a certain Unit to the exclusion of another Unit or other Units, and shall not be separated from the Unit to which they are assigned upon sale or transfer of the Unit.

**1.18 “Management Committee”** means the governing body of the Association elected by the Owners to manage and operate the Community and to carry out this Declaration, the Bylaws and Rules and Regulations.

**1.19 “Manager” or “Managing Agent”** means the person or entity that may be retained from time to time by the Association to manage the Property or assist in the administration of the Association.

**1.20 “Member”** shall mean and refer to every person who holds membership in the Association.

**1.21 “Mortgage”** means any mortgage or deed of trust encumbering any Unit and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office.

**1.22 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.23 “Notice”** means notice as defined, and shall be carried out as set forth, in the Bylaws.

**1.24 “Owner”** means the person, persons or other entity owning any Unit, as such ownership is reflected in the records of the County Recorder but does not include a tenant or holder of a

leasehold interest or person holding only a security interest in a Unit. Owners does not include any person or persons purchasing a Unit under contract, until such contact is fully performed and legal title conveyed of record.

**1.25 “Percentage Interest”** means the percentage of undivided ownership interest of each Unit Owner in the Common Areas as set forth in **Exhibit B** attached hereto.

**1.26 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the record of survey map(s) recorded at the County Recorder’s Office and any plats recorded among the Recorder's Office in substitution therefor or amendment thereof.

**1.27 “Property” or “Project”** means the Birch Estates Condominiums development, including all Units, Common Area and Improvements thereon, and all other real property and interests described in the Plat and herein.

**1.28 “Rules and Regulations”** means and refers to those rules and regulations adopted by the Association from time to time.

**1.29 “Unit” or “Living Unit”** means a separate physical part of the Property intended for independent use and ownership, consisting of rooms and spaces located within a building structure. Subject to this section, each Unit shall consist of the space enclosed and bounded by the horizontal and vertical planes shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries shall be part of the Unit; provided, however, that a Unit shall not include pipes, wires, conduits, or other utility lines running through it which are utilized for or which serve more than one Unit and shall not include any load bearing walls or floors comprising a part of the Building in which the Unit is contained. Mechanical equipment and appurtenances located within any one Unit or located outside of said Unit but designated and designed to serve only that specific Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning or air cooling apparatus, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors; all surfaces of floors and ceilings; all wallboard or drywall; paneling; tiles; wallpaper; paint; flooring; carpeting and tile. The vertical boundaries of each Unit shall be the interiors of the unfinished walls located on the perimeter lines of the respective Units as shown on the Plat. A Unit shall also include all windows and doors (and parts thereof) forming part of the vertical boundaries of a Unit, including thresholds and door jams; garage doors (and all parts thereof) all pipes, shut-off valves, breaker boxes, wires, conduits, public utility lines or installations serving only a specific Unit; and any structural features or any other property of any kind, including fixtures and appliances within any Unit which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the structure or building within which the Unit is situated.

**1.30 “Voting Rights”** shall mean the number of voting rights attributable to a Member of the Association, which voting rights of such member shall be equal to the Percentage Ownership Interest allocated to the Unit Owned by such Member. The Voting Rights allocated to all members of the Association shall cumulatively total one hundred (100) Voting Rights.

## ARTICLE II - PROPERTY DESCRIPTION

**2.1. Property Subject the Declaration, Bylaws and the Act.** It is hereby confirmed and acknowledged that the Project is submitted and subject to the Act and shall be transferred, held, sold, conveyed, used, occupied and improved subject to, and the rights and obligations of all parties interested in the Project shall be governed and controlled by, this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Association, and the Act and any amendments thereto as codified from time to time, and, to the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control. This Declaration and covenants, conditions and restrictions herein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of the Association each Owner thereof.

**2.2. Description and Legal Status of Units.** The Map shows the Units and building designations, their locations, dimensions from which its areas may be determined together with the Definitions above, and the Common Areas. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed. There are five Condominium Buildings containing twenty-nine (29) total residential Units.

**2.3. Ownership Interest in Common Areas, Percentage Interests.** The Percentage Interests of the Unit Owners in the Common Areas for all purposes including voting is as assigned in **Exhibit B**. The common profits of the Property shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the Unit Owners according to their respective Percentage Interests. Neither the Percentage Interest nor the right of exclusive use of the Limited Common Areas shall be separated from the Unit to which it appertains, and even though not specifically mentioned in the instrument of transfer, the Percentage Interest and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

**2.4. Form of Unit Conveyance - Legal Description of Unit.** Each conveyance or installment contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Plat Map with appropriate reference to said Plat and to this Declaration, as each shall appear on the records of the County Recorder. Such description will be construed to describe the Unit, together with the appurtenant undivided interest in the Common Areas, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in the Governing Documents; and, even though not specifically mentioned in the instrument of transfer the ownership interest shall automatically accompany the transfer of interest in the Unit to which it related.

**2.6 No Right of First Refusal.** The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction.

## ARTICLE III - RESTRICTIONS ON USE

### 3.1 *Animals.*

No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit, in the Limited Common Areas appurtenant to his Unit, in the Common Areas, or in any other part of the Project, except that the Committee may provide in its rules and regulations that cats and other quiet household pets may be kept in Units subject to the rules and regulations adopted by the Committee. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious by noise or otherwise to Unit Owners. In general, dogs shall not be allowed unless approved in writing by the Committee, who may place conditions on such, including the right to cause the dog to be removed if it becomes an annoyance to other Unit Owners. All animals must be kept in a fenced yard of the Unit or on a leash in the Common Areas.

### 3.2 *Leasing of Units.*

Consistent with the provisions of the Declaration and the Utah Condominium Ownership Act, the leasing and renting of Units by Owners shall be in accordance with the terms herein.

The terms “leasing,” “lease,” “leasing,” “renting,” “rent,” or “rental” used in reference to any Unit within the Association shall mean and refer to the granting of a right to use or occupy a Unit to any person or entity for a specific term or indefinite term, in exchange for the payment of rent (money, property or other goods or services of value); but shall not mean nor include joint ownership of a Unit by means of joint tenancy, tenancy-in-common or other forms of co-ownership.

A. Restrictions. All Owners and Units shall be subject to the following restrictions (subject to Section B below):

(i) Owner Occupancy. A Unit must be Owner-occupied for a minimum of two (2) consecutive years before it can qualify as a rental Unit.

(ii) Rental Cap. No more than **twenty percent (25%) of Units**, may be rented at any given time, except as provided within this document or as may be required by law (“Rental Cap”).

(iii) Short Term Rentals. No Owner may lease or rent less than their entire Unit, unless and only as long as the Owner also resides in the Unit (that is, no individual rooms or partial Unit rentals are permitted unless the Unit Owner also resides in the Unit) and no Owner may lease or rent any Unit for a period of less than twelve **(12) consecutive months**.

No short term, daily, weekly or monthly rentals are permitted including, but not limited to, nightly or other short-term rentals through programs such as VRBO, Airbnb, or similar arrangements. Individual room rentals are not permitted, unless and only as long as the Owner of record also resides in the Unit concurrently.

B. Exemptions. The following Unit Owners and their respective Units, upon proof sufficient to the Management Committee, are **exempt** from the rental cap limit outlined herein below unless otherwise stated:



- (i) A Unit Owner in the military for the period of the Unit Owner's deployment;
- (ii) A Unit occupied by a Unit Owner's parent, child, or sibling;
- (iii) A Unit Owner whose employer has relocated the Unit Owner for two (2) years or less;
- (iv) A Unit owned by an entity that is occupied by an individual who:
  - (a) Has voting rights under the entity's organizing documents; and
  - (b) Has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- (v) 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:
  - (a) A current resident of the Unit; or,
  - (b) The parent, child, or sibling of the current resident of the Unit.

C. Multiple Unit Ownership. An Owner is not eligible to rent more than one Unit until the pending applications of:

- (i) All Owners who are not currently renting or leasing Unit have been approved; and
- (ii) All Owners who are currently renting or leasing fewer Units than the applicant have been approved.

D. Application and Approval. Owners desiring to rent or lease their Units shall submit a written application to the Management Committee (and/or its agent). Additionally, the Owner shall submit to the Management Committee within ten (10) days of occupancy by the tenants, the names of those occupying the Unit. The Committee shall monitor and make a determination of whether the rental or lease will exceed the Rental Cap.

- (i) The Management Committee shall:
  - (a) Approve the application if it determines that the rental or lease will not exceed the Rental Cap; or
  - (b) Deny the application if it determines that the rental or lease of the Unit will exceed the Rental Cap.
- (ii) Applications from an Owner for permission to rent or lease shall be reviewed and approved or denied by the Committee as set forth in this subsection.
  - (a) The Committee shall review applications for permission to rent or lease in chronological order based upon the date of receipt of the application, and shall notify the Owner within fifteen (15) business days of receipt of the application if permission is not given and the reason for the denial.
  - (b) If an Owner's application is denied, the applicant may be placed on a waiting list according to the date the application was received.
- (iii) An application form, the application approval process, a waiting list, and any other rules deemed necessary by the Management Committee to implement this section may be required and established by rules or resolution adopted by the Committee consistent with this Declaration to ensure the consistent administration and enforcement of the rental restrictions contained herein.
- (iv) All Owners shall provide the Management Committee with a copy the executed lease. The Lease Agreement may be on a form prescribed by resolution of the

## Committee

E. Grandfathering Clause. All Owners of record prior to the recordation of this Declaration currently renting or leasing their Unit, may continue to rent or lease their Unit, for as long as they own the Unit, until such time as title to the Unit changes, for whatever reason, unless an exemption (above) is required. At such time title changes, the “grandfathered status” is lost. However, notwithstanding the grandfather provision above, if a Grandfathered Owner fails to re-let their Unit within ninety (90) days of the expiration or termination of a rental or lease agreement by any tenant, then the Grandfathered Owner and Unit shall lose their grandfathered status and become subject to the Rental Cap expressed above and shall apply to the Management Committee for permission to rent or lease the Unit.

F. Lease Agreement. Rental and lease agreements shall comply with this subsection.

(i) The Owner shall provide the tenant or lessee with a copy of the Declaration, the Bylaws, including any relevant amendments to such documents, and all rules and regulations then in effect, and any amendment thereafter.

(ii) Upon the commencement of the rental or lease period, the Owner shall provide the Association with a signed copy of the Lease Agreement.

G. Remedies. In addition to any other remedies available to the Association, the Management Committee may require the Owner to terminate a lease or rental agreement if the Committee determines that any lessee or tenant has violated any provision of this Declaration, the Articles of Incorporation, the Bylaws, or any amendments thereto, or the rules and regulations adopted thereto. If an Owner fails to correct any such violations related to their tenants or fails to terminate the lease pursuant to the above, the Owner hereby grants the Management Committee standing to initiate eviction proceedings against their tenant and considers the Association a third-party beneficiary to its rental/lease agreement.

H. Additional Rules. The Management Committee is authorized to promulgate additional rules, procedures and requirements regarding rentals and the rental process as it deems necessary from time to time to give effect to, or further clarify, this Section 3.2.

(i) Fines, Sanctions and Attorney’s Fees. The Management Committee shall have the power to enforce the Association’s governing documents, including by obtaining injunctive relief from the courts, by issuing fines, by terminating any common service paid for as a common expense, and by utilizing any other remedy authorized by law or the governing documents in order to maintain and operate the project and to enforce these rental restrictions. The Association shall be entitled to its attorney’s fees and costs in any action to enforce these rental restrictions.

(ii) Lease Payments by Tenant to Association. If an Owner who is renting his or her Unit fails to pay an assessment for more than sixty (60) days after the assessment is due, the Management Committee may demand that the tenant, and the tenant thereafter shall, pay to the Association all future lease payments due to the Owner until the amount due to the Association is paid in accordance with the procedures established by law, and such amounts shall be the personal obligation and debt of the tenant to the Association, jointly and severally with the Owner.

(iii) Hardship Exemptions to Rental Prohibition. The Management Committee shall have the sole discretion to allow rentals that would otherwise exceed the rental cap stated herein upon the showing of an undue hardship by the requesting owner. The Committee shall state the terms and duration of the hardship exemption granted and cause the owner to sign an agreement to such terms. No hardship exemptions are guaranteed, nor may this Section be relied on by any owner that such an exemption will be granted.

(iv) Owner responsible for actions of Tenant. Any Owner allowing a non-owner occupant to occupy his or her Unit shall be responsible for the occupant's compliance with the Declaration, Bylaws and Rules.

### **3.3 Fences.**

No fences will be allowed in the front yards or in side yards except as necessary to enclose patios unless otherwise approved by the Management Committee.

### **3.4 Residential Use.**

Units shall be used for residential purposes in accordance with, and subject to, the Governing Documents. No trade, craft, business, profession, commercial or similar activity may be conducted in a Unit, unless: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all applicable zoning requirements; (c) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door to door solicitation within the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Committee. Notwithstanding the above, the leasing of a Unit shall not be considered a business activity within the meaning of this section.

### **3.5 Vehicles; Parking; Towing.**

Owners and occupants may only park their vehicles (including any transportation or recreation vehicle or trailer) within their designated parking stall or in designated areas. Visitors may only park temporarily in designated spaces and in accordance with rules and regulations designated and promulgated by the Association. No Owners or occupants shall repair or restore any vehicle of any kind upon Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. No parking stalls may be altered or used in such a manner that the number of automobiles which may reasonably be parked therein after the alteration or use is less than the number of automobiles that could have been reasonably parked in the parking stall as originally constructed. The Association may adopt further rules and restrictions regarding parking and vehicles within the Property and to govern the enforcement of parking and vehicle restrictions, which rules may require owner identification of vehicles. Vehicles in violation of the Governing Documents may be towed at the cost (including the cost of any storage thereof) of the owner. The Association shall be indemnified and held harmless by the owner of a vehicle from any loss, damage or claim caused by or arising out of the impounding, towing or storing of a vehicle pursuant hereto.

### **3.6 Window Coverings.**

The Association may establish rules regarding draperies, blinds, shades and other interior window coverings to regulate their appearance from the exterior of buildings. No tinted

windows shall be permitted. Aluminum foil, newspapers, reflective film coatings, or any other similar materials may not be used to cover the windows in any unit. All windows and window panes must be harmonious, and comparable in size, design and quality to the other Units in the Community.

### **3.7 *Modifications to Unit or Common Area.***

No interior changes to a Unit shall be performed unless a building permit is first obtained, if one is required by a local authority, a copy of which is provided to the Association, and approval for the changes is given by the Association. No Unit shall be subdivided, and no Units shall be combined. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Association. No structural changes whatsoever to any Unit, and no plumbing, electrical and similar work within Common Area, shall be commenced, erected, maintained, made or done without the prior written approval of the Association. By way of illustration but not limitation the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like. This section may be further clarified by rules and/or resolutions duly adopted by the Management Committee.

### **3.8 *Signs, Attachments.***

No signs of any kind shall be display to the public view without the approval of the Management Committee, with the exceptions that one (1) "for sale" or "for lease" sign no larger than three (3) feet by two (2) feet may be displayed on a Unit. Numbers on residences shall be located in the same position as originally constructed and any replacement of such numbers shall be with numbers of the same design, style, texture, color and materials as the original numbers unless prior written consent to change has been received from the Management Committee.

### **3.9 *Offensive Activities, Prohibited Behavior and Use.***

No noxious or offensive activity, including commercial business enterprises shall be carried on, created or maintained in, on or about any Unit or the Common Areas, nor shall anything be done therein which may be or becomes an annoyance, disturbance, hazard or nuisance to other Owners or occupants. Special activities in the Common Area (other than those conducted exclusively within the confines of a Unit) require the prior written consent of the managing agent under the direction of the Management Committee.

It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Property. The term "nuisance" includes the following: (1) the development of any unclean, unhealthy, unsightly, or unkempt condition on or in the Property; (2) the storage of any item, property or thing that causes any Unit or the Common Area to appear to be in an unclean or untidy condition or that is noxious to the senses, that emits any foul, unpleasant or noxious odors, or that causes any noise or other condition that disturbs or might disturb the peace, quiet, safety, comfort, or serenity of the other residents of the Property; (3) actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police must be called to restore order; (4) maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, conditions or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may

diminish the enjoyment of the Community by other residents, their guests or invitees; and (5) too much noise or traffic in, on or about any Unit or the Common Area, especially after 10:00 pm and before 8:00 am. No unlawful use shall be made of any part of the Property, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. Nothing shall be done or kept within any Unit or on the Common Areas which will increase the cost of insurance to the Association or to other Owners or which will result in cancellation of insurance on any Unit.

### **3.10 *Antennas/Dishes.***

Owners are encouraged to use cable service for television and Internet. Satellite antennas, such as Direct Broadcast Satellite (“DBS”) antennas (dishes) one meter in diameter or less and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed only upon approval of the Management Committee and to the extent and in locations allowed herein and by local, state or federal law. All other antennas are prohibited. “Antenna” as used herein includes satellite dish antennas.

(a) Antennas may only be installed inside the Owner’s Unit or on Limited Common Area over which the owner has exclusive use and control under the terms of this Declaration. No Owner may install an antenna in or on the Common Area, including on the exterior or roof of any building. No antenna may extend beyond balcony railings. Owners need to be aware that their Unit may not be in a proper location to receive satellite broadcast signals even if they install an antenna. Prior to installation, Owners should check with a qualified and reputable company to determine if they are able to receive adequate signals at their unit. Owners shall notify the Committee in writing prior to any installation. Such notice shall include a description of the location for the antenna and the installation (attachment) method. No Owner may drill holes in walls, doors or window frames in order to install the antenna or run cable from the antenna to the television. All installations must be performed in such a manner as not to cause legitimate safety concerns. These would include, but not be limited to, danger of falling, danger of permanent damage to the building or proximity to power lines.

(b) Owners are responsible for any injury or damage to persons or property caused by their antenna. All installations must be performed in complete compliance with all applicable statutes, rules and regulations. If permits are required, the Owner will obtain all such permits prior to installation. These rules are meant to comply with 47 CFR § 1.4000, as may be amended from time to time. All requirements of such section are hereby incorporated herein. In the event any portion of this section is held to conflict with applicable law, those portions shall be deemed stricken and all other portions of this installation policy will remain in full force and effect.

(c) No portion of the installation policy in this Section may be waived or changed by the Committee verbally. Any such waiver or change will be effective only when in writing. If any Owner receives the benefit of any waiver or change of the installation policy, it shall be that Owner’s responsibility and obligation to keep and safeguard the written waiver or change and to produce it upon any future request of the Committee.

### **3.11 *Temporary Structures or Equipment.***

No structure of a temporary character, trailer, basement house, tent, shack, garage, barn or other

out building shall be used on any property at any time. No clothes lines, clothing racks, or other apparatus on which clothes, rags, or other items are exposed for the purpose of drying or airing shall be located on, and no rugs, rags, laundry, or other clothing or materials shall be allowed to hang from or within, the Property, except within a Unit or Limited Common Area screened from view from any other Unit, Common Area or the public.

### **3.12 Rubbish and Trash.**

No garbage, trash, or other waste may be kept or maintained on any part of the Property outside a Unit except in a sanitary container as specified by the Association. All rubbish, trash, refuse, waste, debris and garbage shall be regularly removed from the Unit and its Limited Common Area and shall not be allowed to accumulate therein.

### **3.13 Association Rules and Regulations.**

In addition to the restrictions and requirements above, the Association from time to time may adopt such rules and regulations governing the conduct of persons and the operation, aesthetics and use of the Units and Common Areas, including Limited Common Areas, as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property and the accomplishment of the purposes of the Association and the Community.

## **ARTICLE IV - MAINTENANCE OBLIGATIONS**

### **4.1 Owner's Responsibility.**

4.1.1 Units. Maintenance of each Condominium Unit and/or Living Unit shall be the sole responsibility of the Owner thereof, who shall maintain such Living Unit in good repair and in a clean and sanitary condition, all so as to not interfere in any way with other Owners' Living Units, or affect the value or use thereof, or the Common Areas, and so as to not detract from the appearance of the Community.

4.1.2 Walls, Ceilings, Floors, Windows, Doors. Each Owner shall be responsible at his or her sole expense to maintain, repair and replace: (1) the interior surfaces of the following: walls, ceilings, floors (including all wallboard, plasterboard, plaster, lath, furring, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting the finished surfaces of walls, ceilings and floors) forming the boundaries of his or her Unit; (2) all walls, ceilings, floors and doors within such boundaries; (3) all windows and doors (and all parts thereof) forming part of the vertical boundaries of a Unit, including thresholds, frames, door jambs and hardware, and (4) all vents and stacks.

4.1.3 Common Walls. Some or all of the Condominiums share at least one Common Wall with at least one other Condominium. The Owners of the Condominiums sharing these Common Walls shall be deemed to own one-half (1/2) of the wall nearest his/her Condominium and shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. Except for the sheet rock and the wall finishes (including paint, wallpaper, plaster, or other finishes) which shall be maintained by the Owner of the applicable Condominium, any such Common Wall shall be deemed a structural component of the building in which it is located, and shall therefore be maintained by the Association as Limited Common

Areas (designated for the benefit of the Condominiums within the same Condominium Building): provided, however, such maintenance obligations (like all other maintenance obligations of the Association herein) are subject to the Owner's responsibility to repair damage caused by the negligence or willful misconduct of such Owner, or such Owner's invitees, guests or tenants.

Owners may not undertake any change to the composition of their respective side of the Common Wall without the express prior written consent of the Association and any governmental agency or department with jurisdiction and responsibility over building, development, construction, building permits, and/or the requested changes. By way of illustration, replacing the sheet rock of the Common Wall with any other material of any kind shall be considered a change in the composition of the Common Wall, and is strictly prohibited without the express prior written consent as described herein. Painting the Common Wall or installing wall hangings are not significant changes to the Common Walls that require prior approval.

4.1.4 Utility Facilities Servicing Only Unit. In addition, each Owner shall be responsible for the maintenance, repair or replacement of the following that may be in, connected solely with, or servicing solely his or her Unit: any utility facilities, plumbing fixtures, water heaters, heating equipment, air conditioners and air cooling units of any type, all sewer and drainage pipes, water and other utility lines (between the points at which the same enter the respective Unit and the points where the same join the utility lines serving other Units), lighting fixtures and bulbs wiring, receptacles, switches, refrigerators, dishwasher, disposal equipment, ranges, toilets, fireplaces, or other appliances or fixtures.

4.1.5 Payment of Utilities. The Owner shall pay for all utility services, including but not limited to water, sewer, garbage, and gas/electricity, furnished to each Unit except utility services which are not separately billed or metered to individual Units by the utility or other party furnishing such service. To the extent utility services are not separately metered, all utility services shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner; provided, however, in the event a certain meter (or meters) services only certain or specific groups of Units, the Management Committee may, at its option, allocate the costs and expenses of such utility services among the applicable Units connected to such meter.

4.1.6 Cable/Internet/Telephone. The Management Committee may elect to have cable, internet, and/or telephone services provided by the same service provider by entering into a service agreement, in which event each Owner hereby agrees to be subject to such agreement. In the event such an agreement exists, all costs and expenses associated with the service shall be a Common Expense paid by the Association and shall be included in the assessments to each Unit Owner.

4.1.7 Limited Common Area. Except as otherwise provided, each Unit Owner shall, at his or her own cost, maintain, repair and replace the Limited Common Areas (including enclosed patio areas) appurtenant to his or her Unit and keep the same in a clean, sanitary and attractive condition at all times.

4.1.8 Parking Stalls. The Association shall maintain the outer walls and roofs of carports. Interiors of parking stalls, if any, shall be the responsibility of the Owner.

4.1.9 Fenced Limited Common Areas. Maintenance of any Common Area yards which have been “fenced-in” is the responsibility of the Owner. Owner shall have all responsibility to replace, repair, maintain, mow, trim or otherwise such fenced-in area. Failure to do so shall be a violation and subject to fines. Fences shall be maintained by the Association with the exception that any damage caused to a fence by an Owner, Owner’s family member, guest, or invitee shall be the responsibility of the Owner to repair.

#### **4.2 Maintenance by Association.**

4.2.1 The Association shall maintain the Common Areas, unless stated otherwise in Section 4.1 above. The Committee shall determine, in its sole discretion, the appropriate maintenance and improvement of the Common Areas and any other area or item for which it is responsible hereunder. If the Common Areas are damaged by the willful or negligent act of an Owner, its guests, tenants, or invitees, the Owner shall be responsible for all such damage, and the cost to repair such shall be an Assessment against that Owner and that Owner’s Unit.

4.2.2 Areas maintained by the Association shall include, but are not limited to:

(a) Exteriors of each Living Unit, including roofs, gutters, downspouts, foundations, exterior building surfaces, exterior door, exterior light fixtures, and other exterior improvements to the Condominium Buildings and the Project in general, but excluding mechanical systems, glass, window screens light bulbs, door hardware and patio areas which shall be the responsibility of Unit Owners. However, such maintenance obligations (like all other maintenance obligations of the Association herein) are subject to the owner’s responsibility to repair damage caused by the negligence or willful misconduct of such Owner, or such Owner’s invitees, guests or tenants.

(b) Sidewalks, curbing, and covered parking stalls, parking areas, landscaped areas, and green spaces, including, but not limited to, grass, landscaping, shrubs, watering and the sprinkling system, unless otherwise agreed upon in writing by the Committee.

4.2.3 Consistent with Sections 4.1.3. and 4.1.4 above, the Association shall pay for all water and garbage removal services furnished to Units. Each Unit Owner shall pay for all utility services which are separately billed or metered to individual Units by the utility or other party furnishing such service.

Consistent with Section 4.1, any Common Area yards which have been “fenced-in” or otherwise altered become the maintenance responsibility of the Owner. Common Areas that have been altered or enclosed by Owner will not be maintained by the Association and the Owner shall have all responsibility to replace, repair, maintain, mow, trim or otherwise. Failure



to do so shall be a violation and subject to fines. Additionally, side-yards, landscaping and trees are the responsibility of the Owner.

4.2.4 Additionally, the Association, by and through the Committee, may, but shall not be obligated to, assume an Owner's maintenance responsibility over a Unit and Limited Common Area, or take such other action as necessary if, in the opinion of the Committee, the Owner is unwilling or unable to adequately provide such maintenance, or in order to remedy any condition which is in violation of an Association covenant, restriction or rule. Before assuming such maintenance responsibility, the Committee shall provide notice to the Owner of its intention to do so in accordance with Section 6.2(a) below, and if such Owner has not commenced and diligently pursued remedial action within the time period stated in the notice, the Association may proceed to carry out such maintenance or action. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall be levied and collected in the same manner as assessments pursuant to this Declaration.

4.2.5 To the extent not clarified herein, the Association may, by duly adopted resolution of the Committee, identify and assign those areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall not be inconsistent with the provisions of this Declaration, unless such determinations merely reflect an established pattern of practice which has been in effect for five or more years, even though inconsistent with the provisions of this Declaration, in which case a resolution shall be recorded outlining the same. Such determinations shall be set forth in a Committee resolution distributed to all Owners and shall be binding against all Owners.

4.2.6 Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

## **ARTICLE V - ASSESSMENTS**

**5.1. *Covenant for Assessments.*** Each Owner, by acceptance of a deed conveying any Unit to such Owner, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments. No Owner may exempt itself from liability for Assessments by abandonment of a Unit. No offsets against Assessment amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers.

## **5.2. Annual Budget and Assessment.**

5.2.1. Adoption of Budget. The Management Committee shall prepare and adopt an annual budget for the Association which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. If the Management Committee fails to adopt an annual budget, the last adopted budget shall continue in effect.

### 5.2.2. Determination of Annual Assessment.

(a) The Management Committee shall fix the amount of the annual assessment ("Annual Assessment") against each Unit for each assessment period at least thirty (30) days in advance of the beginning of the period. Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period. Annual Assessments may be paid in monthly, quarterly, or annual installments as determined by the Committee.

(b) The Annual Assessment may be increased each year by up to fifteen percent (15%) above the maximum assessment for the previous year without a vote of the membership. Any Annual Assessment increase above 15% above the maximum assessment for the previous must be approved by affirmative vote of Owners holding at least 50% of the Voting Interests within the Association.

(c) The omission by the Management Committee, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(d) If the Annual Assessments levied at any time are, or will become, inadequate to meet all expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Management Committee may determine the approximate amount of the inadequacy and adopt a supplemental budget which establishes the equitable change in the amount of the Annual Assessment.

**5.4. Apportionment of Assessments.** All Units shall be assessed Annual Assessments and Special Assessments based upon the Percentage Interests of the Units. Individual Assessments shall be apportioned exclusively against the Units benefitted or to which the expenses are attributable as provided for below.

**5.5. Purpose of Assessments.** The Assessments levied by the Association shall be used for carrying out the purposes and obligations of the Association, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums; (c) The costs of utilities and other services which may be

provided by the Association for the Community; (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the duties under this Declaration or the Bylaws; (e) The cost of funding reserves established by the Association, including a general operating excess and a reserve for replacements; and (f) Any other items properly chargeable as a Common Expense of the Association.

**5.6. *Special Assessments.*** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments (a “Special Assessment”). The Management Committee may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Owner may only be levied if it is first voted upon by the Owners and: (1) the votes cast favoring the Special Assessment exceed the votes cast opposing it, and (2) a quorum of Owners holding 25% of the Percentage Interests exists. Special Assessments shall be collected as specified by the Management Committee, unless otherwise determined by the resolution of the Members of the Association approving the special assessment.

**5.7. *Individual Assessments.*** Any expenses benefitting or attributable to fewer than all of the Units may be assessed exclusively against the Units affected or benefitted (“Individual Assessments”). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Unit to reimburse the Association for costs or attorney fees incurred in bringing the Unit or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses incurred by the Association relating to the cost of maintenance, repair, or replacement of the individual Units.

**5.8. *Reserve Analysis.***

5.8.1. Reserve Analysis Required. The Committee shall cause a reserve analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.

5.8.2. Reserve Analysis Defined. “Reserve analysis” means an analysis to determine the need for a reserve fund to accumulate reserve funds, and the appropriate amount of any reserve fund. A reserve analysis shall include:

(a) a list of the components identified in the reserve analysis that will reasonably require reserve funds;

(b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;

(c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;

(d) 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

(e) a reserve funding plan that recommends how the Association may fund the annual contribution described in subsection (d) above.

5.8.3. Reserve Analysis Summary Provided to Owners. The Association shall: (a) annually provide Owners a summary of the most recent reserve analysis or update; and (b) provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**5.9. Reserve Fund.** The Association shall establish and maintain a reserve fund, separate from other Association funds, for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditure, and for any other purpose determined from time to time by the Committee. In formulating the budget each year, the Association shall include a reserve fund line item in an amount the Committee determines, based on the reserve analysis, to be prudent. The Committee may not use money in a reserve fund for daily maintenance expenses unless a majority of the Owners vote to approve the use of reserve fund money for that purpose.

The Committee's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Committee members shall not be held liable for any potential or alleged under-funding of the reserve account.

**5.10. Nonpayment of Assessments.** Unless otherwise provided by resolution of the Management Committee, the Annual Assessments shall be levied and due and payable on a monthly basis on the first calendar day of each month and shall be delinquent if not paid within ten (10) days after the due date or such other date established by the Committee (the "date of delinquency"). The due date of any Special Assessment or other Assessment shall be fixed in the resolution authorizing the Assessment or in the notice of the Assessment.

5.11.1 Interest. Delinquent payments shall bear interest at the rate of 10% per annum, or such other lower rate established by the Association from time to time.

5.11.2 Late Charge. Each delinquent payment shall be subject to a late charge in the amount established by the Association from time to time.

5.11.3 Acceleration. If the delinquent installments of Annual Assessments and any charges thereon are not paid in full, the Committee, or its authorized agent, may declare all of the unpaid balance of the Annual Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the

Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

5.11.4 Rent Payments by Tenant to Association. If the Owner of a Unit who is leasing the Unit fails to pay an assessment for more than 60 days after the assessment is due, the Management Committee may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic payment, until all amounts due to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Committee, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

5.11.5 Termination of Common Service and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Management Committee may, after giving notice and an opportunity to request a hearing in accordance with the law and any written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Committee. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Committee shall immediately take action to reinstate the terminated utility services to the Unit.

5.11.6 Remedies under the Act and Other Law. The Association shall have each and every remedy for collection of assessments provided in the Utah Condominium Ownership Act, Utah Code Title 57, Chapter 8, as amended from time to time, and in Utah Code Title 12, and such remedies and provisions shall be deemed to be fully set forth herein. A collection fee shall be imposed upon any delinquent account turned over to an attorney or collection agency for collection, in accordance with Utah Code § 12-1-11, in addition to any other amount owed to the Association.

**5.11. Lien.** All Assessments and charges imposed, together with damages, fines, interest, costs of collection, late charges, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a charge and continuing lien upon each of the Units against which the Assessment is made and shall be construed as a real covenant running with the land. The recording of this Declaration constitutes record notice and perfection of the lien established herein. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment.

**5.12. Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Unit and in a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments

against the latter up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

**5.13. *Appointment of Trustee.*** By acceptance of a deed for a Unit, each Owner as trustor conveys and warrants to trustee in trust for the Association, as beneficiary, with power of sale, the Owner's Unit and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section, the Act, and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the trustee, or substitution thereof, by recording an appointment or substitution of trustee in the records of the local County Recorder. Each Owner hereby also grants to the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

**5.14. *Enforcement of Lien.*** The lien provided for in this Article may be enforced by the Association by causing a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, or by foreclosing the lien through a judicial foreclosure, all in the manner provided by the Act and by the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts or the law for the foreclosure of a mortgage, as the case may be. The Association shall have the power to bid on the Unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the defaulting Owner shall be required to pay the reasonable rental value of such Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner, and an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, the costs and attorney fees associated with which shall be awarded to the Association or the purchaser, as the case may be. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**5.15. *Subordination of Lien to Mortgages.*** The lien provided for in this Article has priority over each other lien and encumbrance on a Unit except a first or second security interest on the Unit secured by a mortgage or deed of trust that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against the Unit. The sale or transfer of any Unit pursuant to mortgage or deed of trust foreclosure (but not a proceeding in lieu thereof) shall extinguish the lien provided for herein as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Unit from liability or lien for any Assessments or charges thereafter becoming due, and shall not relieve any Owner of his or her personal obligation for such amounts.

**5.16. *Statement of Unpaid Assessment & Payoff Information.*** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments have been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge, determined by the Association, may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association

payoff information needed in connection with the financing, refinancing, or closing of an Owner's sale of the Owner's Unit up to the maximum amount allowed by law.

**5.17. Application of Payments.** Payments upon an Owner's account shall be applied first to costs and attorney fees, then to the oldest charges (regardless of type) on the Owner's account.

## **ARTICLE VI - PROPERTY RIGHTS, EASEMENTS, CONSTRUCTION**

**6.1 Use and Occupancy.** Except as otherwise provided in Governing Documents from time to time, the Owner(s) of a Unit shall be entitled to the exclusive use and benefits of ownership of such Unit. Each Unit, however, shall be bound by, and the Owner, occupants and guests, shall comply with, the restrictions contained herein and all other provisions of the Governing Documents for the mutual benefit of the Owners.

**6.2 Easements Reserved.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

6.2.1 Easements for Maintenance and Repair. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Unit for the purpose of performing maintenance authorized herein or determining whether the use of the Unit or an element within the Unit is causing damage or harm to the Common or Limited Common Areas. Reasonable notice shall be provided to the Unit occupant prior to entry. "Reasonable notice" means: (i) written notice that is hand delivered to the unit at least 24 hours prior to the proposed entry; or (ii) in the case of emergency repairs, notice that is reasonable under the circumstances, which, at the discretion of the Management Committee, shall mean attempting to contact the occupant or owner immediately prior to entry via contact information the Association has on record, or via knock on the Unit door. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Unit. The Association shall repair damage it causes to the Common Areas or to a Unit the Association uses to access the Common Areas within a time that is reasonable under the circumstances.

6.2.2 Utility Easements; Public Service and Transportation. The Association and any public utility provider shall have an easement through all Units and the Common Areas for the installation, maintenance and development of utilities, as may be necessary. Each Unit Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Units and serving his or her Unit. The Management Committee may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area.

An easement shall exist consistent with the right of Salt Lake County, or any other governmental or quasi government body having jurisdiction over the Property to access, including rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for the purposes of providing police and fire protection, transporting school

children, and providing other governmental or municipal service.

6.2.3 Common Areas; Delegation of Rights. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas which right and easement shall be subject to compliance by the Owner with the provisions of the Governing Documents and the right of the Association to limit the number of guests of residents. Except as to rights of ingress and egress to a Unit, any Owner not residing on the Property shall be deemed to have delegated his or her right of enjoyment and use of and to the Common Area facilities and amenities to any tenants, contract purchasers, or other occupants of the Unit who actually reside on the Property and no person other than residents and their guests (up to the number established by rule from time to time) may use any Common Area facility or amenity.

**6.3 No Encroachment.** No Unit shall encroach upon an adjoining Unit or Common Area. If, however, any part of a Unit encroaches or shall hereafter encroach upon the Common Area or an adjoining Unit due to or caused by error in the original construction of any building or improvements constructed within the Project, by error in the Plat, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project, or any part thereof, in accordance with the provisions of this Declaration, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Unit. If any part of the Common Areas encroaches or shall hereafter encroach upon any Unit, an easement for such encroachment and for the maintenance of the same shall and does exist.

## ARTICLE VII – THE ASSOCIATION

**7.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Committee may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Management Committee as provided herein and in the Bylaws.

**7.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Units within the Community shall be a member of the Association. The membership shall commence, exist and continue by simple virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws and each Owner shall have such vote in matters of the Association for each Unit owned equal to the Percentage of Undivided Interest appertaining to such Unit, as assigned in Exhibit B of this Declaration.

**7.4 Powers and Authority of the Association.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, together with its general powers as a corporation, and the power to do any



and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. The Association shall have the exclusive authority and right to provide for the management, use, maintenance, repair, operation or administration of the Community and Common Area. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

7.4.1 In fulfilling any of its duties under this Declaration, including its duties for the management, maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Unit on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration, (ii) to defend, bring, prosecute, and settle litigation for itself and the Project, (iii) to obtain, contract and pay for, or to otherwise provide for such utility services, including (without limitation) water, sewer, trash removal, and snow removal services, as the Committee may from time to time deem desirable, and the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Committee may deem desirable, (iv) to delegate by resolution or contract to a Managing Agent any of its powers under this Declaration, (v) to repair or restore the Project following damage or destruction or a permanent taking by the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act, (vi) to grant easements and rights-of-way over the Common Area and to approve signage for the Project, and (vii) to borrow money and to pledge or assign current or future Assessments as security for any loan obtained by the Association, provided the assent of a majority of the voting interests is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

7.4.2 Except as limited in the Governing Documents or by the Act, the Management Committee acts in all instances on behalf of the Association.

## **ARTICLE VIII - COMPLIANCE, ENFORCEMENT, APPEAL**

**8.1 Compliance.** All Unit Owners, occupants of the Property, or any other person who may in any manner use the Property or any part thereof shall be subject to and comply with the provisions of the Governing Documents, the Act, and any other applicable law. Failure to comply therewith shall be grounds for levying of fines and an action or suit maintainable by the Association or an aggrieved Owner, subject to the requirements of Article XII herein.

**8.2 Remedies.** The voting rights of any Owner more than 60 days' delinquent in his or her account with the Association shall be automatically suspended until the account is brought current, unless otherwise determined by the Committee. Violation of any provisions of the Governing Documents (including failure to timely pay an assessment) or of any decision of the Association made pursuant to such documents, shall give the Management Committee acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws or under law, to do any or all of the following after giving notice (the provisions of Article XII shall not apply to the following except number (5)):

(1) Subject to the provisions of this Declaration, to enter the Unit as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to such provisions, and the Management Committee shall not thereby be deemed guilty of any manner of trespass;

(2) To levy fines (in accordance with Section 8.3 below). A violation of any express rule, regulation, covenant, restriction or provision of any of the Governing Documents shall be subject to a fine in the amount set forth in a schedule of fines adopted by the Association from time to time, or in the absence of such schedule, \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$100 per ten days for a continuous violation;

(3) To terminate the right to receive utility or other services paid for by the Association, and to terminate the right of access to and use of recreational and service facilities of the Association until the correction of the violation has occurred;

(4) To suspend the voting rights of an Owner, but not for longer than 60 days except in the case of a continuous violation; and

(5) Subject to Article XII herein, to enjoin, abate, or remedy such thing or condition by appropriate legal proceeding, and to otherwise bring suit or action against the Owner on behalf of the Association and/or other Owners to enforce the Governing Documents and the Association shall be entitled to recovery of its attorneys' fees and costs in such case.

**8.3 Fines.** The Association may assess a fine against an Owner for a violation of the Governing Documents in accordance with the Act, Utah Code Title 57, Chapter 8, Section 37, as may be amended and consistent with its Schedule of Fines.

**8.4 Appeal by Owner.** Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Committee to dispute the fine, penalty or suspension within 33 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures promulgated by resolution of the Committee from time to time, or if none, in accordance with the standards determined by the Committee at the hearing.

**8.5 Action by Owners.** Subject to any limitation imposed under this Declaration, including Article XII, the Bylaws, or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy a thing or condition by appropriate legal proceedings.

**8.6 Committee Action to Enforce Governing Documents – Parameters.** The Committee shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including whether to compromise a claim made by or against the Committee or Association, and whether to pursue a claim for an unpaid Assessment. The Association may not be required to take enforcement action if the Committee determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (1) the Association's legal position does not justify taking any or further enforcement action; (2) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (3)(A) a technical violation has or may have occurred, and (B) the violation is not material as to

a reasonable person or does not justify expending the association's resources; or (4) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria. If the Committee decides to forego enforcement, the Association is not prevented from later taking enforcement action. The Committee may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action. The Association's actions or inactions in enforcing or not enforcing a provision of the Governing Documents shall in no event be deemed to constitute a waiver or modification of that provision.

**8.7 *Injunctive Relief.*** Nothing in this Declaration shall prevent an Owner, the Association, or other interested party from resort to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or restrictions in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**8.8 *Notification of First Mortgage.*** The Management Committee shall notify in writing any first Mortgagee of any individual Unit of any default in performance of the terms of this Declaration by the Unit Owner which is not cured within sixty (60) days provided such Mortgagee has requested in writing to be so notified.

## **ARTICLE IX - INSURANCE**

### **9.1 *Association Insurance.***

9.1.1. **Property and Liability Insurance.** The Association shall maintain a master insurance policy which includes: (1) blanket property insurance with not less than 100% of the full replacement cost for the physical structures in the condominium project, including common areas and facilities, limited common areas and facilities, and Units, and including fixtures, improvements and betterments to a Unit made by a Unit Owner, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils; and (2) liability insurance having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including medical payments insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas and facilities.

(a) The Association's property insurance shall include coverage for any fixture, improvement, or betterment installed by a Unit Owner to a Unit or to a Limited Common Area, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Unit or to a Limited Common Area element associated with a Unit.

(b) Each Unit Owner is an insured person under the Association's property insurance policy. Each Unit Owner is an insured person under a liability insurance policy that the Association obtains, but only for liability arising from: (1) the Unit Owner's ownership interest in the common areas and facilities, (2) maintenance, repair, or replacement of common areas and facilities, and (3) the Unit Owner's membership in the Association.

9.1.2. **Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Committee,

employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Units plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten days prior written notice to the Association or any insurance trustee.

9.1.3. Flood Insurance. If any portion of the Project is deemed to be located within an area which has been officially identified by the Secretary of Housing and Urban Development as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program, the Association shall be required to obtain and pay the premiums upon a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy in an amount deemed appropriate by the Association but not less than the lesser of: (1) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or (2) 100% of current replacement cost of all such buildings and other insurable property within such area.

9.1.4. Directors and Officers (D&O) Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Committee member or officer of the Association, and any other person the Association is required by law or contract to indemnify, against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

9.1.5. Other Insurance. The Association shall obtain such other insurance if and to the extent required by law or as the Committee deems necessary from time to time, such as workers' compensation insurance.

9.1.6. Loss Not Exceeding Deductible. If, in the exercise of the business judgment rule, the Management Committee determines that a covered loss is likely not to exceed the policy deductible of the Association and until the covered loss exceeds the deductible of the property insurance of the Association and a claim is submitted to the property insurance insurer of the Association: (i) for a Unit to which a loss occurs, the Unit Owner's policy is considered the policy for primary coverage for the damage to that Unit; (ii) the Association shall pay for any loss for any common areas and facilities for which a loss occurs; (iii) a Unit Owner who does not have a policy to cover the damage to that Unit Owner's Unit is responsible for that Unit damage and the Association may, as provided herein, recover any payments the Association makes to remediate that Unit, and (iv) the Association need not tender the claim to the Association's insurer.

9.1.7. The Association shall set aside an amount equal to the amount of the Association's property insurance policy deductible or \$10,000.00, whichever is less.

9.1.8. An insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy.

9.1.9. Loss Due to Fault of Another. This Declaration does not prevent a person 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, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (1) any person residing with the Unit Owner, if the Unit Owner resides in the Unit, and (2) the Unit Owner.

9.1.10. Power of Attorney, Insurance Trustee. The Association may enter into an insurance trust agreement with a trustee (the "Insurance Trustee") who shall thereafter have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Unit, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose. By purchasing a Unit, all Owners appoint the Association, or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

9.1.11. The Association, or insurance trustee if any, shall hold any proceeds of insurance in trust for Unit Owners and their first mortgage holders as their interests may appear. The policies required herein for the Association must provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage listed as a scheduled holder of a first mortgage in the policies. No policies shall require that contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC. Loss payments shall not be contingent upon action by the carrier's board of directors, policyholders, or members. The policies shall include: (1) a waiver of the right of subrogation against Unit Owners individually, (2) that the insurance is not prejudiced by any act or neglect of individual Unit Owners which is not in the control of such Owners collectively.

9.1.12. The Association shall use generally acceptable insurance carriers. Specific requirements for qualifications of insurance carriers may be found in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide.

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

**9.2. Unit Owner Insurance Responsibility.** For Units, the Association's policy is primary, but the Unit Owner is responsible for the deductible as follows:

9.2.1. If a loss occurs that is covered by the Association's policy and by a Unit Owner's policy, the Association's policy provides primary insurance coverage, but the Unit Owner is responsible for the deductible of the association of Unit Owners, and Coverage A of the Unit Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

9.2.2. If a Unit, or limited common area element appurtenant to a Unit, suffers damage as part of a covered loss, the Unit Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Unit damage for that Unit to the amount of the deductible under the Association's policy. If a Unit Owner does not pay the amount required within 30 days after substantial completion of the repairs to, as applicable, the Unit or the limited common area appurtenant to the Unit, the Association may levy an assessment against a Unit Owner for that amount.

9.2.3. The deductible under the Association's policy is subject to change from time to time by the Management Committee. The Association shall provide notice to the Owners of any change in the amount of the deductible.

9.2.4. The Association's policy does not cover the contents of a Unit or an Owner's personal property. Each Owner is strongly encouraged to obtain insurance coverage for contents of their Unit, as well as for coverage in the event the Owner has to pay the Association's deductible as provided above.

## **ARTICLE X - AMENDMENT**

**10.1 Amendment.** Any and all of the conditions, restrictions, charges and terms contained in this Declaration may be annulled, waived, changed, modified or added to through a duly adopted amendment to this Declaration.

**10.2 How Proposed.** Amendments to the Declaration shall be proposed to the membership only by the Management Committee, either on its own initiative or after it receives a written request to do so signed by Owners holding a majority or more of the Percentage Interests. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of, or consent to, the amendment.

**10.3 Approval Required.** This Declaration may be amended if such amendment is approved by more than fifty percent (50%) of the total voting interest of the Owners. Notwithstanding anything herein to the contrary, the Governing Documents may be amended by the Management Committee without approval of the Owners if an amendment is necessary to comply with FHA or other regulatory or lending guidelines or restrictions in order to facilitate the ability to secure financing for the sale of Units.

**10.4 Execution and Recordation.** An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate County Recorder's Office.

## ARTICLE XI – MORTGAGEE RIGHTS

**11.1 Request for Approval of Mortgagees.** If an Eligible Holder's consent is a condition for amending the Declaration or Bylaws, then, the Eligible Holder's consent is presumed if: (1) written notice of the proposed amendment or action is sent by certified or registered mail to the Eligible Holder's address provided to the Association by such Eligible Holder; (2) 60 days have passed after the day on which notice was mailed; and (3) the person designated for receipt of the response in the notice has not received a written response from the Eligible Holder either consenting to or refusing to accept the amendment or action.

**11.2 Rights of Eligible Holders.** In addition to the approvals required and the rights provided above, each Eligible Holder shall have the following rights: (1) the right to examine the books and records of the Association upon reasonable notice and at reasonable times; (2) the right, upon written request, to receive an annual financial statement of the Association within ninety days following the end of any fiscal year of the Association; (3) upon written request, written notice of all meetings of the Association, and such mortgagees shall be permitted to designate a representative to attend all such meetings; (4) upon written request to the Association, the right to timely written notice of any proposed termination of the condominium regime; any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which the Eligible Holder holds a Mortgage interest; any delinquency in the payment of assessments or charges owed by the Owner of a Unit subject to a Mortgage of the Eligible Holder, where such delinquency has continued for a period of 60 days; and any lapse, cancellation or material modification of any insurance policy maintained by the Association; (5) upon written request, written notice of any adds or amends any material provision of the Declaration and Bylaws that would (i) redefine any Unit boundaries (ii) convert any Unit to Common Areas or vice versa, (iii) impose restriction on Owners right to sell or transfer his/her Unit (iv) decision by the Association to restore or repair the Project (after dame or partial condemnation) in a manner other than that specified in the Declaration (v) notice of any provision adopted that expressly benefits Mortgagees, insurers, or guarantors.

## ARTICLE XII - MISCELLANEOUS PROVISIONS

**13.1 Premises Liability.** The Association and the Management Committee are and shall remain wholly free and clear of any and all liability to, or claims by, all Unit Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and a Unit Owner shall defend, indemnify and hold harmless the Association and Management Committee against such claim, loss or liability asserted by such Unit Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Unit Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**13.2 Covenants to Run with Land/Reference to Declaration and Deeds.** The Declaration and all of the provisions thereof shall constitute covenants to run with the land and inure to the benefit of all parties who acquire any interest in a Unit or in the Common Areas and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. By acquiring any interest in a Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of the Declaration.

Deeds to any instruments affecting any Unit or any other part of the Project may contain the provisions set forth herein by reference to the Declaration and as it may be amended, but regardless of whether any such reference is made in any deed or instrument, each and all of the covenants, conditions, restrictions, reservation, easement, assessments, changes and liens set forth herein shall be binding upon the grantee-owner or other person claiming through any deed or other instrument and his heirs, executors, administrators, successors and assigns.

**13.3 Priority of Governing Documents.** To the extent possible under the law and in light of the requirement of the Act that organizational documents for a nonprofit corporation shall not conflict with the rights and obligations found in the declaration and bylaws, in the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: the Act, the Plat and the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations.

**13.4 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in the Governing Documents shall be resolved by the Management Committee, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Committee except where powers are expressly restricted. The Management Committee acts in all instances on behalf of the Association, except as expressly limited by the Governing Documents or law.

**13.5 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Unit. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

**13.6 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The



masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**13.7 Joint Owners.** In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest, subject to the provisions of the Bylaws regarding voting by joint owners.

**13.8 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Unit and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**13.9 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Management Committee or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association, Management Committee or Owner as to any similar matter.

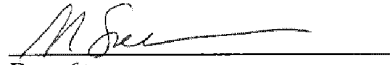
**13.10 Notice of Sale or Lease.** Immediately upon the sale, rental or other conveyance of any Unit, the Owner shall promptly inform the secretary or manager of the name and address of said grantee or tenant. The Management Committee may for all purposes act and rely on the information concerning Owners and Unit ownership which is thus acquired by it and the address of each Owner shall be deemed for all purposes to be the address of the Unit owned by such Owner unless the Management Committee is otherwise advised in writing.

**13.11 Person to Receive Service of Process.** The person designated to receive service of process on behalf of the Project, in the cases provided by the Act, is the registered agent of the Association as designated by the Association from time to time with the Utah Division of Corporations and Commercial Code.

[END OF DECLARATION]

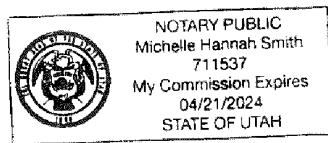
IN WITNESS WHEREOF, the Birch Estates Condominiums Association, has executed this Declaration this 2nd day of MARCH, 2021.

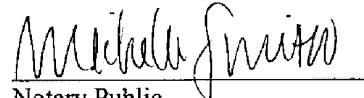
**Birch Estates Condominiums Association**

  
By: MICHAEL SANDERS  
Its: PRESIDENT

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

Acknowledged before me on this 1st day of March, 2021 by Michael Sanders, of the Birch Estates Condominiums Association.



  
Notary Public

**EXHIBIT A**

**Legal Description**

All Units (29 total) and Common Area, BIRCH ESTATES CONDOMINIUMS, as set forth on the plat map and in the records of the Salt Lake County Recorder for Salt Lake County, state of Utah.

Including Parcel No. 16323360010000 through 16323360300000

## EXHIBIT B

### Unit Numbers and Percentage Interests in Common Areas

Unit No. from Plat	Square Footage	% of Ownership Interest in Common Areas
Building 1 3841 S. Unit 1	1,000	3.448%
Building 1 3841 S. Unit 2	1,000	3.448%
Building 1 3841 S. Unit 3	1,000	3.448%
Building 1 3841 S. Unit 4	1,000	3.448%
Building 1 3841 S. Unit 5	1,000	3.448%
Building 1 3841 S. Unit 6	1,000	3.448%
Building 1 3841 S. Unit 7	1,000	3.448%
Building 1 3841 S. Unit 8	1,000	3.448%
Building 1 3841 S. Unit 9	1,000	3.448%
Building 2 3817 S. Unit 1	1,000	3.448%
Building 2 3817 S. Unit 2	1,000	3.448%
Building 2 3817 S. Unit 3	1,000	3.448%
Building 2 3817 S. Unit 4	1,000	3.448%
Building 2 3817 S. Unit 5	1,000	3.448%
Building 3 3811 S. Unit 1	1,000	3.448%
Building 3 3811 S. Unit 2	1,000	3.448%
Building 3 3811 S. Unit 3	1,000	3.448%
Building 3 3811 S. Unit 4	1,000	3.448%
Building 3 3811 S. Unit 5	1,000	3.448%
Building 4 3805 S. Unit 1	1,000	3.448%
Building 4 3805 S. Unit 2	1,000	3.448%
Building 4 3805 S. Unit 3	1,000	3.448%
Building 4 3805 S. Unit 4	1,000	3.448%
Building 4 3805 S. Unit 5	1,000	3.448%
Building 5 3799 S. Unit 1	1,000	3.448%
Building 5 3799 S. Unit 2	1,000	3.448%
Building 5 3799 S. Unit 3	1,000	3.448%
Building 5 3799 S. Unit 4	1,000	3.448%
Building 5 3799 S. Unit 5	1,000	3.448%
TOTALS	29,000	100%

**EXHIBIT C**

**BYLAWS**

**OF**

**BIRCH ESTATES CONDOMINIUMS ASSOCIATION**

**ARTICLE 1 - DEFINITIONS.....35**  
**ARTICLE 2 – NOTICE, ELECTRONIC MEANS, HOA REGISTRY .....35**  
**ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM.....36**  
**ARTICLE 4 - MANAGEMENT COMMITTEE MEMBERS – SELECTION, ELECTION,  
TERM OF OFFICE .....39**  
**ARTICLE 5 - MEETINGS OF MANAGEMENT COMMITTEE.....41**  
**ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE MANAGEMENT COMMITTEE  
.....44**  
**ARTICLE 7 - OFFICERS AND THEIR DUTIES .....46**  
**ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS.....47**  
**ARTICLE 9 - RECORDS AND AUDITS.....48**  
**ARTICLE 10 - AMENDMENTS.....50**  
**ARTICLE 11 - MISCELLANEOUS.....50**

**ARTICLE 1 - DEFINITIONS**

The definitions contained in or adopted by the Declaration shall be applicable to these Bylaws.

**ARTICLE 2 – NOTICE, ELECTRONIC MEANS, HOA REGISTRY**

2.1 Notices.

2.1.1 Association. All notices to the Association or the Management Committee shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Management Committee may hereafter designate

from time to time.

#### 2.1.2 Owners.

(a) Notice by Electronic Means. In any circumstance where notice is required to be given to the Owner, the Association may provide notice by electronic means, including text message, email, or an Association website, if the Management Committee deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Management Committee is authorized to promulgate rules and procedures facilitating the implementation of this section as it deems fit from time to time, including requiring Owners to furnish the Association with a current email address.

(b) If a Unit is jointly owned or the Unit has been sold under a land sale contract, notice shall be sent to a single address (physical or electronic), of which the secretary has been notified in writing by such parties. If no address has been given to the secretary in writing, then mailing to the Unit shall be sufficient.

2.1.3 Notice shall be delivered to the Unit Owners not less than twenty (20) days prior to the date fixed for said meeting. At or prior to an Annual Meeting, the Management Committee shall furnish to the Unit Owners: (1) a budget for the coming fiscal year that shall itemize the estimated common expenses of the coming fiscal year with the estimated allocation thereof to each Unit Owner; and (2) an audited statement of the common expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Unit Owner. Within ten (10) days after the Annual Meeting, that budget statement shall be delivered to the Unit Owners who were not present at the Annual Meeting.

2.2 Conducting Affairs, Electronic Means. Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the Owner if the Association, through the Committee, does so in good faith and has no reason to believe it is not the act of the Owner. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be considered the signature of such person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by a Member or by the Association.

2.3 Utah HOA Registry. The Association shall register with the Utah Department of Commerce in the manner established by the department and in compliance with the Act (the "Homeowner Associations Registry." The Association shall update such information with the Registry within 90 days after a change in any of the information.

### ARTICLE 3 – ASSOCIATION MEETINGS, VOTING, QUORUM

3.1 Annual Meetings. Each regular annual meeting of the members shall be held each year on the day and at a time and place within the state of Utah as is designated in the notice of such meeting, as determined by the Management Committee.

3.2 Special Meetings. The Association, by and through the Management Committee, shall notice, hold and conduct a special meeting of its members (1) on call of the President, or (2) by a majority of the Owners or Committee Members.

3.3 Meetings or Participation by Electronic Means. At the discretion of the Board, any meeting of members or participation at a meeting may be through electronic means. Any reference to “in person” contained in this Declaration and Bylaws shall include participation by electronic means in real time. The means of electronic participation shall be established by the Board and stated in the Notice of Meeting.

3.4 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the secretary or person authorized to call the meeting, in a fair and reasonable manner, unless oral notice is reasonable under the circumstances, at least twenty (20) days before the time fixed for the meeting. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the members and, in the case of a special meeting, the purpose of the meeting.

3.5 Voting. Each Unit shall be allocated such vote in the affairs of the Association equal to the Percentage Interest appertaining to such Unit as set forth in **Exhibit B** attached hereto. A Member's voting rights may be suspended for any period during which an assessment on such Member's Unit remains unpaid or for infractions by such Member of the provisions of this Declaration or of any rule or regulation promulgated by the Association, if such infraction has not been cured after notice and opportunity to cure.

3.6 Proxies, Absentee Ballots and Rights of Mortgagees.

3.6.1 Proxies. A vote may be cast in person or by proxy. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated and signed by such Owner and shall be filed with the secretary in accordance with procedures adopted by the Committee by resolution or as stated in the notice of the meeting. A proxy shall be valid for, and only for, the meeting (and any adjournment of the meeting) for which it was solicited, unless otherwise expressly stated in the proxy; however, no proxy may be valid for more than six (6) months after the date of execution. No proxy shall be valid if it purports to be revocable without notice. An Owner may not revoke a proxy given except by actual notice of revocation to the person presiding over a meeting, or to the Committee if a vote is being conducted by written ballot in lieu of a meeting. Every proxy shall automatically cease upon sale of the Unit.

3.6.2 Absentee Ballots. A vote may be cast by absentee ballot.

### 3.7 Quorum.

3.7.1 “Quorum” means the Owners holding the minimum number of Percentage Interests (when duly represented in person or by proxy at a meeting or casting a written ballot in an action by written ballot or consenting to an action without a meeting) necessary to make the proceedings valid.

3.7.2 At any meeting of the Association, or any action taken without a meeting, the Owners representing twenty-five percent (25%) of the Unit Owners shall constitute a quorum represented in person, by proxy, or by written ballot (except when a higher quorum is required by the Governing Documents).

3.7.3 If any meeting of Owners cannot be organized because of a lack of quorum, the meeting shall be adjourned for twenty four (24) hours, at which time it shall reconvene and any number of the Owners who are present, represented in person, by proxy, or by written ballot, shall constitute a quorum at such adjourned meeting.

3.7.4 When a quorum is once present to organize a meeting it cannot be broken by the subsequent withdrawal of an Owner or Owners.

3.8 Binding Vote. Action on a matter other than the election of directors is approved and shall be binding upon all owners for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by the Governing Documents.

3.9 Meeting Procedure. Rules of order may be adopted by resolution of the Management Committee, otherwise, the President shall conduct meetings according to the procedure he or she deems fit and shall have absolute authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at such meeting and to establish reasonable rules for expediting the business of the meeting (including any informal or question and answer portions thereof). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used. All informalities or irregularities in calls or notices of meetings and in the manner of voting, credentials, and methods of ascertaining those present shall be deemed waived by those present if no objection is made at the meeting.

3.10 Action by Written Ballot in Lieu of a Meeting. Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Member entitled to vote on the matter not less than fourteen (14) days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All



solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve each matter other than election of Management Committee members; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter. In the event the action is for election of Committee members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting of Members and may be described as such in any document. The Management Committee may elect to conduct a vote pursuant to this section by a secrecy procedure whereby a written ballot is accompanied by: (1) a secrecy envelope; (2) a return identification envelope to be signed by the owner; and (3) instructions for marking and returning the ballot. Written ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed.

3.11 Action without Notice and a Meeting. Any action required to be taken or which may be taken at a meeting of Members may be taken without a meeting and without prior notice if one or more consents in writing, setting forth the action so taken, are signed by Members having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Members entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty day period. Any such writing may be received by the Association by electronically transmitted facsimile or other form of communication providing the Association with a complete copy thereof, including a copy of the signature thereto. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date.

3.12 Fiduciaries and Joint Owners. An executor, administrator, guardian, or trustee may vote in person or by proxy, at any meeting of the Association with respect to any Unit owned or held in such capacity, whether or not the same shall have been transferred to his or her name; provided, that the person shall satisfy the secretary that he or she is the executor, administrator, guardian, or trustee holding the Unit in such capacity. Whenever any Unit is owned by two or more persons jointly, according to the records of the Association, the vote of the Unit may be exercised by any one of the Owners then present, in the absence of protest by a co-owner. In the event of a protest, no one co-owner shall be entitled to vote without the approval of all co-owners. In the event of disagreement among the co-owners, the vote of the Unit shall be disregarded completely in determining the proportion of votes given with respect to the matter.

#### **ARTICLE 4 - MANAGEMENT COMMITTEE MEMBERS – SELECTION, ELECTION, TERM OF OFFICE**

##### 4.1 Number, Term and Qualifications.

4.1.1 The affairs of the Association shall be governed by a Management Committee composed of three (3) Committee members. The Owners may increase or decrease the number of Committee members at any Association annual meeting if such increase or decrease is placed on the notice and agenda of such meeting.

4.1.2 Members of the Management Committee shall serve for a term of two (2) years. The terms shall be staggered so all Committee members are never elected in the same year.

4.1.3 A Committee member must be an Owner or the spouse of an Owner of a Unit in Good Standing, except that a husband and wife may not serve on the Committee at the same time. A representative of an entity which owns a Unit in Good Standing, such as a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Committee. Only one such entity representative may serve on the Committee at any one time.

4.2 Nomination. Nomination for election to the Management Committee shall be made in the manner determined by the Management Committee. The Management Committee may, but shall not be obligated to, inquire of the Owners to identify those having an interest in serving on the Management Committee. The Management Committee or, if established, the nominating committee, shall make as many nominations for election as it shall in its discretion determine, but not less than the number of vacancies. Self-nominated candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination promulgated by the Association at least thirty (30) days before the applicable meeting.

4.3 Election. At the election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written or electronic ballot. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 Vacancies. Vacancies on the Management Committee, caused by any reason other than the removal of a Committee member by a vote of the Association, shall be filled for the balance of the term by vote of a majority of the remaining Committee members even though they may constitute less than a quorum. Each person so elected shall be a Committee member until a successor is elected upon expiration of the term for which the person was elected by the other Committee members to serve. The Committee shall fill such a vacancy within the time period that the Committee reasonably determines.

4.5 Removal of Committee members.

4.5.1 At any annual or special meeting, any one or more of the Committee members may be removed, with or without cause, by a majority of the total voting interests of the Members. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Committee member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.5.2 A Committee member who is delinquent in the payment of an Assessment for longer than three months, is absent from three consecutive regular Committee meetings, or is absent from more than 25% of the regular Committee meetings held in any 12-month period, shall be deemed to have tendered his or her resignation, and upon acceptance by the

Management Committee his or her position shall be vacant. The vacancy shall be filled as provided in Section 4.4 above.

4.5.3 Any one or more Committee members may be removed, with or without cause, by a majority of the Committee at any regular meeting of the Committee and the Management Committee may establish a code of conduct or standards by which such decisions are made.

4.6 Compensation. No Committee member shall receive compensation for any service he or she may render to the Association as a Committee member. However, any Committee member may be reimbursed for actual expenses incurred in the performance of his or her duties.

## **ARTICLE 5 - MEETINGS OF MANAGEMENT COMMITTEE**

### 5.1 Organizational Meeting.

5.1.1 Location, Date and Time. The first meeting of a newly-elected Management Committee shall be held at such place, date and time as shall be fixed by the Committee members at the meeting at which the Committee members were elected and no notice shall be necessary to owners or to the newly elected Committee members in order to legally hold the meeting providing a majority of the elected Committee members are present.

5.1.2 Until the election of new officers, those existing officers that continue to serve on the Committee shall remain in their positions, and the organizational meeting shall be chaired by the president, or in the absence of such person, the vice president, or in the absence of such person, the secretary. At the organizational meeting, the Committee shall elect officers in accordance with Section 7.2 below and may conduct any other Association business.

5.2 Regular Meetings. Regular meetings of the Management Committee shall be held at such place and hour as may be fixed from time to time by the Committee, and if so fixed, no notice thereof need be given. Should the meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, or at another date and time agreed upon by the Management Committee with notice to all members of the Management Committee. Committee meetings shall be held no less than once each quarter.

5.3 Special Meetings. Special meetings of the Management Committee shall be held when called by the president of the Association, or by any two (2) Committee members, after not less than three (3) days' notice to each Committee member by mail, electronic mail, telephone, or facsimile, unless waived pursuant to 5.7 below. The notice must state the time, place, and purpose of the meeting.

5.4 Meeting Procedure. Unless other rules of order are adopted by resolution of the Management Committee: (a) Meetings of the Management Committee shall be conducted by the President; (b) A decision of the Management Committee may not be challenged because the appropriate rules of order were not used; (c) A decision of the Management Committee is deemed valid without regard to any procedural errors related to the rules of order unless the error appears on the face of a written instrument memorializing the decision.

### 5.5 Open Meetings; Executive Sessions.

5.5.1 Open Meetings. Except as provided in subsection 5.5.3, all meetings of the Management Committee shall be open to Owners. At each meeting, the Committee shall provide each Owner a reasonable opportunity to offer comments. The Committee may limit the comments to one specific time period during the meeting. Beyond such comment period, no Owner shall have a right to participate in the Committee meeting unless the Owner is also a member of the Committee. The president or Committee shall have the authority to exclude an Owner who disrupts the proceedings at a Committee meeting. The Committee may adopt policies governing meetings of the Committee from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Committee shall also supersede these Bylaws to the extent the policy restates then current Utah law. "Meeting" means a gathering of the Management Committee, whether in person or by means of electronic communication in real time under Section 5.6, at which the Committee can take binding action.

5.5.2 Notice of Committee Meeting. At least 48 hours before a Management Committee meeting, the Association shall give written notice of the meeting via email to each Owner who requests notice of a Committee meeting ("Meeting Notice"), unless notice of the meeting is included in a meeting schedule that was previously provided to the Owner, or the meeting is to address an emergency, and each Committee member receives notice of the meeting less than 48 hours before the meeting. A Meeting Notice shall: (i) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (ii) state the time and date of the meeting; (iii) state the location of the meeting; and (iv) if a Committee member may participate by means of electronic communication under Section 5.6 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication.

5.5.3 Executive Sessions. Consistent with Utah Code, Title 57, Section 8, Chapter 57, in the discretion of the Committee, the Committee may close a Committee meeting and adjourn to executive session as provide to: (a) consult with an attorney for the purpose of obtaining legal advice; (b) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (c) discuss a personnel matter; (d) discuss a matter relating to contract negotiations, including review of a bid or proposal; (e) 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 (f) discuss a delinquent assessment or fine.

5.5.4 Executive Session Procedure. Except in the case of an emergency, the Management Committee shall vote in an open meeting whether to meet in executive session. If the Committee votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to owners. The statement, motion or decision to meet in executive session must be included in the minutes of the meeting.

5.6 Meetings by Telephonic or Electronic Communication. In the event of an emergency, or by decision of the Committee, meetings of the Committee may be conducted by means of electronic communication that allows all members of the Committee participating to be able to

communicate orally in real time

5.7 Action Taken by Committee without a Meeting.

5.7.1 Notice, Response. The Committee shall have the right to take any action in the absence of a meeting which they could take at a meeting if notice is transmitted in writing to each member of the Committee and each member of the Committee, by the time stated in the notice:

- (a) (1) signs a writing for such action; or (2) signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
- (b) fails to demand in writing that action not be taken without a meeting.

5.7.2 Content of Notice. The notice required by Subsection 5.7.1 (the “Notice”) shall state:

- (a) the action to be taken;
- (b) the time by which a Committee member must respond to the notice;
- (c) that failure to respond by the time stated in the notice will have the same effect as: (1) abstaining in writing by the time stated in the notice; and (2) failing to demand in writing by the time stated in the notice that action not be taken without a meeting; and
- (d) any other matters the Association determines to include.

5.7.3 Approval of Action/Decision. Action is taken under this Section 5.7 only if, at the end of the time stated in the Notice:

- (a) the affirmative votes in writing for the action received by the Association equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Committee members then in office were present and voted; and
- (b) the Association has not received a written demand by a Committee member that the action not be taken without a meeting (other than a demand that has been revoked pursuant to Subsection 5.7.5).

5.7.4 Waiver of Meeting. A Committee member’s right to demand that action not be taken without a meeting shall be considered to have been waived unless the Association receives such demand from the Committee member in writing by the time stated in the Notice.

5.7.5 Revocation. A Committee member who in writing has voted, abstained, or demanded action not be taken without a meeting may, in writing, revoke the vote, abstention, or demand at any time before the time stated in the Notice.

5.7.6 Electronic Transmission. A communication under this Article may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Article if the electronic transmission is delivered with information from which the Association can determine that the electronic transmission is transmitted by the person (e.g., from a sender’s known email account), and the date on which the electronic transmission is transmitted. The date on which an electronic transmission is transmitted is considered the date on which the vote, abstention, demand, or revocation is signed. For purposes of this Section 5.7, communications to

the Association are not effective until received.

5.8 Waiver of Notice. Any Committee member may, at any time, waive notice of any meeting of the Management Committee in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Committee member at any meeting of the Committee shall constitute a waiver of notice by the Committee member, except where the Committee member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. If all Committee members are present at any meeting of the Committee, no notice to Committee members shall be required and any business may be transacted at the meeting.

5.9 Quorum and Acts. At all meetings of the Management Committee, a majority of the existing Committee members shall constitute a quorum for the transaction of business and the acts of the majority of the Committee members present shall be the acts of the Management Committee. If, at any meeting of the Management Committee, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

5.10 Proxies at Committee Meetings. For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Committee member may be considered to be present at a meeting and to vote if the Committee member has granted a signed written proxy: (i) to another Committee member, or other person, who is present at the meeting; and (ii) authorizing the other Committee member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

## **ARTICLE 6 - POWERS, RIGHTS, AND DUTIES OF THE MANAGEMENT COMMITTEE**

6.1 General Powers and Duties. The Management Committee shall have the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or the Governing Documents specifically directed to be exercised and done by, or upon the vote of, the Owners.

6.2 Best Interest of Association and Reliance on Information. A Committee member or officer shall discharge the Committee member or officer's duties (a) in good faith, (b) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (c) in a manner the Committee member or officer reasonably believes to be in the best interests of the Association. The Management Committee members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a reasonable, prudent person would do to serve the best interest of the Association.

In discharging duties, a Committee member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (a) one or more officers or employees of the Association whom the Committee

member or officer reasonably believes to be reliable and competent in the matters presented, (b) legal counsel, a public accountant, or another person as to matters the Committee member or officer reasonably believes are within the person's professional or expert competence, or (c) in the case of a Committee member, a sub-committee of the Association or Management Committee of which the Committee member is not a member if the Committee member reasonably believes the sub-committee merits confidence.

### 6.3 Conflicts of Interest.

6.3.1 A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Committee member, (2) a party related to a Committee member, or (3) an entity in which a Committee member is a director or officer or has a financial interest.

6.3.2 A Committee member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Committee member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Committee, (2) the Committee in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Committee members (even if the disinterested Committee members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

6.5 Sub-Committees. The Management Committee, in its sole discretion, may create sub-committees to perform or oversee certain tasks. Such sub-committees and their individual members may be established and serve for any periods designated by a resolution adopted by a majority of the Management Committee members. Each sub-committee shall operate in accordance with the terms of the resolution of the Management Committee designating the sub-committee or with rules adopted by the Management Committee. Only Owners of Units within the Association who meet the eligibility requirements for Management Committee members set forth in Section 4.1 above may be members of sub-committees.

6.6 Rules and Regulations. The Management Committee may, in its sole discretion, at any time and from time to time, implement and enforce any other restrictions, rules and regulations for all or any portion of the Properties, including without limitation restrictions, rules and regulations relating to (i) the swimming pool, (ii) the common areas, (iii) smoking (inside any Units or outside in common areas), (iv) parking and parking areas, and (v) noise levels. Any such restrictions, rules and regulations may not amend or conflict with provisions specifically stated in the Declaration and these Bylaws.

6.7 Professional Management. The Management Committee may delegate by resolution or contract to a Professional Management company any of its powers under this Declaration as the Management Committee may deem desirable.

## **ARTICLE 7 - OFFICERS AND THEIR DUTIES**

### **7.1 Designation and Qualification.**

7.1.1 **Designation.** The principal officers of the Association shall be a president, a vice-president, and secretary-treasurer.

7.1.2 **Qualifications.** The principal officers must be Committee members (and shall cease to be an officer upon ceasing to be on the Committee). Any Committee member may be an officer of the Association.

7.1.3 **Multiple Offices.** A person may simultaneously hold more than one office.

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

7.2 **Election and Vacancies.** The officers of the Association may be elected by the Committee at the organizational meeting of each new Committee or any Committee meeting thereafter to serve until their respective successors are elected at the next organizational meeting. If any office becomes vacant by reason of death, resignation, removal, disqualification or any other cause, the Committee shall elect a successor to fill the unexpired term.

7.3 **Resignation.** Any officer may resign at any time by giving written notice to the Committee, the president or the secretary. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

7.4 **Removal of Officers.** Officers shall hold office at the pleasure of the Committee. Upon an affirmative vote of a majority of the members of the Committee any officer may be removed, either with or without cause.

7.5 **Compensation of Officers.** No officer who is a member of the Committee may receive any compensation from the Association for acting as an officer, unless the compensation is authorized by a vote of the Owners or is reimbursement for actual, reasonable out-of-pocket expenses and costs incurred in the performance of their respective duties. The Committee may fix any reasonable compensation to be paid to an officer who is not also a Committee member.

7.6 **Duties of Officers.** Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and by the Committee, to the extent not inconsistent with these Bylaws or the Declaration. The Committee may delegate any powers or duties of officers to other persons or agents as the Committee deems necessary or appropriate from time to time. Any principal officer may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. The general duties of the officers are as follows:

(a) **President.** The president shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Association and of the Management Committee. The president shall have all of the general powers and duties which are usually vested in the



office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

(b) Vice-President. The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Committee. The Vice-President shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

(c) Secretary-Treasurer. The secretary-treasurer shall prepare and maintain the minutes of all meetings of the Management Committee and the minutes of all meetings of the Association, have charge of such books, papers and records as the Management Committee may direct, shall have the responsibility for preparation and maintenance other records and information required to be kept by the Association under the Act and under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act; and for authenticating records of the nonprofit corporation, and in general, shall perform all of the duties incident to the office of secretary. The secretary-treasurer also shall have responsibility for the Association's funds and securities not otherwise held by a managing agent and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in books belonging to the Association. The treasurer shall be responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Management Committee and disbursing funds as directed by resolution of the Management Committee.

7.8 Signatures. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers (different individuals), or by such other person or persons as may be designated by resolution of the Management Committee.

#### **ARTICLE 8 - INDEMNIFICATION OF OFFICERS AND COMMITTEE MEMBERS**

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

When an officer, agent or employee of the Association or member of the Management Committee is sued for liability for actions undertaken in his or her role as a member of the Management Committee, officer, agent or employee of the Association, the Association shall indemnify him or her for his or her losses or claims, and undertake all costs of defense, until and

unless it is proven that he or she acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense and may recover costs already expended from the person who so acted. Management Committee members, officers, and agents and employees of the Association are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association but may be recovered from persons whose activity gave rise to the damages.

Beyond (but subject to) the foregoing provisions of this Article, each officer and Committee member of the Association, in consideration of his or her services, shall be indemnified by the Association to the extent permitted by the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities reasonably incurred by him or her in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which he or she may be a party by reason of being or having been a Committee member or officer of the Association. The foregoing right to indemnification shall not be exclusive of any other rights to which the Committee member or officer or person may be entitled by law or agreement or vote of the members or otherwise

## **ARTICLE 9 - RECORDS AND AUDITS**

The Association shall maintain within the state of Utah all documents, information and other records of the Association in accordance with the Governing Documents, the Act, and the Utah Revised Nonprofit Corporation Act.

### **9.2 General Records.**

9.2.1 Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) The Declaration, Bylaws and Articles of Incorporation, (2) minutes of all meetings of the Association and of the Management Committee; (3) a record of all actions taken without a meeting by the Association members or the Management Committee; (4) a record of all actions taken by a committee in place of the Management Committee on behalf of the Association; and (5) a record of all waivers of notices of meetings of members and of the Management Committee or any committee of the Management Committee.

9.2.2 Resolutions and Rules. The Association shall maintain (1) a record of the rules, regulations, and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its members in a form that permits preparation of a list of the name and address of all members in alphabetical order, and showing the number of votes each member is entitled to vote.

9.2.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. The account shall designate the Unit number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

9.2.4 Records at Principal Office. The Association shall keep a copy of each of the

following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the minutes of all Owners' meetings for a period of three years; (3) records of all actions taken by Owners without a meeting, for a period of three years; (4) all written communications to Owners generally as Owners for a period of three years; (5) a list of the names and business or home addresses of the current officers and Management Committee members; (6) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code Section 16-6a-1607; and (7) all financial statements prepared for periods ending during the last three years that show in reasonable detail the assets and liabilities and results of the operations of the Association.

9.2.5 Form of Records. The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

9.3 Financial Reports and Audits. Upon written request by an Owner or mortgagee of a Unit, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Management Committee to the person(s) making the request within ninety days after the end of each fiscal year. From time to time, the Management Committee, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association.

9.4 Availability of Records to Owners.

9.4.1 Owner May Elect Method. An Owner may elect whether to: (1) view and copy records in person, (2) receive hard copies of records, or (3) receive the records electronically.

(a) In Person. If an Owner elects to view and copy records in person, the Owner must bring imaging equipment to the inspection which shall be at a reasonable place, and during such hours specified by, the Association and the Association shall provide the necessary space, light, and power for the imaging equipment.

(b) Receive Hard or Electronic Copies. If an Owner elects to receive hard copies of records or to receive records electronically, the Owner may request a recognized third-party duplicating service to make the copies and any necessary electronic scans of documents, in which case, the Association shall arrange for the delivery and pick up of the original documents, and the Owner shall pay the duplicating service directly. If the Association makes the copies or electronic scans, the Owner shall pay the Association the reasonable cost of the copies or of any

necessary electronic scans of documents, which may not exceed: (1) the actual cost that the Association paid to a recognized third party duplicating service to make the copies or electronic scans; or (2) if an agent of the Association makes the copies or any electronic scans, 10 cents per page and \$15 per hour for the person's time making the copies or electronic scans. If the Owner requests a recognized third-party duplicating service make the copies or electronic scans

9.4.2 Availability of Records Kept at Principal Office. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the records in Section 9.2.4 above.

9.4.3 Availability of Other Records - Proper Purpose Required. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the other records of the Association and: (1) the request must be made in good faith and for a proper purpose; (2) the Owner must describe with reasonable particularity the purpose and the records the Owner desires to inspect; and (3) the records must be directly connected with the described purpose.

9.4.4 Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Committee may withhold from inspection or copying any records: (1) considered by the Committee in executive session and the minutes of any executive session, or (2) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Committee, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

## **ARTICLE 10 - AMENDMENTS**

The approval of a majority (more than 50%) of the total voting interests of the Unit Owners of the Association shall be required for any amendment to these Bylaws. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the County Recorder's Office.

## **ARTICLE 11 - MISCELLANEOUS**

11.1 Waiver, Precedent and Estoppel. No restriction, condition, obligation, or provision contained in these Bylaws or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

11.2 Invalidity; Number; Captions. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All

captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.


11.3 Fiscal Year. The fiscal year of the Association shall be determined by the Committee in its discretion.

11.4 Conflicts. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the BIRCH ESTATE CONDOMINIUMS ASSOCIATION has caused these Bylaws to be executed by its duly authorized officer on this 3rd day of March, 2021.

(Sign): [Signature]  
(Print Name): MICHAEL SANDERS, President

STATE OF UTAH COUNTY OF: <u>Salt Lake</u> ON THE <u>3rd</u> DAY OF <u>MARCH</u> PERSONALLY APPEARED BEFORE ME <u>Michael Sanders</u> SIGNER(S) OF THE ABOVE INSTRUMENT, WHO DULY ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME  <u>Michelle Hannah Smith</u> NOTARY PUBLIC
---

 NOTARY PUBLIC Michelle Hannah Smith 711537 My Commission Expires 04/21/2024 STATE OF UTAH
---