

AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM

FOR

ENT 109304: 2019 PG 1 of 92
Jeffery Smith
Utah County Recorder
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MOUNT TIMPANOGOS
VILLAGE CONDOMINIUMS

(FORMERLY KNOWN AS MIRA VISTA
CONDOMINIUMS)

A UTAH CONDOMINIUM PROJECT

IN

UTAH COUNTY, UTAH

EXCEPT IN VERY LIMITED CIRCUMSTANCES

**OCCUPANCY IS RESTRICTED
TO
PERSONS 55 YEARS OF AGE AND OLDER**

(Carefully read the declaration and in particular Section 10.1
for an explanation of these IMPORTANT restrictions)

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EXHIBIT A A-1

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AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
MOUNT TIMPANOGOS VILLAGE CONDOMINIUMS
(formerly known as Mira Vista Condominiums)

This Amended and Restated Declaration of Condominium is recorded by the Mount Timpanogos Village Condominium Association (the "Association"), f/k/a Mira Vista Condominium Association or Mira Vista Owners Association, Inc. d/b/a Mt. Timpanogos Village, upon its approval by the Owners, and is effective as of the date it is recorded in the Utah County Recorder's Office.

RECITALS

1. Capitalized terms in this Declaration are defined in Article 1 or in other sections of this Declaration.
2. This Declaration affects the real property located in Utah County, State of Utah, described with particularity on **Exhibit A**, which exhibit is attached hereto and incorporated herein by reference. The real property described on **Exhibit A** was previously submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Property, and all easements and rights appurtenant thereto, to a condominium project now consisting of 80 residential Units and related Common Area pursuant to Utah Code Ann. § 57-8-1 *et seq.*
3. The "Declaration of Easements, Covenants, Conditions, and Restrictions of Mira Vista" was recorded on March 13, 2001 at the office of the Utah County Recorder as Entry No. 23123:2001, which the Association contends has been abandoned.
4. The "Declaration of Easements, Covenants, Conditions, and Restrictions of Mira Vista a Planned Development" was recorded on November 27, 2001 at the office of the Utah County Recorder as Entry No. 123172:2001, which the Association contends has been abandoned.
5. The "Declaration of Condominium of Mira Vista Condominiums (an expandable condominium)" was recorded on November 27, 2001 at the office of the Utah County Recorder as Entry No. 123173:2001 (the "**Enabling Declaration**").
6. The "First Amendment and Supplement to the Declaration of Condominium of Mira Vista Condominiums (an expandable condominium)" was recorded on March 6, 2006 at the office of the Utah County Recorder as Entry No. 25931:2006.
7. The "Second Amendment and Supplement to the Declaration of Condominium of Mira Vista Condominiums (an expandable condominium)" was recorded on May 4, 2007 at the office of the Utah County Recorder as Entry No. 66191:2007.
8. The "Correction to Second Amendment and Supplement to the Declaration of Condominium of Mira Vista Condominiums (an expandable condominium)" was recorded on December 31, 2007 at the office of the Utah County Recorder as Entry No. 178615:2007.
9. The Association, with the authority and requisite approval of the Owners, hereby adopts this Declaration, which (along with and subject to any future amendments) shall be the sole Declaration for the Condominium Project and which shall amend and completely replace the Enabling Declaration and all prior declarations and amendments thereto (whether recorded or not, properly adopted or not, or referenced in this Declaration or not), prior to the date of the recording of this Declaration.

10. This Declaration is adopted to replace and update the terms of the Enabling Declaration and any amendments thereto, to further define the rights of the Association and the Owners, and to provide for a general plan for managing the Condominium Project; all in furtherance of the Association's efforts to efficiently and economically protect and enhance the value of the Units and the Condominium Project and to create a superior living environment.
11. All rights of the declarant defined in the Enabling Declaration have expired pursuant to the terms of the Enabling Declaration and Utah Code Ann. § 57-8-16.5. No declarant approval is required for this amendment.
12. The Association and Owners hereby desire to establish the Terms and Conditions for the mutual benefit and burden of the Association, and all current and future Owners, Occupants, Lenders, and others acquiring any interest in the Condominium Project.
13. The Association previously operated or was known as the Mira Vista Condominium Association or Mira Vista Owners Association, Inc. d/b/a Mt. Timpanogos Village; however, the Association has, or will, formally change its name to the Mount Timpanogos Village Condominium Association, Inc.
14. The Management Committee has obtained the approval of the Owners necessary to adopt and record this Declaration and the attached Exhibits.

NOW, THEREFORE, for the reasons recited above the Association hereby adopts this Declaration.

ARTICLE 1: DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 **"Act"** shall mean the Condominium Ownership Act codified at Utah Code Ann. §§ 57-8-1 *et seq.*, as may be amended from time to time.
- 1.2 **"Articles"** shall mean the Articles of Incorporation or the chartering document of any other legal entity, as may be amended from time to time, if any entity shall be formed and remain in effect for the Association.
- 1.3 **"Assessment"** shall mean any monetary charge imposed or assessed on an Owner by the Association as provided for in this Declaration or the Act.
- 1.4 **"Association"** shall refer to the Mount Timpanogos Village Condominium Association, the membership of which shall include each Owner in the Condominium Project. The Association may be incorporated as a nonprofit corporation. If the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.
- 1.5 **"Building"** shall mean the building(s) containing the Units in the Condominium Project.
- 1.6 **"Bylaws"** shall mean the bylaws of the Association attached as Exhibit E, and all valid amendments and supplements thereto. No amendment to the Bylaws shall be effective until it is recorded.
- 1.7 **"Common Area"** shall, unless otherwise more specifically provided in this Declaration, mean everything and everywhere in the Condominium Project, except to the extent any fixture, structure, or other area is part of a Unit as defined herein. Unless otherwise

specifically included or excluded on the Plat or in this Declaration, Common Area includes, but is not limited to:

- (a) All real property included within the Condominium Project, including any air space or subsurface rights, whether leasehold or in fee simple;
- (b) All fixtures and equipment related to the provision of electricity, gas, water, television, internet, and electronic services, and the removal of waste water;
- (c) All apparatus and installations clearly intended and existing for common use including, if any, stairways, roofs, tanks, pumps, ducts, fans, compressors, wiring, and central or common installations and equipment to provide power, light, water, heating, air conditioning, and garbage disposal;
- (d) All Limited Common Areas;
- (e) The lobby, library, arts and crafts room, meeting room, swimming pool, and television room;
- (f) All windows and window frames on the exterior of the Building, including those on the exterior boundary of Units.
- (g) All doors of any kind on the exterior boundary of a Unit or the Building that lead to a hallway, patio or balcony (including sliding doors), and associated thresholds, jambs, hinges, doorbells, chimes, handles, and locks and all components therein.
- (h) All lawns, gardens, and other landscaping;
- (i) All roadways, walkways, and parking areas in the Condominium Project that are not otherwise specifically dedicated to a governmental body or by other means specifically excluded from the Condominium Project in the Plat or Declaration; and
- (j) All other parts of the Condominium Project necessary or convenient to its existence, maintenance, safe operations, or normally in common use.

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

1.8 **"Common Expenses"** shall mean the actual and estimated costs for or related to: (a) administration, maintenance, repair, or replacement of the Common Areas; (b) the Joint Use and Cross Easement Agreement; (c) maintenance, repair, and replacement of those aspects of the Units which are maintained by the Association as provided for in this Declaration (if any); (d) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (e) utilities (other than utilities that are separately metered and/or charged to the Units), extermination, landscape maintenance, and other related services; (f) insurance and bonds required or allowed by this Declaration; (g) amounts deposited in reserves; (h) other charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (i) any other expenses of the Association arising from the operation of the Association and not otherwise excluded from Common Expenses by the Governing Documents or any applicable law.

1.9 **"Condominium Project"** shall mean the land, whether leasehold or in fee simple, the Building(s), all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection

therewith; as defined by the Plat and this Declaration and including the Units, the Common Area, and the Limited Common Areas. Condominium Project as defined in this Declaration is intended to have the same definition as "Property" as defined in the Act.

- 1.10 **"Declaration"** shall mean this Declaration, including all attached exhibits, which, other than the Bylaws, are hereby incorporated by reference into the Declaration and shall be part of the Declaration, and any and all amendments to this Declaration.
- 1.11 **"Electronic Transmission" or "Electronically Transmitted"** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 1.12 **"Governing Documents"** shall refer to this Declaration, the Plat, the Bylaws, the Rules, any Articles, and any other documents or agreements binding upon all of the Owners.
- 1.13 **"Joint Use and Cross Easement Agreement"** shall refer to the Joint Use and Cross Easement Agreement executed, or to be executed, by the Association and Mira Vista P.U.D., Inc. and recorded in the office of the Utah County Recorder.
- 1.14 **"Lender"** shall mean a holder of a mortgage or deed of trust on a Unit.
- 1.15 **"Limited Common Area"** shall mean a portion of the Common Area specifically designated in this Declaration or the Plat for the exclusive use of Owners of one or more Units to the exclusion of other Owners. Conveyance of a Unit includes the use of the Limited Common Area designated for the use of the Owner of the Unit.
- 1.16 **"Management Committee"** shall mean the body of elected or appointed people with primary authority to manage the affairs of the Association, including the responsibility and authority to make and enforce reasonable Rules covering the operations and maintenance of the Condominium Project.
- 1.17 **"Management Committee Member"** shall mean a duly qualified and elected or appointed member of the Management Committee.
- 1.18 **"Manager"** shall mean any Person engaged by the Association to manage the Condominium Project.
- 1.19 **"Occupant"** shall mean any Persons, other than an Owner, in possession of, using, entering into, or living in a Unit in the Condominium Project, including, without limitation, family members, tenants, guests, and invitees of an Owner or an Occupant. Occupants shall include any trespassers or previously lawful Occupants if the Owner fails to secure the Unit against trespass, fails to take action necessary and appropriate to remove trespassers or previously lawful Occupants immediately upon notice of the trespass or occupancy, or fails to take reasonable measures to become aware of any unauthorized Occupants in the Unit or of any unauthorized entry and use of the Unit (which shall include the duty to verify the physical condition and occupancy of the Unit at least monthly if it is left unoccupied).
- 1.20 **"Owner"** shall mean the Person or Persons who have record title to a Unit, including those who hold a fee simple interest in the Unit (in whole or in part), according to the records of the Utah County Recorder; however, Owner shall not include a trustee for a deed of trust.
- 1.21 **"Par Value"** means the number of points assigned to each Unit by this Declaration as set forth in **Exhibit B** hereto.

- 1.22 **“Person”** shall mean a natural individual, corporation, estate, partnership, trustee, association, joint venture, government, governmental subdivision or agency, or any other legal entity with the legal capacity to hold title to real property.
- 1.23 **“Plat”** shall mean the record of survey map or maps of the Condominium Project (the “condominium plat” as used in the Act) recorded in the records of the Utah County Recorder and all amendments and supplements thereto.
- 1.24 **“Property”** shall mean the property legally described in **Exhibit A** and all easements and rights appurtenant thereto.
- 1.25 **“Rules”** shall mean and refer to the rules adopted by the Management Committee.
- 1.26 **“Shared Common Areas”** shall mean and refer to the common areas, facilities, and amenities shared with the Mira Vista P.U.D., Inc. owners pursuant to the Joint Use and Cross Easement Agreement between the Association and Mira Vista P.U.D., Inc.
- 1.27 **“Terms and Conditions”** shall mean any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.28 **“Undivided Interest”** shall mean the interest of that Owner (expressed as a percentage in **Exhibit B** to this Declaration) in the Common Areas proportionate to the Par Value of that Owner’s Unit, which shall be applicable for the purposes of voting, the payment of Common Expenses, and for other purposes indicated in this Declaration or the Act.
- 1.29 **“Unit”** shall mean and refer to an individual condominium unit, unit, or condominium, (all as defined in the Act), which shall consist of a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a Building, and which is identified on the Plat. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest appurtenant to such Unit.

**ARTICLE 2:
THE CONDOMINIUM PROJECT**

- 2.1 **Submission to the Act.** The Association hereby confirms and restates that the Condominium Project is a condominium project as defined in the Act.
- 2.2 **Binding Effect of Governing Documents.** The Property is part of the Condominium Project and the Condominium Project and all of the Units shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions, which Terms and Conditions shall, to the extent they are included in recorded documents, constitute equitable servitudes, easements, and covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association and each Owner, including their respective heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Unit such Owner consents to, and agrees to be bound by, each and every Term and Condition in the Governing Documents.
- 2.3 **Condominium Project Name.** The Condominium Project, as identified on the Plat, is named “Mira Vista Condominiums” and is located entirely in Utah County, Utah.
- 2.4 **Nature of the Condominium Project.** The Condominium Project primarily contains eighty (80) Units in three (3) Buildings. The Condominium Project further includes a swimming pool, spa, fitness room, and other Common Area.

- 2.5 **Identification of Units.** All of the Units are referenced specifically and identified by location on the Plat.
- 2.6 **Registered Agent.** The registered agent of the Association shall be as provided for in the entity filings of the Association with the State of Utah. The Management Committee may approve a change in the registered agent of the Association without any need for Owner consent.

**ARTICLE 3:
DESCRIPTION OF THE UNITS, LIMITED COMMON AREA,
AND UNDIVIDED INTERESTS**

3.1 **The Unit.**

- (a) The distinct Unit number that identifies the Unit on the Plat may or may not be consistent with the mailing address of the Unit.
- (b) Subject to further specification in this Declaration, each Unit consists of the space enclosed and bounded by the horizontal and vertical planes as shown on the Plat, and all interior partitions and other fixtures and improvements within such boundaries. The horizontal boundaries of each Unit shall be the underside of the finished but unpainted or decorated ceiling of each level of the Unit, and the top of the finished but undecorated floor of each level in the Unit. The vertical boundaries of each Unit shall be the interior of the finished but undecorated walls located on the perimeter lines (boundary) of the respective levels of the Units as shown on the Plat. All framing, concrete, and other structural components in the walls, floors, or ceilings on the vertical and horizontal boundaries of a Unit (as designated on the Plat) and all framing, structures, and concrete in any bearing walls are part of the Common Area. Generally, all wallboard, dry wall, concrete, and framing in walls, ceilings, and floors on the boundaries of the Unit are not part of the Unit and are Common Area. All materials constituting any part of the finished surfaces or of the decorating in the Unit are part of the Unit. Generally, all paneling, tile, wallpaper, paint, carpet, hardwood flooring, linoleum, and other materials constituting any part of the finished surfaces or installed on the finished surfaces in a Unit are part of the Unit. All parts of exposed concrete structural components in the Building (including the surface) in or on the boundary of a Unit shall be Common Area. All parts of non-bearing walls and partitions inside the boundaries of a Unit (walls not on the exterior boundary of a Unit) are part of the Unit.
- (c) All pipes, wires, conduits, chutes, flues, ducts, shafts, public utility, water, power, air, sewer lines, or any other similar fixtures located inside the designated vertical and horizontal boundaries of a Unit and those between the point at which the same enter the Owner's Unit and the closer of the point where the same join the utility lines serving another Unit or exit the Building, are part of the Unit.
- (d) The boundaries of a Building or Unit constructed or reconstructed in substantial accordance with the Plat shall be conclusively presumed to be the actual boundaries rather than the description expressed in the Plat, regardless of the settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the Plat and those of the Building or Unit.
- (e) Each Unit, together with its Undivided Interest in the Common Areas, shall, for all purposes, constitute real property and may be individually conveyed and encumbered

and may be inherited or devised by will. Any Unit may be held and owned by more than one Person as joint tenants or as tenants in common, or in any other real property tenancy relationship recognized under the laws of the state of Utah.

- (f) Each Unit shall be assessed separately for taxes, assessments, and other charges of the state of Utah or of any political subdivision or special improvement district or of any other similar authority. The Common Area shall not be subject to separate taxation or assessment.
- (g) Each Owner may separately convey, encumber, or mortgage the Owner's Unit. No Owner may encumber the Common Areas, except to the extent of the Undivided Interest in the Common Area appurtenant to the Unit. The provisions of this Declaration shall be superior to any such interest and in the event of any foreclosure (judicial or otherwise) the Person taking title shall be subject to this Declaration.
- (h) All doors/windows on the interior or exterior of any Unit and associated thresholds, jambs, hinges, doorbells, chimes, handles, and locks and all components therein, are part of the Unit.

3.2 **Limited Common Area.**

- (a) The Limited Common Area associated with each Unit shall consist of areas identified on the Plat or in this Declaration as Limited Common Area.
- (b) The covered parking spaces in the Condominium Project shall be Limited Common Area associated with the Unit to which the parking space is assigned. Each Unit shall be entitled to the assignment of one covered parking space. The Management Committee shall maintain a list of covered parking space assignments.
- (c) Any windows, shutters, awnings, doors, porches, balconies, patios, or other apparatus intended to serve a single Unit, but located outside the boundaries of the Unit, shall constitute a Limited Common Area pertaining to that Unit exclusively.
- (d) Should it be unclear from the Plat or this Declaration if a particular area is Common Area or Limited Common Area, the Management Committee shall have absolute authority in determining the proper designation of that area.
- (e) If any area designated as Limited Common Area in the Plat, the Declaration, or (if unclear) by the Management Committee, is not physically associated with a particular Unit and is not identified as pertaining to a particular Unit in the Plat or this Declaration, the Management Committee may determine to which Unit the Limited Common Area pertains based on the following factors: advice of counsel, fairness to all Owners, and any established use, each of which shall have equal weight but none of which shall be individually determinative.
- (f) The right to the exclusive use of the Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit.

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

Undivided Interests allocated to all Units shall at all times equal one hundred percent (100%). The Undivided Interest of one or more Units may be adjusted to cause the totals in **Exhibit B** to equal one hundred percent (100%).

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

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

4.1 **Owner Responsibility.**

- (a) The Owner of a Unit shall furnish and be responsible for, at the Owner's own expense, all of the cleaning, maintenance, repair, and replacement of all of the following with regard to the Owner's Unit or Limited Common Area:
- (1) All doors to Common Area hallways, including thresholds, jambs, hinges, doorbells, chimes, handles, and locks (regardless of whether they are part of the Common Area or Unit);
 - (2) All paneling, tile, wallpaper, paint, carpet, finished interior flooring, fireplaces, and any other materials constituting the finished interior surfaces of floors, ceilings, or walls;
 - (3) All windows, skylights, and door glass or equivalent materials, and related frames, sashes, casings, jambs, interior sills, exterior seals and weather-strip (regardless of whether they are part of the Common Area or Unit), including the interior and exterior cleaning of such windows and door glass;
 - (4) All drywall, wallboard, or similarly functioning materials within the Unit;
 - (5) All framing, insulation, and other materials associated with interior nonbearing walls;
 - (6) All fixtures, appliances, and other improvements in the Unit;
 - (7) All equipment, lines, pipes, wiring, equipment, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, heating, air conditioning, Internet, television, telephone, and any other utility service, wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively; and
 - (8) Any storage shed, storage unit, or storage area assigned to or owned by an Owner, if any, and located within the Condominium Project.
- (b) Without the prior approval of the Management Committee, an Owner shall not replace or make any alterations, repairs, or modifications to the surface of any door facing the interior Building hallway, Common Area, or any part of the exterior of a Building. The Association may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular materials or aesthetics requirements or other standards. The Management Committee may adopt reasonable Rules related to the oversight and approval of any and all repairs made to Units.

- (c) The Owner shall be responsible for keeping the following areas in a clean and sanitary condition and free of pests, birds and rodents:
 - (1) The Unit;
 - (2) Any Limited Common Area parking area assigned to a Unit;
 - (3) Any storage shed, storage unit, or other storage area within the Condominium Project assigned to or associated with a Unit or owned by an Owner; and
 - (4) The interior surface of any window on the exterior boundary of the Unit.
- (d) The Management Committee may set forth in the Rules complete restrictions on all or some items or specific restrictions or guidelines on what may or may not be kept, installed, or left on or in any storage area, parking area, or Limited Common Area.
- (e) Subject to an Owner's obligation to comply with Rules related to parking areas that may include requirements to keep such areas free of clutter, debris, and other items, the Association shall be responsible for cleaning parking areas.
- (f) The Association may establish Rules, policies, or guidelines to address areas of maintenance, repair, replacement, or cleaning unidentified or unresolved by this Declaration and to establish maintenance, repair, replacement, or cleaning responsibilities and standards for components, fixtures, and areas in between, on, or straddling areas of different maintenance responsibility.

4.2 Association Responsibility.

- (a) Except as maintenance and cleaning obligations are otherwise assigned to the Owners or others in this Declaration, the Association shall repair, maintain, replace, and clean the Common Area, which shall include but not be limited to the obligation to repair, maintain, replace, and clean (as appropriate) the following:
 - (1) All foundations, concrete pillars, and suspended concrete slabs and pads;
 - (2) All framing and structural components of the building including the exterior and bearing walls, roof, ceilings and floors;
 - (3) Insulation in exterior walls, bearing walls, or in any wall on the boundary to a Unit;
 - (4) The exterior surfaces of the Buildings and all components that are a part of the exterior surface of the Buildings including window exteriors;
 - (5) Any balconies and stairways exterior to any Unit and any railings associated therewith (including any water penetration related thereto);
 - (6) The roofs, rain gutters, heat tape (electricity for heat tape may be derived from a Unit served by the heat tape), fascia, soffits, and all related components;
 - (7) All equipment, lines, pipes, wiring, equipment, and fixtures related to the provision of: sewer and water drainage and removal, hot and cold water, power, natural gas, Internet, television, telephone, and any other utility service, wherever they might be located, to the extent they serve more than one Unit;
 - (8) The swimming pool, and all similar amenities not located within a Unit;
 - (9) All Common Area hallways and common spaces;

- (10) All Limited Common Areas, except as otherwise set forth in this Declaration;
 - (11) All covered parking structures;
 - (12) All exterior landscaping; and
 - (13) Snow and ice removal from all sidewalks, walkways, driveways, and stairs.
- (b) The Association shall have the right to modify, remove fixtures from, add fixtures and structures to, place signs upon, and otherwise modify the Common Area (subject only to the obligation to get approvals for material alterations to the Condominium Project). The Association shall do all such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, in accordance with the general purposes specified in this Declaration.

4.3 **Owner Approval for Certain Improvements.** Improvements shall be governed by and subject to the following conditions, limitations, and restrictions:

- (a) Any improvement (repair, replacement, modification, or upgrade) to the Condominium Project that does not materially alter the Condominium Project may be authorized by the Management Committee alone.
- (b) A material alteration to the Condominium Project is the installation of a previously non-existent and materially significant fixture or permanent removal of a materially significant fixture such as a swimming pool, hot tub, workout room, tennis court, or parking area. Landscaping alterations, general remodeling, the updating of existing fixtures such as boilers, electrical systems, plumbing equipment, and the addition or removal of signs or small structures are not material alterations to the Condominium Project.
- (c) Regardless of its cost and prior to being constructed or started, any improvement that would materially alter the Condominium Project must be authorized by the vote of Owners holding at least fifty percent (50%) of the Undivided Interests at a meeting called for that purpose and must be approved of by the Management Committee. No material alteration that changes the size, shape, or location of any Unit shall be permitted without the written consent of all directly affected Owners.

4.4 **Standard of Maintenance.** The Management Committee shall determine, in its sole discretion, the appropriate maintenance standard for the Common Area and Limited Common Area, so long as those areas are maintained in a safe condition and in the best interests of the Owners.

4.5 **Default in Maintenance.** If an Owner or Occupant fails to: (1) maintain or clean a Unit or Limited Common Area as required in the Governing Documents; or (2) make repairs otherwise required of the Owner in such a manner as may be deemed reasonably necessary in the judgment of the Management Committee to preserve and protect the structural integrity, attractive appearance, good condition, and value of the Units in the Condominium Project, then the Association may take any action allowed for a failure to comply with the Declaration and may give written notice to such Owner or Occupant stating with particularity the nature of the default and the corrective action that the Management Committee determines to be required and requesting that the same be carried out within a period of at least thirty (30) days. If the Owner or Occupant fails to carry out such action within the period specified by the notice then the Management Committee may cause corrective action to be taken (which

may include completing the repairs and replacements) and may assess the Owner for all costs associated therewith.

4.6

Remodeling, Maintenance, and Repair of Units.

- (a) An Owner may complete any maintenance or upgrades to the interior of a Unit, not otherwise defined as remodeling, without prior approval of the Association.
- (b) The Association may regulate and restrict remodeling within the Condominium Project, including, but not limited to, by adopting Rules related to the approval and oversight of remodeling. Unless and until the Association adopts Rules regulating remodeling, the following restrictions shall apply.
 - (1) For the purpose of this Declaration, remodeling shall include but not be limited to: changing, removing, or adding flooring such as carpet, linoleum, tile or hardwood floors; kitchen or bathroom modifications; moving or removing walls; altering the walls beyond painting such as by adding interior brick, paneling, or glass; any change to the electrical, mechanical, plumbing, fireplaces, or ventilation system other than repairing, changing or replacing vent covers, outlet covers, or faucets; and any other activity generally referred to as remodeling.
 - (2) Before beginning any remodeling or deviating from a previously approved remodeling plan, the Owner shall:
 - (i) Notify the Management Committee and provide the following: (1) a written description of the proposed remodeling; (2) a description of how any debris or materials removed will be disposed of; (3) the date the remodeling is expected to begin; (4) the date the remodeling is expected to be completed; (5) the names, contractor's license numbers, proof of current workers compensation insurance, and proof of current liability insurance for all contractors and other Persons expected or required to perform work in the remodeling, if available (all of this information shall be provided to the Association before work begins); (6) any expected nuisance that the remodeling may create such as noise or dust; (7) the Owner's proposal for mitigating any expected nuisance; and (8) the location and times for delivery and storage of any construction materials or other items if they are to be delivered or stored outside of the Unit.
 - (ii) Wait to begin the remodeling until the Management Committee gives written approval. If the Association does not respond within thirty (30) days of notifying the Management Committee of remodeling as required in Section 4.6(b)(2)(i), the Owner may complete the remodeling to the Unit consistent with the information provided in the notice and the requirements of this Declaration. The Management Committee may respond by approving the request, requesting additional information, or denying the request if the notice is not complete or if the remodeling plan appears unsafe or inconsistent with the terms of the Governing Documents. If the Association responds and requests further information or denies the request, the Owner shall not begin the remodeling.

- (iii) Pay or agree to pay any fees or costs required by the Management Committee associated with reviewing or monitoring the remodeling.
- (3) Without prior written permission of the Management Committee and regardless of whether any response from the Management Committee is timely received or not related to a request for remodeling approval, none of the following shall occur at any time: (i) any use of the Common Area or any roadways for staging, storage, assembly, or construction; (ii) any nuisance as established by law or by the Governing Documents; (iii) any blocking of the Common Area or roadways by vehicles, materials, or Persons; (iv) any use of any Association garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling; (v) any construction work performed outside of the period of time between 8:00 a.m. and 6:00 p.m.; or (vi) modification or encroachment of any Common Area.
- (4) The Management Committee shall have no authority to approve or permit any remodeling inconsistent with the Terms and Conditions, that modifies the boundaries of any Unit from the original construction (unless any such modification is otherwise specifically allowed in this Declaration or by law), or that would cause unsafe conditions or a legal nuisance.
- (c) All remodeling and other repairs and modifications to Units must be completed in compliance with all applicable building codes, laws, ordinances, and the manufacturer's specifications for any materials, equipment, and fixtures. The Management Committee shall have no obligation to verify that any remodeling or other repairs and modifications to Units are completed as required herein.

4.7

Regulation of Initial Construction. Although the time for adding additional land to the Condominium Project has expired, and nothing in this Declaration shall be interpreted to extend any such time or to authorize adding land to the Condominium Project or the construction of any new Building or Unit in the Condominium Project, if any additional Building(s) or Unit(s) is nevertheless constructed within or as part of the Condominium Project after the date of this Declaration ("**Initial Construction**"), the Association shall have the power and authority, in the sole discretion of the Management Committee, to regulate any such Initial Construction as set forth in this Section 4.7.

- (a) The Management Committee shall have the power to take any and all action, in its sole discretion, to ensure that any Initial Construction is consistent with the Governing Documents, applicable building codes, governmental regulations or requirements, material manufacture specifications, and to otherwise ensure the Association's long term interest of requiring good quality and long lasting infrastructure to reduce maintenance and capital expenses, to preserve and protect Owners' safety and comfort, and the value of the Units.
- (b) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee may, in its sole discretion, hire any necessary inspectors, at the cost of anyone conducting Initial Construction, to ensure that all Initial Construction is consistent with the Governing Documents, applicable building codes, governmental regulations or requirements, material manufacture specifications, and any other reasonable requirement imposed by the Management Committee.

- (c) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee shall have the power and authority, in its sole discretion, to impose restrictions, requirements, rules, and regulations to govern any and all aspects of any Initial Construction.
- (d) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee shall have the power and authority, in its sole discretion, to review and approve plans and specifications related to the Initial Construction to determine compliance and consistency with the Governing Documents, applicable building codes, governmental regulations or requirements, aesthetics, consistency with existing construction within the Condominium Project, and all other standards applicable or otherwise imposed in the discretion of the Management Committee.
- (e) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee shall have the power and authority, in its sole discretion, to review and approve the selection and use of materials both inside and on the exterior of any Buildings.
- (f) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee shall have the power and authority, in its sole discretion, to regulate staging related to Initial Construction, equipment access to the site of Initial Construction, and parking related to Initial Construction.
- (g) Without limiting the Management Committee's general power and authority as set forth in Section 4.5(a), the Management Committee shall have the power and authority, in its sole discretion, to set specific requirements related to Initial Construction, including, but not limited to: (1) minimum specifications for construction components such as windows, electrical systems, foundations, building envelope components, heating and air conditioning components, and roofing systems; (2) requirements for installation of certain components or amenities such as intercom systems, satellite and cable television wiring; and (3) the right to require that any unfinished Common Area (grass, parking, landscaping, mailboxes, dumpster enclosures, etc.) be completed consistent with specifications and requirements of the Association.
- (h) The Management Committee shall have the right, in its sole discretion, to require the contractor of any Initial Construction to make advance payment (or deposit for estimated costs) of any and all Association expenses, costs, and reasonable estimated damage related to the construction activities including, but not limited to, expenses incurred to retain necessary professionals including, but not limited to, architects, attorneys, engineers, superintendents, and security as appropriate in the sole discretion of the Management Committee.

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

**ARTICLE 5:
ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 5.1 **Organization of Association.** The Association shall serve as the organizational body for all Owners.
- 5.2 **Modifying or Changing the Name of the Condominium Project.** The name of the Condominium Project may be modified or changed pursuant to a lawful amendment to this Declaration.
- 5.3 **Legal Organization.** The Association may be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws. If the legal entity should ever expire or be dissolved for any reason as required or permitted by law, in any reorganization or reinstatement of the entity, the Association shall, to the extent possible and subject to any then existing legal requirements, adopt documents with terms substantially similar to the documents related to the expired or dissolved entity.
- 5.4 **Membership.** Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Unit. Upon the transfer of an ownership interest in a Unit, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.
- 5.5 **Availability of Documents.** The Association shall make available to the Owners, Lenders and insurers of any Lender, current copies of the Governing Documents and other minutes, books, records and financial statements related to the operations of the Association. The term "available" as used in this section shall mean available for inspection and copying within thirty (30) days, unless a shorter time period is required by law, after receiving a proper request, during normal business hours and under other reasonable conditions. The Association shall have the right to refuse to disclose information that the Management Committee determines, in good faith, would reveal sensitive personal or financial information of another Owner or of an employee or agent of the Association, such as bank account numbers, birth dates, social security numbers, or any communication or document subject to the attorney – client privilege. The Association may require that the Owner comply with any statutory provision or other legal requirement applicable to providing this information before providing it. Subject to any legal requirements to the contrary, the Association may charge a fee for the reasonable cost of producing documents or information. Notwithstanding any of the foregoing, the Association shall comply with any applicable legal requirements contrary to any provision in this Section 5.5.
- 5.6 **Management Committee.** The governing body of the Association shall be the Management Committee elected and removed as provided in the Bylaws. The Management Committee shall consist of three (3) members. Except as otherwise provided in this Declaration or the Articles, the Management Committee shall act, in all instances, on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee.

Except as may be specifically provided in this Declaration, Articles, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.

- 5.7 **Management Committee Member Requirements.** The Bylaws shall set forth the qualifications for serving as a Member of the Management Committee and may place reasonable obligations and requirements on existing Management Committee Members to retain their membership on the Management Committee, such as a requirement that a Management Committee Member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee Member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee Members.
- 5.8 **Limitation on Authority of Owners, Management Committee Members, Officers, & Committee.**
- (a) Except as otherwise provided herein or in the Bylaws, the Management Committee, any individual Owner, and any individual Management Committee Member or Officer shall have no authority to and may not act on behalf of the Association or the Management Committee to:
- (1) Amend or terminate any Governing Document;
 - (2) Elect or remove members of the Management Committee;
 - (3) Establish or change the qualifications, powers and duties, requirements, or terms of Management Committee Members or of the Management Committee; or
 - (4) Authorize or agree to any deviation or exception from the Terms and Conditions.
- 5.9 **No Reliance on Actions Contrary to Governing Documents.** No one may rely upon any authorization (from the Management Committee or otherwise) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Unit in the Association to verify that anything that the Association does, does not do, or authorizes related to the Condominium Project or the Association is in compliance with the terms of the Governing Documents.
- 5.10 **Registration with the State.** In compliance with Utah Code Ann. § 57-8-13.1, the Association shall be registered with the state Department of Commerce and shall update its registration to keep any required information current as required by law.

ARTICLE 6:

GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

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

- (b) Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Condominium Project consistent with the requirements of the Governing Documents.
- (c) Entering Units. After having given the appropriate notice as provided for in Article 17 of this Declaration, the Association shall have the right, in the sole discretion of the Management Committee, at all times upon reasonable notice (and at any time in case of an emergency) to enter into any Unit to abate any infractions or correct any violation of any of the Terms and Conditions, to make repairs, or to abate any condition that threatens the health or property of any Owner or Occupant.
- (d) Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Condominium Project. If Rules are adopted, they shall be consistently and uniformly enforced. Unless precluded by law, the Rules may address any issues including those addressed in any other Governing Document. The Rules may supplement, clarify, and add detail to issues addressed in the other Governing Documents so long as they do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive, subject to any timely judicial determination. The standard for adopting Rules is reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue the Rule addresses.
- (e) Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Management Committee in the management and operation of the Condominium Project and may delegate its powers and obligations in the Governing Documents to the Manager, employees, or other agents as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, fines to Owners, and general and special Assessments. The Management Committee may revoke at any time, with or without cause, any powers and duties delegated to any Manager or other Person. The terms of any agreement between the Association and a Manager must provide that the Association may terminate the agreement without penalty and with or without cause upon thirty (30) days' notice. **To avoid any doubt, the Management Committee has no authority to enter into any agreement or contract for management of the Association or the Condominium Project inconsistent with the terms of the Governing Documents or that allows for a termination fee or requires termination for cause.**
- (f) Enforcement Rights. In addition to any other remedies allowed or provided for in the Governing Documents for any violation of the Governing Documents, the Association may: (1) impose fines; (2) terminate Owners' rights to receive utility services paid as a Common Expense; (3) collect rents directly from tenants if Owners fail to pay Assessments; and (4) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- (g) Uniform Enforcement. The Management Committee shall uniformly and consistently enforce and implement the Terms and Conditions in the Governing Documents.
- (h) Reserve Fund. The Association shall establish and fund a reserve fund and obtain and update a Reserve Analysis as required in this Declaration and the Act.

- (i) Preventing Conflicts with Service Providers and Vendors. Unless the Management Committee specifically authorizes it as documented in the minutes of the Association after full disclosure of all aspects of the potential conflict, the Association shall not permit any paid services or materials obtained by the Association to be performed or provided by: (1) any relative of any Management Committee Member, Manager, or of any officer, employee, or Owner of the Manager; (2) any business or entity in which any Management Committee Member, Manager, or employee, officer, or owner of any management company employed as the Association's Manager or any relative of the same is employed or has more than a one percent (1%) ownership or beneficial interest; or (3) any business, entity, or Person with any familial or financial relationship with any Management Committee Member, Manager, or of any officer, employee, or owner of the Manager, or any relative of the same. The prohibitions above related to the Manager and relatives of the Manager shall not apply to the management company as it relates to providing management services or other directly contracted for services by the Manager. A relative is any Person known to be related by blood or marriage. The provision of services and materials for purposes of this provision shall include managers, insurance brokers, investment or financial advisors, accountants, landscapers, contractors, and all other companies and Persons providing services to the Association.
- (j) Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (1) at least two (2) weeks' notice of the hearing to the Owners; and (2) a reasonable time period under the circumstances for the Owner(s) to present their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- (k) Annual Meeting. The Management Committee shall arrange for and conduct an annual meeting as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or law.
- (l) Bulk Services Agreements. As the Management Committee deems appropriate, the Association shall have the right to enter into agreements for the provision of cable, television, internet, telephone, or other similar services for all of the Units. Such services shall be assessed to the Owners pursuant to the provisions of this Declaration and may be broken out as a separate line item on invoices, statements, or notices of Assessment.
- (m) Review and Audit of Association Finances. The Association may have an independent accountant conduct a review of the Association's finances. The Association shall make any such review available to the Owners. Any Owner may have an audit or review conducted of the Association's records by a CPA, at that Owner's expense, and

the Association shall cooperate in providing access to any records needed for that audit or review. Upon receipt of a request signed by owners holding twenty percent (20%) of the Undivided Interests, the Management Committee shall have an audit conducted of the Association's finances by a CPA and shall make the audit available to the Owners.

- (n) Electric Cars and Charging Stations. The Association may allow and shall have the right to regulate and impose reasonable requirements on the installation of charging stations and the charging of electric vehicles in the Association. An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local authorities as well as all other applicable zoning, land use or other ordinances, or land use permits. The Association shall have the power to establish Rules implementing this section and such rules may include, but are not limited to, the following: (1) requiring the Owner to pay the cost of installation, maintenance, insurance, and power related to any charging station or vehicle charging; (2) requiring the Owner to pay the cost of measuring the power usage; (3) Rules imposing charges to an Owner for reasonable estimates by the Management Committee of power consumption when the Owner is allowed to connect to common area power without a requirement for specific metering; (4) Rules imposing charges to an Owner for reasonable costs of managing and administration of extra billing, power allocation, metering, or other costs associated with electric vehicle charging; (5) Rules establishing standards related to the construction or use of any charging equipment or cables; (6) Rules requiring that Owners pay for any costs associated with the modification to electrical systems necessary to support charging or charging equipment; (7) Rules requiring proper maintenance, certification, inspections, and cleaning of any charging equipment and components; (8) Rules related to the location and storage of any charging equipment; and (9) any other reasonable Rules related to charging and charging stations.
- (o) Condominium Project Air Space, Drones, and Unmanned Aircraft. The Association shall have the right in the Rules to regulate, ban any use, and impose reasonable requirements on the use of the airspace (all airspace up to public airspace) by anyone over the Property and any structures on the Property. The Association shall also have the right to regulate, ban, and impose restrictions or requirements on the flying of any device including unmanned aircraft or drones (any remotely controlled or autonomous flying device): (1) within all airspace over the Property; and (2) in any airspace within 1000 feet of the Property if the device is caused to be flown by an Owner, Occupant, or Person within the Condominium Project. Any Rules adopted by the Association that do not prohibit or allow the flying of devices in the Condominium Project's airspace shall not subject the Association to liability for damages to persons or property relating to the operation of such a device. Any Owner or Occupant causing a flying device to be flown within the airspace over the Property or in violation of any Rule adopted by the Association shall: (1) be responsible for any damage caused by the device and (2) indemnify against all liabilities and losses and defend the Association, its manager, and all officers and directors (past or present), from any claims related to the device. The Association shall have the power to establish Rules implementing this section and such Rules may include, and are not limited to, the following: (1) requiring Owners or Occupants to provide information about and/or photographs of the device to the Association; (2) requiring flying devices to be marked with the Owner's or Occupant's name or other information; (3) establishing certain

areas, hours, minimum or maximum height limitations, or banning flying of devices completely; (4) banning altogether or designating required commercial drone delivery landing sites; and (5) any other reasonable Rules related to the flying of devices.

- (p) Payoff Information Fees. The Association is specifically authorized to establish a fee up to the maximum amount allowed by law to provide payoff information related to the transfer, refinance, or closing of a Unit. Unless otherwise determined by the Association in its Rules, such fee shall be \$50.00.
- (q) Easements, Maintenance, and Use Rights. The Association, through the Management Committee, shall have the right to grant easements, rights-of-way, and use rights upon or through the Common Areas, and to enter agreements to maintain property outside of the Condominium Project if such maintenance shall, in the Management Committee's discretion, provide a benefit to the Association or the Owners. Without limiting the generality of the foregoing, this shall include, but is not limited to, the authority to enter into the Joint Use and Cross Easement Agreement and any other easement or use agreement with any neighboring or adjoining association or project. The Association, through the Management Committee, further has the authority to record against the real property within the Condominium Project any easement, right-of-way, and other agreement which the Association may enter into pursuant to this subsection or any other part of the Declaration.
- (r) Other Necessary Rights. The Association shall have any other right that is reasonably necessary to carry out the terms of the Governing Documents.

ARTICLE 7: BUDGETS & ASSESSMENTS

- 7.1 **Purpose of Assessments.** Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Condominium Project; enhancing the quality of life of the Owners in the Condominium Project; enhancing and preserving the value of the Condominium Project and Units; and in the furtherance of carrying out or satisfying any other responsibility or power of the Association.
- 7.2 **Budget and Regular Assessment.**
 - (a) The Management Committee is authorized and required to prepare and adopt a budget annually. The budget shall estimate the total Common Expenses to be incurred for the next calendar year (or that calendar year for a revised budget), which shall be broken down into reasonably detailed expense categories. The budget may include reserves, contingencies, and estimates as the Management Committee deems appropriate.
 - (b) The budget prepared and adopted by the Management Committee for the following year shall be presented to the Owners at the annual meeting.
 - (c) The Management Committee shall determine the amount of the regular Assessments to be paid by the Owners of each Unit by multiplying the total budgeted amount by the Undivided Interests for each Unit. Unconstructed units (units that have not been built yet), if any, shall pay assessments in the same manner and at the same rate as constructed units.

- 7.3 **Payment of Regular Assessments.** Unless otherwise established by the Management Committee and communicated to each Owner, each Owner shall pay to the Association the Owner's regular Assessment in equal monthly installments.
- 7.4 **Adjustments to Regular Assessments.** In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may then revise the budget and each Owner's share of the new budget total based on the Owner's Undivided Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner shall thereafter pay to the Association the Owner's adjusted regular Assessment in equal monthly installments.
- 7.5 **Personal Obligation for Assessment.** Each Owner of any Unit, by acceptance of a deed or other instrument creating in such Owner the interest required to be an Owner, whether or not it shall be so expressed in any such deed or other instrument and regardless of any lien rights or lack thereof, hereby personally covenants and agrees with each other Owner and with the Association to pay to the Association any Assessments as provided for in the Governing Documents, including any Assessments assessed and unpaid prior to the date the Owner became an Owner. Each such Assessment, together with any interest, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment is assessed.
- 7.6 **Improvements.** Expenses for improvements may be included in the budget, paid for through Special Assessments, or paid for in any other manner the Management Committee determines.
- 7.7 **Allocation of Assessments.** Except as otherwise provided herein, all Assessments (other than Special Assessments to individual Units) shall be allocated to Owners based on the Undivided Interest applicable to the Unit. Assessments for utilities, including, but not limited to, cable or satellite television, internet and telephone paid directly by the Association but utilized unequally by the Units, if any, may be assessed at a uniform rate per Unit for those using any such utilities and not assessed based upon the Undivided Interests applicable to the Units.
- 7.8 **Rules Regarding Billing and Collection Procedures.** The Management Committee may adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing late fees and collection charges, and establishing interest (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 7.9 **Statement of Unpaid Assessment.** An Owner may request a statement from the Association showing an accounting of all unpaid assessments and charges to the Owner's account. The Association may set forth in the Rules the amount of the fee that the Association will charge for providing such statement; however, unless a different amount is set forth in the Rules, such fee will be twenty-five dollars (\$25.00). For any valid, request, the Association shall provide a written statement of account within a reasonable time. A written statement from the Association is conclusive in favor of a Person who relies on the written statement in good faith.

- 7.10 **Account Payoff Information.** The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit. The Association may set forth the amount of the fee in the Rules up to the maintenance amount allowed by law. Unless otherwise determined by the Association in its Rules or as otherwise set forth in the Act, such fee shall be fifty dollars (\$50.00). Within five (5) business days of any complete payoff information request, the Association shall provide Assessment payoff information needed for the closing. A request for payoff information needed for a closing must: (a) be conveyed in writing; (b) be conveyed to the primary contact person designated by the Association with the Association's registration with the Utah Department of Commerce; (c) contain: (1) the name, telephone number, and address of the person making the request; and (2) the facsimile number or email address for delivery of the payoff information; (d) be accompanied by a written consent for the release of the payoff information: (1) identifying the person requesting the information as a person to whom the payoff information may be released; and (2) signed and dated by an Owner of the Unit for which the payoff information is requested. Each certificate is conclusive in favor of a Person who relies on the written statement in good faith.
- 7.11 **General Special Assessments.** Subject to any limitations in this Declaration for the particular type of expense, the Association is expressly authorized to set and collect special Assessments payable as may be determined by the Management Committee (in lump sums or over a period of time) to pay for any Common Expenses. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that any payment for the special Assessment is due.
- 7.12 **Individual Special Assessments to Individual Units.** Special Assessments may be assessed by the Association against a particular Unit and its Owner for:
- (a) Costs incurred in bringing an Owner or the Owner's Unit into compliance with the provisions of the Governing Documents;
 - (b) Costs associated with the maintenance, repair or replacement of a Limited Common Area assigned to such Unit if such cost is the responsibility of the Owner as provided for in this Declaration;
 - (c) Subject to the provisions in this Declaration related to insurance responsibility and deductible allocation, if the need for maintenance or repair is caused by the fault or negligence of an Owner or an Occupant, the Association may assess the Owner the actual cost of such maintenance or repair to the extent the repair costs are not paid for by any applicable insurance;
 - (d) Any other charge designated as pertaining to an individual Unit in the Governing Documents;
 - (e) Fines, late fees, collection charges, and interest; and
 - (f) Attorney fees, costs, and other professional expenses relating to any of the above.
- 7.13 **Acceptance of Materials or Services.** In the event the Association undertakes to provide materials or services that are not otherwise required for 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 may be a special Assessment pertaining to that Unit, at the Management Committee's discretion.

- 7.14 **Application of Excess Assessments.** In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee in its sole discretion may retain the excess in the Association's operating account as working capital, apply the excess to reserves, credit the excess against future Assessments, refund the excess to the Owners in proportion to the Undivided Interest of each Unit, or take other action with the funds permitted under this Declaration, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.
- 7.15 **No Offsets.** All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 7.16 **How Payments Are Applied.** Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.
- 7.17 **Administration of Assessment Funds.** The Association shall keep all Assessment-generated funds in an account, or accounts, in the name of the Association. The Association shall not commingle Assessment-generated funds with the personal funds of any other Person.
- 7.18 **Loans.** Upon approval of Owners holding fifty one (51%) of the Undivided Interests by vote at a meeting called for that purpose, the Association may borrow money, enter into leases, and may provide such security as necessary for the loan or lease, including but not limited to securitizing, pledging, or assigning the Association's right to assess Owners. Notwithstanding anything to the contrary, no Unit shall be security for any loan to the Association without that Unit Owner's consent.
- 7.19 **Reinvestment Covenant upon Sale or Transfer of Unit.** The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Unit (a "**Reinvestment Fee**") as provided for in Utah Code Ann. § 57-1-46. Unless and until the Management Committee sets a different Reinvestment Fee in the Rules or reduces the Reinvestment Fee to zero, the Reinvestment Fee shall be one-half of one percent (0.5%) of the value of the Unit at the time of the transfer. The Reinvestment Fee shall be due within thirty (30) days after the effective date of the deed or similar instrument transferring title. The Reinvestment Fee shall constitute an Assessment against the Unit in accordance with the Declaration. A transfer is any change in the ownership of the Unit as reflected in the office of the County recorder, regardless of whether it is pursuant to the a sale of the Unit or not. The value of the Unit for purposes of this section shall be the higher of: (a) the value of the Unit as determined by the property tax assessor on the date of the transfer of title, (b) the purchase price paid for the Unit related to the transfer, or (c) the value of the Unit on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of ten appraisers selected by the Association.

- (a) Purpose of the Reinvestment Fee. Once collected, the Reinvestment Fee may only be used by the Association to pay costs directly related to the transfer of the burdened property as well as:
- (1) common planning, facilities, and infrastructure;
 - (2) obligations arising from an environmental covenant;
 - (3) community programming;
 - (4) resort facilities;
 - (5) open space;
 - (6) recreation amenities;
 - (7) charitable purposes; or
 - (8) association expenses.
- (b) Limitation on Reinvestment Fee. The Reinvestment Fee is not due and may not be enforced against:
- (1) an involuntary transfer;
 - (2) a transfer that results from Court order;
 - (3) 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;
 - (4) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution;
 - (5) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed two hundred and fifty dollars (\$250.00); or
 - (6) if expressly provided in the Rules at the Management Committee's sole discretion, a transfer to an inter vivos trust in which an Owner is a grantor and title to the Unit after the transfer is held by the trustee of that inter vivos trust; provided, however, that if this exception is not expressly provided in the Rules, however, a transfer to an inter vivos trust is subject to the Reinvestment Fee the same as any other transfer not excepted by this Declaration or Utah law from imposition of the Reinvestment Fee.
- (c) Additional Actions.
- (1) The Association shall have the authority to record any notice required by law to effectuate this provision.
 - (2) The Association shall have the authority to enact Rules that may include: (i) exceptions to the imposition of a Reinvestment Fee, including, but not limited to, for an Owner's transfer of a Unit to an inter vivos trust; (ii) requirements for Owners to provide sales and transfer documents; (iii) requirements for the timing of responses to requests such as the selection of the appraiser; (iv) default provisions if no selection is made such as allowing the Association to select the appraiser; and (v) other procedural requirements and Rules as the

Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

- (3) Notwithstanding anything herein to the contrary, the Management Committee may impose a Reinvestment Fee in an amount up to the maximum allowed by law.

ARTICLE 8:

NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY

- 8.1 **Delinquency.** Assessments not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 8.
- 8.2 **Collection Charges and Interest.** The Association may adopt or establish billing and collection procedures, including the amount of late fees and interest, in the Rules or by resolution. If the Association does not adopt collection procedures, the following shall apply. Monthly Assessments shall be due and payable on the first (1st) day of each month and shall be considered late if not received by the tenth (10th) of the month. Accounts with an unpaid balance after the tenth (10th) of each month shall be charged a twenty-five dollar (\$25.00) late fee. In addition to late fees, interest shall accrue on all unpaid balances, including unpaid prior attorney fees, interest (resulting in compounding of interest), late fees, and Assessments, at one and one-half percent (1.5%) per month, compounded monthly. The Association may also impose and assess to the Owner a collection charge, late fee, and any other reasonable charge by a Manager related to collections.
- 8.3 **Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments.** The Owner and any future Owners of a Unit are jointly and severally liable for all Assessments accruing related to that Unit prior to and during the time that an Owner is an Owner. An Owner is not liable for any Assessments accruing after an Owner has lawfully transferred the Unit to another Owner. The recording of a deed to someone or some company that has not agreed to take ownership of the Unit shall not be considered a legal conveyance of title. The obligation in this paragraph is separate and distinct from any lien rights associated with the Unit.
- 8.4 **Lien.** The Association has a lien on each Unit for all Assessments, which include but are not limited to interest, collection charges, late fees, fines, attorney fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of the Enabling Declaration and shall have priority over all encumbrances recorded after the Enabling Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association's lien shall have priority over each other lien and encumbrance on a Unit except only: (a) a lien or encumbrance recorded before the Enabling Declaration was recorded; (b) a first or second security interest on the Unit secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (c) a lien for real estate taxes or governmental assessments or charges against the Unit. The Association may, but need not, record a notice of lien on a Unit.
- 8.5 **Action at Law.** The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien. In addition, the Association's choice of one remedy shall not prejudice or

constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest and collection charges, if appropriate). Each Owner vests in the Association or its assigns the right and power to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.

- 8.6 **Foreclosure Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code Ann. Sections 57-1-20 and 57-8-44 to 53, an Owner's acceptance of an interest in a Unit constitutes a simultaneous conveyance of the Units in trust, with power of sale, to Quinn A. Sperry, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 8.7 **Association Lien Not Subject to Homestead Exemption.** Pursuant to Utah Code § 57-8-44(5), any lien of the Association arising under Section 44 of the Act is not subject to any Owner's homestead exemption, and each Owner hereby waives any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter that relate to the Association's lien arising under the Act and this Declaration.
- 8.8 **Termination of Delinquent Owner's Rights.** The Association shall have all rights provided for in the Act to terminate a delinquent Owner's: (a) rights to receive a utility service for which the Owner pays a Common Expense; and (b) access to recreational facilities.
- 8.9 **Requiring Tenant to Pay Rent to Association.** Pursuant to and as provided for in the Act, the Association shall have a right to demand and collect rent from any tenant in a Unit for which an Assessment is more than sixty (60) days late. Any tenant who fails to pay such rent when demanded shall be liable to the Association for the amount of any unpaid rent and all collection costs and reasonable attorney fees related to the failure to pay as provided for in Section 8.10 and regardless of whether an action is commenced or not.
- 8.10 **Attorney Fees Incurred as a Result of a Default.** In addition to any attorney fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including but not limited to attorney fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including but not limited to regular monitoring of an Owner's progress in a Chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy and all related activities including seeking and responding to discovery, taking depositions or examinations, introducing evidence, hiring and paying expert witnesses, filing motions and other pleadings, attending trials, hearings, or other court proceedings, including as necessary related to assert any non-dischargeability of debts, to assert claims against the estate or co-debtors, to challenge exemptions, to pursue any appropriate adversary proceeding, or for any other reason related to the ultimate attempt to collect unpaid Assessments; and (h) foreclose a lien, secure lien rights, or provide for any notice of lien. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an

Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

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

**ARTICLE 9:
PROPERTY RIGHTS IN UNITS AND COMMON AREA**

9.1 **General Easements to Common Area and Units.**

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

- 9.2 **Sale, Conveyance, Lease, or Hypothecation of Common Area.** To the extent permitted by law and with the consent of Owners holding fifty-one percent (51%) of the Undivided Interests present at a meeting called for that purpose, the Association may, sell, convey, lease, or hypothecate Common Area.

- 9.3 **Mira Vista P.U.D. Common Area, Facilities, and Amenities.** The Association and Owners shall have easement, use, and access rights to certain common areas, facilities, and amenities of the Mira Vista P.U.D. pursuant to the terms of the Joint Use and Cross Easement Agreement. Owners and Occupants shall be bound by and subject to the terms of the Joint Use and Cross Easement Agreement and any rules adopted by Mira Vista P.U.D., Inc. related to the use of the common areas, facilities, and amenities located in the Mira Vista P.U.D. project and subject to the Joint Use and Cross Easement Agreement. In the event that a dispute arises under the Joint Use and Cross Easement Agreement between and Owner, or the Owner's Occupant, and the Mira Vista P.U.D., then pursuant to the terms of the Joint Use and

Cross Easement Agreement the Owner may be liable for the attorney's fees and costs incurred by the Mira Vista P.U.D. in enforcing the agreement.

- 9.4 **Public Utilities.** Easements and rights-of-way over the Condominium Project for the installation and maintenance of electricity lines, telephone lines, cable television lines, fiber optics, water lines, gas lines, sanitary sewer lines, drainage facilities, telecommunication fixtures and equipment, utility fixtures and equipment, and such lines, fixtures, or equipment needed or determined by the Management Committee to be helpful in serving the Condominium Project, Units, or Unit Owners in the Condominium Project are hereby reserved to the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey, in the name of the Association or all of the Owners as their attorney-in-fact, to any Person easements and rights-of-way in, on, over or under the Common Area or Units for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, wireless transmission or reception equipment, conduits, or other devices for electricity, cable television, power, telecommunications, internet, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any other public, quasi-public, or private improvements or facilities. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association. However, no easement can be granted pursuant to this paragraph if it would permanently and materially interfere with the use, occupancy or enjoyment by any Owner of such Owner's Unit.
- 9.5 **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 Building(s) is constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment, shall exist for the life of the structure.
- 9.6 **Limitation on Easement—Suspension of Owner's Rights.** An Owner's Undivided Interest and right and easement of use and enjoyment concerning the Common Area shall be subject to any other limitation in the Governing Documents and the following:
- (a) The right of the Association to suspend the Owner's right to the use of any recreational facilities included in the Common Area: (1) for any period during which an Assessment on such Owner's Unit remains unpaid; (2) for a period not exceeding sixty (60) days for any infraction by such Owner of the provisions of this Declaration or any Rule; and (3) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period;
 - (b) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Area;
 - (c) The right of any governmental or quasi-governmental body having jurisdiction over the Condominium Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common

Area for purposes of providing police and fire protection, transporting school children, and providing other governmental or municipal services; and

- (d) The right of the Association to reasonably limit or restrict Owner's access and use of certain portions of the Common Area set aside for the functioning of the Association.

9.7 **Owner Easement for Storage Sheds or Storage Units.** Each Owner shall have an easement for the placement of a small storage shed or storage unit at the front of each Owner's assigned covered parking space. The Owner shall be responsible to maintain, clean, repair, and replace any such storage shed or storage unit at the Owner's sole cost. The Management Committee may adopt Rules governing such storage sheds or storage units, including, but not limited to, what may be placed, left, or stored on or in any such storage shed or storage unit; maintenance, repair, replacement, and condition of any such storage shed or storage unit; the size of any storage shed or storage unit; the material any storage shed or storage unit is constructed of; and the appearance of any storage shed or storage unit.

9.8 **Views.** Views from a Unit and the Condominium Project are not assured or guaranteed in any way. There is no warranty concerning the preservation of any view or view plane from the Condominium Project and each Owner and Occupant acknowledges and agrees that there are no view easements or view rights appurtenant to the Unit or the Condominium Project.

**ARTICLE 10:
USE LIMITATIONS AND CONDITIONS**

10.1 **Units Occupied by Persons 55 Years of Age or Older.** The Condominium Project is intended to be "housing for older persons" as defined in the Housing for Older Persons Act ("HOPA"), 42 USC § 3607. Pursuant to HOPA, except as otherwise provided in this Section 10.1, all Persons occupying a Unit in the Condominium Project must be 55 years of age or older (a "Qualified Occupant").

- (a) The provisions of this Section 10.1 are intended to comply with HOPA, 42 USC § 3607, as may be amended; the federal Fair Housing Act, 42 USC §§ 3601 et seq., as may be amended; and Utah's Fair Housing Act, Utah Code Ann. §§ 57-21-1 et seq., as may be amended (collectively the "Housing Acts"). If any provision herein is inconsistent with any provision of the Housing Acts, the provision of the Housing Acts shall supersede any such inconsistent provision to the extent necessary to ensure that the Condominium Project complies with the Housing Acts and to maintain the Condominium Project's status as housing for older persons under HOPA.
- (b) The Management Committee may, but is not required to, adopt Rules with respect to the Condominium Project's intended nature as housing for older persons under HOPA, including, but not limited to, Rules designed to maintain the Condominium Project's compliance with HOPA, and Rules governing the presence of any Persons under 55 years of age at the Condominium Project.
- (c) The following persons under 55 years of age may occupy a Unit in the Condominium Project:
 - (1) A child or grandchild of a Qualified Occupant with a disability under the Americans with Disabilities Act who must live with the Qualified Occupant because of the disability;
 - (2) A Person living with a Qualified Occupant for the sole purpose of providing live-in long term or hospice care to a Qualified Occupant. For purposes of this

exception, the care provided must be substantial in nature and must provide assistance to the Qualified Occupant as to necessary daily activities or medical treatment;

- (3) A spouse of a Qualified Occupant who lives in the Unit with the Qualified Occupant. Provided, however, that in the event of a divorce, separation, or inheritance upon the Qualified Occupant's death, a spouse under 55 years of age at the time of any such event may only continue to occupy the Unit if 90% of the other Units in the Condominium Project are occupied by at least one Qualified Occupant; or
 - (4) Other Persons as determined by the Management Committee on a case by case basis in its sole and absolute discretion.
- (d) Notwithstanding any other provision in this Section 10.1, any person less than 55 years of age may visit or live with a Qualified Occupant as a guest of a Qualified Occupant, so long as the person less than 55 years of age does not live with a Qualified Occupant for more than ninety (90) days in any calendar year.
 - (e) At least every two (2) years, the Management Committee shall determine the percentage of Units with at least one Qualified Occupant. At the Management Committee's request, each Owner, Occupant, perspective Owner, or perspective Occupant of any Unit shall promptly complete a survey in a form determined by the Management Committee to verify the age of all persons occupying the Unit and to attest to the Occupant(s)'s qualifications to reside in the Unit pursuant to this Section 10.1. Further, upon the Management Committee's request, each Owner and Occupant of a Unit shall provide the Management Committee with reliable documentation (such as a birth certificate, driver's license, passport, immigration card, military identification, state issued identification, or similar government issued identification) of his or her age.
 - (f) Notwithstanding any other provision of this Declaration, upon the unanimous consent of the Management Committee's members, the Management Committee shall be entitled to amend this Section 10.1 and such other provisions of the Governing Documents as may be necessary to comply with and conform to provisions of federal and state law necessary to retain its status as housing for older persons under HOPA. The Management Committee shall be entitled to make, adopt, sign, and record such amendments without Owner approval.

10.2 **Limitations on Occupants Per Unit.** The Management Committee in its sole discretion may adopt Rules limiting the number of Occupants per Unit based on the size and facilities of the Unit and the fair use of Common Area.

10.3 **Access Codes.** The Management Committee may in its sole discretion adopt Rules related to the access codes used to access the Building(s) in the Condominium Project, including, but not limited to, Rules concerning Owners and Occupants sharing access codes with non-Owner and non-Occupants and non-Owners' and non-Occupants' use of access codes to enter the Building(s), including, but not limited to, restricting or prohibiting such sharing and use.

10.4 **Rules.** The Association shall have authority to promulgate and enforce such reasonable Rules and procedures as may aid the Association in carrying out any of its functions and to ensure that the Condominium Project is maintained and used in a manner consistent with the interests of the Owners. The Association further has the authority to adopt Rules related to the Joint

Use and Cross Access Agreement, including, but not limited to, adopting and incorporating in the Association's Rules any rules adopted by Mira Vista P.U.D., Inc. related to the use of the common areas, facilities, and amenities located in the Mira Vista P.U.D. project and subject to the Joint Use and Cross Easement Agreement.

- 10.5 **Signs.** The Association may regulate and restrict signs in the Condominium Project, to the extent permitted by law, in the Rules. "Signs" shall include any type of object (including but not limited to flags, billboards, banners, plaques, A-frames, easel signs, poly-bag signs, corrugated plastic signs, lawn signs, window signs) used to convey a message, symbol, idea, identification, or for any other purpose that signs are typically used, that is placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Unless and until the Association adopts Rules regulating signs in the Condominium Project, all signs are prohibited unless expressly approved in advance by the Management Committee. The Association's prohibition on signs shall be subject to applicable state and federal laws.
- 10.6 **Nuisance.** No noxious or offensive activity shall be conducted in the Condominium Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Condominium Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.
- 10.7 **Smoking.** Smoking is prohibited in the Condominium Project, including in the Units, Limited Common Areas, and Common Areas. It shall be a nuisance and prohibited to permit or cause any smoke to drift or otherwise enter into the Common Areas, any Unit, or the Limited Common Area of any Unit. The Association relies upon the definitions of the terms "e-cigarette" and "smoking" as used in the Utah Indoor Clean Air Act (Utah Code Ann. §§ 26-38-1 *et seq.*) in defining such terms for this Section 10.7.
- (a) "E-cigarette" means any electronic oral device (1) that provides a vapor of nicotine or other substance; and (2) which simulates smoking through inhalation of the device, including any oral device that is composed of a heating element, battery, or electronic circuit and is marketed, manufactured, distributed, or sold as: an e-cigarette; e-cigar; e-pipe; or any other project name or descriptor, if the function of the project is to provide a vapor of nicotine or other substance and simulates smoking through inhalation -through the device.
- (b) "Smoking" means: (1) the possession of any lighted or heated tobacco product in any form; (2) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine intended for inhalation through a cigar, cigarette, pipe, or hookah; (3) using an e-cigarette; or (4) using an oral smoking device intended to circumvent the prohibition of smoking.
- (c) The Management Committee may adopt Rules to address new non-combustible tobacco products that may not otherwise fall into the prohibition against smoking in this Section 10.7 to expressly include such products in this smoking prohibition.
- 10.8 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Condominium Project or used therein unless otherwise authorized in this Declaration or approved by the Management Committee.

- 10.9 **Parking.** Unless otherwise permitted by the Association in the Rules, the following parking restrictions shall apply to all Owners and parking areas of the Association.
- (a) One covered parking space in the Condominium Project has been assigned to each Unit. Unless traded or reassigned in the manner provided in this Section 10.9(a), the covered parking space assigned to each Unit at the time this Declaration is recorded shall remain assigned to that Unit. Use of the assigned covered parking spaces shall be expressly limited to the Owner, Occupant, or guests of the Unit to which the covered parking space is assigned. The Management Committee shall maintain an up to date list identifying the assignments of covered parking spaces to Units. Unless otherwise provided in Rules adopted by the Management Committee, covered parking spaces may be traded and reassigned if the Owner of each Unit to which the covered parking spaces to be traded or reassigned and the Management Committee all approve of the trade or reassignment.
 - (b) An Owner shall not sell, lease or otherwise convey all or any part of the parking rights it has by virtue of ownership of a Unit (other than in connection with the sale, lease or other conveyance of such Owner's Unit).
 - (c) Except as provided in Section 10.18, no motor vehicle shall be constructed, repaired or serviced at the Condominium Project.
 - (d) Only operable, licensed, and registered automobiles, motorcycles, noncommercial trucks and vans shall be allowed within the parking spaces in the Condominium Project.
 - (e) The Association may adopt Rules relating to the parking of vehicles within and in the area of the Condominium Project including, without limitation: (1) Rules allowing or causing to be removed any vehicles that are improperly parked; (2) restrictions on the type and condition of vehicles allowed in parking spaces; (3) restrictions on the time period and duration of temporary parking, including, but not limited to, parking by visitors and guests; (4) Rules related to the assignment, reassignment, or trade of assigned covered parking spaces; and (5) the assessment of fines to Owners who violate such Rules or the assessment of fines to Owners whose guests violate such Rules.
- 10.10 **Recreational Vehicles.** Unless otherwise provided in the Rules, Recreational Vehicles including, but not limited to, boats, trailers, 4-wheelers, and motor homes may not be parked in the Condominium Project at any time, except pursuant to the Joint Use and Cross Easement Agreement in the area designated for the parking of Recreational Vehicles so long as space is available in the designated parking area.
- 10.11 **Holiday Decorations.** The Association may regulate and restrict holiday decorations in the Condominium Project, to the extent permitted by law. Holiday decorations shall include any type of object (including, but not limited to, lights, wreaths, plants, trees, displays, inflatable items, religious iconography or symbols) relating to any national or religious holiday or used to convey a religious message, symbol, idea, identification, or for any other purpose that holiday decorations are typically understood and which are placed in, on, or outside of a Unit with the apparent purpose, in whole or in part, of making it visible to people outside of the Unit. Unless and until the Management Committee adopts Rules regulating holiday decorations, holiday decorations are permitted.

- 10.12 **Items in Common Area in Front of Unit Doors.** The Management Committee may adopt Rules allowing or not allowing Owners to place small items in the Common Area immediately in front of such Owner's Unit including, but not limited to, vases, flowers, small pictures, other artwork, floor mats, wreaths, or other decorations. Unless and until the Management Committee adopts such Rules, Owners may place such small items in front of their Unit in the Common Area hallway as long as such items are kept neat and tidy and do not block the hallways.
- 10.13 **External Fixtures.** To the extent permissible by applicable law and the Governing Documents, no external items such as, but not limited to, television and radio antennas, satellite dishes, flag poles, solar panels, clotheslines, wiring, air conditioning equipment, water softening equipment, fences, awnings, ornamental screens, screen doors, porches, patios, balconies, enclosures, sunshades, lighting fixtures, walls, windows, skylights, landscaping and plantings, other than those provided in connection with the original construction of the Condominium Project, shall be constructed, erected, or maintained on the Condominium Project without the prior written approval of the Management Committee.
- 10.14 **Window Covers.** The Management Committee may adopt Rules requiring window covers, regulating the type, color, and design of window covers, and requiring prior approval of window coverings before installation. Absent Rules permitting otherwise, only curtains, drapes, shades, shutters, and blinds may be installed as window covers. No window shall be covered by paint, foil, sheets, reflective film, or similar items.
- 10.15 **External Laundering.** Unless otherwise permitted in the Rules, external laundering and drying of clothing and other items are prohibited.
- 10.16 **Outside Speakers and Amplifiers.** Except as permitted in the Rules and subject to any regulations in the Rules, no radio, stereo, broadcast, loudspeaker, or projection of sound or music on or directed to the outside of any Unit shall be permitted.
- 10.17 **Repairs.** Except for emergency automobile maintenance, no repairs of any detached machinery, equipment, or fixtures, including without limitation, motor vehicles, shall be made in the Condominium Project except as may be permitted by the Management Committee in the Rules.
- 10.18 **Unightly Items.** All rubbish, debris, unsightly materials, or similar objects of any kind shall be regularly removed from Units and shall not be allowed to accumulate therein or thereon. Trash and garbage shall be properly and promptly disposed of as provided for in the Rules.
- 10.19 **Animals.** Unless otherwise provided in the Rules, no animals, livestock, birds, reptiles, or poultry of any kind shall be raised, bred or kept in any Unit or upon the Condominium Project, except that one (1) dog or one (1) domestic cat weighing twenty (20) pounds or less may be kept by Owners or Occupants within a Unit, provided such is not raised, bred, kept or maintained for any commercial purposes. Notwithstanding the foregoing, no animal or fowl may be kept within a Unit or upon the Condominium Project which, in the good faith judgment of the Management Committee, results in an annoyance or is obnoxious to Owners or Occupants within the Condominium Project. The Management Committee may exercise its judgment for specific animals even though others are permitted to remain. All fecal matter shall be immediately cleaned up on any portion of the Condominium Project. The Management Committee may adopt Rules applicable to the provisions of this Section 10.19 and to the keeping of animals within the Condominium Project, including, but not limited to, requirements for registration or licensing; requirements for vaccinations; specific fees or deposits for an animal; the use of leashes; noise and barking limitations; and their

enforcement, including the assessment of charges to Owners and Occupants who violate such Rules, subject to any applicable hearing procedures that may be required by this Declaration, the Rules, or the Act. The Owner of a Unit in which an animal is kept is liable for any damages caused by such animal, and shall indemnify against all liabilities and losses and defend the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal. Notwithstanding the foregoing, in an effort to minimize anxiety and fear of the Owners generally, or as may be otherwise required or beneficial for the Association to obtain insurance coverage, the Association may prohibit dogs of certain breeds (pure or partial) believed generally to be aggressive, including, but not limited to, the following breeds: Pit Bull, Fila Brasileiro, Presa Canario, Chow Chow, Alaskan Malamute, Doberman Pinscher, and Rottweiler.

- 10.20 **Landscape Maintenance.** Absent the adoption of a Rule allowing otherwise, no one may alter, change, or maintain any landscaping, plants, or other plantings in the Common Area without the written approval of the Management Committee.
- 10.21 **Floor Load.** There shall be no floor load in excess of the weight for which the Unit was designed, unless special arrangements are made, and an engineering determination of floor load capacity in the areas of the heavy use is obtained by the Owner and approved in writing by the Management Committee. It shall be the Owner's responsibility to determine if any particular item exceeds the floor load capacity for a Unit. Upon reasonable notice that an item or items of abnormally high weight will be in a Unit, the Association may require the Owner to pay the costs of an engineer or architect hired by the Association to verify that the Owner is not exceeding a safe floor load weight.
- 10.22 **Residential Occupancy.** Except as provided in this Section, no Unit may be used for any purpose other than a residential purpose.
- (a) No trade or business may be conducted in or from any Unit unless:
- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from outside the residence;
 - (2) the business activity conforms to all zoning and legal requirements for the Condominium Project and the business activity;
 - (3) the business activity does not involve Persons coming onto the Condominium Project who do not reside in the Condominium Project or solicitation of Occupants or Owners of the Condominium Project;
 - (4) the business activity is consistent with the residential character of the Condominium Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Occupants of the Condominium Project;
 - (5) the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Unit for such activity, and a description of any impact on the Condominium Project;
 - (6) there is no commercial delivery of packages or mail other than deliveries consistent with typical residential use;
 - (7) the business activity will not result in the increase of the cost of any of the Association's insurance;

- (8) all Owners and Occupants of the Unit reside in the Unit in which the business activity is conducted for the entire time any business activity is conducted, (if an entity owns the Unit, all owners of the entity must reside in the Unit, if the Unit is held in the name of a trustee for a trust, the beneficiary must reside in the Unit); and
- (9) the Management Committee's requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely as often as the Management Committee shall determine in its discretion.

(b) No Unit may be used as a time-share property.

- 10.23 **No Subdivision or Timeshare of Units or Recording by Owners of Terms and Conditions.** No Unit shall be split, subdivided, separated or timeshared into two (2) or more Units or property interests (whether temporally or spatially), and no Owner of a Unit shall sell or lease part of a Unit. No subdivision Plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Unit. No subdivision Plat or covenants, conditions, or restrictions related to any Unit or the Condominium Project shall be recorded on the Condominium Project unless the Management Committee and/or Owners (as required in this Declaration) have first approved the Plat or the proposed covenants, conditions, or restrictions. Any Plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.
- 10.24 **Firearms.** The discharge of firearms within the Condominium Project is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paintball guns, air soft guns, and other firearms of all types, regardless of size.
- 10.25 **Garage Sales.** Garage sales, estate sales, rummage sales, or similar sales will not be permitted unless pre-approved by the Management Committee. The Management Committee may adopt Rules governing such sales.
- 10.26 **Architectural Control.** No changes to anything outside of the boundary of Units shall be commenced, erected, maintained, made, or done without the prior written approval of the Management Committee or any committee established by the Management Committee for that purpose. By way of illustration, but not of limitation, the following are considered changes outside the boundary of a Unit: painting of the exterior of the Building(s); landscaping; excavation; changing or modifying screens; changing doors leading to hallways; modifying the exterior surface of doors to Common Area, or hallways; the addition or modification of an evaporative cooler, fireplace, stove, or other vent or exhaust, chimney, skylight, solar collector, shade screen, or awning; exterior window coating or tinting; window replacement, decorative alterations to the exterior of any Unit, and other work that in any way alters the appearance of the Condominium Project from anywhere outside of a Unit (not including changes made in and to a Unit visible through windows). The Management Committee may in its sole discretion designate the design, style, model and manufacturer of any such improvement or alteration. Such designations shall be for the purpose of achieving uniformity of appearance which is hereby deemed and agreed to be necessary to preserve and enhance the value of Units and the Condominium Project.
- 10.27 **Lighting.** Lighting fixtures outside of Units shall be allowed only to the extent approved by the Management Committee.

10.28 **Variances.** The Management Committee may, at its option and in extenuating circumstances, grant variances from the Terms and Conditions set forth in this Article 10 if the Management Committee determines in its discretion (by unanimous vote): (a) either (1) that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or (2) that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any financial effect or any other substantial adverse effect on the Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Condominium 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 Management Committee.

10.29 **Hazardous Substances.**

- (a) The Owners and Occupants 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 Condominium Project, that are not properly possessed, controlled, safeguarded, and disposed of. The Owners and Occupants 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 Condominium Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Condominium Project.
- (b) Each Owner and Occupant shall indemnify from all liabilities and losses and defend the Association and each and every other Owner and Occupant 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 Condominium Project, which the Association or the other Owners or Occupants may incur due to the actions or omissions of an indemnifying Owner or Occupant. The foregoing indemnity shall apply: (1) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant and (2) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Condominium Project. The obligations of each Owner and Occupant under this Section 10.29 shall survive any subsequent transfers of the Unit (voluntary or otherwise).
- (c) As used in this Section, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section, "Environmental Law" means federal laws and laws of the jurisdiction where the Condominium Project is located that relate to health, safety, or environmental protection.

**ARTICLE 11:
INSURANCE**

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Annual Insurance Report.** The Association may obtain a written report by an independent and experienced insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association), with specific knowledge and experience in the community association insurance industry, setting forth: (a) a summary description of the insurance coverage obtained by the Association, including the dollar amounts of any such coverage, and any material exceptions, exclusions, and limitations on such coverage; (b) whether, in the opinion of such broker or consultant, the insurance coverage in effect for the Association complies with the requirements of this Declaration and the law; (c) a description of any earthquake insurance and material exclusions and limitations for that coverage and if no earthquake insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: **“NO EARTHQUAKE INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION”**; and (d) a description of any flood insurance and material exclusions and limitations for that coverage and if no flood insurance is obtained, a conspicuous clear statement in both bold and uppercase letters stating: **“NO FLOOD INSURANCE HAS BEEN OBTAINED BY THE ASSOCIATION”**. The report shall also set forth any recommendations or suggestions from the insurance professional regarding current policy provisions, deductibles, exceptions, exclusions, and for additional insurance suggested or recommended for the protection of the Owners in light of the insurance then available and the best practices with respect to other similar projects. If obtained, the most recent annual insurance report shall be distributed to the Owners at or before the annual meeting of the Association and shall be provided to any Owner at any other time upon request. If the report is distributed to Owners at the annual meeting, a copy shall also be mailed to Owners not personally in attendance within thirty (30) days of the annual meeting.
- 11.3 **Property Insurance.**
- (a) Hazard Insurance.
- (1) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering the entire Condominium Project, including the Common Area and all Buildings including all Units, fixtures, and Building service equipment.
- (i) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Units, or Limited Common Areas, including but not limited to, floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

- (ii) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.
 - (iii) The blanket or guaranteed replacement cost policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.
 - (iv) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.
 - (v) Each property policy that the Association is required to maintain shall also contain or provide for the following: (A) "Inflation Guard Endorsement," if available; (B) "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 (C) "Equipment Breakdown," if the Condominium Project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.
- (b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:
- (1) The Association's policy provides primary insurance coverage;
 - (2) Notwithstanding Subsection 11.3(b)(1) and subject to Subsection 11.3(b)(3):
 - (i) the Owner is responsible for the Association's policy deductible; and
 - (ii) building property coverage, often referred to as Coverage A, of the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.
 - (3) An Owner who owns a Unit that has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.

- (i) If an Owner does not pay the amount required under Subsection 11.3(b)(3) within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an Assessment against the Owner for that amount.
- (ii) As used in this Subsection (3):
 - (A) “**Covered Loss**” means a loss, resulting from a single event or occurrence that is covered by the Association’s property insurance policy.
 - (B) “**Unit Damage**” means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.
 - (C) “**Unit Damage Percentage**” means the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage.
- (c) Flood Insurance.
 - (1) 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 Condominium 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 Condominium Project located within a designated flood hazard areas; or (ii) one hundred percent (100%) of the insurable value of the Insurable Property.
 - (2) If the Condominium Project is not situated in a Special Flood Hazard Area, the Association may nonetheless, at the discretion of the Management Committee, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.
- (d) Earthquake Insurance. The Association may purchase earthquake insurance as the Management Committee deems appropriate. If the Management Committee elects not to purchase earthquake insurance, a vote of the Owners present at the annual meeting, with a proper quorum, shall be required to confirm this decision. If the Owners at the annual meeting do not confirm the decision to not purchase earthquake insurance, the Association shall purchase earthquake insurance within sixty (60) days of the vote.
- (e) Association’s Obligation to Segregate Property Insurance Deductible. The Association shall set aside the amount of the property insurance deductible. The Association may keep those funds in a segregated bank account or financial account (such as the purchase of a certificate of deposit) in an amount equal to the Association’s property insurance policy deductible or ten thousand dollars (\$10,000.00), whichever is less, unless some other amount is required by law – which shall be complied with. 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 Management Committee determines that a covered loss is likely not to exceed the Association's property insurance policy deductible, and until it becomes apparent the covered loss exceeds the Association's property insurance deductible, and a claim is submitted to the Association's property insurance insurer: (1) the Owner's policy is considered the policy for primary coverage for any loss to the Owner's Unit, to the amount of the Association's policy deductible; (2) the Association is responsible for any loss to any Common Area; (3) an Owner who does not have a policy to cover the damage to that Owner's Unit is responsible for that damage and the Association may, as provided in Section 11.3(b)(3)(i), recover any payments the Association makes to remediate that Unit; and (4) the Association need not tender the claim to the Association's insurer.
- (g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation under Subsection 11.3(b) for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

- 11.4 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners against liability incident to the use, repair, replacement, maintenance, or ownership of the Common Area and the Owner's membership in the Association. The coverage limits under such policy shall be determined by the Management Committee, but 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 would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.
- 11.5 **Director's and Officer's Insurance.** The Association may obtain Directors' and Officers' liability insurance protecting the Management Committee, the officers, members of committees formed by the Management Committee, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). To the extent reasonably available, this policy shall: (a) include coverage for volunteers and employees, (b) include coverage for monetary and non-monetary claims, and (c) 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. At the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.6 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association may obtain insurance covering the theft or embezzlement of funds that shall: (a) 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 (b) provide coverage for theft or embezzlement of funds by: (1) Officers and

Management Committee Members of the Association (2) employees and volunteers of the Association, (3) any Manager of the Association, and (4) officers, directors, and employees of any Manager of the Association.

- 11.7 **Workers' Compensation Insurance.** The Association shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and may purchase workers compensation insurance even if the Association has no employees, as the Management Committee deems appropriate.
- 11.8 **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.
- 11.9 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.
- 11.10 **Right to Negotiate All Claims and Losses and Receive Proceeds.** The Association shall have the right to negotiate all claims and losses and to receive any proceeds from the Association's insurance policies. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after paying for any necessary action related to the property shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. The cost of repair or replacement of any Unit in excess of insurance proceeds and reserves is a Common Expense to the extent the Association is required under this Declaration or the law to provide insurance coverage for the Unit. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.
- 11.11 **Insurance Trustee.** At the discretion of the Management Committee or upon written request executed by Owners holding fifty percent (50%) or more of the Undivided Interests, the Management Committee shall hire and appoint an insurance trustee ("**Insurance Trustee**"), with whom the Association shall enter into an insurance trust agreement, for the purpose of taking such action as the Owners or Management Committee (as the case may be) shall require related to a loss and receipt or potential receipt of insurance proceeds.
- 11.12 **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association to terminate an insurance policy, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.
- 11.13 **Waiver of Subrogation against Owners and the Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the

Association, the Owners, any Person residing with an Owner if an Owner resides in the Unit, and the Association's agents and employees.

11.14 **Right of Action.** Nothing in this Declaration shall prevent an Owner suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a Person at fault for the loss.

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

**ARTICLE 12:
DESTRUCTION OF IMPROVEMENTS**

12.1 **Reconstruction.** In the event of partial or total destruction of the Building, the Association shall promptly take the following actions:

- (a) Ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain performance and lien payment bonds. If the Management Committee in good faith determines that none of the bids submitted under this Section reasonably reflect the anticipated reconstruction costs, the Management Committee shall continue to attempt to obtain an additional bid that it determines reasonably reflects such costs. Such determination shall be made by the Management Committee as soon as possible.
- (b) The Management Committee, or any Insurance Trustee if one is appointed, shall determine and liquidate the amount of insurance proceeds, if any, or establish a procedure by which any insurance proceeds shall be available for either a cash payment or for reconstruction.
- (c) Engage the services of a reputable licensed architect to advise and consult with the Management Committee or any Insurance Trustee on all actions and decisions necessary under this Article.
- (d) If an appraisal of any or all Units is required under this Article, the Management Committee shall select the appraiser and any appraisal relied upon by the Management Committee shall be final and not subject to challenge by any Owner for purposes of this Article.

12.2 **Insurance Proceeds Sufficient for Reconstruction.** In case of fire or any other disaster and if insurance proceeds are sufficient to reconstruct the Building and all Units suffering damage therein, then the insurance proceeds shall be applied to reconstruct the Building and any Units suffering damage. As used herein, reconstructing the Building shall mean restoring the Building and Units to substantially the same condition in which they existed prior to the fire or other disaster, with each Unit and the common elements having the same vertical and horizontal boundaries as before.

12.3 **Insurance Proceeds Insufficient for Reconstruction.** If insurance proceeds will be insufficient for reconstruction, the following shall apply:

- (a) If the cost of reconstruction is equal to or less than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Project (prior to the damage and destruction), then the Association shall proceed forward with reconstruction applying any insurance proceeds as provided for in Section 12.2. The

cost of reconstruction in excess of insurance proceeds and reserves shall be a Common Expense.

- (b) If the cost of reconstruction is greater than twenty-five percent (25%) of the estimated fair market value of all of the Units in the Condominium Project (prior to the damage and destruction), then the Management Committee shall call a special meeting of the Owners for the purpose of voting on whether to reconstruct or not.
- (1) Unless Owners holding seventy-five percent (75%) or more of the Undivided Interests vote to not proceed with reconstruction at such meeting, the Association shall proceed with reconstruction as provided for in Section 12.3(a).
 - (2) If, however, the Owners, by a vote at such meeting of not less than seventy-five percent (75%) of the Undivided Interests, decide not to proceed with such reconstruction:
 - (i) The Property shall be deemed to be owned in common by the Unit Owners;
 - (ii) The Undivided Interest in the Property owned in common which shall appertain to each Owner shall be the Owners' Undivided Interest as determined in this Declaration;
 - (iii) Any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the Undivided Interest of the Owners in the Property; and
 - (iv) The Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale, together with the net proceeds of the insurance, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of the Undivided Interest owned by each Owner in the Property, after first paying out of the respective shares of each Owner, to the extent sufficient, all liens on the Undivided Interest in the Property owned by each Owner.

ARTICLE 13: EMINENT DOMAIN

- 13.1 **Total Taking of a Unit.** If a Unit is taken by eminent domain or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, the award must compensate the Owner for the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area will automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration that accomplishes the adjustment required for this section. Any remnant of a Unit remaining after part of a Unit is taken becomes part of the Common Area.
- 13.2 **Partial Taking of a Unit.** Except as provided in Section 13.1, if part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used under this Declaration, the award must compensate the Owner for the reduction

in the value of the Owner's Unit and Undivided Interest in the Common Area, regardless of whether any Common Area is taken. Upon such a taking, unless the decree otherwise provides, that Unit's Undivided Interest in the Common Area will remain the same, but if the decree provides for a reduction of the Undivided Interest for such Unit, the reduced amount will automatically be reallocated to that Unit and the remaining Units in proportion to their respective Undivided Interests immediately before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Undivided Interest.

- 13.3 **Taking of Limited Common Area.** If the portion of the 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 will be divided among the Owners of the Units to which such Limited Common Area was allocated or assigned at the time of the acquisition.
- 13.4 **Taking of Common Area.** If the portion of the Condominium Project taken by eminent domain, or sold under threat thereof, is not comprised of or does not include any Unit or Limited Common Area, the Management Committee shall, as soon as practicable, cause the award to be utilized for the purpose of repairing or restoring that area in the Condominium Project adjacent to the taking, and the portion of the award not used for restoration will be added to the general funds of the Association.
- 13.5 **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 related thereto in this Declaration will apply.
- 13.6 **Priority and Power of Attorney.** Nothing contained in this Article 13 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of any condemnation award allocated to such Unit. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. If the taking involves all or part of any Unit or the Common Area or Limited Common Area, the award or proceeds will 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, is irrevocable, and binds any heirs, personal representatives, successors or assigns of an Owner.

ARTICLE 14:

TERMINATION OF CONDOMINIUM PROJECT OR SALE OF PROPERTY

- 14.1 **Required Vote.** The Condominium Project may be removed from the provisions of the Act, terminated, and/or sold by approval of Owners holding at least sixty-seven percent (67%) of the Undivided Interests or as otherwise provided in Article 13 and in compliance with any other applicable laws.
- 14.2 **Sale of Condominium Project Following Termination.** 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.
- 14.3 **Sale of Condominium Project Without Termination.** Pursuant to and as provided for in the Act, the Unit Owners may, by an affirmative vote of sixty-seven percent (67%) of such Unit Owners, at a meeting of Unit Owners duly called for such purpose, elect to sell or otherwise dispose of the Property either in conjunction with the termination of the Condominium Project or not. Such action shall be binding upon all Unit Owners and it shall thereupon become the

duty of every Unit Owner to execute and deliver such instruments and to perform all acts in manner and form necessary to affect the sale.

- 14.4 **Sale Agreement.** An agreement to sell the Project must be evidenced by the execution or ratification of a sale agreement, in the same manner as a deed, by the requisite number of Owners. The sale agreement must specify a date after which the agreement will be void unless it is recorded before that date. A sale agreement, including all ratifications of such termination agreement, becomes effective when it is recorded in the records of the County Recorder in Utah County, Utah.
- 14.5 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Condominium Project on the termination of the Condominium Project or related to the approval of the sale of the Condominium Project pursuant to Sections 14.2 and 14.3. The contract is not binding on the Owners until approved pursuant to the provisions in this Article 14. If any real estate in the Condominium Project is to be sold, immediately upon approval of the sale of the Property by the Owners or the Approval of the Owners of Termination of the Condominium Project, title to that real estate shall immediately vest in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to affect the sale. Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had notwithstanding any termination. Unless otherwise specified in a termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.
- 14.6 **Proceeds of Sale.** The proceeds of any sale of real estate or assets of the Association shall be held by the Association as trustee for Owners and Lenders as their interests may appear. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit. The interest of any Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds. Following termination, Lenders holding notes on the Units that were recorded before termination may enforce those liens in the same manner as any lien holder. The value of each Unit for purposes of distributing proceeds shall be determined by an appraisal of each Unit, conducted by an independent appraiser selected by the Management Committee. If any Owner disputes the appraised amount, the Owner shall notify the Association of the dispute within ten (10) days of receiving notice of the value of that Owner's unit. Upon timely notice of a dispute, the Owner shall select an appraiser who shall jointly with the Association's appraiser select a third appraiser to appraise the Unit. That appraisal shall be final as to the value of the Unit, regardless of whether it is lower or higher than the original appraisal. The Owner shall pay for the final appraisal.
- 14.7 **Allocation upon Termination or Sale.** Unless provided otherwise herein, in a termination agreement, or in an approved contract for the sale of the Property, upon any liquidation or termination of all or part of the 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 must be made payable to the Association, which shall hold such proceeds for the benefit of the Owners and their Lenders.

**ARTICLE 15:
AMENDMENTS**

- 15.1 **General Amendment Requirements.** Except as otherwise provided herein, this Declaration may be amended by the affirmative approval of Owners holding Undivided Interests totaling not less than sixty-seven percent (67%) of the total Undivided Interest. The approval required to amend the Declaration may be obtained by ballot, vote, or any other means allowed by law. The approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit.
- 15.2 **Scope of Amendments.** This Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in the Declaration.
- 15.3 **Execution and Effective Date of Amendments.** An amendment that has been adopted as provided herein shall be executed by the Management Committee, through its agent, who shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with to the best of the Management Committee's knowledge. The amendment shall be effective when it is recorded in the office of the County Recorder of Utah County, Utah.
- 15.4 **Changes to Plat or Boundaries of the Association.** The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any Unit or Units upon the affirmative approval of Owners holding Undivided Interests totaling on less than sixty-seven percent (67%) of the total Undivided Interest and any Owner who owns any Unit in which the boundary is directly affected. Any Plat amendment, supplementation, or correction may make material changes to the existing or prior Plat including the addition or removal of amenities, increasing the size of Units, deleting, adding, or modifying Common Area or Limited Common Area, or other changes in the layout of the Condominium Project. If the Plat amendment is solely to effectuate the approval of a Material Change to the Condominium Project (that has been approved by the number of Owners required in this Declaration), no additional approval shall be required for the amendment of the Plat. If any such amendment affects any boundary of a Unit or Limited Common Area, that Unit Owner must consent. If the approval required herein, or as otherwise provided in this Declaration, is obtained, each and every Owner: (a) shall sign, consent to, and execute any further documents required for the finalization, recording, and/or governmental approval of any such document regardless of whether they approved of or consented to the change in the Plat; and (b) grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the agreement, amendment, or correction. The Management Committee may, without the approval of the Owners, agree to any boundary agreement on any Common Area boundary of the Association.
- 15.5 **Amendment to Conform to Law.** The Management Committee may, without the approval of the Owners, amend this Declaration to conform the Declaration to any applicable legal requirements otherwise applicable to the Association, but only to the extent necessary to eliminate any conflict with the law, to add provisions required by law, or to add provisions that embody rights or obligations otherwise binding on the applicable parties as a matter of law. This procedure may also be used to change the Declaration to add or conform to any requirements necessary for Owners to obtain government insured or guaranteed financing such as through the Department of Veterans Affairs, the Department of Housing and Urban

Development or FNMA, or similar programs or to comply with any directive of any federal, state, or local government agency. The following procedures and requirements must be complied with for any such amendment:

- (a) The Association must obtain from an attorney who has significant experience and a regular practice in area of Community Association law and who may be the Association's current counsel, a written opinion explaining in detail and opining that the proposed amendment may be sought pursuant to this Section 15.5;
- (b) The members of the Management Committee must unanimously agree to the Amendment at the time it is recorded;
- (c) The Management Committee must provide to the Owners: (1) the proposed amendment instrument; (2) the language of this Section 15.5 of the Declaration; (3) the law that conflicts with the existing Declaration language or the provisions that must be complied with to permit owners to obtain financing; (4) the attorney opinion letter required for the amendment; and (5) a notice in which the Association (i) notifies the Owner that it intends to amend the Declaration pursuant to this Section 15.5, (ii) provides the Owner a right to object to the amendment within thirty (30) days, and (iii) provides instructions on how, when, and where to properly make the objection. The Management Committee may include further explanation, information, and recommendations regarding the proposed amendment in the information provided to the Owners;
- (d) Within forty-five (45) days after providing Owners the notice and information required by this Section 15.5, unless Owners holding more than thirty percent (30%) of the Undivided Interests have objected to the amendment in a written notice to the Association, the Management Committee is authorized to sign and record the amendment; and
- (e) Having otherwise complied with all of the requirements of this Section 15.5, the Management Committee Members shall each sign the amendment instrument verifying that this Section 15.5 has been complied with to the best of their knowledge and that Owners holding no more than thirty percent (30%) of the Undivided Interest after having received the notice required in this Section 15.5. The amendment shall be effective upon the recording of the instrument in the office of the County Recorder of Utah County.

15.6 **Consent of Two-Thirds Owners to Alter Undivided Interests.** Notwithstanding anything to the contrary herein, the consent of two-thirds (2/3) of the Owners shall be required to alter any Undivided Interest.

ARTICLE 16:

INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 16.1 **No Waiver.** Failure by the Association or by any Owner to enforce any Term and Condition in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to that breach and any such future breach of the same or any other Term and Condition.
- 16.2 **Conflicting Provisions.** In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Articles, the Bylaws, and then the Rules. The Declaration shall take priority over the Plat.

- 16.3 **Interpretation of Declaration and Applicability of the Act.** The Condominium Project shall be governed by the Act, except where (in compliance with the Act) the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Condominium Project to the extent allowed by the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.
- 16.4 **Cumulative Remedies.** All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law simultaneously, consecutively, or alternatively.
- 16.5 **Severability.** Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 16.6 **Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential community and for the maintenance of the 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 article and section numbers, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 16.7 **Applicable Law.** This Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Condominium Project unless they are applicable as a matter of law, this Declaration expressly states that such amendments shall be applicable, or the Association makes those amendments applicable by amendment to the Declaration.
- 16.8 **Gender and Number.** Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 16.9 **Effect of Declaration.** This Declaration is made for the purposes set forth in the recitals in this Declaration, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

**ARTICLE 17:
NOTICE**

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

(a) Notice to an Owner from the Association.

- (1) Notice to an Owner shall be effective upon the satisfaction of any of the following delivery methods:
 - (i) By a written notice delivered personally to the Owner, which shall be effective upon delivery.
 - (ii) By a written notice placed in the first-class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Unit. Unless otherwise provided by law, such as provided in Utah Code Ann. § 16-6a-103(4), any notice so deposited in the mail shall be deemed effective five (5) days after such deposit.
 - (iii) By Electronic Transmission to an Owner which includes:
 - (A) An email that is sent to an email address provided by the Owner for the purpose of Association communications; or an email sent to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Unless otherwise provided by law, any notice sent by email shall be deemed effective when received or five (5) days after it is sent, whichever occurs first;
 - (B) By facsimile (whether to a machine or to an electronic receiving unit) to an Owner that is sent to a facsimile number provided by the Owner for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered. Unless otherwise provided by law, any notice sent by facsimile shall be deemed effective when received or five (5) days after it is sent, whichever occurs first; or
 - (C) By text message to a phone number provided by the Owner for the purpose of Association communications; or a phone number from which the Owner has communicated related to Association matters, and so long as no indication is received that the text message may not have been delivered. Unless otherwise provided by law, any notice sent by text message shall be deemed effective when received or five (5) days after it is sent, whichever occurs first.
 - (iv) By any other method that is fair and reasonable as provided for in the Act or otherwise provided for by law.
- (2) Notwithstanding subsection (1) of this Section 17.1(a), the Association shall send all notices by U.S. Mail if an Owner, in writing, demands that the Association send all notices by mail.
- (3) In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than

one notice per Unit, whether electronic or not. In case any two (2) co-Owners send conflicting notice demands, notice shall be proper and effective if mailed by first-class mail to the Unit.

- (4) In the case of posting a notice on the Unit, when permitted, such posting is effective when posted on the front or primary access door to the Unit and any such posting may be removed by the Association the sooner of either (a) two (2) days after the event or action for which notice was given or (b) ten (10) days after the posting.
- (b) Special Notice Prior to Association Entry into a Unit.
- (1) In the case of an emergency involving the potential loss of life, the Association's agent or representative may enter the Unit immediately and without any notice.
 - (2) In the case of any emergency involving immediate and substantial damage to the Common Areas or to another Unit, before entering a Unit the Association shall: (i) knock on the door and attempt to obtain permission to enter from an Occupant or Owner in the Unit; (ii) if no one answers the knocking, loudly identify who is knocking and state that the Person identified is going to enter the Unit on behalf of the Association, then wait one minute; and (iii) where practicable under the circumstances, attempt to call the Owner or any Occupant prior to entry to inform them of the entry.
 - (3) If the Association enters a Unit for any purpose permitted in this Declaration other than those identified in the prior two paragraphs, before entering a Unit the Association shall: (i) give notice to the Owner that an entry is required at least two (2) weeks in advance with such notice stating: (A) that the Association or its authorized Persons will enter the Unit, (B) the date and time of the entry, (C) the purpose of entering the Unit, (D) a statement that the Owner or Occupant can be present during the time the Association is in the Unit, (E) the full names of any Person who will be entering into the Unit, and the phone numbers and addresses of the Persons entering the Unit or of the company for whom the Persons entering the Unit are employed for the purpose of entering the Unit, and (F) any other information the Association deems appropriate to include; and (ii) post the written notice described above on the front door to the Unit at least seven (7) days prior to entry into the Unit.
- (c) Notice to a Lender. Notice to a Lender shall be delivered by certified or registered mail to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a recorded document evidencing a security interest in a Unit shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit.
- (d) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:
- (1) by a written notice delivered personally to the Manager, which shall be effective upon delivery;

- (2) by a written notice placed in the first-class United States mail, postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed effective when received, or five (5) days after such deposit, whichever occurs first;
- (3) by Electronic Transmission to the Association: (i) that is sent to an e-mail address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (ii) that is emailed to an e-mail address from which the Manager or the President of the Association has communicated related to Association matters, and so long as no indication is received that the e-mail may not have been delivered or received. Any notice sent by e-mail shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first; or
- (4) by facsimile (whether to a machine or to an electronic receiving unit) to the Association that is sent to a facsimile number provided by the Association for the purpose of Association communications and so long as no indication is received that the facsimile may not have been delivered or received. Any notice sent by facsimile shall be deemed effective when received, or five (5) days after it is sent, whichever occurs first.

**ARTICLE 18:
ATTORNEY FEES AND COSTS**

18.1 Legal Costs Associated with Disputes with Owners.

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

**ARTICLE 19:
RESERVES**

- 19.1 **Requirement for Reserves.** The Association shall obtain a reserve analysis and maintain a reserve fund for the maintenance, repair, and replacement of the Common Area and Limited Common Area, in the amount determined by the Management Committee annually, pursuant to the following provisions:
- (a) Collection. Reserve funds may be collected as part of regular or special Assessments, as determined by the Management Committee.
 - (b) Amount. In formulating the Association's yearly budget, the Association shall include a reserve fund line item in an amount the Management Committee determines, based on the reserve analysis, to be prudent. A reserve fund line item means the line item in the Association's annual budget that identifies the amount to be placed into the reserve fund.
 - (c) Owner Veto. Within forty-five (45) days after the day on which the Association adopts the annual budget, the Owners may veto the reserve fund line item by a fifty-one percent (51%) vote of the Undivided Interests in the Association at a special meeting called by the Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto a reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.
 - (d) Surplus Monies Applied to Reserves. The Association may retain surplus Association money as additional reserves rather than refund it to the Owners or credit it to future Assessments.
 - (e) Segregation of Reserves. The Association shall segregate money held for reserves from regular operating and other accounts and shall keep all reserve funds in an account, or accounts, in the name of the Association. The Association may elect to prudently invest money held in the reserves fund in a low-risk investment or high-yield saving account. The Management Committee may determine by resolution the maximum amount of reserves that may be invested. The Association may not commingle reserve funds with the funds of any other person.
 - (f) Use of Reserves. Unless a majority of the Owners vote to approve the use of reserve fund money for that purpose, the Management Committee may not use reserve fund money for (1) daily maintenance expenses; or (2) any purpose other than the purpose for which the reserve fund was established
 - (g) Reserve Analysis. The Association shall cause a reserve analysis with an onsite evaluation to be conducted no less frequently than every six (6) years. The Association shall review and, if necessary, update a previously conducted Reserve Analysis no less frequently than every three (3) years. The reserve analysis shall include, at a minimum: (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (4) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component

identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (5) a reserve funding plan that recommends how the Association may fund the annual contribution set forth in the reserve analysis. The reserve analysis and updates shall project a minimum of thirty (30) years into the future.

- (h) Qualifications for Person Preparing Reserve Analysis. The reserve analysis report shall be prepared by a Person who satisfies the law, who may be a Person or Persons with either the RS (Reserve Specialist) designation available through the Community Association Institute (CAI), the PRA (Professional Reserve Analyst) designation offered through the Association of Professional Reserve Analysts (APRA), or other designations by similar associations establishing that the Person has some formal training related to preparing a reserve analysis.
- (i) Disclosure and Approval at Annual Meeting. If required by law, annually, at a special meeting or at the annual meeting of Owners, the Association shall present the most recent reserve analysis and any updates to the reserve analysis, and provide an opportunity for Owners to discuss reserves and to vote on how to fund the reserves and in what amount. The Association shall prepare and keep minutes of each meeting held under this Section 19.1(h) and indicate in the minutes any decision relating to funding a reserve fund.
- (j) Summary and Copies of Reserve Analysis. The Association shall annually provide Owners a summary of the most recent reserve analysis or update. The Association shall provide a copy of the complete reserve analysis or update to an Owner who requests a copy.

**ARTICLE 20:
LEASING AND NON-OWNER OCCUPANCY**

- 20.1 **Declaration and Rules Governing Non-Owner Occupancy.** Notwithstanding anything to the contrary in this Declaration or in the Bylaws, any leasing and non-Owner occupancy of a Unit shall be governed by this Article 20 and by Rules and procedures adopted as allowed in this Article 20.
- 20.2 **Definitions.** For the purpose of this Article 20:
 - (a) **“Non-Owner Occupied”** means:
 - (i) For a Unit owned in whole or in part by an individual or individuals, the Unit is occupied by someone when no individual Owner occupies the Unit as the individual Owner's primary residence; or
 - (ii) For a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone other than the person for whom the entity or trust was created or anyone other than the owners of the entity.
 - (b) **“Non-Owner Occupant”** means the Person(s) occupying the Non-Owner Occupied Unit.
- 20.3 **Limitation on Non-Owner Occupancy.** Subject to the provisions in this Article 20, the number of Units permitted to be Non-Owner Occupied may not exceed twenty percent (20%) of the total Units, or sixteen (16) of the total Units, in the Condominium Project. So long as there are less than sixteen (16) total Non-Owner Occupied Units within the Project, any Unit may leased or Non-Owner Occupied as long as such non-Owner occupancy complies with the

provisions of this Article 20 and other applicable provisions of the Declaration and Act. The sixteen (16) Unit maximum shall be calculated by including any Units that are permitted to be Non-Owner Occupied pursuant to the exemptions in Section 20.5 and the grandfathering provision in Section 20.6.

- 20.4 **Non-Owner Occupants Must be 55 Years of Age or Older.** To preserve the Condominium Project's nature as a 55 years of age and older community, Non-Owner Occupants, including a Non-Owner Occupant of an exempt Unit under Section 20.5, must be 55 years of age or older, except as may be otherwise provided in this Declaration, and any lease or rental agreement related to a Unit must be between a Unit Owner and a Person 55 years of age or older.
- 20.5 **Units Exempt From the Limitation on Non-Owner Occupied Units.** The following Unit Owners and Units are exempt from the twenty percent (20%) of Units, or sixteen (16) Units, limitation on Non-Owner Occupied Units in Section 20.3:
- (a) A Unit Owner in the military for the period of the Unit Owner's deployment;
 - (b) A Unit occupied by a Unit Owner's parent, child, or sibling;
 - (c) A Unit Owner whose employer has relocated the Unit Owner for a period of two (2) years or less;
 - (d) A Unit owned by an entity that is occupied by an individual who: (1) has voting rights under the entity's organizing documents; and (2) has a twenty-five percent (25%) or greater share of ownership, control, and right to profits and losses of the entity; or
 - (e) A Unit owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for the estate of: (1) a current resident of the Unit, or (2) the parent, child, or sibling of the current resident of the Unit.
- 20.6 **Grandfathered Units.** Units that were Non-Owner Occupied before the date this Declaration is recorded with the Utah County Recorder may continue to be Non-Owner Occupied until: an Owner, or an officer, owner, member, trustee, beneficiary, director, or Person holding a similar position of ownership or control of an entity or trust that holds an ownership interest in the Unit, occupies the Unit; or the Unit is transferred. Upon either of these occurrences, the Unit's qualification for this exception irrevocably terminates.
- (a) For purposes of this Section, a Unit is transferred when one or more of the following occurs: (i) the conveyance, sale, or other transfer of a Unit by deed, as evidenced by the records at the Summit County Recorder; (ii) the granting of a life estate in the Unit; or if the Unit is owned by any type of a business entity then the sale or transfer of more than seventy-five percent (75%) of the business entity's share, stock, membership interest or partnership interest occurs during a twelve month period.
- 20.7 **Permitted Rules.** The Management Committee may adopt Rules requiring:
- (a) reporting and procedural requirements related to Non-Owner Occupied Units and the Occupants of those Units including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, the age of Non-Owner Occupants, vehicles, phone numbers, etc.;
 - (b) reasonable fees related to the administration of leased and Non-Owner occupied Units, to the extent otherwise allowed by law; and

- (c) other reasonable administrative provisions consistent with and as it deems appropriate to enforce the requirements of this Declaration.

20.8 **Required Rules.** The Management Committee shall adopt Rules, resolutions, or procedures to: (a) determine and track the number of Non-Owner Occupied Units in the Condominium Project, including those grandfathered under Section 20.6 and exempt under Section 20.5, and (b) ensure consistent administration and enforcement of the restrictions on Non-Owner Occupied Units in this Declaration.

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

- (a) No Owner shall lease or rent his or her Unit to any Person less than 55 years of age.
- (b) Any lease or agreement for Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Declaration, the Bylaws, and the Rules, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Non-Owner Occupant.
- (c) If required in the Rules or requested by the Management Committee, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or by the Management Committee.
- (d) No Owner shall lease his Unit for transient, hotel, seasonal, rental pool or corporate/exclusive use purposes (whether for pay or not), which shall be deemed to be any rental with an initial term of less than twelve (12) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate Persons, or lease less than the Owner's entire Unit; and
- (e) Any Owner who shall lease the Owner's Unit shall be responsible for assuring compliance by the Non-Owner Occupant(s) with the Governing Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the Owner's Non-Owner Occupant who is in violation of the Governing Documents within ten (10) days after receipt of written demand to do so from the Management Committee, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his Non-Owner Occupant. Neither the Association, the Management Committee, nor any Manager shall be liable to the Owner or Non-Owner Occupant for any eviction under this Section 20.9(e) that is made in good faith. Any expenses incurred by the Association related to an eviction, including attorney fees, service fees, storage fees, constable or sheriff fees, and costs of suit, shall be charged as an Assessment to such Owner.

20.10 **Exceptions for Exempt Units.** If a Non-Owner Occupied Unit is exempt under Section 20.5(b), (d), or (e) then no written lease or rental agreement between the Owner and the Occupant is required.

20.11 **Joint and Several Liability of Owner and Non-Owner Occupants.** The Owner of a Unit shall be responsible for the Non-Owner Occupant's or any guest's compliance with the Governing Documents. The Owner and the Non-Owner Occupant, or similarly situated

individual, shall be joint and severally liable for any violations of the Governing Documents. In addition to any other remedy for noncompliance with the Governing Documents, the Association shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the Non-Owner Occupant. The Association, the Management Committee, the Manager, and any agent of the Association shall not have any liability for any action taken pursuant to this Section 20.11 and the Owner shall indemnify against all losses and liabilities and pay the defense costs of the Association (with the Association's choice of counsel), the Management Committee, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this Section 20.11.

**ARTICLE 21:
RIGHTS OF LENDERS**

- 21.1 **Notice to Lender.** Each Lender may request to receive the notices provided in this Declaration by written request to the Management Committee which request shall set forth the name and address and Unit number for the Unit secured by its mortgage. Only those Lenders requesting notice pursuant to this Section 21.1 shall be entitled to receive the notices required in this Declaration. A Lender requesting notice pursuant to this Section 21.1 is referred to herein as an "Eligible Lender".
- 21.2 **Books and Records.** A Lender shall have the right to examine the books and records of the Association. A Lender may also require annual financial statement of the Association be made available to it within one hundred twenty (120) days after the end of the Association's fiscal year.
- 21.3 **Damage or Condemnation.** A Lender shall be entitled to notice of any condemnation of or damage to a material part of the Unit to which its mortgage pertains or to the Condominium Project. No Unit Owner or other party shall be entitled to priority over a Lender as to the distribution to such Unit of any insurance proceeds or condemnation award.
- 21.4 **Notice of Default, Lapse, or Action.** Each Eligible Lender is entitled to written notification from the Management Committee of any default by the Owner of the Unit to which its mortgage pertains in the performance of any obligation under the Declaration which is not cured within sixty (60) days of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and of any proposed action which requires the consent of a specified percentage of Eligible Lenders.
- 21.5 **Consent of Lenders.** Unless at least fifty-one percent (51%) of Eligible Lenders consent in writing or by operation of law, pursuant to the Act, neither the Management Committee nor the Association shall be entitled to do any of the following by either action or inaction:
- (a) Seek to abandon or terminate the Condominium Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of condemnation or eminent domain;
 - (b) Change the pro-rata interest or obligations of any Unit for: (1) the purposes of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards, or (2) determining the pro-rata share of ownership of each Unit in the Common Area;
 - (c) Make any material amendment to this Declaration or the Bylaws, including, but not limited to, any amendment which would change the percentage interest of the Unit Owners in the Common Area;

- (d) Seek to amend, partition, subdivide, encumber, sell, or transfer the Common Areas, but the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of the this Section 22.5(d); and
- (e) Use hazard insurance proceeds for losses to any Condominium Project property (whether to Units or to the Common Areas) for other than the repair, replacement, or reconstruction of such improvements, except as provided by statute in cases of substantial loss to the Units and/or Common Areas.

21.6 **Relationship with Assessment Liens.**

- (a) In accordance with Utah Code § 57-8-44, the lien provided for in Article 8 for the payment of Assessments shall be subordinate to: (1) a lien or encumbrance recorded before the Enabling Declaration was recorded; (2) a first or second security interest on the Unit by Lender which was recorded prior to the recordation of any notice of lien by, or on behalf of, the Association; or (3) a lien for real estate taxes or other governmental assessments or charges against the Unit.
- (b) If any Unit which is subject to a monetary lien created by this Declaration is also subject to the lien of a Lender, then: (1) the foreclosure of any lien created by this Declaration shall not operate to affect or impair the lien of such Lender with a superior lien, and (2) 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 which 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 21.6(b), any Lender who obtains title to a Unit by reason of any 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 which 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 21.6 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.

**ARTICLE 22:
GENERAL PROVISIONS**

- 22.1 **Enforcement.** The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation.
- 22.2 **Non-liability of Officials.** To the fullest extent permitted by applicable law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.

- 22.3 **Use of Funds Collected by the Association.** All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).
- 22.4 **Owner Liability and Indemnification.** Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligent or intentional act of that Owner or that Owner's guest or Occupant, to the extent such losses and damages are either under the Deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed to a Unit, agrees personally to indemnify against all losses and liabilities and to defend each and every other Owner and Occupant against, any claim of any Person for personal injury or property damage occurring within the indemnifying Owner's Unit, including Limited Common Area, if any, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's insurance; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 22.5 **Consent, Power of Attorney, Waiver.** By acceptance of a deed, lease, or other conveyance of an interest in a Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.
- 22.6 **Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Condominium Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Condominium Project acknowledges that the Association has no duty to any Owner, guest, or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone such as that of a landlord or retail business. By purchasing a Unit in this Condominium Project and/or residing in this Condominium Project, Owners and Occupants agree that the Association and the Management Committee are not insurers of the safety or well-being of Owners, guests, or Occupants or of their personal property as it relates to criminal conduct, and that each Owner, guest, or Occupant specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

- 22.7 **Reasonable Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its counsel that such action is required, may make or permit reasonable accommodations or modifications to the Condominium Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, to accommodate a Person with a handicap (as defined by Federal law at the time the accommodation is requested) or disability (as defined by state law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Unit, the Common Area, the Limited Common Area, or the Building, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 22.8 **No Representations and Warranties.** EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE OR ENTERING OR RESIDING IN THE CONDOMINIUM PROJECT THAT THE ASSOCIATION AND THE MANAGEMENT COMMITTEE HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE CONDOMINIUM PROJECT AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE CONDOMINIUM PROJECT.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned officer or director of the Association hereby certifies that the Association obtained the requisite consent of the Owners in approving and adopting this Declaration, including all exhibits hereto.

IN WITNESS WHEREOF, the Association has executed this Declaration.

Dated this 18 day of October, 2019.

MOUNT TIMPANOGOS VILLAGE CONDOMINIUM ASSOCIATION

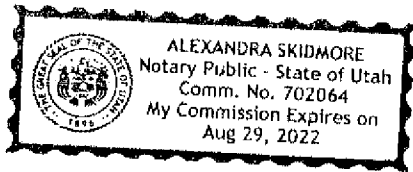
By: Gary Schlenker
Signature

Gary Schlenker
Printed

Its: President of the HOA.
Title

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 18, day of October, 2019 by Gary Schlenker, as a Member of the Management Committee for Mount Timpanogos Village Condominium Association.



Alexandra Skidmore
Notary Public

LEGAL DESCRIPTION AND PARCEL NUMBERS

LEGAL DESCRIPTION

ALL OF LOT 4 of MIRA VISTA PLAT "A" AMENDED SUBDIVISION,

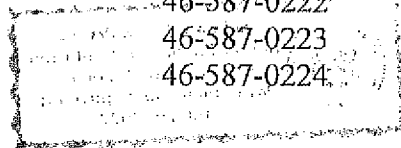
LESS THE FOLLOWING:

BEGINNING AT A POINT WHICH IS SOUTH 1227.97 FEET AND EAST 447.03 FEET FROM THE WEST QUARTER CORNER OF SECTION 19, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; THENCE WEST 106.75 FEET; THENCE NORTH 113.54 FEET; THENCE WEST 52.77 FEET; THENCE NORTH 106.00 FEET; THENCE EAST 51.92 FEET; THENCE SOUTH 10.00 FEET; THENCE EAST 29.71 FEET; THENCE NORTH 20.00 FEET; THENCE EAST 37.40 FEET; THENCE SOUTH 28.21 FEET; THENCE S45°00'00"E, 11.37 FEET; THENCE EAST 15.94 FEET; THENCE SOUTH 8.60 FEET; THENCE EAST 3.75 FEET; THENCE SOUTH 34.71 FEET; THENCE EAST 12.77 FEET; THENCE SOUTH 149.98 FEET TO THE POINT OF BEGINNING. (CONTAINS 0.631 AC, 27,490 SF)

PARCEL NUMBERS

Mira Vista Condominiums Phase I

46-487-0101 Common Area	46-587-0120	46-587-0218
46-587-0112	46-587-0121	46-587-0219
46-587-0113	46-587-0122	46-587-0220
46-587-0114	46-587-0160	46-587-0221
46-587-0115	46-587-0213	46-587-0222
46-587-0116	46-587-0214	46-587-0223
46-587-0117	46-587-0215	46-587-0224
46-587-0118	46-587-0216	
46-587-0119	46-587-0217	



Mira Vista Condominiums Phase II

46-673-0100 Common Area	46-673-0132	46-673-0229
46-673-0124	46-673-0133	46-673-0230
46-673-0125	46-673-0134	46-673-0231
46-673-0126	46-673-0135	46-673-0232
46-673-0127	46-673-0136	46-673-0233
46-673-0128	46-673-0225	46-673-0234
46-673-0129	46-673-0226	46-673-0235
46-673-0130	46-673-0227	46-673-0236
46-673-0131	46-673-0228	46-673-0237

Mira Vista Condominiums Phase III, Amended

46-736-0101 Common Area	46-736-0147	46-736-0244
46-736-0137	46-736-0148	46-736-0245
46-736-0138	46-736-0149	46-736-0246
46-736-0139	46-736-0150	46-736-0247
46-736-0140	46-736-0151	46-736-0248
46-736-0141	46-736-0238	46-736-0249
46-736-0142	46-736-0239	46-736-0250
46-736-0143	46-736-0240	46-736-0251
46-736-0144	46-736-0241	46-736-0252
46-736-0145	46-736-0242	46-736-0253
46-736-0146	46-736-0243	

EXHIBIT B ENT 109304 : 2019 PG 70 of 92
UNDIVIDED INTERESTS

UNIT #	PAR VALUE	UNDIVIDED INTEREST
C132	1.141	1.14%
C233	1.141	1.14%
C127	1.141	1.14%
C125	1.141	1.14%
C126	1.141	1.14%
C226	1.141	1.14%
C227	1.141	1.14%
C228	1.141	1.14%
A112	1.141	1.14%
A213	1.141	1.14%
C135	1.141	1.14%
C236	1.141	1.14%
D146	1.141	1.14%
D247	1.141	1.14%
D252	1.141	1.14%
D151	1.141	1.14%
D147	1.141	1.14%
D150	1.141	1.14%
D248	1.141	1.14%
D251	1.141	1.14%
A115	1.142	1.14%
A216	1.142	1.14%
A224	1.241	1.24%
A122	1.241	1.24%
A223	1.241	1.24%
C136	1.241	1.24%
C124	1.241	1.24%
D137	1.241	1.24%
C225	1.241	1.24%
C237	1.241	1.24%
D238	1.241	1.24%
A120	1.241	1.24%
A121	1.241	1.24%
A221	1.241	1.24%
A222	1.241	1.24%
A113	1.241	1.24%
A114	1.241	1.24%
A117	1.241	1.24%

A118	1.241	1.24%
A214	1.241	1.24%
A215	1.241	1.24%
A218	1.241	1.24%
A219	1.241	1.24%
C129	1.241	1.24%
C130	1.241	1.24%
C133	1.241	1.24%
C134	1.241	1.24%
C230	1.241	1.24%
C231	1.241	1.24%
C234	1.241	1.24%
C235	1.241	1.24%
D253	1.341	1.34%
D142	1.341	1.34%
D143	1.341	1.34%
D145	1.341	1.34%
D148	1.341	1.34%
D149	1.341	1.34%
D243	1.341	1.34%
D244	1.341	1.34%
D246	1.341	1.34%
D249	1.341	1.34%
D250	1.341	1.34%
A116	1.341	1.34%
A217	1.341	1.34%
C131	1.341	1.34%
C232	1.341	1.34%
D138	1.341	1.34%
D239	1.341	1.34%
D139	1.341	1.34%
D141	1.341	1.34%
D144	1.341	1.34%
D240	1.341	1.34%
D242	1.341	1.34%
D245	1.341	1.34%
D241	1.344	1.34%
D140	1.344	1.34%
A119	1.344	1.34%
A220	1.344	1.34%
C128	1.344	1.34%
C229	1.344	1.34%

TOTALS	100	100.00%

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EXHIBIT C
BYLAWS

AMENDED AND
RESTATED BYLAWS
OF
MOUNT TIMPANOGOS
VILLAGE CONDOMINIUM
ASSOCIATION

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**AMENDED AND RESTATED BYLAWS
OF
MOUNT TIMAPANOGOS VILLAGE CONDOMINIUM
ASSOCIATION**

These Amended and Restated Bylaws are hereby adopted and established as the Bylaws of the Mount Timpanogos Village Condominium Association, f/k/a Mira Vista Condominium Association or Mira Vista Owners Association, Inc. d/b/a Mt. Timpanogos Village (the "**Association**"). These Bylaws and any amendments thereto shall apply to the Association upon their recording and shall bind all present and/or future Owners and Occupants.

**ARTICLE I:
DEFINITIONS AND NOTICE**

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

**ARTICLE II:
MEETINGS OF THE OWNERS**

- 2.1 **Annual Meetings.**
 - (a) Requirement. An annual meeting of the Owners shall be held each calendar year.
 - (b) Date and Time. Unless changed by the Management Committee in its sole discretion, the annual meeting of Owners shall be held on the last Wednesday in January of each year. The Management Committee may from time to time change the date and time for the annual meeting of the Owners.
 - (c) Purpose. The Annual Meeting shall be held for the following purposes:
 - (1) Electing members of the Management Committee;
 - (2) So long as required by law, distributing the most recent reserve study and permitting discussion on reserve funding options;
 - (3) Reviewing the Association's budget;
 - (4) Distributing any annual insurance checklist if it was not distributed before the meeting, announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage;

- (5) If no earthquake insurance has been obtained, voting to confirm this decision;
 - (6) Approving any previously unapproved minutes of the prior annual meeting; and
 - (7) Transacting such other business as may have been properly included in the notice of the meeting. No business may be conducted at an annual meeting other than as provided for in these Bylaws or as indicated in the Notice of the meeting.
- (d) Approval of Minutes. The minutes of the annual meeting may be approved by the Management Committee within ninety (90) days of the annual meeting.
 - (e) Election of Management Committee Members. If the election of the Management Committee Members whose term has expired cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) Who May Call. Special meetings of the Owners may be called by the Management Committee, the President, or upon the written request of Owners holding not less than thirty-five percent (35%) of the Undivided Interest of the Association.
- (b) Requirements for Request of Owners. Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the President, who shall then call a special meeting, provide notice of the special meeting, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Condominium Project shall be the place for any annual or special meeting unless special circumstances make it unavailable, in which case the meeting shall be held at a suitable location designated by the Management Committee that is within five miles of the Condominium Project.

2.4 Meetings by Telecommunications. Any or all of the Owners may participate in an annual or special meeting of the members by, or the meeting may be conducted through the use of, any means of communication by which all Persons participating in the meeting may hear each other during the meeting. An Owner participating in a meeting as allowed in this section is considered to be present in person at the meeting. The Management Committee may establish procedures and rules related to

- this provision as it relates to proxies, verifying attendance, and other aspects of the meeting.
- 2.5 **Notice of Meetings.** The Management Committee shall cause written notice of the time and place, and in the case of a special meeting, the purpose, for all meetings of the Owners, whether annual or special, to be delivered to the Owners, not more than sixty (60) nor less than ten (10) days prior to the meeting.
- 2.6 **Owners of Record.** For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Persons or entities appearing in the records of the Association on such record date as the Owners of record of Units in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.
- 2.7 **Quorum.** At any meeting of the Owners, the presence of Owners holding, or holders of proxies entitled to cast, more than twenty percent (20%) of the Undivided Interest of the Association shall constitute a quorum for the transaction of business. If a quorum is not met, the meeting shall be postponed to a date of not more than thirty (30) days and not less than fifteen (15) days at which time the Owners present shall constitute a quorum. In the case of any such postponement, notice of the meeting shall again be provided to all Owners at least seven (7) days before the postponed meeting which shall include the statement: "The meeting will occur without any requirement for a minimum number of owners present."
- 2.8 **Proxies.** At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that a proxy may be granted by an Owner only in favor of another Owner or a Lender and the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or that Owner's attorney when duly authorized in writing. Such instrument authorizing a proxy to act may set forth the specific matters or issues upon which the proxy is authorized to act. Such instrument shall be delivered to the Secretary of the Association or to such other officer or Person who has been authorized by the Association to accept proxies at the meeting. Such instrument shall be delivered either prior to or at the meeting, but no later than any point after the start of the meeting at which it is announced by the Person in charge of the meeting as the final time to deliver proxies.
- 2.9 **Votes.** With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, the number of votes appertaining to the Unit(s) of such Owner, as shown in the Declaration. The affirmative vote of Owners holding the majority of the Undivided Interests entitled to be cast by the Owners present or represented by proxy at a

meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Unit, any Owner may exercise the vote for such Unit on behalf of all co-Owners of the Unit. In the event of two (2) conflicting votes by co-Owners of one Unit, no vote shall be counted for that Unit but it shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Unit.

- 2.10 **Ballots and Written Consent.** The Association may, consistent with the requirements of the Utah Revised Nonprofit Corporation Act, use procedures other than a meeting for obtaining the approvals of Owners, such as written consents to take action without a meeting or mailed ballots. Any Owner may deliver written consent by Electronic Transmission. A written consent delivered by Electronic Transmission is considered to be written, signed, and dated for purposes of action without a meeting if the written consent is delivered with the information from which the Association can determine that the written consent was sent by the Owner or the Owner's duly authorized proxy and the date on which the written consent was transmitted.
- 2.11 **Minutes of Meetings.** Minutes shall be taken of all meetings of the Owners. The minutes shall include, at a minimum: (a) the identification of the Persons present at the meeting in person and by proxy; (b) the determination of whether a quorum was achieved; (c) the date of the meeting; (d) the identification of any issue that is voted on or decided in the meeting; (e) the number of votes cast for and against any issue decided upon; and (f) the wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. The Management Committee may keep minutes of meetings of the Management Committee and may require committee's formed by the Management Committee to keep minutes of their meetings.
- 2.12 **Electronic and Other Means of Voting.** The Association may utilize online, telephonic, electronic, email, remote, and any other means of member voting and meetings to the extent not prohibited by the Act and the Utah Revised Nonprofit Corporation Act.

ARTICLE III: MANAGEMENT COMMITTEE

- 3.1 **Number, Tenure, Qualifications, and Election.**
- (a) Number of Members. The Management Committee shall be composed of three (3) members.
- (b) Member Requirements. To be on the Management Committee, a Person must be an Owner or spouse of an Owner, over the age of eighteen years old and must reside in the Condominium Project. If an Owner is an entity or trust, an officer, partner, member, manager, trustee, or beneficiary of such Owner may be a member of the Management Committee if that Person meets the requirements above. Only one Management Committee

Member may serve per Unit. Any candidate or member of the Management Committee shall, upon a request by any Owner, produce sufficient documentation establishing that Person's right to serve on the Management Committee.

- (c) Term. The term of each Management Committee Member shall be three (3) years. The terms of the three Management Committee Members shall overlap so that one (1) new Management Committee Member is elected each year. Upon the expiration of a Management Committee Member's term, he or she may not be elected to the Management Committee for at least one year from the date of the expiration of his or her term.
- (d) Nominations. Not less than sixty (60) days prior to the annual meeting, a request for nominations for open or expiring Management Committee positions shall be provided to all Owners. Any Owner may nominate him or herself or another Owner for election to the Management Committee. If any ballot or proxy with names of candidates or other information is sent out to Owners or otherwise published by the Association prior to the annual meeting, any Owner properly nominated prior to the date the information is sent out or published shall be included in any such information. ~~Nominations may be submitted prior to or at the annual meeting or any subsequent meeting at which the election is held, and any owner may submit that Person's own name or the name of any other willing and otherwise qualified Person to be added to the ballot for election of Management Committee members and such Person shall be added to the names of candidates. If the name of a Person is submitted prior to the meeting or who is not in attendance at the meeting, it must be submitted with a written statement from that Person indicating the Person is willing to serve. Nominations may be submitted in person from the floor of any meeting in which Management Committee elections are held. Only Persons who have been properly nominated may be elected to the Management Committee.~~
- (e) Disqualification. If any Management Committee Member is alleged to not meet the qualification requirements in the Declaration or these Bylaws and any Management Committee Member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee Member is qualified or not, and during this period shall not make any further decisions. If the Management Committee Member is not qualified, the Management Committee Member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee Member was not qualified. If a Management Committee Member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the

decisions and actions of the Management Committee and that Management Committee Member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section or until the Management Committee Member is disqualified if no such notice is provided.

- (f) Removal for Failure to Participate. If any Management Committee Member shall fail to appear (in person or by some other means allowing for participation) at four (4) successive regular Management Committee meetings or fifty percent (50%) or more of the regular meetings within the preceding twelve (12) months, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the Management Committee Member's schedules, the other Management Committee Members may by unanimous vote, except for the Management Committee Member to be removed, remove that Member and appoint a new Member.

3.2 Management Committee Meetings.

- (a) Regular Meetings. The Management Committee shall hold regular meetings at least quarterly, and more often at the discretion of the Management Committee.
- (b) Who Is Entitled to Attend. Management Committee Members may attend all meetings. Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance, including a requirement that they remain silent except when comments are solicited by the Management Committee.
- (c) Notice to Owners. The Association is required to provide notice of Management Committee meetings only to those Owners who request notice of a Management Committee meeting from either a Management Committee Member or the Manager and provide a valid email address at which the Owner will receive such notice. Any Owner who has requested notice of Management Committee meetings shall be given notice along with the Management Committee Members.
- (d) Owner Comments at Management Committee Meetings. At each meeting of the Management Committee, the Management Committee shall provide each Owner who wishes to speak a reasonable opportunity to offer comments. The Management Committee may select a specific time period during the meeting and limit Owner comments to such a time period. The Management Committee may set a reasonable length of time that each Owner may speak.
- (e) Attendance by Telephone or other Electronic Means. The Management Committee may allow attendance and participation at any meeting of the Management Committee by telephone or any other electronic means that

allows for the Management Committee Members to communicate orally in real time including, but not limited to, means such as web conferencing, video conferencing, or telephone conferencing. If the Management Committee meets by electronic communication, the Management Committee must provide information necessary to allow any Owner who has requested notice of Management Committee meetings the ability to participate by the available means of electronic communication. A Person participating by these means is considered to be present in person at the meeting.

- (f) Special Meetings. Special meetings of the Management Committee may be called by or at the request of any two (2) Management Committee Members or the President of the Association. Notice of any special meeting of the Management Committee shall be given at least five (5) days prior thereto to each Management Committee Member.
- (g) Quorum and Manner of Acting. A majority of the then authorized number of Management Committee Members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee Members present at any meeting at which a quorum is present and for which proper notice was provided to the Management Committee Members shall be the act of the Management Committee. The Management Committee Members shall act only as a Management Committee, and individual members shall have no powers as such.
- (h) Place and Notice of Meetings. The Condominium Project shall be the place for any Management Committee meeting unless special circumstances make it unavailable, in which case the meeting shall be held at a suitable location designated by the Management Committee that is within five miles of the Condominium Project. All Management Committee Members shall be given at least ten (10) days' notice of Management Committee meetings unless the meeting is at a regularly scheduled time and date of which each Management Committee Member has received notice. Owners requesting notice of a meeting by email shall be provided such notice at least forty-eight (48) hours before the meeting. No notice is required to Owners of a Management Committee meeting if: (1) the meeting is to address an emergency; and (2) each Management Committee Member receives notice of the meeting less than forty-eight (48) hours before the meeting.
- (i) Executive Session.
 - (1) The Management Committee or any other committee may, by motion and a vote, continue deliberations and discussions in executive session for the reasons allowed in these Bylaws. If they enter executive session, they shall discontinue any executive session by motion and a vote.
 - (2) The Management Committee may hold executive sessions to:

- (i) consult with an attorney for the purpose of obtaining legal advice;
 - (ii) discuss and make decisions with respect to ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
 - (iii) discuss a matter relating to contract negotiations and purchases related to the Association, including review of a bid or proposal;
 - (iv) discuss an Association employee or personnel matter, including reviews, discipline issues, termination issues, salary issues, and the terms of employment;
 - (v) discuss a delinquent assessment or fine; or
 - (vi) to discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy.
- (3) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee.
 - (4) Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session
 - (5) The minutes of the meeting at which an executive session is held, if kept, shall include:
 - (i) The purpose(s) of the executive session in sufficient detail. For example, the following are sufficient descriptions: "to discuss the terms of a management contract with XYZ Company," or "To discuss the pending litigation with XYZ"; and
 - (ii) Any decisions made during executive session.
 - (6) Care shall be taken so that attorney-client privileged information is not disclosed in minutes that are made available to anyone outside of members of the Management Committee.

3.3 Informal Action and Action by Management Committee Members without a Meeting.

- (a) Action Without a Meeting. Any action that is required or permitted by law or the Governing Documents to be taken at a Management Committee meeting may be taken without a meeting if:

- (1) all Management Committee Members consent to the action by signing a writing (i.e. via letter or Electronic Transmission) describing the action taken, unless, before that time, any director revokes his or her consent by a writing signed by the director and received by the secretary; or
 - (2) the affirmative votes in writing for the action received by the Association and not revoked equal or exceed the minimum number of votes that would be required to take the action at a meeting at which all Management Committee Members then in office were present and voted; provided that after notice is transmitted in writing to each Management Committee Member, each Management Committee Member by the time stated in the notice:
 - (i) signs a writing for such action, signs a writing against such action, abstains in writing from voting, or fails to respond or vote; and
 - (ii) fails to demand in writing that action not be taken without a meeting.
- (b) Notice. The notice under Section 3.3(a)(2) shall state, at a minimum:
- (1) the action to be taken;
 - (2) the time by which the Management Committee Member must respond to the notice; and
 - (3) that failure to respond by the time stated in the notice will have the same effect as: (i) abstaining in writing by the time stated in the notice and (ii) failing to demand in writing by the time stated in the notice that the action not be taken without a meeting.
- (c) Revocation. A Management Committee Member who in writing has consented, voted, abstained, or demanded action not be taken without a meeting may revoke the consent, vote, abstention, or demand in a writing received by the Association by the time stated in the notice contemplated in Section 3.3(b).
- (d) Means for Taking Action Without a Meeting. The Management Committee may utilize online, telephonic, electronic, email, remote, and any other means of Management Committee Member voting to the extent not prohibited by the Act or the Utah Revised Nonprofit Corporation Act.
- (e) Effective Date of Action Without a Meeting. An action approved of pursuant to Section 3.3(a)(1) is effective at the time the last Management Committee Member signs a writing describing the action taken, unless the Management Committee establishes a different effective date. An action approved of pursuant to Section 3.3(a)(2) is effective at the end of the time stated in the notice transmitted, unless the notice states a different effective date.

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

3.4 **Compensation.** No Management Committee Member shall receive compensation or discount in assessments for any services that he or she may render to the Association as a Management Committee Member; provided, however, that a Management Committee Member may be reimbursed for expenses incurred in the performance of his/her duties as a Management Committee Member to the extent such expenses are approved by the Management Committee.

3.5 **Resignation and Removal.** A Management Committee Member may resign at any time by delivering a written resignation to any other member of the Management Committee or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any

Management Committee Member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the Undivided Interest of the Association. This vote must be taken at a special meeting of the Owners called for that purpose. If the Owners vote to remove all of the members of the Management Committee, they shall immediately thereafter and at the same meeting elect new members of the Management Committee using the procedures normally applicable for election of Management Committee Members at an annual meeting. If the Owners vote to remove less than all of the members of the Management Committee, the Owners may vote to elect replacement members at the special meeting. If the Owners vote to remove less than all of the members of the Management Committee and either due to inadvertence or choice do not elect replacements at the special meeting, the remaining members of the Management Committee, by majority vote, shall appoint replacement members for the remainder of the term of the Management Committee Members who were removed.

- 3.6 **Vacancies other than by Removal by Owners.** If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee Member, the Management Committee Members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee Members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee Member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee Member is removed. Any Management Committee Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her predecessor.

ARTICLE IV: OFFICERS

- 4.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer.
- 4.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting and thereafter at any time. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. 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 in or execute any instrument in the capacity of more than one (1) office. All officers must be members of the Management Committee during the entire term of their respective offices.
- 4.3 **Resignation and Removal.** Any officer may resign any officer position at any time by delivering a written resignation to any Management Committee Member or any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. At any time, the Management Committee may appoint new or different officers, with or without cause.

- 4.4 **Vacancies and Newly Created Offices.** If any vacancy shall occur by any cause, such vacancies may be filled by the Management Committee at any regular or special Management Committee meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.
- 4.5 **The President.** The President shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the President shall have all authority typically granted to the Person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive Persons who may include but not be limited to any Person who: (1) refuses to abide by rules or requests of the presiding Person related to the order of the meeting and when speaking is permitted; or (2) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other Person to preside over any meeting at which the President is present. Unless otherwise delegated by the President or directed by the Management Committee, 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 Management Committee. The President shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The President shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect the Property. The President shall be responsible for the duties of any other office while that office is vacant.
- 4.6 **The Vice President.** The Vice President shall act in the place and stead of the President in the event of the President's resignation, absence, inability, or refusal to act. The Vice President shall perform such other duties as required by the Management Committee.
- 4.7 **The Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such Person to keep. The Secretary shall also act in the place and stead of the President in the event of the President and Vice President's resignation, absence, inability, or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.
- 4.8 **The Treasurer.** The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of Governing Documents as it relates to the funds of the Association including the requirement to obtain a review by an independent accountant every

three years and the preparation and filing of appropriate tax returns. The Treasurer shall also act in the place and stead of the President in the event of the President, Vice President, and Secretary's resignation, absence, inability, or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.

- 4.9 **Compensation.** No officer shall receive compensation or discount in assessments for any services that he or she may render 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 Management Committee.

ARTICLE V: SUB-COMMITTEES

- 5.1 **Designation of Committees.** The Management Committee may from time to time designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such committee designated hereunder shall include at least one (1) Management Committee Member. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee. The Management Committee may terminate any committee at any time.
- 5.2 **Proceedings of Committees.** Each committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. If required by the Management Committee, each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the committee.
- 5.3 **Quorum and Manner of Acting.** The Management Committee may establish any procedural or quorum requirements for voting by the committee. The members of any committee designated by the Management Committee hereunder shall act only as a committee, and the individual members thereof shall have no powers, as such. A committee may exercise the authority granted by the Management Committee.
- 5.4 **Resignation and Removal.** Any committee member may resign at any time by delivering a written resignation to any member of the Management Committee or any presiding officer of the Management Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any committee.
- 5.5 **Vacancies.** If any vacancy shall occur in any committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. A vacancy may be filled at any meeting of the Management Committee.

**ARTICLE VI:
INDEMNIFICATION**

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

**ARTICLE VII:
AMENDMENTS**

- 7.1 **Amendments.** Except as otherwise provided herein, these Bylaws may be amended by the affirmative approval of Owners holding Undivided Interests totaling not less than fifty-one percent (51%) of the total Undivided Interest. The approval required to amend the Bylaws may be obtained by ballot, vote, or any other means allowed by law. The approval of any one Owner of a Unit is sufficient if there are multiple Owners of the Unit
- 7.2 **Execution of Amendments.** Upon obtaining the required vote, an amendment shall be signed by the President and Secretary of the Association, who shall certify that the amendment has been properly adopted as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Utah County, Utah.

**ARTICLE VIII:
WAIVER OF IRREGULARITIES**

- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining Persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) If the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue was made at the meeting.
 - (b) If the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date the meeting was held.
 - (c) If the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within thirty (30) days of the date of the meeting.
 - (d) If the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the objecting person's receipt of actual or constructive notice of the action, vote, or decision that is the subject of the particular procedural issue.
 - (e) For any action, vote, or decision that occurred without a meeting, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the objecting person's receipt of actual or constructive notice of the occurrence of the action, vote, or decision that is the subject of the particular procedural issue.

- 8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific and shall include identification of the specific provision of the Governing Document or Law that is alleged to have been violated and a brief statement of the facts supporting the claimed violation.
- 8.3 **Irregularities That Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration;
 - (b) Any failure to obtain a proper quorum; and
 - (c) Any failure to obtain the proper number of votes, consents, or approvals required to take a particular action.

ARTICLE IX:

PROHIBITION ON SMOKING

- 9.1 **Smoking Prohibited.** As set forth in Section 10.7 of the Declaration, which Section is incorporated herein by reference, smoking is prohibited within the Condominium Project.