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# DECLARATION OF CONDOMINIUM FOR WEST SQUARE CONDOMINIUMS

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## A Utah Condominium Project

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**TABLE OF CONTENTS**

**RECITALS .....1**

**ARTICLE 1 DEFINITIONS .....2**

**ARTICLE 2 THE CONDOMINIUM PROJECT .....5**

**ARTICLE 3 DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST .....6**

**ARTICLE 4 MAINTENANCE AND UTILITIES .....7**

**ARTICLE 5 ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT .....9**

**ARTICLE 6 BUDGET AND ASSESSMENTS .....12**

**ARTICLE 7 EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES .....15**

**ARTICLE 8 PROPERTY RIGHTS IN COMMON AREA .....17**

**ARTICLE 9 USE RESTRICTIONS .....19**

**ARTICLE 10 INSURANCE .....24**

**ARTICLE 11 DESTRUCTION OF IMPROVEMENTS .....28**

**ARTICLE 12 EMINENT DOMAIN .....31**

**ARTICLE 13 RIGHTS OF LENDERS .....32**

**ARTICLE 14 TERMINATION .....34**

**ARTICLE 15 AMENDMENTS .....35**

**ARTICLE 16 SPECIAL DECLARANT RIGHTS .....36**

**ARTICLE 17 GENERAL PROVISIONS .....39**

**EXHIBIT A LEGAL DESCRIPTION**

**EXHIBIT B ALLOCATED INTEREST IN COMMON AREAS**

**EXHIBIT C BYLAWS**

**DECLARATION OF CONDOMINIUM  
FOR  
WEST SQUARE CONDOMINIUMS**

A Utah Condominium Project

This DECLARATION OF CONDOMINIUM FOR WEST SQUARE CONDOMINIUMS ("Declaration") is effective when recorded with the Davis County Recorder's Office by West Square, LLC, a Utah limited liability company ("Declarant"), pursuant to the Utah Condominium Ownership Act.

**RECITALS**

- A. Capitalized terms in this Declaration are defined in Article 1.
- B. The real property situated in Davis County, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Parcel"), is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Parcel, and all easements and rights appurtenant thereto (collectively, the "Property"), to a condominium project consisting of residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 et seq. (the "Project").
- C. Declarant is the owner of the real property subject to this Declaration. By signing this Declaration, each entity consents to subjecting their real property to the terms, covenants and restrictions contained herein.
- D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Condominium Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the Property.
- E. Declarant desires to create an association of condominium owners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.
- F. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Property, and for establishing rules for the use, occupancy, management, and enjoyment thereof.
- G. Declarant explicitly reserves for itself the option in the future to expand the Condominium Project.
- H. The Project is to be known as West Square Condominiums.

**DECLARATION**

**NOW, THEREFORE,** Declarant hereby declares that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions and restrictions. These covenants,

conditions, and restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

## ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meaning stated:

- 1.1 **“Act”** shall mean the Utah Condominium Ownership Act, beginning at § 57-8-1, Utah Code Annotated, as the same may be amended from time to time.
- 1.2 **Reserved.**
- 1.3 **“Allocated Interest”** shall mean and refer to the undivided ownership interest of each Unit (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas, The Common Expense liability, and votes in the Association allocated to each Unit as set forth on Exhibit “B” attached hereto.
- 1.4 **“Articles”** shall mean the Articles of Incorporation for the Association, as may be amended and restated from time to time.
- 1.5 **“Assessments”** shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.
- 1.6 **“Association”** shall refer to West Square Condominium Owners Association, Inc., the membership of which shall include each Owner of a Unit in the Condominium Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this Declaration shall refer to that entity.
- 1.7 **“Board Member”** shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association.
- 1.8 **“Board of Directors” or “Board”** shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. It shall have the same meaning as “Management Committee” does under the Act.
- 1.9 **“Bylaws”** shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The initial Bylaws of the Association are attached hereto as Exhibit “C”.
- 1.10 **“Common Area”** shall mean, refer to, and include:
  - (a) the land included within the Condominium Project;
  - (b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces (excluding windows and window frames and doors and door frames),

- gutters, downspouts, soffit, and fascia of any buildings in the Condominium Project;
- (c) any halls, corridors, stairs, and stairways, entrances and exits which are designed for the use of more than one Unit;
  - (d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, playgrounds, swimming pool, basketball court, dog park, clubhouse, and other installations or facilities existing for common use as set forth on the Plat;
  - (e) all installations of central services such as power, light, gas, water, and sewer including all pipes, wires, conduits or other utility lines running through each building and utilized by more than one Unit;
  - (f) all any mechanical, plumbing, or other equipment, apparatus, and installations existing for common use;
  - (g) everything included within the Condominium Project, excluding the individual Units, as identified on the Plat; all other parts of the Condominium Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.
- 1.10 **“Common Expenses”** shall mean: (a) all sums lawfully assessed against Units; (b) expenses of administration, maintenance, management, operation, repair, and replacement of the Common Areas maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as Common Expenses by the Association; (e) expenses declared Common Expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board of Directors pursuant to the Act, this Declaration, the Bylaws, or the Rules.
- 1.11 **“Condominium Project”** or **“Project”** as hereinbefore defined shall include this real estate condominium project wherein fee simple title to single units in a multi-unit project, together with an undivided interest in the Common Area of the Property are owned separately.
- 1.12 **“Declarant”** shall mean and refer to West Square, LLC, a Utah limited liability company, and any successor in interest.
- 1.13 **“Declaration”** as mean and refer to this Declaration and shall include any and all amendments and supplements thereto.
- 1.14 **“Eligible Mortgagee”** shall mean and refer to a mortgagee, beneficiary under a trust deed, or Lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.
- 1.15 **“Insurance Trustee”** shall mean any trustee with which the Association may enter into an Insurance Trust Agreement, and which shall have exclusive authority to negotiate losses under the policies of insurance in accordance with such agreement.
- 1.16 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.17 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited

Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. Limited Common Area includes the driveways. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area.

- 1.18 **“Manager”** shall mean a person, persons, or entity, if any, selected by the Board of Directors to manage the affairs of the Condominium Project.
- 1.19 **“Occupant”** shall mean any Person, other than an Owner, living, dwelling, visiting, or staying in a Unit. This includes, but is not limited to an Owner’s lessees, tenants, family members, guests, agents, invitees, and representatives.
- 1.20 **“Owner” or “Unit Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Davis County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement. With the exception of Developer or an affiliate or a combination of affiliates of Developer, No Owner may own more than ten percent (10%) of the total number of built Units at any point in time.
- 1.21 **“Parcel”** as hereinbefore defined shall include the real property legally described in Exhibit “A.”
- 1.22 **“Period of Declarant Control”** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (1) the date on which all of the Units in all phases of the Project have been conveyed, or (2) the Declarant executes and records a written waiver of its right to control.
- 1.23 **“Person”** shall mean a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency or other legal entity capable of holding title to real property.
- 1.24 **“Plat”** shall mean the condominium Plat recorded with the Davis County Recorder. “Plat” shall also refer to any additional or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.
- 1.25 **“Project”** as hereinbefore defined shall at any point in time mean, refer to The West Square Condominiums.
- 1.26 **“Property”** as hereinbefore defined shall include the Parcel, together with all the buildings, improvements and permanent fixtures located thereon, and all easements and rights appurtenant thereto.
- 1.27 **“Project Documents”** means and refers to the Declaration, Articles, Bylaws, and Rules as set forth herein.

- 1.28 **“Restrictions”** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.
- 1.29 **“Rules”** shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Directors.
- 1.30 **“Supplemental Declaration”** shall mean a written instrument recorded in the records of the Davis County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.
- 1.31 **“Unit”** shall mean and refer to a separate physical part of the Property intended for independent use, consisting of rooms or spaces located in a building. Units are shown on the Plat. Mechanical equipment, ducts, pipes, and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, fixtures and the like, shall be considered part of the Unit. Unit includes all decorated interiors, wallboard and drywall, surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of *inter alia* and as appropriate, wallpaper, paint, flooring, carpeting, and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any structural members 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 building within which the Unit is situated shall be considered part of the Unit. If a Unit Owner has purchased a one (1) car garage, the Unit Owner’s Unit shall include the purchased garage. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Allocated Interest in the Common Area appurtenant to such Unit.
- 1.32 **“Unit Number”** shall mean the number, symbol, or address that identifies one of the several Units in the Condominium Project.

## ARTICLE 2 THE CONDOMINIUM PROJECT

- 2.1 **Submission.** The Declarant hereby confirms that the Parcel described with particularity on Exhibit “A” attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Condominium Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.
- 2.2 **Name and Location.** The Condominium Project is known as West Square Condominiums. The Project is located in Clearfield City, Davis County, Utah. The legal description of the real property included in the Project is the Parcel set forth in Exhibit “A”.
- 2.3 **Interpretation of Declaration and Applicability of the Act.** The Declarant intends that the Condominium Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary,

supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act.

- 2.4 **Agent for Service of Process.** The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, unless such time as the Board of Directors duly appoints a new agent. The Board of Directors may change the Registered Agent at any time and without the need for Owner consent.

### **ARTICLE 3 DESCRIPTION OF IMPROVEMENTS, ALLOCATED INTEREST**

- 3.1 **Description of Improvements.** The improvements contained in the Project will be located upon the Parcel. The Condominium Project will be built in phases. Phase 1 will include one (1) building with fifty-three (53) Units, Phase 2 will include one (1) buildings with forty-four (44) Units, and Phase 3 will include one (1) building with forty-five (45) Units. Other major improvements include enclosed garages, asphalt roadways, open parking spaces, fences, concrete patios, and outdoor lighting and landscaping. The Plat(s) shall supplement the information and descriptions in this section.
- 3.2 **Description and Legal Status of Units.** The Plat(s) show the Unit and building designation, its location, dimensions from which its area may be determined, those Limited Common Areas which are reserved for its use, and the Common Areas to which it has immediate access. All Units are residential Units. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit and an appurtenant undivided interest in and to the Common Area.
- 3.3 **Allocated Interests in the Common Area.**
- (a) The Allocated Interests shall be apportioned among the Units as set forth in this Section. Each Unit shall have an equal Allocated Interest. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Allocated Interests. To calculate the undivided interest of a Unit, Declarant shall divide 100 by the number of Units in the Condominium Project.
  - (b) The Allocated Interest appurtenant to each of the Units is set forth in Exhibit "B" attached hereto and incorporated herein by this reference, and may be displayed as a fraction or a percentage.
  - (c) As Units are added with each Phase of the Condominium Project, or if Units are otherwise legally added to or withdrawn from the Condominium Project, the Allocated Interest shall be recalculated in accordance with the formula set forth above and recorded via Supplemental Declaration by the Declarant, or following the Period of Declarant Control, by the Association, through the Board. Otherwise, the Allocated Interest shall have a permanent character and shall not be altered without the express consent of all Owners expressed in an amendment to this Declaration.



**ARTICLE 4  
MAINTENANCE AND UTILITIES**

4.1 **Maintenance of Units.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit, which includes the assigned garage, and such other items designated herein. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, undamaged, and tidy condition, all of the following:

- (a) all interior and exterior doors, including door trim and the garage doors, including any door glass;
- (b) all paneling, tiles, wallpaper, paint, carpet, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;
- (c) all windows, window frames, and trim and door glass or equivalent materials (including the interior and exterior cleaning of such windows and door glass);
- (d) all sewer and drainage pipes, water, power, and other utility lines in an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; and
- (e) any of the following whether inside or outside of the Unit, which serve an Owner's Unit exclusively: fans, plumbing fixtures, stoves, dishwashers, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, and forced air units), light bulbs in exterior lighting fixtures, intercoms, security systems, and such other appliances, fixtures, and decorations as an Owner may install.

4.2 **Modifications to Units.**

- (a) An Owner may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the Units, but an Owner shall not make any structural alterations or alterations to any part of the Unit on the exterior of a building (such as windows, light fixtures, and exterior doors and garage doors), the Common Area, or the Limited Common Area without the prior written approval of the Board. The Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular color schemes, material requirements, or other standards.
- (b) **Remodeling and Extensive Maintenance.** An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area, or Limited Common Area. Without prior written permission of the Board of Directors, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons;

or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

**4.3 Maintenance of Common Area and Limited Common Area**

- (a) **Maintenance of Common Area.** Except as otherwise provided specifically herein, the Association, through its Board or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
- (b) **Maintenance of Limited Common Area.** The Association shall repair, maintain, and replace the Limited Common Area. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is maintained in a clean, sanitary, and uncluttered condition.
- (c) **Standard of Maintenance.** The Board shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area, so long as the Association is maintained in the best interests of the Owners.
- (d) **Assessment for Maintenance Expenses to Specific Owner.** If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

**4.4 Default in Maintenance.** If an Owner or Occupant fails to maintain a Unit or Limited Common Area for which the Owner is responsible, as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board deems necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment, as outlined in Article 6. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in this Declaration.

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

**ARTICLE 5**  
**ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT**

- 5.1 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.
- 5.2 **Legal Organization.** The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.
- 5.3 **General Powers and Obligations.** The Association shall have, exercise, and perform all of the following powers, duties, and obligations:
- (a) The powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles;
  - (b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
  - (c) The powers, duties, and obligations of a condominium association pursuant to the Act;
  - (d) The powers, duties, and obligations not reserved specifically to the Owners; and
  - (e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Project Documents.
- 5.4 **Membership.** Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.5 **Voting.** Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Allocated Interest pertaining to the Unit owned by that Owner at any meeting of the Owners, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the

event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than establishing a quorum.

- 5.6 **Board of Directors.** The governing body of the Association shall be the Board of Directors elected pursuant to the Bylaws.
- 5.7 **Qualification of Board Members.** Except for Board Members appointed by the Declarant, all Board Members shall be an Owner or the spouse of an Owner. If an Owner is a corporation, partnership, limited liability company, a manager, or trust, such entity may designate a representative to serve on the Board who may be an officer, partner, member, manager, trustee, or beneficiary of such Owner. Except for Board Members appointed by the Declarant, no two (2) Board Members may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Unit(s). If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board of Directors shall automatically terminate.
- 5.8 **Action by Board of Directors and Owners.** Unless otherwise provided in this Declaration or the Bylaws, the Board may act on behalf of the Association in all instances unless such action requires approval from the Owners.
- 5.9 **Annual Meeting.** The Association shall conduct an Annual Meeting as provided in the Bylaws.
- 5.10 **Right of Association to Enter Units.** The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Project Documents, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided in Article 7. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Condominium Project, including the sound or sight of running water in a Unit, the smell or sight of smoke or gas in a Unit, abnormal or excessive noises; and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.
- 5.11 **Rules.** The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Condominium Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive.
- 5.12 **Remedies Available to the Board of Directors.** In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Project Documents; (2) terminate an Owner's rights to receive utility services paid as a Common Expense; (3) terminate an Owner's rights to access

and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; and (5) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.

- 5.13 **Reserve Fund.** The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area, as determined by the Board. Reserve funds may be collected as part of the Annual Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.
- 5.14 **Availability of Condominium Project Documents.** The Association shall maintain current copies of the Project Documents and the Association's own books, records, and financial statements (as required by law) available for inspection, upon written request by any Owner or Lender (or any insurer or guarantor of a Lender) as may be further provided in the Bylaws. The term "available" as used in this Section shall mean available for inspection within a reasonable time after delivery of a written request to a Board Member and at a location convenient to the Board within the Condominium Project or at such other location as may be agreed by the Board and the party requesting.
- 5.15 **Managing Agent.** The Board may contract with a professional Manager to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.
- 5.16 **Hearing before Board of Directors.** The Board shall have the authority to create a reasonable hearing process applicable in case the Board or Association takes adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.
- 5.17 **Board Indemnification.** Each past and present Board Member (including the Declarant and its appointees) shall be entitled to indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.
- 5.18 **Board Liability.** To the fullest extent permitted by the Utah Revised Nonprofit Corporation Act, the Declarant and each past and present Board Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

**ARTICLE 6  
BUDGET AND ASSESSMENTS**

- 6.1 **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted.
- 6.2 **Covenant to Pay Assessments.** Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.
- (a) In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorneys' fees, if any, against the latter for his share of any Assessments authorized by this Declaration 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. However, any such grantee shall be entitled to a statement from the Board or Manager setting forth the amounts of the unpaid Assessments against the grantor, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid Assessments against the grantor in excess of the amount set forth. Otherwise, the personal obligation for any delinquent Assessment, together with interest, costs and reasonable attorneys' fees shall not pass to the Owner's successor or successors in title unless expressly assumed by such successor or successors.
- (b) A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.
- 6.3 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the purposes of the following: promoting the safety and welfare of the Owners; effecting the management, maintenance, care, preservation and protection of the Condominium Project; enhancing the quality of life in the Condominium Project; and maintaining and enhancing the value of the Condominium Project including, without limitation, the improvement and maintenance of the services and facilities

devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

- 6.4 **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly or quarterly installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.
- 6.5 **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to one-thousand dollars (\$1,000) per Unit, payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over one-thousand dollars (\$1,000) in a calendar year may be levied if approved by a majority of Owners who are present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.
- 6.6 **Individual Assessments.** In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Project Documents; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Project Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Project Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.
- 6.7 **Declarant Assessment Exemption.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments.
- 6.8 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Individual Assessments) shall be imposed upon all Units according to its Allocated Interest.
- 6.9 **Rules Regarding Billing and Collection Procedures.** The Board shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the

Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident of the Unit of the Owner.

- 6.10 **Certificate of Payment.** The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a recordable written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of \$25 (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- 6.11 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Condominium Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment at the discretion of the Board.
- 6.12 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 6.13 **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.
- 6.14 **Reinvestment Fee.** Subject to the terms and conditions of Subsection (b) below, the Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee assessment in accordance with this Section. If established by the Board, the Board or its agent shall record and is hereby authorized to record, a notice or amended notice of this Reinvestment Fee covenant against all Units, consistent with the following terms and conditions:
- (a) Upon the occurrence of any sale, transfer, or conveyance (as applicable, a "Transfer") of any Unit, the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (i) 0.5% of the value of the applicable Unit, or (ii) the maximum rate permitted by applicable law.



- (b) Notwithstanding anything to the contrary contained in this Section, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:
- (i) Any Transfer to Declarant or an affiliate or successor of Declarant.
  - (ii) Any Transfer to the United States or any agency or instrumentality thereof, the State of Utah, or any county, city, municipality, district or other political subdivision of the State of Utah.
  - (iii) Any Transfer to the Association or its successors.
  - (iv) Any Transfer, whether outright or in trust, that is for the benefit of the transferor or the transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Living Unit transferred.
  - (v) Any Transfer or change of interest by reason of death, whether provided for in a will, trust, or decree of distribution, except for a sale of a Unit by the estate of an Owner.
  - (vi) Any Transfer made solely for the purpose of confirming, correcting, modifying, or supplementing a Transfer previously recorded to remove clouds on title.
  - (vii) Any lease of any Unit or portion thereof for a period of less than thirty (30) years.
  - (viii) Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation.
  - (ix) Any Transfer in connection with the foreclosure of a deed of trust or mortgage, or a deed given in lieu of foreclosure.
  - (x) An involuntary transfer.
  - (xi) A bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity.

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

## **ARTICLE 7**

### **EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES**

- 7.1 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more or all of the sanctions granted in this Article.
- 7.2 **Collection Charge.** Unless otherwise set by the Board in the Association's Rules, the following shall apply. Interest shall accrue at the rate of eighteen percent (18%) per annum on all delinquent account balances, in addition to a collection charge and/or such other late fee penalty established by the Board. Until paid, such collection

charges, interest, and/or late fees shall constitute part of the Assessment lien as provided for in Article 6. Late fees may be assessed each month until the delinquent Assessment is paid in full, including all its accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

- 7.3 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.
- 7.4 **Foreclosure Sale.** Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or non-judicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.
- 7.5 **Trust Deed Provisions.** Each Owner by accepting a deed to a Unit hereby conveys and warrants the Unit in trust with power of sale to the Association's attorney as trustee to secure performance of the Owner's obligations, to the Association, under the Project Documents. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit or the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.
- 7.6 **Suspension of Votes.** The Board may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.
- 7.7 **Termination of Services.** If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.
- 7.8 **Unpaid Assessments and Future Lease Proceeds.** If an Owner who is leasing a Unit fails to pay any Assessment for more than sixty (60) days after the Assessment

is due, the Board may demand that the tenant pay to the Association all future lease proceeds due to the Owner beginning with the next monthly payment until the amount due is paid to the Association.

## ARTICLE 8 PROPERTY RIGHTS IN COMMON AREA

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

- (a) Subject to this Declaration and the Rules, each Owner shall have an equal undivided interest, right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant.
- (b) The Declarant reserves in favor of the Declarant such easements and rights of ingress and egress over, across, through, and under the real property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete each Unit and all of the other improvements described in this Declaration or in the Plat; and (ii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as Declarant may reasonably determine to be appropriate. This reservation shall, unless terminated sooner by law, expire seven (7) years after the date on which this Declaration is recorded with the Davis County Recorder.
- (c) The Declarant reserves in favor of the Declarant and the Association, acting through the Board or its authorized agent, nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Declarant and the Association, acting through the Board or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Condominium Project; provided, however, such rights shall be exercised in a reasonable manner and at reasonable times, with proper notification, unless emergency situations demand immediate access.

- 8.2 **Public Utilities.** Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sanitary sewer lines, drainage facilities, and such other public utilities needed to serve the Condominium Project are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the

Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of all of the Owners as their attorney-in-fact, to any other person easements and rights-of-way in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no such easement can be granted if it would permanently and significantly interfere with the use, occupancy, or enjoyment by any Owner or such Owner's Unit.

- 8.3 **Easements for Encroachments.** If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings stand.
- 8.4 **Limitation on Easement - Suspension of Owner's Rights.** An Owner's equal undivided interest, right and easement of use and enjoyment concerning the Common Area shall be subject to the following:
- (a) The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Project Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;
  - (b) The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and
  - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Property to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.
- 8.5 **Views.** Views from a Unit and the Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Project and each Owner and Occupant in such Owner's Unit acknowledges and agrees that there are no view easements or rights appurtenant to the Unit or the Project relative to any other Unit or structure only within the Project.

**ARTICLE 9  
USE RESTRICTIONS**

- 9.1 **Rules and Regulations.** The Association has authority to promulgate and enforce such Rules and procedures as may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and the Bylaws.
- 9.2 **Use.** Units shall be occupied and used only as a private single-family residence. Common Areas are to be used in a manner consistent with their community nature and use restriction.
- 9.3 **Signs.** Unless otherwise set forth by the Board in the Association's Rules, the following restrictions shall apply. Lawn signs are prohibited, except for "For Sale" or "For Rent" signs that may be placed outside the main entry and only in the areas identified by the Board. All other signs may only be erected or maintained on the Property, whether in a window or otherwise, with the prior approval of the Board. Signs may not exceed 18" X 24" in size and may only be posted into the ground with wire or stakes no more than 1" in diameter.
- 9.4 **Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights of quiet enjoyment, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. A nuisance includes but is not limited to the following: excessive noise between 10:00 p.m. and 7:00 a.m.; the use of outdoor speakers or amplifiers; excessive foot or vehicular traffic in, on, or about the Project beyond that expected for a typical personal residence, especially after 10:00 p.m. and before 7:00 a.m.; and any violation of the Project Documents. The Board may adopt Rules that further describe the activities that are deemed to be nuisances within the Project.
- 9.5 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Board.
- 9.6 **Parking.** The Project shall have between 30 and 40 garage spaces that shall be offered for sale. In addition, each Unit shall be assigned a covered parking space. Owners, Occupants, and tenants must first use their garages and/or covered parking space before other vehicles may be parked outside of those spaces. Overnight parking is prohibited on the streets within the Project. Undesignated parking stalls shall be subject to and governed by Association Rules and may be assigned by the Board of Directors. The Association may charge a fee for the use of the assigned parking stalls, which are intended to be used as vehicle parking spaces only and are restricted to such use. The Board may adopt additional Rules relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the use of the undesignated parking spaces identified on the Plat, if any, including, without limitation, the right to loan or license the visitor parking spaces in the discretion of the Board; the right to remove or cause to be removed any vehicles that are improperly parked; the time visitor spaces may be used; and the assessment

of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

- 9.7 **External Fixtures.** No external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, clotheslines, wiring, insulation, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, exterior doors, screen doors, porch or patio or balcony enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and planting, other than those provided in connection with the original construction of the Condominium Project, and any replacements thereof, and other than those approved by the Board, and any replacements thereof, shall be constructed, erected or maintained on the Project without the prior written approval of the Board. The Board may adopt Rules regulating the location, type, color, and design of these external fixtures. Any damage caused by the installation of any external fixture to the Common Areas (including roofs and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment (see Article 6) against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Board.
- 9.8 **Window Covers.** No window shall be covered by paint, grease, blankets, rugs, foil, sheets, towels, newspaper, or similar items. The Board may adopt Rules regulating the type, color, and design of the external surface of window covers. All window coverings shall be installed within (1) month of moving into a Unit.
- 9.9 **Repairs.** No repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made upon the Project, unless such work is done within the Unit's garage.
- 9.10 **Unsightly Items.** All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from Units and Limited Common Areas and shall not be allowed to accumulate therein or thereon. Refuse containers and machinery and equipment not a part of the Units, shall be prohibited in any Unit and Limited Common Area unless obscured from view of adjoining Units and Common Area. Trash and garbage shall be properly disposed in accordance with the Rules applicable thereto adopted by the Board of Directors.
- 9.11 **Pets.** One (1) domestic pet per Unit is allowed. No pets, animals, livestock, or poultry of any kind shall be bred in, on, or about the Project. The Board may adopt Rules adding further restrictions related to pets not inconsistent with this Declaration including but not limited to requirements for registration and the use of leashed and noise barking limitations. All pets must be registered in advance with the Association. All pets must be properly licensed and registered with the appropriate governmental agency and must abide by all pet Rules adopted by the Board of Directors from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Limited Common Area of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion; or (f) it molests or harasses a passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area and shall be leashed whenever outside the Unit.

- 9.12 **Leases.** The leasing of Units is permitted, provided, at no time shall more than 45% of the total number of fully built Units be non-Owner-occupied at any one time. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "lease") shall be in writing, a copy of which shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner may lease individual rooms to separate persons or less than his or her entire Unit. All leases shall provide that the tenant is subject to and shall abide by the Project Documents and the tenant's failure to do so shall constitute a breach of the lease agreement. Within ten (10) days after delivery of written notice of the creation of a nuisance or violation of the Project Documents, the Owner shall proceed promptly to either abate or terminate the nuisance, or cure the default, and notify the Board in writing of his or her intentions. In the event that the Owner fails to act accordingly, the Board may initiate eviction proceedings on behalf of the Owner, and through this Declaration the Owner hereby assigns the Association the authority to do so.
- 9.13 **Landscape Maintenance.** The Association shall have the right and duty to maintain and the right to alter and change any and all landscaping in the Common Area. The Association shall have the right of access to all Common Area and Limited Common Area of the Condominium Project as necessary for such landscape maintenance. If the Association is unable to enter into a Limited Common Area for landscape maintenance, then the Owner shall be responsible for such maintenance.
- 9.14 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit or balcony was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is approved in writing by the Board. This includes, but is not limited to, the use of waterbeds, or Jacuzzi hot tubs.
- 9.15 **Residential Occupancy and Commercial Activity Limits.** No business use and trade may be conducted in or from any Unit unless:
- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit;
  - (b) the business activity conforms to all zoning requirements for the Project;
  - (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project;
  - (d) such business is legal within the meaning of all applicable statutes of the state of Utah and all ordinances of municipal authorities; and
  - (e) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents, as may be determined in the sole discretion of the Board.
  - (f) Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section.
- 9.16 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Board has first approved

the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Association's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Boards review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Property. However, in no event shall the approval of the Board of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

- 9.17 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board or any committee established by the Board for that purpose. By way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, repairs, excavation, patio covers, screens, windows, doors, fences, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, shade screens, awnings, window coating or tinting, decorative alterations, or other work that in any way alters the exterior appearance of the Property. The Board may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board, or any committee established by the Board. Any structural change may be denied by the Board, or the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the building or other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, and the like.
- 9.18 **Lighting.** Exterior lighting fixtures and walkway and landscaping lights shall be allowed only to the extent approved by the Board.
- 9.19 **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.
- 9.20 **Hazardous Substances.**
- (a) The Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, nor allow anyone else to do, anything affecting the Condominium Project that is in violation of any environmental law. The preceding two sentences shall not apply to the presence, use or storage on the Project of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance of a Unit or the Project.
  - (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for



bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the hazardous substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of hazardous substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

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

- 9.21 **Smoke and Carbon Monoxide Detectors.** Each Unit shall have an operable Smoke and Carbon Monoxide Detector as required by building code. The Board may, but is not required to, upon advanced notice of at least forty-eight (48) hours, enter a Unit to ensure that the Unit is in compliance with this Section.
- 9.22 **Sound Transmission.** Without the prior written consent of the Board, no Unit shall be altered in any manner that would increase sound transmissions, resonances or reverberations to any adjoining Unit, including, but not limited to, the replacement, modification or penetration of any flooring or floor covering, ceiling or wall or the penetration of any wall, floor or ceiling that increases sound transmissions, resonances or reverberations to any other Unit. Owners of Units on the second-floor level and above shall not replace any carpeted area with hard surface floor coverings without the written consent of the Board. Each Unit Owner shall cover one hundred percent (100%) of any hard surface floor area within the bedrooms of such Owner's Residential Unit with carpets and pads and shall cover a minimum of sixty percent (60%) of any other hard surface floor areas within the Owner's Unit (including kitchens, bathrooms, and main entry-ways) with area rugs or carpets and pads; provided, however, that the provisions of this sentence shall not apply to (a) a multi-level Unit having at least one level of such Unit on the first floor of the Building in which such Unit is located, (b) a Unit on the first floor of the Building in which such Unit is located.
- 9.23 **Energy Conservation Equipment.** Solar energy collector panels and attendant hardware or other energy conservation equipment shall be prohibited from being constructed or installed on any part of the Common Area in the Project. Notwithstanding the forgoing, if the Board elects to allow energy conservation equipment in the Project, then the Board may adopt rules and regulations for the installation of solar panels or other energy conservation equipment. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the buildings. The Board shall assess the costs related to any installation, operation, and maintenance of energy conservation equipment to the requesting

Owner(s) or benefitted Owner(s) in the Board's sole discretion. The costs arising under this Section do not need to be allocated according to allocated interests.

- 9.24 **Variations.** The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variations from the Restrictions set forth in this Article if the Board determines in its discretion: (a) either (i) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; and (b) that the activity permitted under the variance will not have any substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this provision.

## ARTICLE 10 INSURANCE

The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums purchased by the Association shall be a Common Expense.

- 10.1 **Property Insurance.** The Association shall obtain property insurance as required by the Act at §57-8-43.

- (a) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Condominium Project, including the Common Area and all buildings including all Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.
- (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.
- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
- (iii) The blanket policy shall be in an amount not less than one hundred

percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

- (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
- (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
  - (i) the Association's policy provides primary insurance coverage;
  - (ii) notwithstanding Subsection (a) above, and subject to Subsection (c) below:
    - (B) the Owner is responsible for the Association's policy deductible; and
    - (B) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
  - (iii) An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Unit to the amount of the deductible under the Association's property insurance policy; and
  - (iv) If an Owner does not pay the amount required under Subsection (b) above within thirty (30) days after substantial completion of the repairs

to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an individual Assessment against the Owner for that amount.

- (c) Flood Insurance. If any part of the Condominium Project is or comes to be situated in a Special Flood Hazard Area as designated on a Flood Insurance Rate Map, a policy of flood insurance shall be maintained covering the Project, or, at a minimum, that portion of the Condominium Project located within the Special Flood Hazard Area. That policy shall cover any machinery and equipment that are not part of a building and all Common Area within the Condominium Project ("Insurable Property") in an amount deemed appropriate, but not less than the lesser of: (i) the maximum limit of coverage available under the National Flood Insurance Program for the Insurable Property within any portion of the Project located within a designated flood hazard area; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property. If the Condominium Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, in the discretion of the Board, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association may purchase earthquake insurance as it deems appropriate. The decision to purchase earthquake insurance may be made by the Board or a majority vote of the Allocated Interest.
- (e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.
- (f) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.
- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation with regard to the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

10.2 **Comprehensive General Liability Insurance**. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence.

Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

- 10.3 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.
- 10.4 **Fidelity Insurance.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) officers and Board Members of the Association, (b) employees and volunteers of the Association, (c) any manager of the Association, (d) officers, directors, and employees of any manager of the Association, and (e) coverage for acts.
- 10.5 **Directors and Officers Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.
- 10.6 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 10.7 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 10.8 **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and

appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

- 10.9 **Insurance Trustee.** In the discretion of the Board or upon written request executed by Owners holding at least fifty-percent (50%) of the Allocated Interest of the Association, the Board shall hire and appoint an Insurance Trustee, with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board (as the case may be) shall require.
- 10.10 **Owner Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 10.11 **Waiver of Subrogation Against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.
- 10.12 **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by Utah Code § 57-8-43, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

## ARTICLE 11 DESTRUCTION OF IMPROVEMENTS

- 11.1 **Reconstruction.** In the event of partial or total destruction of a building or buildings or any portion of the Common Area within the Condominium Project, the Board of Directors shall promptly take the following actions:
- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds.
  - (b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer carrying the policy covering the Condominium Project.
  - (c) Pursuant to § 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.
  - (d) If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders encumbering Units within the Condominium Project setting forth such findings and informing the Owners and Lenders that the

Board of Directors intends to commence reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Allocated Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

- (e) If the Board in good faith determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Board shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Board as soon as possible. However, if such determination cannot be made within ninety (90) days after the date of such destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately call a meeting of the affected Owners and all Lenders pursuant to Section 11.2.
- (f) If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

11.2 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt) determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.3 **Procedure for Minor Reconstruction.** If the cost of reconstruction is equal to or less than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium Project, then the Board of Directors shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Condominium Project in conformance with the original plans and specifications, or if the Board of Directors determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements.

11.4 **Procedure for Major Reconstruction.** If the cost of reconstruction is greater than ten percent (10%) of the estimated fair market value of all of the Units in the Condominium

Project, all insurance proceeds, together with such amounts from available reserves or Special Assessments as are needed to complete the cost of reconstruction, shall be paid directly to an Insurance Trustee, to be designated by the Board, as trustee for all Owners and Lenders. The Insurance Trustee shall be a bank or savings and loan association with an office in Davis County, Utah, whose accounts are insured by the Federal Deposit Insurance Corporation or the successor to such agency. Such proceeds shall be received, held, and administered by the Insurance Trustee subject to the provisions of an insurance trust agreement, which shall be consistent with the provisions of this Declaration and which shall be entered into between the Insurance Trustee and the Board. Disbursement of such funds shall be made only upon the signatures of two (2) Board Members and upon the terms and conditions provided in this Section 11.4. As soon as practicable after notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed Units and Common Area according to the original plan and specifications of said improvements or, if the Board determines that adherence to such original plans and specifications is impracticable or not in conformity with applicable statutes, ordinances, building codes or other governmental rules and regulations then in effect, then of a quality and kind substantially equivalent to the original construction of such improvements. The contract with such licensed contractor or contractors shall provide for payment to the contractor or contractors a specified sum for performance and execution of the work therein described, and shall have provisions for periodic disbursement of funds by the Insurance Trustee, which shall be consistent with procedures then followed by prudent lending institutions doing business in Davis County, Utah. Such periodic disbursements of funds shall be for specific dollar amounts and shall not be paid until the contractor who is engaged by the Board shall furnish to the Board before the commencement of construction a full performance and lien payment bond written by a good and responsible corporate surety. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate or other documentation containing such provisions as may be appropriate in the circumstances, and deemed suitable by the Board. The Board may employ a licensed architect to supervise the repair and rebuilding to insure that all work, services and supplies are in conformity with the requirements of the construction contract.

- 11.5 **Determination not to Reconstruct without Termination.** If Owners of not less than seventy-five percent (75%) of the Allocated Interests (including every Owner of a Unit or an allocated Limited Common Area that will not be rebuilt after a casualty) and Eligible Mortgagees on Units to which at least fifty-one percent (51%) of the Allocated Interests are attributable vote not to rebuild and the entire Condominium Project is not repaired or replaced, and the Condominium Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Allocated Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.
- 11.6 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any



other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

- 11.7 **Repair of Units.** Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.
- 11.8 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

## ARTICLE 12 EMINENT DOMAIN

- 12.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, or if part of a Unit is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area.
- 12.2 **Partial Taking of a Unit.** Except as provided in Section 12.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction in the value of the Owner's Unit and Allocated Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Allocated Interest in the Common Area shall remain the same, but if the decree provides for a reduction of the Allocated Interest for such Unit, the reduced amount shall automatically be reallocated to that Unit and the remaining Units in proportion to their respective Allocated Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.
- 12.3 **Taking of Limited Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.
- 12.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or includes any Unit or Limited Common Area, the Board of Directors shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring the portion of the Condominium Project so taken, and the portion of the award not used for restoration shall be divided among the owners in proportion to their Allocated Interest in the Common Area before the taking.

- 12.5 **Taking of Entire Condominium Project.** In the event the Condominium Project, in its entirety, is taken by eminent domain; or sold under threat thereof, the Condominium Project is terminated and the provisions of the Act apply.
- 12.6 **Priority and Power of Attorney.** Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

### ARTICLE 13 RIGHTS OF LENDERS

- 13.1 **Notice of Lenders.** A Lender shall not be entitled to receive any notice that this Declaration requires the Association to provide Lenders for notice, approval, or consent regarding a proposed action or otherwise, unless and until such Lender or its mortgage servicing contractor, has delivered to the Association a written notice stating that such Lender is the holder of a loan encumbering a Unit within the Condominium Project, in accordance with this Article. Notwithstanding the foregoing, if any right of a Lender under this Declaration is conditioned on a specific written request to the Association, in addition to the above, a Lender must also make such request in writing delivered to the Association. Except as provided in this Section, a Lender's rights pursuant to this Declaration, including, without limitation, the priority of any mortgage lien over the lien of Assessments levied by the Association hereunder shall not be affected by the failure to deliver a notice or request to the Association. The provisions of this Section shall not apply to the Department of Veterans Affairs or the Department of Housing and Urban Development.
- 13.2 **Priority of Lenders.** No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.
- 13.3 **Relationship with Assessment Liens.**
- (a) The lien provided for in Article 6 for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due.
  - (b) If any Unit that is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (i) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender; and (ii) the foreclosure of the lien of a Lender or the sale under a power of sale included in a mortgage or deed of trust shall not operate to affect or impair the lien hereof, except that any Person who obtains an interest thereafter shall take title free of any lien created by this Declaration for any Assessments that

became due after the recordation of the mortgage or deed of trust, or any personal obligation for such charges, but such Person shall remain subject to the lien hereof for all charges that shall accrue subsequent to such foreclosure.

- (c) Without limiting the provisions of Section 13.3(b), any Lender who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Condominium Project.
- (d) Nothing in this Section 13.3 shall be construed as releasing any Person from the personal obligation to pay for any Assessments levied pursuant to this Declaration during the period such Person is an Owner.

13.4 **Required Lender Approval.** Except upon the prior written approval of sixty-seven percent (67%) of all Lenders that have provided notice to the Association as described in Sections 13.1 and 13.6, based on one (1) vote for each Unit encumbered by a loan, neither the Association nor the Board of Directors shall be entitled by action or inaction to do any of the following:

- (a) Abandon or terminate by an act or omission the legal status of the Condominium Project; or
- (b) Except as specifically provided by this Declaration, amend any provisions governing the following:
  - (i) voting rights;
  - (ii) the priority of Assessment liens;
  - (iii) reallocation of interests in the Common Area and the Limited Common Area, or rights to their use;
  - (iv) redefinition of any Unit boundaries;
  - (v) convertibility of Units into Common Area or vice versa;
  - (vi) expansion or contraction of the Condominium Project, or the addition, annexation or withdrawal of property to or from the Condominium Project, except for any expansion, contraction, addition, annexation, or withdrawal done as reserved by the Declarant; or
  - (vii) restoration or repair of the Condominium Project (after damage or particular condemnation) in a manner other than that specified in this Declaration, the Articles, or the Bylaws.

13.5 **Other Rights of Lenders.** Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled:

- (a) To inspect current copies of the Project Documents and other books and records of the Association during normal business hours; and
- (b) To receive the most recent annual financial statement of the Association.

- 13.6 **Notices of Action.** Upon written request to the Association identifying the name and address of the Lender (and the name and address of the Lender's insurer or guarantor, if desired) and the Unit Number or address, any such Lender (or any such insurer or guarantor) will be entitled to timely written notice of:
- (a) Any condemnation or casualty loss that affects a material portion of the Condominium Project or any Unit on which there is a First Mortgage held by such Lender;
  - (b) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
  - (c) Any proposed action by the Owners or the Association that would amount to a material change in the Declaration as identified in Section 13.4 of the Declaration.

#### **ARTICLE 14 TERMINATION**

- 14.1 **Required Vote.** Except as otherwise provided in Articles 11 and 12, the Condominium Project may only be terminated by unanimous agreement of all Owners.
- 14.2 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the County Recorder in Davis County and is effective only on recordation.
- 14.3 **Sale of Condominium Project.** A termination agreement may provide that the entire Condominium Project shall be sold following termination. If, pursuant to such agreement, any real estate in the Condominium Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.
- 14.4 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Condominium Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Condominium Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

- 14.5 **Allocation upon Termination.** Unless provided otherwise herein, upon any liquidation or termination of all or part of the Condominium Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Allocated Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Condominium Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

## **ARTICLE 15 AMENDMENTS**

### **15.1 General Amendment Requirements.**

- (a) Amendments by Declarant. Prior to the termination of the Period of Declarant Control, the Declaration and the Condominium Plat may be amended by the Declarant without any additional approval required, and no other amendment shall be valid or enforceable without the Declarant's prior written consent.
- (b) Amendments by Association. After termination of the Period of Declarant Control, amendments to this Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding at least forty percent (40%) of Allocated Interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least sixty-seven percent (67%) of the Allocated Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Davis County. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this paragraph. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any signature shall be required.

### **15.2 Lender Approval for Association Amendment or Action.** Assuming a Lender has given notice as provided in Section 13.1 above, if a Lender's consent is a condition for amending this Declaration or the Bylaws, or for any other action, such Lender's consent is presumed if:

- (a) Written request of the proposed amendment or action is sent by certified or registered mail to the Lender's address listed with the Association;
- (b) Sixty (60) days have passed after the day on which notice was mailed; and

- (c) The Association has not received a written response from the Lender consenting to or refusing to accept the amendment or action.

**ARTICLE 16**  
**SPECIAL DECLARANT RIGHTS**

16.1 **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- (a) Any improvements shown on the Plat; and  
;
- (b) Any other buildings, structures, or improvements that Declarant desires to construct on the Parcel, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Condominium Project.

16.2 **Reserved.**

16.3 **Other Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Project Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by law:

- (a) the right to maintain sales offices, model Units, and signs advertising the Condominium Project or any Unit at any location in the Condominium Project;
- (b) the right to use easements throughout the Common Areas as set forth in this Declaration;
- (c) the right to appoint or remove members of the Board during the Period of Declarant Control;
- (d) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents; and
- (e) the right to withdraw land from the Project for up to fifteen (15) years from the date this Declaration is recorded in the office of the Davis County Recorder.
- (f) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

16.4 **Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which: (i) the Period of Declarant Control expires; (ii) the Declarant no longer owns a Unit; or (iii) seven (7) years after this Declaration is recorded with the Davis County Recorder. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Property, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Property. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

- 16.5 **Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.
- 16.6 **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) seven (7) years after the Declaration is recorded, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.
- 16.7 **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person. Such transfer, conveyance, or assignment shall be effective upon recording in the office of the Davis County Recorder.
- 16.8 **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.
- 16.9 **Voting.** During the Period of Declarant Control, any matter voted upon by the Owners shall not become effective unless the matter is approved in writing by the Declarant.
- 16.10 **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Condominium Project or any improvements thereon ("Claim") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving any Claim.
- (a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:
- (i) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
  - (ii) The legal basis of the Claim (i.e. the specific authority out of which the Claim arises);
  - (iii) The proposed remedy;
  - (iv) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
  - (v) That the person alleged to be responsible for the acts giving rise to the Claim shall have one hundred and eighty (180) days to cure or resolve the Claim.

- (b) Within sixty (60) days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.
- (c) In the event that the Claim is not resolved following the meeting, or if the meeting fails to take place within the sixty (60) day period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following the conclusion of the one hundred and eighty (180) day cure period provided in the Notice.
- (d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:
  - (i) Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
  - (ii) Call and hold a Special Meeting of the Owners to discuss the Claim and disclosures, and provide at least seventy-two (72) hours notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the Special Meeting;
  - (iii) Receive approval from two-thirds (2/3) of the entire Allocated Interest at the Special Meeting to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and
  - (iv) Allow the one hundred and eighty (180) day right to cure period to expire.
- (e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.
- (f) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association shall have no power whatsoever to institute,



prosecute, maintain or intervene in any proceeding of a Claim, (2) any institution, prosecution or maintenance of, or intervention in a proceeding of a Claim by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the proceeding of a Claim; and (3) this Section may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of Allocated Interests of the Association, and (b) not less than seventy-five percent (75%) of the Directors; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void.

- (g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

#### ARTICLE 17 GENERAL PROVISIONS

- 17.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.
- 17.2 **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.
- 17.3 **Cumulative Remedies.** All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.
- 17.4 **Severability.** Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration by judgment or court order shall in no way affect any other Restrictions or provisions contained herein or therein, which shall remain in full force and effect.
- 17.5 **Covenants to Run with the Land.** The Restrictions and other provisions of this Declaration shall run with and bind the Condominium Project as equitable servitudes

and also as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring any interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

- 17.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential condominium community and for the maintenance of the Condominium Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.
- 17.7 **Gender and Number.** Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 17.8 **Nuisance.** The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.
- 17.9 **Attorney Fees.** If the Association obtains legal counsel to enforce any of the provisions contained in this Declaration, the Bylaws, or the Rules, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought, regardless of whether a lawsuit is ultimately initiated or not.
- 17.10 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of this Declaration shall be in writing and shall be delivered as follows:
- (a) Notice to an Owner shall be delivered personally, by email, or placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. Notice by email shall be deemed delivered when sent. Notice by email is not proper notice if an Owner sends a written request to the Board of Directors stating that the Owner will not accept notices by email.
  - (b) Notice to a Lender shall be delivered by first class United States mail, postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Unit shall be deemed an office of the

Lender. Any notice so deposited in the mail shall be deemed delivered upon deposit.

- (c) The Declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, or to any Lender or Lenders, in any manner that this Section allows, shall be deemed conclusive proof of such mailing.
  - (d) Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the statutory agent of the Association; or if there is none, to the President and Secretary of the Association. The Association shall, however, have the right to designate a successor or substitute address for receipt of notices hereunder by filing a Supplemental Declaration and such Supplemental Declaration may be filed for this purpose alone upon approval of the Board of Directors.
- 17.11 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.
- 17.12 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. During the Period of Declarant Control, any changes to the Plat shall be approved in advance and in writing by the Declarant. Failure to do so shall make the Plat invalid and void.
- 17.13 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 17.14 **Consent in Lieu of Vote.** In any case in which the Act or this Declaration requires the vote of a stated percentage of the Allocated Interest for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold at least the stated percentage of the Allocated Interest. The following additional provisions shall govern any application of this Section:

- (a) all necessary consents must be obtained prior to the expiration of sixty (60) days after the first consent is given by any Owner; and
- (b) any change in ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

- 17.15 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner's family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.
- 17.16 **Conflicting Provisions.** In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.
- 17.17 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease or other conveyance of an interest in Unit, each Owner or Occupant of such Owner's Unit consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 17.18 **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Condominium Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Unit in this Association that Association and the Declarant are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Units, the Common Area, and to the contents of improvements located

thereon to the extent not insured by the Association as required by this Declaration. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE DECLARANT HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE CONDOMINIUM PROJECT.

17.19 **Effective Date.** This Declaration, and any amendment or supplement hereto, shall take effect upon its being filed for record in the office of the Davis County Recorder.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative.

DATED as of the 28<sup>th</sup> day of June, 2018.

**DECLARANT**  
**West Square, LLC**  
A Utah Limited Liability Company

By: [Signature]

Its: Authorized Representative

State of Utah )  
County of Coconino ) ss.

On the 28<sup>th</sup> day of June, 2018, personally appeared before me Craig Winder who by me being duly sworn, did say that she/he is an authorized representative of West Square, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.



Notary Public [Signature]

**EXHIBIT "A"**

PROPERTY

Lot 1, West Square Subdivision according to the official plat recorded in the Davis County Court House under Entry 2943537 on June 6, 2016 also located in Part of the Northwest Quarter of Section 12, Township 4 North, Range 2 West of the Salt Lake Base and Meridian described as follows:

Commencing at a Brass Cap monumenting the North Quarter Corner of Section 12, Township 4 North, Range 2 West of the Salt Lake Base and Meridian from which the Northwest Corner of said Section 12 bears N89°48'25"W 2648.35 feet (Basis of Bearing), thence S00°09'18"W 798.44 feet to the POINT OF BEGINNING and running

thence S 00°09'18" W 631.20 feet;  
thence S 89°50'43" E 314.56 feet along the south line of Hamblin Park Townhomes P.U.D.;  
thence N 00°09'17" E 19.96 feet along the east line of Hamblin Park Townhomes P.U.D.;  
thence S 89°50'43" E 82.41 feet to the west right of way line of 550 East Street;  
thence S 01°16'30" W 79.03 feet along said west right of way line;  
thence N 89°50'43" W 80.87 feet;  
thence N 00°09'17" E 11.61 feet;  
thence N 89°50'43" W 82.50 feet;  
thence N 00°09'17" E 14.44 feet;  
thence N 89°50'43" W 232.06 feet;  
thence S 00°09'18" W 283.79 feet;

thence Northwesterly, a distance of 30.79 feet along a non tangent curve to the left of which the radius point lies S 45°44'51" W, with a radius of 230.00 feet, having a central angle of 07°40'14" and a chord that bears N 48°05'16" W 30.77 feet;

thence Northwesterly, a distance of 64.81 feet along a reverse curve to the right having a radius of 170.00 feet and a central angle of 21°50'33" and a chord that bears N 41°00'07" W 64.42 feet;

thence N 30°04'50" W 957.98 feet;

thence Northerly, 133.10 feet along a curve to the right having a radius of 252.00 feet, a central angle of 30°15'46" and a chord that bears N 14°56'57" W 131.56 feet;

thence N 00°10'56" E 396.18 feet;

thence S 89°48'25" E 120.45 feet

thence S 00°11'35" W 183.00 feet to the boundary line of Clearfield Meadows Phase 5 recorded February 3, 2009 under Entry No. 2420775;

thence along said boundary the next seven courses:

- 1) thence N 89°48'25" W 23.84 feet;
- 2) thence S 00°07'00" E 268.49 feet;
- 3) thence N 89°59'31" E 5.63 feet;
- 4) thence S 00°00'22" E 96.48 feet;
- 5) thence N 89°43'23" E 446.17 feet;
- 6) thence N 00°09'18" E 72.74 feet;
- 7) thence S 89°57'15" E 32.02 feet to the point of beginning,  
containing 7.34 acres or 319,731 square feet.

Tax ID No. 12-850-0001

**EXHIBIT B**  
**ALLOCATED INTEREST IN COMMON AREAS**

<b>UNIT NUMBER</b>	<b>ALLOCATED INTEREST</b>
Building A 128	1/53
Building A 129	1/53
Building A 130	1/53
Building A 131	1/53
Building A 132	1/53
Building A 133	1/53
Building A 134	1/53
Building A 135	1/53
Building A 136	1/53
Building A 137	1/53
Building A 138	1/53
Building A 139	1/53
Building A 140	1/53
Building A 221	1/53
Building A 222	1/53
Building A 223	1/53
Building A 224	1/53
Building A 225	1/53
Building A 226	1/53
Building A 227	1/53
Building A 228	1/53
Building A 229	1/53
Building A 230	1/53
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Building A 232	1/53
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Building A 237	1/53
Building A 238	1/53
Building A 239	1/53
Building A 240	1/53
Building A 321	1/53
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Building A 330	1/53



Building A 331	1/53
Building A 332	1/53
Building A 333	1/53
Building A 334	1/53
Building A 335	1/53
Building A 336	1/53
Building A 337	1/53
Building A 338	1/53
Building A 339	1/53
Building A 340	1/53

**EXHIBIT C**

**BYLAWS  
OF  
WEST SQUARE CONDOMINIUM  
OWNERS ASSOCIATION, INC.**

These BYLAWS OF WEST SQUARE CONDOMINIUM OWNERS ASSOCIATION, INC., are effective upon recording in the Davis County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the "Acts").

**RECITALS**

1. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
2. These Bylaws are adopted to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the project known as West Square Condominiums, and to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I  
DEFINITIONS**

Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Condominium for West Square Condominiums.

**ARTICLE II  
APPLICATION**

All present and future Owners, Lenders, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and Rules. The mere acquisition or rental of any of the Units, or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by said persons.

**ARTICLE III  
OWNERS**

3.1 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the Annual Meeting shall be electing Board Members and transacting such other business as may come before the meeting. If the election of Board Members cannot be held on the day designated herein for the Annual Meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held either at a Special Meeting of the Owners to be convened as soon thereafter as may be

convenient or at the next Annual Meeting of the Owners. The Board may from time to time by resolution change the month, date, and time for the Annual Meeting of the Owners. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.2 **Special Meetings**. Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the request. During the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.3 **Place of Meetings**. The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any Annual or Special Meeting. If no designation is made, or if a Special Meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.4 **Notice of Meetings**. The Board shall cause written or printed notice of the date, time, and place (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Residence shall be deemed to be the Owner's registered address and notice to the Residence address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.5 **Qualified Voters**. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she has fully paid his or her share of any Assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting.

3.6 **Record Date for Notice Purposes**. The Board may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 **Quorum**. At any meeting of the Owners, the presence of Owners and holders of proxies

entitled to cast more than thirty-three percent (33%) of the voting interests of the Association shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting, the Board of Directors shall have power to adjourn the meeting and reschedule for a time not earlier than twenty-four (24) hours, nor later than thirty (30) days after the set time for the original meeting. Notice of such rescheduled meeting shall not be required except an oral announcement at the meeting to be rescheduled. No other type of notice shall be required for the rescheduled meeting. The presence of Owners and holders of proxies entitled to cast more than twenty percent (20%) of the voting interests of the Association shall constitute a quorum for the transaction of business at the rescheduled meeting.

3.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owners' attorneys when duly authorized in writing. 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. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.

3.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit of such Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owner, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of one (1) Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit.

3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board of Directors or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within 30 days of notice of any decision by the Board of Directors. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver on any notice requirements.

3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of U.C.A. § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

**ARTICLE IV  
BOARD OF DIRECTORS**

4.1 **General Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors may exercise business judgment and all the powers of the Association, whether derived from the Declaration, these Bylaws, the Articles, or the Acts except such powers that the Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.

4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Directors composed of five (5) persons who meet the qualifications provided in the Declaration. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or beneficiary of such Owner may be a Board Member. During the Period of Declarant Control, the Qualification requirements of these Bylaws shall not apply and the Board may consist of as few as one (1) person appointed by the Declarant.

4.3 **Election.** During the Period of Declarant Control, the Board Members shall be appointed by Declarant. Following the Period of Declarant Control, the election to the Board of Directors shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

4.4 **Term of Office.** During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect three (3) Board Members for two (2) year terms and two (2) Board Members for one (1) year terms, and at each Annual Meeting thereafter, the Owners shall elect the number of Board Members whose terms are to expire for a term of two (2) years each.

4.5 **Regular Meetings.** The Board shall hold meetings at least quarterly at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Davis County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message. By unanimous consent of the Board, special meetings may be held without call or notice to the Board Members.

4.7 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided to the Board Members shall be the act of the Board of Directors. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.8 **Open Meetings.** Except as provided below in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- a. Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
- b. Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
- c. Discuss a labor or personnel matter;
- d. Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
- e. Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
- f. Discuss a delinquent assessment.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.9 **Board Meeting Location.** The Board may designate any place in Davis County as the place of meeting for any regular or special Board meeting. Board meetings may also be held with Board Members appearing telephonically so long as any Board Member appearing telephonically consents to such appearance. Following the Period of Declarant Control, if a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.

4.10 **Board Action.** Notwithstanding noncompliance with Sections 4.7 and 4.8, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with Sections 4.7 and 4.8 may not bring the challenge more than sixty (60) days after the Board has approved the minutes recording the Board action.

4.11 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.12 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association.

4.13 **Vacancies and Newly Created Board Memberships.** If vacancies shall occur in the Board of Directors for any reason during the Period of Declarant Control, the Declarant shall appoint the Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies shall occur in the Board of Directors for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board of Directors occurring by reason of

removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.14 **Action Taken Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of U.C.A. §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.

4.15 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.16 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.17 **Meeting.** For purposes of this Article IV, a Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

## ARTICLE V OFFICERS

5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may from time to time be appointed by the Board.

5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each such officer shall hold such office until the next ensuing meeting of the Board following the Annual Owners Meeting and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act or execute any instrument in the capacity of more than one (1) office.

5.3 **Subordinate Officers.** The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board at any time, with or without cause.

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

5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board of Directors and at meetings of the Owners. At the

meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order". The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

5.7 **Vice President**. The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

5.8 **Secretary**. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require such person to keep. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

5.9 **Treasurer**. The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each Owner meeting and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

5.10 **Compensation**. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

## ARTICLE VI COMMITTEES

6.1 **Designation of Committees**. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

6.2 **Proceeding of Committees**. Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board of Directors.

6.3 **Quorum and Manner of Acting**. At each meeting of any committee designated hereunder by the Board of Directors, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may exercise the authority granted by the Board of Directors.



6.4 **Resignation and Removal.** Any member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation to the President, the Board of Directors, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, with or without cause, remove any member of any committee designated by it thereunder.

6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

## ARTICLE VII INDEMNIFICATION

7.1 **Indemnification.** In addition to the indemnification provisions and requirements set forth in the Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

7.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Board Member, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, employee, or agent of another association,

corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VII.

7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## **ARTICLE VIII RULES AND REGULATIONS**

8.1 **Rules.** The Board shall have the authority to adopt and establish by resolution such Project management and operational Rules as it may deem necessary for the maintenance, operation, management, and control of the Project. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and residents. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least ten (10) days prior to the effective date thereof.

## **ARTICLE IX AMENDMENTS**

9.1 **Amendments by Declarant.** During the Period of Declarant Control, the Declarant acting alone may amend, alter, or repeal and adopt new Bylaws for any reason, without Owner approval. No other amendment shall be valid or enforceable during the Period of Declarant Control unless the Declarant has given written consent to such amendment. Any amendment during the Period of Declarant Control shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Davis County Recorder.

9.2 **Amendments by Association.** After termination of the Period of Declarant Control, amendments to the Bylaws shall be proposed by either a majority of Board Members or by Owners holding at least forty percent (40%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or included as part of the written ballot in lieu of such meeting. Except as otherwise provided herein, the Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than sixty percent (60%) of the voting interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the recorder of Davis County, State of Utah. In such instrument the President shall execute the amendment and certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this paragraph. No acknowledgment of any Owner signature shall be required. No amendment shall in any way restrict, limit, or impair any rights of Declarant without the express written consent of Declarant.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

10.1 **Waiver**. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

10.2 **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 in these Bylaws, 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 are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

10.3 **Conflicts**. These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

*[Signatures on Next Page]*

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association.

DATED this 28<sup>th</sup> day of June, 2018.

**DECLARANT**  
**WEST SQUARE, LLC**  
A Utah Limited Liability Company

By: [Signature]

Its: Authorized Representative

State of Utah )  
County of Cache ) ss.

On the 28<sup>th</sup> day of June, 2018, personally appeared before me Craig Winder who by me being duly sworn, did say that ~~she~~/he is an authorized representative of WEST SQUARE, LLC, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

Notary Public [Signature]

